Country	Entity	License requirement	License review policy	**Federal Register** citation
	Superburning Semiconductor (Nanjing) Co., Ltd., No. 8, Lanhua Road, Room 806, Building 4, Pukou District, Nanjing, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 10/19/2023.
*	*	*	*	*
	Suzhou Xinyan Holdings Co., Ltd., a.k.a., the following one alias: —Shanghai Xinzhili Enterprise Development Co., Ltd. Modern Logistics Building (no. 112), Room 139, No. 88 Modern Avenue, Suzhou Industrial Park, Free Trade Pilot Zone Suzhou Area, Suzhou, China; *and* Building C, No. 888 Huanhu West 2nd Road, Lingang New Area, Shanghai, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 10/19/2023.
*	*	*	*	*
	Zhuhai Biren Integrated Circuit Co., Ltd., Building 18, Room 419, No. 1889 Huandao East Road, Hengqin New District, Zhuhai, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 10/19/2023.
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[4] For this entity, ''items subject to the EAR'' includes foreign-produced items that are subject to the EAR under § 734.9(e)(2) of the EAR. See § 744.11(a)(2)(ii) for related license requirements and license review policy.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–23048 Filed 10–17–23; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51; FCC 23–78; FR ID 177808]

Video Relay Service Compensation Formula

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, to ensure that the providers of Telecommunications Relay Services (TRS) are compensated for the provision of Video Relay Service (VRS), the Federal Communications Commission (Commission) adopts a formula to compensate such providers from the Interstate TRS Fund (TRS Fund) for the provision of service for the next five-year compensation period.

DATES: This rule has been classified as a major rule subject to Congressional review. The effective date is December 18, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, 202–418–1264, *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in CG Docket Nos. 03–123 and 10–51; FCC 23–78, adopted on September 22, 2023, released on September 28, 2023. The Commission previously sought comment on these issues in a Notice of Proposed Rulemaking, published at 86 FR 29969, June 4, 2021, with a correction published at 86 FR 31668, July 15, 2021. The full text of this document can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://docs.fcc.gov/public/attachments/FCC-23-78A1.pdf* or via the FCC's Electronic Comment Filing System (ECFS) website at *www.fcc.gov/ecfs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

1. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of Telecommunications Relay Services (TRS) to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, ''to the extent possible and in the most efficient manner.'' 47 U.S.C. 225(b)(1). TRS are defined as ''telephone transmission services'' enabling such persons to communicate by wire or radio ''in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.'' 47 U.S.C. 225(a)(2). VRS, a relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment, is supported entirely by the TRS Fund. VRS providers are compensated for the reasonable costs of providing VRS in accordance with payment formulas approved by the Commission. In a number of decisions over the past 20 years, the Commission has addressed whether certain cost categories are reasonable costs eligible for recovery from the TRS Fund. Reasonable costs are generally defined as those costs that providers must incur to provide relay service in accordance with mandatory minimum TRS standards.

2. In 2007, to ensure that VRS users could choose from a range of service offerings, despite significant disparities in VRS providers' market shares and per-minute costs, the Commission introduced a tiered compensation structure for VRS. Under this approach, a VRS provider's monthly compensation payment is calculated based on the application of different per-minute amounts to each of three specified ''tiers'' of minutes of service. The highest per-minute amount applies to an initial tier of minutes up to a defined maximum number, a lower amount applies to the next tier, again up to a second defined maximum number of minutes, and a still lower amount applies to any minutes of service in excess of the second maximum. Under the tiered approach, providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that likely more accurately correlates to their

actual costs—and the same is true of providers that have more minutes and lower per-minute costs.

The 2021 Notice of Proposed Rulemaking

3. In May 2021, the Commission released the *Notice of Proposed Rulemaking,* seeking comment on the adoption of a new VRS compensation plan. The Commission proposed to maintain a tiered compensation structure. The Commission also found no reason to depart from the Commission's longstanding policy objectives of bringing TRS Fund payments into closer alignment with allowable costs and preserving and promoting quality-of-service competition among multiple providers. In addition, the Commission sought comment on how cost and demand estimates should be adjusted, if at all, to account for post-COVID costs and demand, and whether projected costs were reliable enough to serve as a reasonable basis to set rates for a new multi-year rate cycle. The Commission also sought comment on whether to rely on historical costs only, in anticipation that VRS costs and demand may decrease to pre-pandemic levels once the pandemic subsides. Further, the Commission asked what labor cost adjustments, if any, should be applied. The Commission also sought comment on whether and how to modify the current compensation structure, whether to revisit any prior Commission determinations on allowable costs, what rate levels should be set, how to structure the compensation period, and whether to provide for rate adjustments during that period.

The Need for a Revised Compensation Plan

4. In setting VRS compensation formulas, the Commission first determines the relevant costs of providing service. Relying on cost and demand data reported by VRS providers to the TRS Fund administrator, the Commission estimates each provider's average per-minute cost to provide VRS (the provider's total allowable expenses divided by its total minutes), and also calculates a weighted-average per-minute cost for the industry as a whole (all providers' total allowable expenses divided by their total minutes). The Commission then adds an allowed operating margin. In the *Notice of Proposed Rulemaking,* the Commission sought comment on whether to revisit any of its prior determinations regarding allowable costs.

Changes in Allowable Cost Criteria

5. *Research and Development (R&D).* The Commission revises its allowable cost criteria to allow TRS Fund support for the reasonable cost of research and development to enhance the functional equivalency of VRS. No commenter opposes this change. The Commission agrees with commenters who assert that the current criterion is unnecessarily restrictive. First, in 2013, when it authorized TRS Fund support of Commission-directed (non-provider) research to improve the efficiency, availability, and functional equivalence of TRS, the Commission recognized that TRS Fund resources can appropriately be used to support research into service improvements that may exceed the existing minimum TRS standards. Authorizing providers (as well as Commission-directed entities) to conduct such research is consistent with the Commission's policy of promoting service improvement by encouraging VRS providers to compete with one another based on service quality—a form of competition that logically may lead a provider to develop innovative features not already required by the Commission's rules. The Commission finds that expenses incurred by VRS providers to develop such improvements are appropriately included as part of the ''reasonable cost'' of service supported by the TRS Fund.

6. Second, changed circumstances support removal of the current limitation. Recent changes in how people communicate are posing new technology challenges for VRS providers. To promote the integration of VRS with video conferencing, even though it is not currently required by the Commission's rules, VRS providers need to conduct research and development on methods of achieving such integration. Further, the risk of wasting TRS Fund resources on unproductive research appears less likely today, because the Commission no longer resets compensation each year based on annual cost reporting, as it did in 2004 when the current limitation on allowable research and development costs was established. With compensation plans now being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend money on wasteful or unnecessary research.

7. Therefore, the Commission concludes that the development of service improvements is deserving of TRS Fund support, even if such improvements exceed what is necessary for compliance with the Commission's minimum TRS standards. The Commission stresses that, as with all provider-reported expenses, expenses for research and development to improve VRS are allowable only if reasonable. In addition, expenses incurred to develop proprietary user devices or software (or any non-TRS product or service) are not recoverable from the TRS Fund.

8. *Number Acquisition and 911 Calling.* The Commission revises its allowable-cost criteria to permit TRS Fund support for the reasonable cost of assigning and porting North American Numbering Plan telephone numbers for TRS users. Last year, the Commission similarly revised its allowable-cost criteria for IP Relay to permit recovery of number assignment costs by IP Relay providers. The Commission agrees that precluding recovery of such costs is no longer justified. Based on the current record, the Commission concludes that voice service providers and VRS providers are not similarly situated regarding the ability to recover such costs from users. As a threshold matter, since 2008 it has become clear that a VRS provider's cost of obtaining the numbers it assigns to its registered users actually is attributable to the use of relay service to facilitate a call. If relay service were not provided, these numbers would not be needed by VRS users. Further, the current record indicates that, as a practical matter, these costs are never passed on to VRS users, but rather are absorbed by VRS providers. While voice service providers have a billing relationship with their customers, VRS providers typically do not, and there would be little point in creating such a relationship for the sole purpose of passing through what likely would be a de minimis monthly charge.

9. In this regard, there is an important difference between traditional text-telephone (TTY) based TRS and internet-based TRS. To place a call using a TTY, a consumer must subscribe to traditional telephone service, for which a telephone number is automatically issued to the subscriber (and for which the number acquisition cost is bundled into the service rate). To place a call using VRS, a consumer must subscribe to broadband internet access service, for which no telephone number is automatically provided (unless the consumer also subscribes to Voice over internet Protocol (VoIP) service—which a VRS user would have no reason to do).

