

Parties filing in electronic form need only submit one copy.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Any order addressing a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious. In no event shall a ruling which denies a petition for reconsideration be considered a modification of the original order.

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(l) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(1) through (3) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (c) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration;

(7) Fail to comply with the procedural requirements set forth in paragraphs (d), (e), and (h) of this section;

(8) Relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (b) of this section; or

(9) Are untimely.

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■ 23. Section 1.1164 is amended by revising paragraph (c) to read as follows:

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

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(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice

will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

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■ 24. Section 1.1912 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 1.1912 Collection by administrative offset.

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(b) * * *

(4) * * *

(ii) The Commission may omit the procedures set forth in paragraph (b)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10-51; FCC 11-54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to address fraud, waste, and abuse in the Video Relay Service (VRS) industry. These

rules are necessary to combat reported and detected activity that has resulted in inappropriate payments to VRS providers from the Interstate TRS Fund (Fund). The intended impact of these rules is to minimize fraud in order to safeguard the sustainability of the VRS program.

DATES: Effective June 1, 2011, except § 64.604(b)(4)(iii) of the Commission's rules, which shall become effective August 30, 2011. The recordkeeping and reporting requirements contained herein are subject to the Paperwork Reduction Act (PRA) and have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the new information collections are due July 1, 2011. The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission via e-mail at PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-7126 or e-mail Diane.Mason@fcc.gov.

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via e-mail Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Structure and Practices of the Video Relay Service Program*, Report and Order (*Report and Order*), document FCC 11-54, adopted on April 5, 2011 and released on April 6, 2011, in CG Docket No. 10-51. Notice of Proposed Rulemaking, FCC 10-88, adopted on May 24, 2010 and released on May 27, 2010 is published elsewhere in this issue. The full text of document FCC 11-54 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II,

445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: <http://www.bcpweb.com>. Document FCC 11-54 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html#orders>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

The recordkeeping and reporting requirements in document FCC 11-54 contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In document FCC 11-54, the Commission has assessed the effects of imposing various requirements on VRS providers as well as providers of other forms of TRS. The Commission recognizes that these requirements are necessary to detect and prevent fraud, abuse and waste in the VRS program. The Commission takes these actions to ensure the sustainability of the program upon which individuals of hearing and speech disabilities have come to rely for their daily communication needs. In doing so, the Commission has balanced preserving the integrity of the VRS program and minimizing the information collection burden for small business concerns, including those with fewer than 25 employees. For example, in adopting procedures for the resolution of disputed provider payment claims when payment has been suspended, the *Report and Order* allows providers, including small businesses, to submit claims for payment in a process that is uniform, predictable and equitable for all providers, thereby reducing burdens associated with

disputed payments. The Commission also requires automated recordkeeping of TRS minutes submitted to the Fund. The Commission believes that providers automatically receiving records of TRS minutes and submitting them in an electronic format should entail minimal burden and will prove critical to ensuring that submitted data for compensation is accurate. The Commission also finds that requiring providers to provide reports and retain records in an electronic format that is retrievable will provide a seamless transaction for the purpose of compensation from the TRS Fund, which will alleviate burdens on providers, including small businesses. Further, the Commission believes that the whistleblower protection rule adopted in the *Report and Order* will benefit all providers, including small businesses, because it provides their employees with guidance that will reduce uncertainty associated with employee's rights. Finally, the Commission concludes that all TRS providers, including small entities, will be eligible to receive compensation from the Interstate TRS Fund for their reasonable costs of complying with the requirements adopted in the *Report and Order*. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of document FCC 11-54 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In document FCC 11-54, the Commission adopts rules to detect and prevent fraud and abuse in the provision of video relay service (VRS), which allows users to communicate in sign language via a video link. The Commission recognizes the valuable ways in which VRS fulfills the communication needs of persons who are deaf and hard of hearing. The program's structure, however, has made it vulnerable to fraud and abuse, which have plagued the current program and threatened its long-term sustainability.

In November 2009, the U.S. Department of Justice indicted 26 people for allegedly manufacturing and billing the Fund for illegitimate calls, the vast majority of whom have either pleaded guilty or been convicted. The Commission continues to receive numerous allegations of abusive practices by VRS providers. Some of

these allegations have resulted in criminal investigations of VRS practices, which in turn have been the subject of semi-annual reports that the Commission's Office of the Inspector General (OIG) has submitted to Congress. The reports on these investigations have noted evidence of the following illicit VRS activities:

- Callers specifically requesting that the call not be relayed by the communications assistant (CA) to a third party;
- Calls placed to numbers that do not require any relaying, for example a voice-to-voice call;
- Calls initiated from international IP addresses by callers with little or no fluency in ASL where the connection is permitted to "run" (*i.e.*, the line is simply left open without any relaying of the call occurring);
- Implementation of "double privacy screens" (*i.e.*, where both users to the video leg of the call block their respective video displays, thus making communication impossible);
- VRS CAs calling themselves;
- CAs connecting videophones/computers and letting them run with no parties participating in the call;
- Callers disconnecting from one illegitimate call and immediately calling back to initiate another; and
- Callers admitting that they were paid to make TRS calls.

