

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, see the direct final rule.

Statutory and Executive Order Reviews. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We believe there will be little or no impact on small entities because the purpose of today's proposed amendments is to simplify the rule by limiting the recordkeeping and reporting requirements for facilities utilizing a low-HAP extraction solvent exclusively in the vegetable oil production process. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule located in the Rules and Regulations section of today's **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,
Administrator.

[FR Doc. 04-19920 Filed 8-31-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; FCC 04-137]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document seeks public comment on various matters concerning Internet Protocol (IP) Relay and Video Relay Service (VRS), including the appropriate cost recovery methodology for VRS, possible mechanisms to determine which IP Relay and VRS calls are intrastate and which are interstate for purposes of reimbursement, whether IP Relay and VRS should become mandatory TRS services, whether IP Relay and VRS should be required to be offered 7 days a week, 24 hours a day, and whether, when, and how we should apply the speed of answer rule to the provision of VRS. We also seek comment on redefining the composition, functions, and responsibilities of TRS Advisory Council, and on issues relating to the abuse of CAs by persons using TRS.

DATES: Comments are due on or before October 18, 2004 and reply comments are due on or before November 15, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Government Affairs Bureau at (202) 418-2284 (voice), (202) 418-0416 (TTY) or e-mail Cheryl.King@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rulemaking (FNPRM)*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, FCC 04-134, does not contain proposed information collection requirement subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. This is a summary of the Commission's *FNPRM*, adopted June 10, 2004, and released June 30, 2004. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before 45 days after **Federal Register** publication, and reply comments on or before 75 days after **Federal Register** publication. Comments may be filed using the Commission's Electronic

Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc. will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554. Parties who choose to file by paper should also

submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 6-C410, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, **CG Docket No. 03-123**, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this *FNPRM* may be purchased from the Commission's duplication contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customer may contact BCPI, Inc. at their Web site: www.bcpweb.com. 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 & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *FNPRM* can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Initial Paperwork Reduction Act of 1995 Analysis

This *FNPRM* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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).

Synopsis

In this *FNPRM*, the Commission addresses a number of outstanding issues with respect to VRS IP Relay including: (1) The appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate; (3) whether IP Relay and/or VRS should become mandatory forms of TRS; (4) whether IP Relay and/or VRS should be required to be offered 7 days a week, 24 hours a day; and (5) whether the Commission should adopt a speed of answer requirement for VRS, and if so, what should it be and how should it be phased-in. The Commission also raises the issues of whether there should be separate compensation rates for traditional TRS and IP Relay, and whether the compensation payments for VRS should be established for a two-year period instead of a one-year period. Further, the Commission seeks additional comment on issues concerning the certification and oversight of OP Relay and VRS providers. The Commission also seeks comment on the TRS Advisory Council, including its composition and the role it plays in advising the TRS Fund Administrator on TRS issues. Finally, the Commission raises issues with regard to recurring problems with the abuse of CAs by callers who seek to either harass the CA, or harass a called party, behind the apparent anonymity of IP Relay call. As in the past, the Commission goal is to continue to ensure that functionally equivalent TRS services are available to consumers, and to ensure the ongoing integrity of the Interstate TRS Fund.

Initial Regulatory Flexibility Analysis (CG Docket No. 03-123)

As required by the Regulatory Flexibility Act (RFA), (*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 Statute 857 (1996)), the Commission has prepared this present Initial Regulatory Flexibility Analysis (*IFRA*) of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*. *See* 5 U.S.C. 603. We also expect that we could certify this action under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there are not a substantial number of small entities that may be affected by our action. Written

public comments are requested on this *IFRA*. Comments must be identified as responses to the *IFRA* and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this *IFRA*, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603 (a). In addition, the *FNPRM* and *IFRA* (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the *FNPRM*

The Commission is issuing this *FNPRM* to seek comment on cost recovery methodology for VRS, what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate, whether IP Relay and VRS should become mandatory forms of TRS and offered 24/7; the appropriate composition and role of the TRS Advisory Council; certification and oversight of IP Relay and VRS providers; and the issue of abuse and harassment of TRS CAs. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users in a manner that will be consistent with Congress' mandate under 47 U.S.C. 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology.