10. As for costs associated with acquisition and use of toll-free numbers, the record does not indicate that any VRS provider still issues toll-free

numbers to registered VRS users. Therefore, the Commission does not find it necessary to revisit that question.

11. Similarly, the record does not indicate that any VRS provider is currently assessed a fee under a state or local E911 funding mechanism. Such fees are typically assessed on providers of telephone service. As a general matter, the TRS Fund supports the reasonable cost of ensuring that E911 calls placed by VRS users are handled in a functionally equivalent manner. FCC rules impose numerous E911-related requirements on VRS providers, including that they provide automatic location information for mobile VRS calls to 911 if technically feasible. The Commission clarifies that the TRS Fund supports reasonable expenses incurred by VRS providers to improve their ability to quickly connect a VRS user's 911 call to the Public Service Answering Point (PSAP) nearest the user's location and to automatically provide specific location data to such PSAP. Such costs are directly related to routing TRS calls to an appropriate PSAP and facilitating emergency call handling. Thus, such costs are allowable under the criteria adopted by the Commission in 2008.

12. *Outreach.* TRS outreach has a dual educational focus: making the general public aware of the availability and use of relay services, *e.g.,* to prevent the uninformed rejection of TRS calls by a called party; and providing ''non-branded'' information about relay services to potential users—*i.e.,* members of the public who are deaf or hard of hearing—to make them aware of the availability and benefits of TRS. Before 2013, the TRS Fund compensated TRS providers for outreach activities. However, the Commission grew concerned about the effectiveness of provider outreach. In 2013, the Commission directed the establishment of a pilot program to provide coordinated nationwide outreach for VRS and IP Relay through contractors or other third parties. The Commission also disallowed TRS Fund support for outreach conducted by VRS and IP Relay providers. Last year, the Commission revised its allowable-cost criteria for IP Relay to permit recovery of outreach costs by IP Relay providers.

13. The Commission concludes that VRS providers' reasonable outreach expenses should be recoverable from the TRS Fund. First, the pilot National Outreach Program expired in 2017 and has not been reauthorized. Although the Commission continues to be skeptical about the extent to which provider-conducted outreach can be effective in educating the general public, in the absence of a national outreach program, the TRS Fund should support outreach by VRS providers who choose to engage in it. However, outreach expenses of this kind are allowable only to the extent that the communication focuses on educating the public about the availability and use of VRS. Expenditures on advertisements about other matters do not constitute allowable outreach expenses.

14. Second, it appears that little is accomplished by continuing to prohibit TRS Fund support of provider outreach to potential VRS users. As the Commission has previously observed, outreach to potential TRS users (unlike outreach to the general public) is not always easy to distinguish from branded marketing, and branded marketing is an allowable TRS expense. Since the Commission's 2013 determination to cease TRS Fund support for outreach by VRS providers, the amounts reported by VRS providers as outreach have decreased, while the amounts reported as allowable marketing expenses have increased. To the extent that VRS providers are motivated to communicate with potential users, whether through branded marketing or otherwise, such efforts can be effective in introducing the service to new users, including subgroups that may lack awareness of the availability of a service or how it can meet their needs.

15. In allowing outreach, the Commission does not reopen the door to wasteful spending. As explained earlier in connection with research and development, with compensation plans being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend wastefully on unproductive outreach activity—especially as the resources involved are more likely to lead to increased compensation revenue if used for branded marketing.

16. *User Access Software.* The Commission revises its allowable-cost criteria to allow TRS Fund support for the reasonable cost of providing downloadable software applications that are needed to enable users to access VRS from off-the-shelf user devices. The Commission agrees that the TRS Fund should support reasonable costs incurred by VRS providers in developing, maintaining, and providing the software necessary to allow VRS users' non-proprietary equipment to route calls and connect to VRS. The Commission allows TRS Fund recovery of VRS providers' reasonable costs directly related to the provision of software that can be downloaded and self-installed by VRS users onto off-the-shelf user devices such as mobile phones, desktop computers, and laptops running on widely available operating systems. Such costs must be incurred by any provider to enable users to connect to its service platform; therefore, they are attributable to the provision of VRS. Further, recovery of the cost of software needed to connect such user devices to VRS is consistent with the Commission's policy to promote the availability of off-the-shelf IP-enabled devices for VRS use and decrease consumers' dependence on VRS equipment specifically designed for connection to a particular VRS provider.

17. However, the Commission declines to also allow recovery of costs incurred in developing, maintaining, or providing software for user devices that are distributed by one VRS provider and cannot be directly connected to other VRS providers' services. While the Commission agrees that users need a software interface to access VRS, they do not need proprietary devices that can be connected to and used with only one provider's service, nor do they need software designed for such devices. Although the Commission has not prohibited providers from distributing such devices and software to consumers requesting them, it is not necessary to support proprietary devices and software with TRS Fund resources. Sorenson Communications, LLC (Sorenson), asserts that the proprietary devices it distributes offer higher video resolutions and more screen space than off-the-shelf platforms, but provides no details supporting this claim. Even if true, Sorenson fails to show that such alleged advantages necessitate the availability of TRS Fund payments for such features or the software supporting them. Sorenson acknowledges that many of its customers (as well as 100% of the customers of other providers that do not distribute proprietary devices) use VRS software running on an off-the-shelf device, either alone or in addition to using a proprietary Sorenson device. Therefore, whatever perceived advantages proprietary devices may have, as a practical matter they provide a useful but not essential means of accessing VRS.

18. Further, allowing recovery of such software costs would not advance the Commission's policy to enable users to access VRS from off-the-shelf IP-enabled devices and to avoid dependence on VRS equipment specifically designed for a particular provider's network. By limiting TRS Fund support to user software that allows VRS access from off-the-shelf equipment that can be connected to any VRS provider, the

Commission promotes the availability of multiple service options for consumers.

19. The Commission recognizes that it may often be difficult for a VRS provider to differentiate precisely between the portions of certain expenses that are attributable to, *e.g.,* the development of software applications for connecting proprietary and non-proprietary equipment to the provider's platform. In cases where such expenses cannot be directly assigned, the provider should adopt a reasonable allocation method and specify the method used in its cost reports, so that it can be evaluated by the TRS Fund administrator and the Commission.

20. *Field Staff Issues.* Because the costs of installing, maintaining, and training customers to use provider-distributed devices are not recoverable through TRS Fund compensation, providers must not report the costs of field staff visits for such purposes as allowable expenses. Costs incurred to install and maintain software for a VRS provider's proprietary user devices are also non-allowable. Therefore, field staff costs related to installation, maintenance, and training of customers to use such software also must be excluded. However, the Commission clarifies that the reasonable cost of service-related work performed by field staff during a visit to a new or current user is an allowable cost of providing VRS. Reasonable costs incurred for service-related field staff visits for the purpose of, *e.g.,* assisting customers with registration, use of VRS on a non-proprietary device, or completing a port are allowable.

21. The above clarifications also apply to the reporting of field staff costs incurred by IP CTS providers. However, any change in the allowability of field staff costs related to installation and provision of IP CTS equipment is beyond the scope of this proceeding.

Estimating Costs

22. *Need for adjustment of provider cost projections.* For the past 13 years, the Commission has established the cost basis for provider compensation by averaging VRS providers' reported historical expenses for the prior calendar year with their projected expenses for the current calendar year. The Commission has found this method to be a useful way to counteract providers' tendency to overestimate future costs. However, for a number of reasons specific to this proceeding, the Commission's averaging approach requires modification to achieve reasonably accurate estimates of provider costs for the purpose of establishing VRS compensation for the new compensation period.

23. First, due to a recent increase in the general inflation rate, which does not appear to be offset by comparable efficiency improvements, the average of VRS providers' historical 2022 and projected 2023 expenses is likely to understate the costs that will be incurred by VRS providers in many expense categories in the new compensation period. There is likely to be significant inflation during the 12-month lag between this 2022–23 reporting period and the 2023–24 Fund Year, which is the first year of the new compensation period. Second, VRS providers may incur expenses in newly allowable cost categories, which are not reflected in their current reporting of allowable costs. Third, the record indicates that, due to a shortage of qualified American Sign Language (ASL) interpreters and the challenges posed by new modes of communication, VRS providers need to substantially increase communications assistant (CA) wages and technology spending to continue providing high-quality, functionally equivalent service.