2. Document FCC 11-54 follows the Commission's, *Structure and Practices of Video Relay Service*, Declaratory Ruling, Order and Notice of Proposed Rulemaking (*VRS Call Practices NPRM*), document FCC 10-88, published at 75 FR 51735, August 23, 2010. In the *VRS Call Practices NPRM*, the Commission sought comment on a number of ways to reduce and ultimately eliminate fraud and abuse, and to improve the integrity and sustainability of the TRS Fund that pays for this program. Specifically, the Commission sought comment on:

- (1) The location of VRS call centers;
- (2) VRS CAs working from home;
- (3) compensation for VRS CAs;
- (4) procedures for the suspension of payment from the TRS Fund;
- (5) the permissibility of specific call practices; and
- (6) ways to detect and stop the billing of illegitimate calls.

Location of VRS Call Centers

3. The Commission declines to adopt its tentative conclusion to require that all VRS call centers be located in the United States. The Commission is concerned about potential violations of international trade agreements, and also agrees with those commenters that argue that it can effectively control fraud and ensure compliance with the

Commission's mandatory minimum standards at any center, regardless of its location, in other ways. However, it will assist the Commission's investigatory efforts to have information about where all current and future call centers are located. Accordingly, the Commission amends its rules to require all VRS providers to submit a written statement to the Commission and the TRS Fund administrator containing the locations of all of their call centers that handle VRS calls, including call centers located outside the United States, twice a year, on April 1st and October 1st. In addition to the street address of each call center, the Commission further directs that these statements contain (1) the number of individual CAs and CA managers employed at each call center; and (2) the name and contact information (phone number and e-mail address) for the managers at each call center. The Commission also amends its rules to require VRS providers to notify the Commission and the TRS Fund administrator in writing at least 30 days prior to any change to their call centers' locations, including the opening, closing, or relocation of any center.

VRS CAs Working From Their Homes

4. Allowing VRS CAs to work from their homes poses substantially more risks than benefits. An unsupervised home environment is more conducive to fraud than a supervised call center with on-site management. In the course of the Commission's ongoing investigations of fraud in the VRS industry, the Commission has identified numerous incidents in which unsupervised VRS CAs may have been complicit in facilitating fraudulent calls.

5. The Commission is also concerned about the ability of home-based VRS arrangements, where there is no on-site management to provide direct supervision, to achieve full compliance with the Commission's TRS mandatory minimum standards. First, the Commission is not convinced that call handling in a home environment can meet the Commission's TRS standard requiring strict confidentiality of all relay calls. See 47 CFR 64.604(a)(2) of the Commission's rules. Eavesdropping is more likely to occur in a home environment and provider call centers typically ensure structural or other arrangements that prevent sound from carrying from call station to call station, which are not available in a home. Second, the Commission is concerned about potential violations of the Commission's technical standards in a home environment. Commission rules require TRS facilities to have redundancy features, including

uninterruptible power for emergency use, and further require TRS providers to be able to handle all 9-1-1 calls. See 47 CFR 64.604(b)(4)(ii) and 64.605 of the Commission's rules. The record does not contain evidence that these critical capabilities, routinely available in provider-operated call centers, are equally available in all home environments.

6. Finally, the Commission has concerns about the ability to achieve service quality standards in a home environment. For example, in provider-based call centers, managerial staff can intervene in the event that a CA is having difficulty understanding someone's signs, assist with an emergency call to 9-1-1, or relieve a CA in the middle of a call if the CA suddenly becomes ill. That is not the case in a home-based setting. Moreover, in a home environment, even when the CA's door is locked and surveillance cameras are used, there is little assurance that interruptions will not occur or that noises coming from outside the room, for example, from other family members, will not adversely affect the CA's ability to accurately and effectively interpret the call. Given the use of VRS as a critical tool for communication in employment and other daily life activities, as well as the statutory mandate to ensure functionally equivalent communication services, the Commission has an obligation to do all that it can to ensure that relay service enables communication that is as accurate and reliable as that of a direct voice telephone conversation. If the Commission determines in the future that home-based VRS can be provided in a manner that meets all of the Commission's requirements, the Commission may revisit this finding.