Specifically, the *FNPRM* seeks comment on several IP Relay related issues, including: (1) What type of mechanism the Commission may adopt to determine whether IP Relay calls are intrastate or interstate (so that States would be required to pay for intrastate IP Relay calls and the Interstate TRS Fund would continue to reimburse interstate IP Relay calls); (2) whether IP Relay should be a mandatory service and be offered 24/7; and (3) whether there should be separate compensation rates for traditional TRS and IP Relay. The Commission also seeks comment on several VRS related issues including: (1) The appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which VRS calls are interstate and which are intrastate, (3) whether VRS should be a mandatory form of TRS and be offered 24/7; (4) whether a speed of answer rule specific to VRS should be adopted, and (5) whether the data reporting period for VRS should be different from the present one-year period. Additionally, the *FNPRM* seeks comment on certification and oversight of IP Relay and VRS providers. The Commission also seeks comment on whether the

composition of the TRS Advisory Council should be changed or expanded to include parties that represent the Interstate TRS Fund or any relevant interests not currently represented by the Council. Finally, the *FNPRM* seeks comment on whether the Commission should adopt TRS rules to curb abusive calls directed at the CA or the called party.

Legal Basis

The authority for actions proposed in this *FNPRM* may be found in sections 1, 4 (i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i), 154 (j), 201–205, 218 and 225.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 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). 15 U.S.C. 632. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4).

Below, we further describe and estimate the number of small entity licensees and regulates that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division,

“Trends in Telephone Service” at Table 5.3, Page 5–5 (August 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

Incumbent Local Exchange Carriers: Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA’s size standard. Consequently, we estimate that there are no more than 1,032 ILECS that are small businesses possibly affected by our action.

Small Incumbent Local Exchange Carriers: We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” 15 U.S.C. 632. The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Interexchange Carriers: Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA’s size standard. Consequently, we estimate that there are no more than 223 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers: Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, State-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *FNPRM* seeks comment on the adoption of a cost recovery methodology for VRS, and the possible means for determining which IP Relay and VRS calls are interstate and which are intrastate. The adoption of a cost

recovery methodology for VRS other than the current per minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. The adoption of a mechanism to determine which IP Relay and VRS calls are interstate and which are intrastate would require providers to keep records of interstate and intrastate calls; it may also change the type of reports and recordkeeping that IP Relay and VRS providers maintain, depending upon how IP Relay and VRS providers are currently maintaining their records. Presently, IP Relay and VRS providers report their costs for all calls and their record of minutes provided to the Interstate TRS Fund Administrator. If a mechanism were adopted to determine which IP Relay and VRS calls were interstate and which were intrastate, IP Relay and VRS providers would need a database to keep a record of calls and minutes of use that differentiate between interstate and intrastate calls.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take (among others) into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. 5 U.S.C. 603.

The proposals in the *FNPRM*, and the comments the Commission seeks regarding them, results from the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. *See, e.g.*, 47 U.S.C. 225. The guiding principle shaping these proposals is Congress's requirement that TRS keep pace with advancing technology and that the Commission's rules should not discourage the implementation of technological advances or improvements, as well as the mandate that TRS services be functionally equivalent to voice telephone services. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers.

Because we believe that the number of small entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternative that would minimize significant economic impact on small businesses. Further, since we believe the essence of the rules we may adopt pursuant to this proceeding will confer the benefits of a more streamlined approach to administering TRS on all entities, including small entities, we are further persuaded that it would be premature to consider alternative to the conferral of such benefits. However, we invite comment on specific alternative that may minimize the economic impact of the proposed rules on small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 218, and 225 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 154(i), 154(j), 201–205, 218, and 225, this further notice of proposed rulemaking *is adopted*.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this further notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–18551 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD22 and RIN 2105–AD23

Withdrawal of Proposed Rulemaking Actions

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws two Office of the Secretary (OST) notices of proposed rulemaking (NPRM) that have been superseded by the transfer to the Department of Homeland Security (DHS) of the Transportation Security Administration (TSA). We inadvertently did not transfer this rulemaking to TSA when TSA moved to the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; e-mail: Jennifer.Abdul-Wali@ost.dot.gov.

ADDRESSES: You may obtain a copy of this notice from the DOT public docket through the Internet at <http://dms.dot.gov>, docket number OST–1996–1437. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–1996–1437 and request a copy of the notice entitled “Withdrawal of Proposed Rulemaking Actions.”

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at <http://www.gpo.gov>.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended, an agency that maintains a system of records may exempt that system from some of the provisions of the Privacy Act; the decision to do so is subject to 5 U.S.C. 553, requiring notice and opportunity for public comment. When TSA was part of DOT, we published rulemaking proposals to exempt a number of systems of records maintained by TSA from provisions of the Privacy Act. When TSA moved to DHS (March 1, 2003), those rulemaking proceedings had not been completed; they were started anew and finished by DHS.

The Privacy Act record systems whose exemption proposals are affected by this action are:

1. The Transportation Security Enforcement Record System (TSER), which would have enabled TSA to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security-related duties. This system would have covered information