24. Finally, recent inflation and other factors appear to have caused an unusual amount of uncertainty and variation in VRS providers' estimates of future costs. In projecting costs for 2023 and 2024, different providers appear to have made very different assumptions about future input costs, as well as the extent to which compensation levels will increase sufficiently to justify additional spending. As a result, estimating each provider's cost of providing VRS based on an average of that provider's historical and projected expenses is likely to cause discrepancies.

25. Providers suggest different approaches for addressing these concerns. ZP Better Together, LLC (ZP) argues that the Commission should abandon any attempt to estimate current provider costs. Instead, ZP recommends applying an inflation adjustment (as well as certain adjustments meant to reflect newly allowable costs) to the compensation rates set in 2017. The Commission rejects this approach, which incorrectly assumes that providers' 2016–17 costs (on which the rates set in 2017 were based) remain relevant for purposes of setting compensation for 2023–24 and beyond. There is no logical or record basis for this assumption, which underlies a number of the assertions in ZP's recent *ex partes—e.g.,* that any rate card should give ZP and Convo Communications, LLC, a share of the new revenues at least equal to its market share. Due to the changes that have taken place since 2017, ''old'' provider revenues resulting from the current rates are disproportionately allocated in relation to provider cost. Therefore, there is no logical necessity for ''new'' revenues to be proportionate to providers' market shares. There is no conceivable basis in section 225 of the Act or economics for such a proposal, divorced from costs and operating margins. The relative per-minute costs of VRS providers are now very different than they were seven years ago. Further, ZP's argument that the tiered rate structure and rates of 2017 reflect immutable truths about economies of scale at different volumes of minutes is based on a flawed study.

26. Sorenson, on the other hand, suggests that the Commission modify past practice by using historical 2022 cost, rather than an average of historical and projected cost, as a baseline for estimating future VRS cost, and apply uniform factors to adjust each provider's 2022 costs for inflation and to make the targeted, above-inflation adjustments needed in certain areas. The Commission believes this approach has merit. Historical costs are more reliably accurate, and each provider's historical cost can be adjusted by a uniform factor to address inflation or other likely cost changes affecting all providers, so as not to unduly distort, or give any provider an undue advantage in, the resulting rates. While ZP has raised concerns about some aspects of Sorenson's reported 2022 costs, Sorenson has provided reasonable explanations for its 2022 cost increases.

27. To address this unusual confluence of rate-setting issues, the Commission adjusts the costs reported in 2022 to: take account of cost changes due to inflation during the 18-month time lag between calendar year 2022 (the cost reporting period) and Fund Year 2023–24 (the first year of the new compensation period); add amounts sufficient to cover necessary increases in technology spending and CA wages and benefits; include estimates of provider expenditures in newly allowable cost categories; and address new costs incurred by Sorenson to provide video-text service. Finally, the Commission adds an appropriate operating margin. The Commission does not anticipate that the modifications made to address these issues will need to be repeated in subsequent compensation proceedings. The current confluence of pandemic-related effects, a sudden change in the inflation rate, shortage of skilled labor, and provider uncertainty regarding future costs is unlikely to recur, or if it does, is

unlikely to coincide with the end of a compensation period.

28. *Adjusting Historical Cost for Inflation.* To ensure that compensation is sufficient to cover likely inflation-related cost increases between calendar year 2022 and Fund Year 2023–24, the Commission increases its estimate of each provider's expenses in most categories by 7.23%, which is the change from fourth quarter 2021 to second quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted total compensation for private industry workers in professional, scientific, and technical services.

29. *Estimating CA Cost.* Several commenters report that VRS labor costs are likely to continue increasing by substantially more than the 18-month inflation adjustment described above, due to a continuing shortage of CAs. All providers increased CA wages in 2022, and Sorenson and ZP both projected further wage increases, leading to higher CA cost in 2023 and 2024. While the Commission agrees that a further increase in CA wages is needed, providers' projections in that regard vary widely. As discussed above, these disparate projections appear to be based on different assumptions about future inflation and future compensation levels. To address the need for CA wages to increase substantially more than inflation, while avoiding the distorting effects caused by disparate provider projections, the Commission estimates costs in this category by assuming that all providers' CA wages and benefits will increase by a constant percentage over historical levels.

30. For this category only, the Commission uses Fund Year 2020–21 as the baseline for estimating increased CA cost. This is because, CA wages were relatively stable through the end of 2021, and the wage increases provided in 2022 differed substantially among the providers. Given the wide disparity among the providers' projections of future wage increases, the Commission must resort to rough estimates. The Commission believes Sorenson's projection, which is at the high end, is closer to being accurate than those of ZP and Convo. However, the Commission is not convinced that CA wages will or should increase to the full extent of Sorenson's estimate.

31. Sorenson's projection is largely based on its claims that community interpreters' compensation averages $80–$100 per hour, and that CA wages must be raised closer to that level to ensure that qualified interpreters are willing to work as VRS CAs. However, the Commission questions the extent to which Sorenson's estimate of $80–$100 per hour for community interpreter compensation is applicable nationwide. Information from other sources appears inconsistent with Sorenson's claim. Also, many of the rates cited by Sorenson do not include travel time. If an interpreter can handle VRS calls at home, as many increasingly do, two hours of VRS work at $50 per hour would earn the interpreter $100, while a one-hour community interpreting engagement, paying $90 per hour of interpreting and requiring an additional hour of travel to and from the interpreter's home, would earn the interpreter only $90. Where travel time is compensated, hourly compensation may be substantially lower.

32. Further, while the Commission recognizes the inherent difficulty of VRS work, working as a CA also has certain advantages that may make it attractive to interpreters despite lower hourly compensation. First, in general, community interpreting work is only available when a meeting has been scheduled that requires an interpreter. VRS, by contrast, is operating 24/7, and there must always be interpreters ready to handle any call that happens to be made. Thus, it is often possible for interpreters to arrange for VRS work during periods when community interpreting work is unavailable. Second, community interpreting necessitates travel, while many VRS CAs handle calls from their homes. As a result, VRS work not only is more convenient for interpreters, but also can be performed by interpreters who live in areas where community interpreting work is relatively scarce or whose personal circumstances make it difficult to work away from home.

33. Finally, as noted above, VRS providers have frequently over-projected the amount by which costs are likely to increase. Taking all these factors into account, the Commission finds it reasonable to assume that the CA costs of VRS providers will rise by a percentage of the increase projected by Sorenson. Under this approach, each provider's CA cost is estimated to be 65% higher than its CA cost in 2020–21. The Commission notes that this estimate gives substantial weight to Sorenson's projection, as 65% is substantially more than a simple average of the CA cost increases projected by the three providers.

34. The Commission recognizes that this estimate is necessarily a matter of judgment. While the Commission is setting compensation for a five-year period, the Commission reserves the right to make adjustments in the formulas, based on a strong showing that such adjustments are needed. Thus, if CA wages are increased consistently with the above estimate, and VRS providers then conclude that further increases are needed, they may present relevant evidence for the Commission's consideration. On the other hand, to the extent that CA wages are not increased consistently with the above estimate, the Commission may also consider and make appropriate adjustments in light of such evidence.

35. *Estimating Engineering and R&D Cost.* The Commission finds that engineering and R&D expenses are likely to increase by a percentage higher than inflation, as all providers work to address the unusually demanding technology upgrades needed to meet service challenges in the next compensation period. Engineering and R&D are closely related aspects of technology spending: successful research and development leads to service innovations, the deployment of which increases engineering costs, and increased engineering staff and resources can also be used to expand research and development. Important changes in how people communicate—such as the rapid growth of video conferencing—are posing new technology challenges for VRS providers. For example, VRS providers must dedicate additional research, development, and engineering resources to collaboration with video platform providers, so that VRS CAs can have an integrated, audio-visual presence in video conferences. In addition, with the Commission taking steps to modernize the E911 system, the Commission anticipates the deployment of new technology to automatically provide the dispatchable location of any mobile VRS user calling 911. VRS providers may expend additional resources to help find and implement a one-number solution that ends the ''siloing'' of VRS, seamlessly merging the use of relay with mainstream voice, video, and texting services.