VRS CA Compensation

7. The indictments resulting from criminal investigations into VRS fraud are replete with alleged instances in which CAs were rewarded for handling calls that otherwise would not have been made, as well as alleged schemes directing VRS call center employees to make illegitimate calls. In addition to being criminal, these arrangements do not support the goal of TRS, which is to provide a telephone service equivalent that allows people with hearing and/or speech disabilities to make or receive calls only when they want to do so. While it may be legitimate to reward VRS employees with bonuses and other forms of compensation for a job well done, or for extra hours worked, incentives based on the number of minutes or calls that these employees

handle encourage such employees to generate minutes that would not otherwise have been made by individuals using VRS. Such incentives encourage CAs to process additional traffic, artificially lengthen the time of a call, or even engage in illicit schemes to create fictional calls where no relaying takes place. Such incentives may be the cause of a substantial amount of the fraud that has occurred over the past few years. Accordingly, the Commission now concludes that VRS CAs, either individually or as part of a group, are prohibited from receiving compensation, being given preferential work schedules, or otherwise benefiting in any way based on the number of minutes or calls that they relay.

Procedures for the Suspension of Payment

8. Delay or suspension of payment is expressly authorized by the TRS rules, which state that the Fund administrator "may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so." 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules. In the past, payment has been withheld either because the minutes have appeared to be non-compensable under the Commission's rules or because the Commission has a basis for believing that fraud is associated with the minutes. To preserve the integrity of the TRS Fund, the Commission must continue withholding payments for TRS minutes, where justified, to ensure compliance with the Commission's rules and to prevent fraud and abuse of the TRS program.

9. However, to provide greater due process and transparency to TRS providers, the Commission adopts a one-year time frame (starting with the date of the provider's initial request for payment) for the evaluation and resolution of disputed payment claims. The time frames set forth below relate only to payment suspension or delay and not to the Commission's investigatory processes used to determine whether a provider has violated the Act or any Commission rule or order. The procedures and time frames for investigation and enforcement will continue to be governed by the provisions of the Act relevant to the Commission's investigative and enforcement functions. The time frames discussed below also are not intended to affect the investigatory processes of other law enforcement bodies, such as the U.S. Department of Justice, in determining

whether a provider has violated any provision of law that such other law enforcement entity enforces. The Commission amends its rules by adopting the following process for suspension or delay of payment to a TRS provider:

- The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

- If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, the TRS provider will be notified within two months from the date the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. The TRS provider then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If the TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

- If the TRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.

- If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment from the Fund will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the

Commission's rules or any other civil or criminal law.

- If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

International VRS Calls

10. In recent years, the TRS Fund call data has revealed a large number of VRS calls from international IP addresses (*i.e.*, wherein the originating party's IP address indicates that the call originated from outside of the United States). In its 2009 Semi-Annual Report to Congress, the Commission's OIG noted that some of the allegations of conspiracy, fraud, and other criminal activity that have been associated with VRS minutes billed to the TRS Fund were based, among other things, on evidence of "run" calls initiated by callers with little or no fluency in ASL from international IP addresses in which no conversations were relayed. Because many of these minutes are likely attributable to fraudulent or abusive activities, the Commission adopts rules to prohibit compensation for VRS calls that originate with Internet connections from international IP addresses, regardless of where those calls terminate. The Commission adopts a limited exception to this prohibition for VRS calls originating from international IP addresses that are made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, so long as the provider has an accurate means of verifying the identity of such callers and their locations at the time such calls are made. When pre-registering, such individuals must specify the locations to which the individual will be traveling, as well as a finite period of time during which they will be on travel. Only calls made from those locations and during the specified time period will be compensable if otherwise in compliance with the Commission's rules and not associated with fraudulent activities. The general prohibition against Internet calling does not apply to (1) VRS calls initiated by voice callers located outside the United States to deaf users physically located in the United States or (2) legitimate VRS calls originated by individuals with IP addresses associated with registered ten-digit numbers that are made from a location within the United States and terminating outside the United States.

A. Use of Privacy Screens; Idle Calls

11. In recent years, some VRS providers have participated in practices that effectively "suspend" the communication that is supposed to be taking place between the parties to a relay call for what appears to be excessive amounts of time. The Commission adopts two rules to reduce the frequency of these schemes. First, the Commission adopts a rule prohibiting CAs from enabling privacy screens from their side of the call at any time. There is no justification for a CA to ever prevent a caller from seeing him or her, because the precise and sole function of the CA is to interpret the call using sign language, a *visual* language.

12. Second, the Commission adopts a rule requiring CAs to terminate VRS calls if either or both the calling or called party: (1) Enables a privacy screen for more than five minutes; or (2) is completely unresponsive or unengaged (creating an idle call) for longer than five minutes. Prior to disconnecting a call, a CA must first announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates that he or she is still actively participating on the call. This rule will not apply to 9-1-1 calls. Nor will it apply to relay calls that are legitimately placed on hold (*e.g.*, by a customer service agent), where at least one of the parties to the call is still actively present and waiting for the other party to return to the phone. To avoid any ambiguity as to the ongoing nature of the call, the Commission expects that at least one of the parties to the call will check in with the CA periodically, so that the CA knows the call has not ended or become idle.

B. Provider-Involved Remote Training

13. The function of a VRS provider is to provide communication for people with hearing and/or speech disabilities that is functionally equivalent to voice telephone communications. When a VRS provider engages in activities that are designed to attract VRS users to "remote training sessions," it is highly likely that the provider is doing so for the sole purpose of generating minutes. The Commission defines remote training to include any training session, such as a classroom lesson, tutorial lesson, seminar, speaker's conference or other event to which an individual connects from a remote distance via a telephone or Internet-based connection. In the *VRS Call Practices NPRM*, the Commission noted that as many as 232,000 VRS minutes stemmed from these and similar types of remote

training sessions in the second half of 2009, resulting in at least \$1.4 million billed to the Fund. Accordingly, the Commission adopts a rule that where a provider is involved, in any way, in remote training, VRS calls to such training sessions are not reimbursable from the Fund. Non-compensable arrangements shall include any program or activity in which a provider or its affiliates of any kind, including, but not limited to, its subcontractors, partnerships, employees and sponsoring organizations or entities, have any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities to VRS users.

C. Ineligible Providers; Revenue Sharing Schemes

14. In order to reduce fraud and establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program, the Commission amends its rules in the following ways. First, only entities determined to be eligible to receive compensation from the TRS Fund under § 64.604(c)(5)(iii)(F) of the Commission's rules will be eligible to provide VRS and hold themselves out as providers of VRS to the general public. VRS service must be offered under the name by which the provider became certified and in a manner that clearly identifies that provider of the service. The foregoing requirement will not prevent a VRS provider from utilizing sub-brands, such as those dedicated to particular states, communities or regions in which it provides service, but requires that each sub-brand clearly identify the certified entity as the actual provider of the service. Calls to any brand or sub-brand of VRS must be routed through a single URL for that brand or sub-brand.

15. Second, the Commission amends its rules to make clear that an eligible provider is prohibited from engaging any third party entity to provide VRS CAs or call center functions (including call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration), on its behalf, unless that third party entity also is an eligible provider under the Commission's rules. This provision will ensure that an eligible provider is responsible for providing the core components of VRS, rather than subcontracting out these responsibilities to third party entities, whose operations are not under the direct supervision of the Commission.

16. Third, to the extent an eligible provider contracts with a third party to provide any other services or functions

related to the provision of VRS, at third party entity must not hold itself out to the public as a VRS provider. This will make it easier for consumers, the Commission and the Fund administrator to tie service to the company providing that service.

17. Fourth, to provide effective oversight, all third-party contracts or agreements must be executed in writing and copies of these agreements must be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

18. Lastly, the Commission seeks to reduce the risk that marketing and outreach efforts will continue to be vehicles for manufacturing fraudulent minutes, such as those described above. To the extent an eligible VRS provider contracts with a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, the costs for such services cannot be compensated from the TRS Fund on a per-minute basis. In addition, all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, must be described in the providers' annual submissions to the TRS Fund administrator.

D. Whistleblower Protections

19. The Commission adopts specific whistleblower protections for the employees and contractors of TRS providers. Notwithstanding the existence of other Federal and state whistleblower regulations, establishing a specific TRS whistleblower protection rule here will provide an explicit layer of protection for employees who are interested in disclosing information necessary to combat waste, fraud, and abuse with respect to relay services, and thus encourage them to do so. Current or former employees of TRS providers or any contractors ("covered individuals") will be protected from reprisal in the form of a personnel action if they disclose information they reasonably believe evidences a violation of the Act or TRS regulations (including any activities that could result in the improper billing of minutes to the TRS Fund) to the eligible TRS provider billing for those minutes, the Commission, the Interstate TRS Fund administrator, or any Federal or state law enforcement entity. For a disclosure to be protected, the covered individual must have a reasonable belief that the information is true. The actual veracity

of any disclosure, however, will not affect whether a disclosure is protected. If a TRS provider violates the TRS whistleblower protection rule, as with any rule violation, the Commission may take enforcement action.