36. The Commission must ensure that the TRS Fund supports sufficient spending on technology to address the challenges described above, so that VRS users have functionally equivalent access to video conferencing and emergency communication. As directed by the Act, the Commission must implement TRS in a way that both encourages the use of existing technology and does not deter the development of improved technology. Further, support for emergency communications is a fundamental part of the Commission's TRS mandate. The amounts that VRS providers will need to spend to address these specific

challenges are not easy to quantify. Perhaps because providers have more leeway to defer spending on new technology, current projections for technology spending are subject to wide variation among the providers. Sorenson projects substantially increased spending on R&D and engineering in 2023 and 2024, while ZP and Convo project declines. For the reasons stated above, the Commission believes all VRS providers will need to increase spending substantially in these areas to ensure that they remain competitive in the evolving communications landscape. Despite their projections of a decline in spending on engineering and R&D, ZP and Convo agree that such increases are needed. Given the uncertainties inherent in predicting future spending on technology, the Commission recognizes that any estimate it makes may be subject to error. However, the Commission prefers to err on the side of over-predicting the amount of spending that will be necessary to ensure that VRS technology provides functionally equivalent service to consumers. While Sorenson projects a substantial increase in technology spending, that projection was made before the Commission issued its Report and Order and Proposed Rule on *Access to Video Conferencing,* which pose additional technology challenges to VRS providers. 88 FR 50053, August 1, 2023; 88 FR 52088, August 7, 2023. The Commission estimates that, in the first year of the new compensation period, each provider will need to increase spending on engineering and R&D by approximately 75% over the levels reported for 2022. Therefore, the Commission further adjusts each provider's estimated costs in these areas by adding 75% of the provider's reported 2022 level. As with CA costs, the Commission notes that it reserves the right to make adjustments in the compensation formulas, either upward based on a strong showing that additional technology expenditures are necessary, or downward, based on evidence that the increased technology expenditures described above have not been made.

37. *Estimated Expenses in Newly Allowable Cost Categories.* The Commission also adjusts estimated VRS costs to include certain expenses that were previously non-allowable and are now allowable. Newly allowable R&D costs are included in the estimates discussed above. However, R&D costs for user devices and proprietary user software remain non-allowable. Previously non-allowable expenses for numbering activities in 2022 are identified by each VRS provider in its annual cost report and are included in the Commission's cost estimates. Costs for customer support provided by field staff remain non-allowable to the extent that they are attributable to installation, maintenance, or customer assistance with provider-distributed devices or software for proprietary devices. The record indicates that Sorenson currently attributes service-related field staff costs to the Operations Support cost category. Thus, service-related field staff costs are already included in reported allowable costs.

38. *Outreach.* During the next compensation period, VRS provider expenditures on outreach may increase somewhat, building on the Commission's and other Federal initiatives to expand broadband access, and the expected increase in VRS availability to incarcerated persons. However, the Commission finds that such expenditures are unlikely to average $0.09 per minute, as ZP estimates. As a general matter, the Commission believes VRS providers are less likely to spend substantial sums on ''unbranded'' outreach than ''branded'' marketing, as unbranded communications are less likely to result in the registration of users generating additional compensation for that provider. No significant amount of outreach expenses have been reported by providers after 2020. Given the virtual absence of provider outreach at present and the relatively weak economic incentives for providers to engage in unbranded outreach rather than branded marketing, the Commission estimates that providers' outreach spending is unlikely to exceed one-quarter of their marketing expenses, on average.

39. Further, the Commission finds no justification for the view that providers will spend on outreach at a uniform per-minute rate. It seems more likely that outreach spending will represent a relatively uniform percentage of each provider's total expenses. Industry-wide, VRS providers' marketing costs (adjusted for recent inflation) average $0.13 per minute, or 3.1% of total expenses. If outreach expenses average one-quarter of the industry-wide average marketing cost, then each provider will devote approximately 0.8% of its total expenses to outreach. The Commission therefore adjusts each provider's estimated VRS cost by an amount equal to 0.8% of its total expenses.

40. *Estimated Costs of Video-Text Service.* With the decision of ASL Services Holding, LLC, dba GlobalVRS (GlobalVRS) to terminate its involvement with VRS, another VRS provider, Sorenson, has undertaken efforts to prepare to offer Video-Text Service for ASL users who are deafblind. Sorenson anticipates that it will incur a substantial amount of relatively fixed costs, which are unlikely to vary substantially with the number of minutes of service provided. Sorenson estimates these costs to include an initial capital expenditure and annually recurring costs for field support, maintenance, testing, software development, etc. The Commission finds that this cost estimate is reasonable, and increases Sorenson's adjusted annual expenses by this amount. Other VRS providers are not precluded from offering this type of service. However, in response to GlobalVRS's impending exit, only Sorenson has represented that it is actively preparing to provide this service. Therefore, the Commission adjusts Sorenson's costs to reflect these estimated expenditures. Sorenson's estimated variable cost of providing this service is not included in this adjustment. As discussed below, the Commission adopts a separate compensation formula to allow recovery of such costs through an additive payment for each minute of Video-Text Service.

41. *Operating Margin.* The Commission finds no reason to modify the range of reasonable VRS operating margins, currently defined as between 7.6% and 12.35%. The record does not support Sorenson's argument that the allowed operating margin is insufficient to encourage capital investment in VRS.

42. The Commission declines to adjust the operating margin to 22% to reflect average operating margins for competitive telecommunications firms or to 17.8% to reflect average operating margin for companies in the communications and information technologies sectors, as urged by Sorenson. The current range of reasonable operating margins for VRS is based on an average of the margins earned in analogous industries, including government contracting and the professional service sector that includes translation and interpretation services, as well as the information technology sector.

43. Sorenson does not provide a convincing explanation of its view that average margins for the competitive telecommunications firms, or for a mix of firms in the communications and information technologies sector would provide a more appropriate benchmark. As a preliminary matter, the Commission notes that Sorenson's initial filing was based on a study that included telecommunications carriers.

The operating margin approach was adopted in 2017 because the Commission recognized that VRS providers are *unlike* the telecommunications industry, in that VRS is not a capital intensive business. Any proposed benchmark that includes the operating margins of telecommunications carriers is clearly inappropriate.

44. While the most recent analysis submitted by Sorenson does purport to filter out capital-intensive companies from the sample of information and communications technology firms, the use of a benchmark based on the high technology sector remains flawed, for several reasons. First, while VRS certainly makes use of advanced technology, the bulk of VRS costs are labor costs, primarily salaries and benefits for interpreters, who need not be highly skilled in technology. This will remain the case despite the technology challenges that require VRS companies to increase spending on research and development and engineering. The economic profile of a VRS provider is quite different from the high technology companies analyzed in the study on which Sorenson relies.

45. Second, that analysis looks at a sample of companies with net profit of up to 100%. The Commission is not persuaded that these high-profit companies are comparable to TRS providers. Third, there are a number of important differences between the risks typically faced by IT companies and the risks involved in VRS. For example, while IT companies may be subject to unexpected, dramatic changes in demand for their products, demand for VRS has been remarkably stable over time. Further, while the prices that IT companies can expect to receive for their products are subject to variation based on, *e.g.,* changing demand and the pricing decisions of competitors, VRS providers can rely on government-established prices that are predetermined for a period of several years.

46. In short, neither Sorenson nor the study on which Sorenson relies persuasively explain why their operating margin analysis, relying on surveys of industry sectors that are markedly dissimilar to the VRS industry, should be deemed preferable to the Commission's 2017 determination of reasonable operating margins, based on data from a diverse set of industries analogous to VRS.

47. In addition, according to recent census figures, typical margins for companies in a number of professional service sectors, including the interpretation services sector, are substantially lower than the numbers cited by Sorenson and are relatively similar to or below the levels of operating margin relied upon in setting the range of reasonableness. The Census Bureau's survey of public companies' financial data for this sector, defined as ''Professional, Scientific, and Technical Services,'' but excluding legal, shows that average quarterly pre-tax operating margins between 2019 and 2022 ranged from −3.06% (in 1Q2020) to 3.58% (in 3Q2020), averaging 0.09% in the 2019–22 period as a whole and −1.78% in 2022 (the most recent year). The subsector that includes translation and interpretation services (but excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services) saw an average operating margin for the public firms included in the Census Bureau's survey ranging from 0.62% (in 1Q2020) to 11.56% (in 2Q2019) for the 2019–22 period and averaging 6.67% in the 2019–22 period as a whole and 6.11% in 2022. Sorenson's analysis does not address the relevant census data.