20. Providers shall provide information about these TRS whistleblower protections, including the right to notify the Commission's OIG or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (e.g. in employee handbooks, policies and procedures manuals, or bulletin board postings) must also explicitly include these TRS whistleblower protections in those written materials. The Commission will also take steps to disseminate information about the TRS whistleblower protection rule.

21. Unlike interpreters generally, CAs are strictly bound by the standards set forth in the Commission's regulations. Thus, whatever ethical codes may be imposed upon these individuals by their certifying bodies in community interpreting situations do not necessarily govern VRS situations; rather the specific rules, including those dealing with confidentiality, that are contained in the Commission's mandatory minimum standards are the governing standards for CAs who handle VRS calls.

Data, Audits and Record Retention Requirements

Data Filed With the Fund Administrator to Support Payment Claims

22. The Commission now expands the data collection rules to require the filing of the following data associated with each VRS call for which a VRS provider seeks compensation: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated.

23. The Commission also amends its functional TRS mandatory minimum standards to require VRS and IP Relay providers to submit speed of answer compliance data. Under the Commission's rules, VRS providers are required to answer 80 percent of all

calls within 120 seconds. 47 CFR 64.604(b)(2)(iii) of the Commission's rules. The provision of this data will enable the Commission to ensure compliance with this mandatory minimum standard, which is critical to ensuring that VRS providers promptly answer calls.

24. Finally, in the *VRS Call Practices NPRM*, the Commission amends its rules to require that the call record and speed of answer data be submitted electronically and in a standardized format in order to reduce the burden associated with compiling and filing this data and to facilitate the collection and analysis of this data by the Fund administrator and the Commission.

Automated Call Data Collection

25. The Commission amends its rules to require TRS providers to use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second; (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call. The Commission defines automated recordkeeping system for purposes of these rules as a system that captures data in a computerized and electronic format in a manner that does not allow human intervention during the call session (for either conversation or session time). An electronic system that requires the CA or provider's employee to manually press a start and/or end command key in order to capture the required data or to terminate the data recording does not constitute an automated system under this requirement.

Transparency and the Disclosure of Provider Financial and Call Data

26. The Commission has declined to make individual provider cost data available to the public because of its highly proprietary nature, and in light of the significant fraud and abuse that has taken place in this industry. The Commission must consider cost and demand data as part of the VRS compensation rate-setting process, and it will work in conjunction with the

Fund administrator to carefully scrutinize data submitted by providers.

Provider Audits

27. The Commission has determined that regular audits of providers must be conducted to ensure the integrity of the TRS Fund. In order to provide the Commission the flexibility and discretion it needs in determining when audits are necessary, the Commission amends the TRS mandatory minimum standards to require that all TRS providers submit to audits annually or, if necessary, at any other time deemed appropriate by the Commission, the Fund administrator, or by the Commission's OIG. The Commission also concludes that providers that fail to fully cooperate in audits, for example, by failing to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of TRS payments until sufficient documentation is provided. The Commission believes that this policy will promote greater transparency and accountability in the compensation process.

Record Retention

28. Providers of all forms of Internet-based TRS must retain all required call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form for a minimum of five years, in an electronic format that is easily retrievable for the Commission and TRS Fund administrator for possible future use, including audits. Retained records must include the following data that is used to support payment claims submitted to the Fund administrator: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

Provider Certification Under Penalty of Perjury

29. The Commission permanently adopts the rule requiring the CEO, CFO, or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, to certify, under penalty of perjury that: (1) Minutes

submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Act and the Commission's rules and orders, and are not the result of impermissible financial incentives, payments or kickbacks to generate calls, and (2) cost and demand data submitted to the Fund administrator in connection with the determination of compensation rates or methodologies are true and correct, as follows:

I swear under penalty of perjury that (i) I am __ (name and title), __ an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and (ii) the TRS calls for which compensation is sought were handled in compliance with section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

30. The Commission believes that this certification will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the compensation data submitted to the Fund administrator.

Final Regulatory Flexibility Certification

31. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Public Law 104–121, Title II, 110 Stat. 857 (1996). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

32. The *Report and Order* adopts rules to minimize fraud, waste, and abuse in the TRS industry, particularly for VRS. Specifically, the *Report and Order* takes

the following measures: It adopts rules requiring that VRS providers submit a statement describing the location and staffing of their call centers twice a year, and a notification at least 30 days prior to any change in the location of such centers. It prohibits VRS CAs from relaying calls from their homes. It prohibits VRS provider arrangements that involve tying compensation paid or other benefits given to CAs to minutes or calls processed by that CA, either individually or as part of a group. In addition, the Commission adopts procedures for the resolution of disputed provider payment claims when payment has been suspended.

33. In addition to the above, in the *Report and Order*, the Commission adopts a rule prohibiting compensation for VRS calls that originate from IP addresses that indicate the individual initiating the call is located outside of the United States. Under new rules, VRS CAs will be required to terminate a VRS call if either party to the call: (1) Enables a privacy screen or similar feature for more than five minutes, or (2) is unresponsive or unengaged for more than five minutes, unless the call is to 9–1–1 or one of the parties is on hold. In addition, compensation for VRS calls for remote training when the provider is involved in any way with such training will be prohibited. The *Report and Order* also requires automated recordkeeping of TRS minutes submitted to the Fund, and amends the rules governing data collection from VRS providers to add requirements for the filing of data associated with each VRS call for which a VRS provider is seeking compensation.

34. The *Report and Order* prohibits revenue sharing agreements between entities eligible for compensation from the Fund and non-eligible entities. Providers will be prohibited from engaging third party entities to provide CAs or call center functions unless the third party is also an eligible provider. Where providers contract with or otherwise authorize other entities to provide other services or functions related to the provision of VRS, the third party may not hold itself out to the public as a service provider. Any such third party contracts must be in writing and available to the Commission and Fund administrator upon request. In addition, each VRS provider will be required to offer VRS only under the name by which the provider became certified and in a manner that clearly identifies that provider of the service, or a sub-brand name that identifies that provider. All calls to any brand or sub-brand of TRS must be routed through a single URL for that brand or sub-brand.

35. The Commission adopts whistleblower protection rules for current and former employees and contractors of TRS providers. The Commission also will require that VRS providers submit to audits annually or as deemed appropriate by the Fund administrator or the Commission. Internet-based TRS providers will be required to retain all records that support their claims for payment from the Fund for five years. Finally, the Commission makes permanent the emergency rule that requires the CEO, CFO, or another senior executive of a TRS provider with first-hand knowledge of the accuracy and completeness of the information to certify, under penalty of perjury, to the validity of minutes and data submitted to the Fund administrator.

36. In order to be compensated, TRS providers are required to comply with all of the Commission's rules governing the provision of TRS. All reasonable costs of providing service in compliance with the *Report and Order* are compensable from the Fund. Thus, because the providers will recoup the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened.

37. Therefore, the Commission certifies that the requirements of the *Report and Order* will not have a significant adverse economic impact on any entities, large or small.

38. The Commission has previously limited its RFA considerations to those entities collecting money directly from the TRS Fund. Although there may be various impacted entities that subcontract with providers eligible for direct compensation from the TRS Fund, the Commission does not have oversight of such entities.

39. Therefore, in addressing only those entities currently eligible to receive compensation from the TRS Fund, the Commission also notes that, of the fourteen providers affected by the *Report and Order*, no more than five meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.

40. Currently, fourteen providers receive compensation from the Interstate TRS Fund for providing any form of TRS. Because no more than five of the providers that will be affected by the *Report and Order*, if adopted, are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities potentially affected by

our proposed rules is not substantial. In addition, because those providers that meet the definition of small entity will be promptly compensated within a reasonable period for complying with the *Report and Order*, the Commission concludes that the financial impact of the Commission's decisions in the *Report and Order* is not substantial.

41. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities, or any entities.

42. The Commission will send a copy of the *Report and Order*, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and the final certification will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

43. Pursuant to sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), document FCC 11–54 *is adopted*.

44. Pursuant to § 1.427(a) of the Commission's rules, 47 CFR 1.427(a), document FCC 11–54 and the rules adopted herein shall become effective June 1, 2011, except for rule, 64.604(b)(4)(iii), which shall become effective August 30, 2011, and except for the rules containing information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
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 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620, unless otherwise noted.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

■ 2. The authority citation for Subpart F is revised to read as follows:

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

■ 3. In 64.601, redesignate paragraph (a)(27) as paragraph (a)(28), and add a new paragraph (a)(27) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(27) *Visual privacy screen.* A screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call.

* * * * *

■ 4. Section 64.604 is revised by adding new paragraphs (a)(6), (a)(7), and (b)(4)(iii), by revising paragraph (c)(5)(iii)(C), and by adding new paragraphs (c)(5)(iii)(L), (c)(5)(iii)(M), and (c)(5)(iii)(N) to read as follows:

§ 64.604 Mandatory Minimum standards.

* * * * *

(a) * * *

(6) *Visual privacy screens/idle calls.* A VRS CA may not enable a visual privacy screen or similar feature during a VRS call. A VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9–1–1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(7) *International calls.* VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving

the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.