48. While the operating margins for public companies defined as ''Professional, Scientific, and Technical Services,'' but excluding legal, have fluctuated over time (and currently are lower than when the Commission adopted the reasonableness range of 7.6%–12.35%), the Commission does not believe it would be beneficial to revise the reasonable range of operating margins that has guided the Commission's TRS compensation methodology over the past decade. It is also beneficial to retain consistency in the reasonable operating margin range that participants in the TRS program should expect, absent a clearer indication that operating margins for companies providing comparable services have significantly changed. The record does not establish such a significant change to operating margins when considering the complete scope of industries comparable to VRS. Therefore, the Commission retains the current reasonableness range for the VRS operating margin.

49. Sorenson's argument that the operating margin should be reassessed to take account of a previously proposed increase in Federal corporate income tax applicable to the top tax bracket, from 21% to 28%, appears to be moot, as the proposed tax rate increase was not adopted. The Commission also notes that the current range of reasonable operating margins was established in 2017, based on estimates of average pre-tax operating margins for companies comparable to VRS providers. During the 2013–16 period from which the sample was drawn, corporate income tax for the top bracket was 35%—substantially higher than the current 21% and even higher than the 28% rate projected by Sorenson. Therefore, the corporate income tax burden that Sorenson claims is unfairly depressing its returns has actually decreased, not increased, since the reasonable range of margins was established by the Commission.

Compensation Structure and Formulas

50. The Commission adopts the tentative conclusion of the *Notice of Proposed Rulemaking* that the purposes of section 225 of the Act are best served by structuring VRS compensation to support multi-provider competition based on quality of service. The record supports the Commission's prior findings that, by offering VRS users a choice among multiple providers, the Commission can efficiently and effectively ensure that functionally equivalent VRS is available to all eligible users. The availability of multiple service offerings encourages VRS providers to compete for customers by exceeding minimum service quality standards. In addition, a multi-provider environment encourages diverse service offerings, including specialized services and features needed by sub-groups within the sign language-using population.

51. Therefore, the Commission has consistently sought to structure VRS compensation so as to maintain competitive choices for consumers while minimizing waste of TRS Fund resources. There is no simple recipe for achieving these objectives. However, the Commission has flexibility to adjust its approach as necessary to address changed circumstances.

Compensation for Large Providers

52. The record of this proceeding shows that circumstances have changed materially since 2017, when the current compensation plan was adopted. *See Structure and Practices of the Video Relay Services Program,* 82 FR 39673, August 22, 2017 (*2017 VRS Compensation Order*). Specifically, the cost structures of the largest VRS providers have come closer to parity. As a result, modifications are needed to avoid overcompensating one or both of these providers. To equitably allocate TRS Fund resources and ensure the availability of functionally equivalent VRS in the most efficient manner, the Commission modifies the current tier structure by eliminating the third tier.

53. The essential purpose of rate tiering is ''to compensate VRS providers

in a manner that best reflects the financial situation'' of providers with disparate cost structures. In the *Notice of Proposed Rulemaking,* the Commission proposed to maintain a tiered structure but sought comment on various possible modifications of that structure. The record now confirms that such modifications are needed. Since 2017, the cost gap between the two largest VRS providers, while still substantial, has progressively diminished. The reasons for the substantial decline in ZP's per-minute costs may not be easy to pinpoint, but they are likely a combination of ZP having successfully grown its call volume, allowing it to operate on a much larger scale, and having apparently completed the consolidation of the 2017 merger of its predecessor entities, enabling ZP to more fully realize the expected scale economies from that merger. As modified above to take account of inflation, newly allowable costs, and the Commission's expectation of increased CA wages, engineering and R&D, and certain other costs, the similarity in the estimated costs of the two providers persists.

54. These cost changes raise significant concerns about the continuing validity of the justification for tiering that the Commission relied on in 2017. While one provider continues to handle the majority of VRS minutes, its share of minutes has dwindled, and it appears to have lost its unique cost advantage. Since 2017, the second largest provider has increased its minutes and its market share, and its per-minute costs are now somewhat closer to those of the largest provider. Thus, the two largest providers now have somewhat similar per-minute costs, and yet there continues to be a substantial disparity in their shares of VRS minutes.

55. These changed circumstances warrant a reconsideration of the compensation structure. One alternative suggested in the record would involve compensating the two largest providers at a single rate. A single-rate plan (*e.g.,* based on the weighted average of the providers' costs) would be simple to administer. Arguably, a single-rate plan could distribute resources efficiently and equitably, ensuring that both providers earn reasonable operating margins above allowable expenses. And it would avoid the growth-incentive issues that can arise under a tiered structure, due to the reduction in compensation for additional minutes of service when a provider's minutes increase beyond a tier's upper boundary.

56. However, at this time the Commission concludes it would be premature to adopt a single-rate compensation plan. First, the record continues to be highly contested—and inconclusive—regarding the conditions under which tiering is or is not necessary. For example, the record contains widely varying estimates regarding the volume of minutes that a provider must achieve for economies of scale to be exhausted. Citing studies presented in previous proceedings, Sorenson continues to argue that relevant economies of scale are essentially exhausted at the level of 250,000 monthly minutes. The Commission has previously found Sorenson's evidence unconvincing, and Sorenson provides no new information that warrants revisiting this view. At the other extreme, ZP argues that relevant economies of scale continue to be significant until at least 5 million monthly minutes. That argument too is less than persuasive, given the limitations of the model used by ZP's expert. An assessment of ZP's model by Commission staff shows that a reliable estimate of industry cost functions through regression analysis is not possible on the basis of the data points provided by ZP's expert.

57. Second, setting TRS Fund compensation, like ratemaking in general, is far from an exact science. While the historical gap between the per-minute costs of the two largest providers has lessened over the last few years, it is only in the last year that their reported costs are actually similar. The Commission cannot rule out the possibility that the similarity is unique to this historical moment and may not be repeated in future years. If the apparent narrowing of the cost differential were to be reversed during the compensation period, applying a single rate to both providers could endanger the availability of competitive choices for VRS users. In analogous situations in prior proceedings, the Commission has adopted a similarly conservative approach when weighing the imponderables involved in VRS compensation methodology.

58. For these reasons, the Commission chooses to preserve a tiered compensation structure for the next period, while modifying it to reduce unnecessary inefficiency or inequity in the allocation of TRS Fund resources. Specifically, the Commission merges the current Tier II (applicable to monthly minutes between 1,000,001 and 2,500,000) and Tier III (applicable to monthly minutes in excess of 2,500,000). As a result, the new plan for VRS providers with more than 1 million monthly minutes will have two tiers:

- Tier I—applicable to a provider's 1st 1 million monthly minutes; and
- Tier II—applicable to a provider's monthly minutes in excess of 1 million.

Merging the current Tiers II and III allows the Commission to set a rate for the merged tier that is low enough to ensure that, in conjunction with the Tier I rate, providers are not over-compensated, *i.e.,* do not earn an operating margin above the reasonable range, but still provides an incentive to continue providing additional minutes of service.

59. *Compensation Rates.* Within this structure, as in 2017, the Commission seeks to set the rates for these tiers to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses. The Commission also seeks to avoid overcompensating any provider, *i.e.,* by allowing a provider to earn an operating margin above its total expenses that is outside the reasonable range. The Commission achieves this by setting per-minute compensation amounts of $6.27 for Tier I minutes and $3.92 for Tier II minutes. Together, these rates will enable providers subject to the tiered formula to recover their allowable expenses and earn an operating margin within the zone of reasonableness. In addition, because the Tier II rate is not substantially lower than the average per-minute expenses of any provider subject to that rate, setting the rate at this level is unlikely to deter a provider from increasing its VRS minutes.

60. The Commission does not agree with ZP's contention that the Commission should not seek to limit the operating margins of VRS providers. VRS is entirely funded by contributions from telecommunications and VoIP service providers, which are generally passed on to communications rate payers. The Commission has a statutory obligation to ensure that these funds are used efficiently. As with the Universal Service Fund, moreover, the Commission is the steward of the TRS Fund and is obligated to protect it from waste, fraud, and abuse. To the extent that a VRS provider's operating margin exceeds the reasonable range, the additional revenues paid from the TRS Fund (and the additional contributions exacted from telecommunications providers to cover them) are wasted. Further, to the extent that ZP's per-minute cost exceeds Sorenson's, manipulating rates to provide a higher operating margin for a higher-cost provider would be inconsistent with economic principles, as in competitive

markets, less-efficient providers are not rewarded for having higher costs.