(b) * * *

(4) * * *

(iii) A VRS CA may not relay calls from a location primarily used as his or her home.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) *Data Collection and Audits.* (1) TRS providers seeking compensation from the TRS Fund shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS investment in general in accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.

(2) Call data required from all TRS providers. In addition to the data requested by paragraph (c)(5)(iii)(C)(1) of this section, TRS providers seeking compensation from the TRS Fund shall submit the following specific data associated with each TRS call for which compensation is sought:

(i) The call record ID sequence;

(ii) CA ID number;

(iii) Session start and end times noted at a minimum to the nearest second;

(iv) Conversation start and end times noted at a minimum to the nearest second;

(v) Incoming telephone number and IP address (if call originates with an IP-based device) at the time of the call;

(vi) Outbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call;

(vii) Total conversation minutes;

(viii) Total session minutes;

(ix) The call center (by assigned center ID number) that handled the call; and

(x) The URL address through which the call is handled.

(3) Additional call data required from Internet-based Relay Providers. In addition to the data required by

paragraph (c)(5)(iii)(C)(2) of this section, Internet-based Relay Providers seeking compensation from the Fund shall submit speed of answer compliance data.

(4) Providers submitting call record and speed of answer data in compliance with paragraphs (c)(5)(iii)(C)(2) and (c)(5)(iii)(C)(3) of this section shall:

(i) Employ an automated record keeping system to capture such data required pursuant to paragraph (c)(5)(iii)(C)(2) of this section for each TRS call for which minutes are submitted to the fund administrator for compensation; and

(ii) Submit such data electronically, in a standardized format. For purposes of this subparagraph, an automated record keeping system is a system that captures data in a computerized and electronic format that does not allow human intervention during the call session for either conversation or session time.

(5) *Certification.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, when submitting a request for compensation from the TRS Fund must, with each such request, certify as follows:

I swear under penalty of perjury that:

(i) I am __ (name and title), an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and

(ii) The TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

(6) *Audits.* The fund administrator and the Commission, including the Office of Inspector General, shall have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments. TRS providers must submit to audits annually or at times determined appropriate by the Commission, the fund administrator, or by an entity approved by the Commission for such purpose. A TRS provider that fails to submit to a requested audit, or fails to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of payment until it submits

to the requested audit or provides sufficient documentation.

(7) Call data record retention. Internet-based TRS providers shall retain the data required to be submitted by this section, and all other call detail records, other records that support their claims for payment from the TRS Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form, in an electronic format that is easily retrievable, for a minimum of five years.

* * * * *

(L) *Procedures for the suspension/withholding of payment.*

(1) The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

(2) If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, a TRS provider will be notified within two months from the date for the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. TRS providers then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If a TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

(3) If the VRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.

(4) If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the

provider for such minutes of use. Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.

(5) If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

(M) *Whistleblower protections.* Providers shall not take any reprisal in the form of a personnel action against any current or former employee or contractor who discloses to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity, any information that the reporting person reasonably believes evidences known or suspected violations of the Communications Act or TRS regulations, or any other activity that the reporting person reasonably believes constitutes waste, fraud, or abuse, or that otherwise could result in the improper billing of minutes of use to the TRS Fund and discloses that information to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity. Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the FCC's Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to its employees in writing (e.g. in employee handbooks, policies and procedures manuals, or bulletin board postings—either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials.

(N) In addition to the provisions set forth above, VRS providers shall be subject to the following provisions:

(1) Eligibility for reimbursement from the TRS Fund.

(i) Only an eligible VRS provider, as defined in paragraph (c)(5)(iii)(F) of this section, may hold itself out to the general public as providing VRS.

(ii) VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service. Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider. Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.

(iv) To the extent that an eligible VRS provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party must not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public. To the extent an eligible VRS provider contracts with or authorizes a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, those VRS minutes are not compensable on a per minute basis from the TRS fund.

(v) All third-party contracts or agreements entered into by an eligible provider must be in writing. Copies of such agreements shall be made available to the Commission and to the TRS Fund administrator upon request.

(2) Call center reports. VRS providers shall file a written report with the Commission and the TRS Fund administrator, on April 1st and October 1st of each year for each call center that handles VRS calls that the provider owns or controls, including centers located outside of the United States, that includes:

(i) The complete street address of the center;

(ii) The number of individual CAs and CA managers; and

(iii) The name and contact information (phone number and e-mail address) of the manager(s) at the center. VRS providers shall also file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.