61. Moreover, the limits the Commission sets to prevent overcompensation do not conflict with the Commission's policy in the *2017 VRS Compensation Order.* In that rulemaking, as in every recent TRS compensation proceeding, the Commission made clear that avoiding overcompensation of VRS providers is a necessary objective to ensure that TRS is provided in the most efficient manner. For example, a key benefit of the tier structure, cited in that decision, is that it allows the Commission to set rates that permit each provider an opportunity to recover its reasonable costs of providing VRS, without overcompensating those providers who have lower actual costs because, for example, they have reached a more efficient scale of operations. Further, the Commission stressed that the range of reasonable operating margins set in that decision was a range of ''allowable'' operating margins, cautioning that ''[the Commission does] not thereby authorize providers to recover additional 'markup' or profit that goes beyond such reasonable allowance.'' Indeed, there would have been little point in setting an upper limit on the reasonable range of operating margins, had the Commission intended to permit providers free rein to earn profits above that limit.

62. In 2017, while the Commission sought to reduce overcompensation, it stopped short of reducing compensation all the way down to cost. In that decision, the Commission sought to address a specific concern raised regarding tier structures: that they could limit providers' incentives to grow and increase their efficiency, especially if a provider's monthly minutes were about to cross the numerical threshold for the next tier. This theoretical risk often can be addressed by ensuring that tier boundaries are wide enough to cover a provider's likely growth during the life of the rate plan. However, it appears that the Commission was uncertain whether the tier boundaries it set actually would be wide enough to completely erase this risk. Therefore, it also sought to set the rate for the next tier high enough to ensure that, if a provider did grow large enough that it came close to a tier boundary, it would not be deterred from crossing that boundary. Under today's circumstances, by contrast, the Commission can set the tier boundaries wide enough to avoid this risk. By merging the existing Tiers II and III into a single tier, the Commission completely removes any tier boundary that could affect the growth incentives of the two largest providers. And by increasing the highest tier rate from $2.63 to $3.92, the Commission eliminates any realistic possibility of deterring any provider subject to that tier from serving additional minutes.

63. *Alternative Tiering Proposals.* The Commission declines to adopt the alternative tiering proposals proposed by ZP and Sorenson in this proceeding. None of the alternatives would ensure that all providers subject to tiered rates earn operating margins within the reasonable range. The initial ZP and Sorenson proposals—to expand Tier II without changing the current per-minute amounts for any tier—were made before the filing of the 2023 cost reports showing a substantial increase, as well as convergence, in these providers' costs. The proponents of these proposals no longer advocate their adoption.

64. As for the June 2023 proposals of ZP and Sorenson, they would do nothing to address the problems with the current tier structure, discussed above. In addition, both these proposals would result in excessive operating margins for one or both providers—even with providers' reported costs adjusted upward. Sorenson's September 2023 proposal also would result in excessive operating margins for both Sorenson and ZP.

Compensation for Small Providers

65. For VRS providers—including new entrants—that handle 1 million monthly minutes or less, the Commission maintains a separate compensation formula. When the Commission established such a separate formula (the ''emergent provider'' formula, then applicable to VRS providers with up to 500,000 monthly minutes) in 2017, it was intended as a temporary measure, to allow the small providers operating at that time a reasonable window of opportunity to grow. The two providers compensated under that formula during this most recent compensation period did not experience a substantial growth in traffic volume, and they incurred per-minute costs substantially higher than those of the two larger providers. Nevertheless, as the Commission recognized in 2017, the availability of additional, reliable service options from smaller VRS providers can effectively reinforce service quality incentives.

66. Further, maintaining a separate compensation formula for smaller providers encourages new entry into the VRS program by potentially innovative firms. Some small providers may advance the availability of TRS by focusing on specialized offerings to niche populations not served by larger providers. Rather than applying a single compensation formula to all providers, regardless of size and cost structure—with the likely result of driving out the remaining small provider, deterring new entry, and leaving only two VRS providers from which VRS users could choose—the Commission preserves a separate VRS formula for the next period. The Commission concludes that this approach is the most efficient way to maintain the availability of functionally equivalent VRS, including specialized services that may be needed by niche populations.

67. To avoid reducing any small provider's incentive to grow their business, the Commission also raises the upper limit for application of the small-provider formula from 500,000 to 1 million monthly minutes. The Commission is concerned that if it maintained the 500,000-minutes limit, a small provider growing its minutes above that limit may not have an opportunity to recover its allowable costs and earn a reasonable operating margin. Based on the record (which indicates that the current small provider has not grown substantially since 2017), it seems unlikely that any small provider or new entrant will approach the expanded limit of 1 million monthly minutes during the next compensation period. However, to address that possibility, the Commission provides that, during the next compensation period, if a provider handled 1 million or fewer monthly minutes in June 2023 (or in the first year of operation for a new entrant), and if such provider subsequently exceeds 1 million monthly minutes, the small-provider formula shall continue to apply to the provider's first 1 million monthly minutes, and the large-provider formula shall apply to all monthly minutes after the first million. This is comparable to the plan adopted by the Commission in 2017 to address analogous circumstances under the emergent-provider formula.

68. *Compensation Amount.* As in previous compensation proceedings, when the Commission sets compensation formulas for small VRS providers, there is no single ''right answer'' to the question; rather, the matter is inherently a question of administrative line-drawing. For VRS providers providing 1 million monthly minutes or fewer, the Commission adopts a compensation formula of $7.77 per minute, applicable to all minutes of such providers. This formula is based on the adjusted per-minute expenses of the remaining VRS provider handling 1 million monthly minutes or fewer, and

is designed to allow VRS providers with 1 million monthly minutes or fewer a reasonable opportunity to earn an operating margin within the range of reasonableness. In setting this per-minute formula, the Commission seeks to ensure that VRS providers that have demonstrated some ability to grow have an opportunity to recover their expenses and earn a reasonable operating margin. This formula also provides an opportunity for very small providers and new entrants to recover their reasonable fixed or start-up expenses. However, the Commission does not guarantee cost recovery for every such provider, regardless of their per-minute costs.

Additional Compensation for Video-Text Service

69. The Commission prescribes additional per-minute compensation for the provision of a specialized form of VRS to ASL users who are deafblind, applicable to any VRS provider that chooses to offer it. Such additional compensation will be paid, in addition to the otherwise applicable per-minute amount, for each compensable minute of this specialized form of VRS.

70. The Commission refers to this specialized form of VRS as Video-Text Service. In a typical VRS call, a deaf or hard-of-hearing person communicates in ASL to a CA, who then voices the message to the hearing party. The CA then signs the hearing party's voice response to the ASL user. Some ASL users who are deafblind, however, are able to sign to a CA but unable to see the signs from the CA well enough to understand them. For such users, there is a special variant of VRS, in which a CA converts the other party's side of the conversation to text (instead of ASL video), which the deafblind party can read using a refreshable braille display. A CA assigned to a Video-Text Service call must not only be fluent in ASL, but must also be a swift, accurate, and reliable typist.

71. Up to the present, only GlobalVRS has offered this specialized form of VRS. With GlobalVRS's announced exit from the VRS industry, Sorenson states it intends to provide Video-Text Service to users. Sorenson's cost estimates indicate that, while most of the costs involved in offering this service do not vary significantly with the number of minutes served, there are some variable costs due to the higher salaries Sorenson expects to pay for those CAs equipped with the additional skills described above.

72. Given the Commission's statutory responsibility to ensure the availability of TRS to persons who are deafblind and the additional costs involved in providing this Video-Text Service, the Commission concludes that additional per-minute compensation should be authorized for the provision of this service by any VRS provider choosing to offer it. As an interim measure, pending the availability of more precise cost data, the Commission estimates the variable cost of this service based on the estimate submitted by Sorenson plus an operating margin to incentivize the provision of this specialized service, resulting in an additive of $0.19 per minute. This amount shall be paid to a VRS provider for each compensable conversation minute of Video-Text Service, in addition to the per-minute amount otherwise payable to the provider under the applicable compensation formula for an ordinary VRS call. Sorenson's non-variable costs for this service will be recovered through the base compensation rate, as they are relatively unaffected by the number of minutes of Video-Text Service provided.

73. *Alternative Compensation Proposal.* In its comments, GlobalVRS proposes a ''Specialized Access Small Business'' (SASB) designation as an alternative compensation approach. To qualify for this compensation, providers would have to serve 5% or less of total program minutes and provide specialized language and modality. Each SASB-designated provider would be subject to an individualized payment formula, reset annually to compensate for that provider's reported allowable costs.

74. The Commission rejects this proposal for several reasons. First, it excludes larger VRS providers from receiving additional compensation for the provision of specialized services. The Commission has stated that offering VRS users a choice among multiple providers can most effectively carry out the Commission's statutory mandate to ensure that functionally equivalent VRS is available to all eligible individuals to the extent possible and in the most efficient manner. By adopting a formula that encourages only small providers to offer a specialized service, the Commission may prevent the service from being offered by a provider with greater access to the necessary resources and inputs, which may enable it to provide the service more effectively and at lower cost. Second, the method by which a provider would be compensated under GlobalVRS's proposal is more administratively burdensome (as it requires annual recalculation of the formula based on annual review of the provider's individual costs), and unlike the multi-year compensation plans generally preferred by the Commission provides no incentive for cost savings.

75. *Registration Process.* A VRS provider may provide Video-Text Service to any registered VRS user who states that they need to use the service. Registered VRS users need not have their identities re-verified by the Database administrator before using Video-Text Service. To enable the TRS User Registration Database administrator to review and pay compensation requests for this service, the Commission directs the administrator to design and execute a field in the User Registration Database to allow a VRS provider to register a new or existing user as a registered user of Video-Text Service. Once the field is implemented, VRS providers shall update User Registration Database registrations to identify existing users of this service and additional users when they begin using this service. The Commission directs the Consumer and Governmental Affairs Bureau to release a public notice announcing when the Database is ready to accept such updates and setting a 60-day deadline for such updates of existing VRS users. Once a user is registered in the Database, the TRS Fund administrator may presume that call detail records associated with that user are for Video-Text Service, but the administrator may review and verify payment claims in accordance with the Commission's rules.

76. At this time, the Commission does not establish additional identification requirements for Video-Text Service users. The Commission notes that the conversation process in Video-Text Service is slower than an ordinary VRS conversation—and a less satisfactory process for those VRS users who can see and understand video-transmitted signs. Therefore, the Commission believes VRS users that do not need to receive a return communication in text will be unlikely to use this service. Further, the Commission believes the additive rate for Video-Text Service is not so high as to significantly increase incentives for fraud and abuse, especially as the number of minutes of use of this service is very small.

77. Pending the implementation of this update, to allow Video-Text Service calls to be identified in call detail records submitted for payment, the Commission directs the TRS Fund administrator to accept from any VRS provider offering Video-Text Service a list of telephone numbers and IP addresses assigned to users who have requested Video-Text Service. VRS providers seeking compensation for Video-Text Service shall submit such

lists in accordance with instructions provided by the TRS Fund administrator. VRS providers shall provide additional information regarding such users and their Video-Text Service calls to the TRS Fund administrator, upon request, as necessary for the administrator to perform its data collection, auditing, payment claim verification, and TRS Fund payment distribution functions.

Other Specialized Services

78. Except in the case of Video-Text Service, the record is insufficient for the Commission to make a determination as to whether, and under what circumstances, a specialized service should be supported by additional compensation.

Effect of New Compensation Formulas

79. Looking to just the effect on the TRS Fund, in the first year of the new period the compensation plan adopted herein would result in an estimated $143 million increase in costs compared to maintaining the current compensation formulas. Based on available data, it will result in an industry average operating margin within the range of reasonableness and provide an opportunity for providers to recover their costs plus earn a reasonable operating margin.

Compensation Period and Adjustments

80. The Commission concludes that the compensation period should be five years, ending June 30, 2028. This period is long enough to give providers certainty regarding the applicable compensation formulas, provide incentives for providers to become more efficient without incurring a penalty, and mitigate any risk of creating the ''rolling average'' problem previously identified by the Commission regarding TRS. On the other hand, the period is short enough to allow timely reassessment of the compensation formulas in response to substantial cost changes and other significant developments.

81. The Commission finds commenters' proposal for a compensation period of 6–8 years incompatible with the need to periodically reassess compensation formulas in response to changes in provider cost structures, possible technological innovations, or other developments. Historically, the Commission has not set TRS Fund compensation periods longer than four years. Further, the VRS providers neither detail nor support their claims that increasing the compensation period to 6–8 years will affect providers' stability, opportunities to obtain loans or attract long-term investment. The Commission is unpersuaded that any potential benefits of a longer period outweigh the benefits from reassessing compensation formulas on a five-year schedule.

82. *Adjustments for exogenous costs.* Under the current methodology, an upward adjustment for well-documented exogenous costs is available for costs that belong to a category of costs that the Commission has deemed allowable, result from new TRS requirements or other causes beyond the provider's control, are new costs that were not factored into the applicable compensation formula, and if unrecovered, would cause a provider's current costs (allowable expenses plus operating margin) to exceed its revenues. The Commission maintains this approach to exogenous cost recovery and codifies these criteria in its rules. Any exogenous cost claims should be submitted to the TRS Fund administrator with the provider's annual cost report, so that the administrator can review such claims and make appropriate recommendations. The Commission delegates authority to the Consumer and Governmental Affairs Bureau to make determinations regarding timely submitted exogenous cost claims.

83. *Adjustments for future cost changes.* In the *Notice of Proposed Rulemaking,* the Commission sought comment on whether per-minute compensation amounts should be adjusted during the compensation period to reflect inflation and productivity. The Commission agrees with several commenters that there should be annual adjustments for cost changes. In the past, the trend of VRS costs has been generally downward. However, in light of recent developments, including increases in general inflation indices and reports of increased wages for VRS CAs, the Commission finds it reasonable to adopt an adjustment factor to ensure that the rates continue to fairly compensate providers if relevant costs continue to increase.

84. As a reference point for determining such annual adjustments, the Employment Cost Index appears best suited for tracking relevant cost changes. Specifically, the seasonally adjusted index of total compensation for private industry workers in professional, scientific, and technical services, which covers translation and interpreting services (including sign language services), can serve as a reasonable proxy for the annual change in VRS costs. As interpreters, CAs fall squarely in this labor cost category, and labor and related costs for CAs, non-CA professionals, and administrative personnel make up the bulk of VRS costs.

85. This index is better suited than the Producer Price Index or the Gross Domestic Product Chain-type Price Index (GDP–CPI). Both these indices reflect changes in the national economy as a whole, based on a broad array of data from various product and service sectors. While these indices may be useful inflation measures for the economy as a whole, reflecting the ups and downs of so many disparate industries may not ensure that annual adjustments are reasonable. A more reliable approach is one that tracks changes in a related industry sector. Commenters agree that labor is the primary expense incurred by VRS providers and the most likely to increase over time, and the Commission finds that labor costs are likely to be a key determinant of the quality of VRS as currently provided. While there is no index that focuses solely on the cost of VRS, the index the Commission adopts here measures employment cost for a sector that includes translation and interpreting services, and thus includes employee costs for VRS as well as other highly comparable services. Adopting such an index is more likely to provide a stable inflation adjustment that reflects cost changes providers are likely to incur, while excluding changes that are specific to unrelated sectors of the national economy.

86. As for productivity gains, the record provides no clear indication of the extent to which, if at all, recent VRS cost increases have been offset by productivity gains. Absent more specific data, the Commission finds it reasonable to presume no change to productivity over the rate period.

87. The Commission delegates authority to the Consumer and Governmental Affairs Bureau to approve annual inflation adjustments of each compensation formula, beginning with Fund Year 2024–25. The Commission directs the TRS Fund administrator to specify in its annual TRS Fund report, beginning with the report due May 1, 2024, the index values for each quarter of the previous calendar year and the last quarter of the year before that. The Commission also directs the TRS Fund administrator to propose adjustments for each per-minute amount by a percentage equal to the percentage change in the index between the first and fifth quarters specified in the report. Those adjusted compensation levels also should be used to calculate the recommended funding requirement for

VRS and the relevant contribution factor.

Accountability Concerns

88. In adopting VRS compensation formulas for the next five years, the Commission relies on estimates of future provider costs that, in total, exceed the most recent historical level by approximately $121.5 million, or 27%. In 2023–24, as a result, VRS compensation will be $142.5 million, or 29.5%, higher than it would be under the current formulas. This increase in compensation—which will require higher TRS Fund contributions from telecommunications and VoIP service providers—is premised on the Commission's belief that maintaining and improving VRS service quality requires a major increase in CA wages and technology spending by VRS providers. As stewards of the TRS Fund, the Commission needs to be able to assess the extent to which the increased TRS Fund support the Commission authorizes is achieving the intended results.