(3) Compensation of CAs. VRS providers may not compensate, give a preferential work schedule or otherwise

benefit a CA in any manner that is based upon the number of VRS minutes or calls that the CA relays, either individually or as part of a group.

(4) Remote training session calls. VRS calls to a remote training session or a comparable activity will not be compensable from the TRS Fund when the provider submitting minutes for such a call has been involved, in any manner, with such a training session. Such prohibited involvement includes training programs or comparable activities in which the provider or any affiliate or related party thereto, including but not limited to its subcontractors, partners, employees or sponsoring organizations or entities, has any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities.

* * * * *

■ 5. In § 64.606, revise paragraph (g) to read as follows:

§ 64.606 VRS and IP Relay provider and TRS program certification.

* * * * *

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. VRS providers shall include within these annual submissions a description of all agreements in connection with marketing and outreach activities, including those involving sponsorship, financial endorsements, awards, and gifts made by the provider to any individual or entity.

[FR Doc. 2011–10342 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2009–0069]

RIN 2127–AK81

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: In this technical amendment, the National Highway Traffic Safety Administration (NHTSA) updates the address for submission, and the procedure to submit designation of target areas on high theft major parts of

motor vehicles. E-mail is now included as a means to submit the target area designations. Under the Theft Prevention Standard, manufacturers of high theft passenger motor vehicle lines subject to parts marking, and manufacturers of replacement parts designed for high theft lines, must submit designation of target areas for identifying numbers to be marked on each major part and symbols to be marked on each major replacement part. This rulemaking makes no substantive changes to the Theft Prevention Standard.

DATES: This final rule becomes effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, NHTSA, 1200 New Jersey Ave., SE., Rm. W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is: (202) 366–0846.

SUPPLEMENTARY INFORMATION: 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard*, specifies that major parts¹ and major replacement parts of motor vehicles subject to the standard must be marked in accordance with Section 541.5, for passenger motor vehicles, and Section 541.6 for replacement parts. The standard specifies that each manufacturer that is the original producer that installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each major part. For replacement parts, the standard specifies that each manufacturer that is the original producer or assembler of the vehicle for which the replacement part is designed shall designate a target area for the identifying symbols to be marked on each replacement part for a major part.

At present, Part 541 specifies that designation of target areas is to be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. NHTSA has moved, and this address is no longer applicable. This technical amendment updates NHTSA's address. In addition, to facilitate timely release of target area information, and to maximize use of electronic means, the target area information henceforth may be sent to the Docket Management

¹ Each of the following parts, if present on a motor vehicle: engine; transmission; right front fender; left front fender; hood; right front door; left front door; right rear door; left rear door; sliding or cargo door(s); front bumper; rear bumper; right rear quarter panel (passenger cars); left rear quarter panel (passenger cars); right side assembly (MPVs); left side assembly (MPVs); pickup box and/or cargo box (LDTs); rear door(s) (both doors in case of double doors), decklid, tailgate, or hatchback, whichever is present.

Facility (Docket No. NHTSA–2009–0069) which is accessible at: <http://www.regulations.gov>. Through this technical amendment, manufacturers will have several options when providing the target area information: electronic means through the portal <http://www.regulations.gov>; paper copies (via US mail, private courier or hand delivery) to Docket Management at 1200 New Jersey Avenue, SE., (NHTSA's new address); or faxing the information.

Through these new means, it is anticipated that the public will be able to view target area information much more quickly than was the case in the past. Because the information may go directly to a publicly reviewable docket, (i.e., NHTSA–2009–0069), NHTSA does not advise that manufacturers send any information for which a manufacturer wishes to assert confidential treatment to Docket Management or to <http://www.regulations.gov>. In the event that a manufacturer wishes the target location data to be treated as confidential information prior to the release of a new model, it should submit the theft area data to NHTSA's Office of the Chief Counsel and request confidential treatment as set forth in 49 CFR Part 512 *Confidential Business Information*. Because confidential target location data will become public when a new model is released for sale, sections 541.5(e)(2) and 541.6(e)(3) also require submission of the target location data within seven days after the information has been made public or the new vehicle line has been released for sale to the public, whichever comes first.

This change will not make any substantive changes to the Theft Prevention Standard and will not impose any additional substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that a notice of proposed rulemaking and opportunity for comment on these amendments are not necessary. In addition, this final rule will change the address to which manufacturers will provide target location data, but will have no effect on the collection of information burden associated with the Theft Prevention Standard (See OMB Clearance No. 2127–0539 *Procedure for Selecting Lines to be Covered by the Theft Prevention Standard*, expiration date: 6/30/2011).

List of Subjects in 49 CFR Part 541

Crime, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR Part 541 as set forth below.