89. This requires the collection, review, and auditing of relevant cost data by the TRS Fund administrator. Therefore, the Commission delegates authority to the Consumer and Governmental Affairs Bureau, in coordination with the Office of the Managing Director, to work with the TRS Fund administrator to update the Interstate TRS Fund Annual Provider Data Request to align with the actions taken in this proceeding. The Commission directs these entities to focus special effort on ensuring the collection of accurate data quantifying CA wages and benefits, based on uniform definitions and methods of calculating key elements such as hourly CA compensation, and expenditures on improved technology. The Commission expects that annual provider cost reports shall include detailed descriptions of ongoing, planned, recently completed, and canceled engineering and R&D projects, the purpose and intended outcome of each project, and the current or projected timeline for each project.

90. By annually collecting such specific information, the administrator will enable the Commission to review whether the increased compensation authorized herein is having the intended results of enabling service improvements that enhance functional equivalence, and to make appropriate changes in compensation at the end of—or if necessary, during—the five-year compensation period. In addition, such information will help the Commission ensure that R&D supported by the TRS Fund is being used for TRS improvements, rather than projects of little or no benefit to TRS users. The inclusion of this additional information and data will also ensure the Commission may address the timing of cost changes and concerns of attempted regulatory arbitrage.

True-Up

91. *True-Up of Compensation.* The Commission directs the TRS Fund administrator to perform a true-up, after the effective date of document FCC 23–78, of the VRS compensation payments made pursuant to waivers granted by the Commission to extend the expiration date of the previously adopted compensation formulas until the effective date of the new compensation formulas. The revised compensation formulas adopted in document FCC 23–78 are based on estimates of the costs VRS providers will incur in the 2023–24 Fund Year. Overall, these revised formulas substantially increase provider compensation to reflect recent increases in reported costs, as well as the Commission's expectation of further increases in certain areas. To allow providers a reasonable opportunity to recover such increased costs, the Commission concludes that they should be compensated under the revised formulas for all services provided during the 2023–24 TRS Fund Year. The Commission finds that the benefits of ensuring full compensation for this Fund Year outweigh the minor administrative burden involved in such a true-up process. Accordingly, after document FCC 23–78 becomes effective, the Commission directs the TRS Fund administrator to make a supplemental payment to each VRS provider for all compensable minutes of service provided after June 30, 2023, for which compensation was paid under the extended formulas. Such supplemental payment shall consist of the difference between the compensation that would be applicable under document FCC 23–78 and the compensation actually paid to the provider.

Final Regulatory Flexibility Analysis

92. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Notice of Proposed Rulemaking.* The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking,* including comment on the IRFA. No comments were received in response to the IRFA.

93. *Need for, and Objectives of, the Report and Order.* In document FCC 23–78, pursuant to 47 U.S.C. 225, the Commission adopts a five-year compensation plan for VRS. To provide the appropriate compensation for the provision of, and continued availability of VRS, the Commission adopts a compensation plan that addressed increasing costs due to inflation and the effect of the COVID–19 pandemic. It also updates the inputs for reasonable cost criteria to improve the ability of VRS providers to provide and receive compensation for VRS that is functionally equivalent. The Commission also adopts a compensation formula for the provision of VRS to individuals who are deafblind, as a specialized service to help ensure the continued availability of this service to the extent possible for the individuals who use this service. Finally, to address changes in the cost structures of various VRS providers, the Commission transitions from a three-tiered rate structure to a two-tiered rate structure for larger VRS providers providing more than one million monthly minutes, while maintaining a separate compensation rate for providers providing one million or fewer monthly minutes.

94. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The policies adopted in document FCC 23–78 will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications.

95. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The provider compensation plan will not create significant reporting, recordkeeping, or other compliance requirements for small entities. VRS providers that seek compensation for the provisioning of a specialized form of VRS to deafblind individuals must identify any users of that specialized service in the TRS User Registration Database. This minor database modification will be implemented through a new field in the TRS User Registration Database that will allow small and other VRS providers to identify users of that service. The Commission anticipates this modification to be of minimal impact to small and other VRS providers, as it is the addition of a single new field to a database VRS users are already using and will allow them to be fully compensated for providing VRS to deafblind users.

96. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The adopted compensation

structure and formulas will apply only to entities who are, or may become, certified by the Commission to offer VRS in accordance with its rules. The Commission adopted these multi-year compensation formulas to compensate providers for their reasonable cost of providing service, to reduce the burden on TRS Fund contributors and their subscribers, and to ensure that TRS is made available to the greatest extent possible and in the most efficient manner. The Commission adopted separate compensation structures for large and small providers to allow small entities the opportunity to recover their costs in providing VRS, which the record suggests are higher than for large providers who have achieved some level of economies of scale. This action by the Commission should minimize the economic impact for small entities who provide VRS.

97. The Commission considered various proposals for compensation methodologies and compensation structure and formulas from small and other entities, and the adopted rules reflect its best efforts to minimize significant economic impact on small entities. The Commission adjusted the allowable cost categories that it considers in determining the appropriate compensation formulas for the provisioning of VRS to allow small and other providers to recover costs and benefit economically from the increased compensation they will receive.

Ordering Clauses

98. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, document FCC 23–78 *is adopted* and the Commission's rules are hereby *amended* as set forth.

Congressional Review Act

99. The Commission sent a copy of document FCC 23–78 to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

100. Document FCC 23–78 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it also does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telephones.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 3. Amend § 64.601 by redesignating paragraphs (a)(52) through (55) as paragraphs (a)(53) through (56) and adding new paragraph (a)(52) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(52) *Video-text service.* A specialized form of VRS that allows people who are deafblind who use sign language and text to communicate through a video link. The video link allows the communications assistant to view and interpret a party's sign language communication and the text functionality allows the communications assistant to send text to peripheral devices employed in connection with equipment, including software, to translate, enhance, or otherwise transform advanced communications services into a form accessible to people who are deafblind. The communications assistant relays the conversation using sign language, voice, and text between the participants of the call.

* * * * *

■ 4. Add § 64.643 to subpart F to read as follows:

§ 64.643 Compensation for Video Relay Service.

For the period from July 1, 2023, through June 30, 2028, TRS Fund compensation for the provision of Video Relay Service (VRS) shall be as described in this section.

(a) *First year.* For Fund Year 2023–24, TRS Fund compensation shall be paid in accordance with the following formulas.

(1) The Compensation Amount for VRS providers handling one million conversation minutes or less in a month shall be $7.77 per minute.

(2) The Compensation Amount for VRS providers handling more than one million conversation minutes in a month shall be:

(i) $6.27 per minute for the first 1,000,000 conversation minutes each month;

(ii) $3.92 per minute for monthly conversation minutes in excess of 1,000,000.

(3) For Video-Text Service, as defined in this subpart, in addition to the applicable Compensation Amount under paragraph (a)(1) or (2) of this section, an additional Compensation Amount of $0.19 per minute shall be paid for each conversation minute.

(b) *Succeeding years.* For each succeeding Fund Year through June 30, 2028, each per-minute Compensation Amount described in paragraph (a) of this section shall be redetermined in accordance with the following equation:

$A_{FY} = A_{FY-1} * (1+IF_{FY})$

Where:

A_{FY} is the Compensation Amount for the new Fund Year,

A_{FY-1} is the Compensation Amount for the previous Fund Year,

IF_{FY} is the Inflation Adjustment Factor for the new Fund Year.

(c) *Inflation Adjustment Factor.* The Inflation Adjustment Factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value—The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value—The fourth quarter of the preceding Calendar Year.

(d) *Exogenous cost adjustments.* In addition to L_{FY}, a VRS provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year. An exogenous cost adjustment shall be paid if a VRS provider incurs well-documented costs that:

(1) Belong to a category of costs that the Commission has deemed allowable;

(2) Result from new TRS requirements or other causes beyond the provider's control;

(3) Are new costs that were not factored into the applicable compensation formula; and

(4) If unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

[FR Doc. 2023–22936 Filed 10–18–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD276]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the annual 2023 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 17, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The annual 2023 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 26,958 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the annual 2023 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 26,758 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 15, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23095 Filed 10–16–23; 4:15 pm]

BILLING CODE 3510–22–P