

Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). HHS submits that this final rule is not “economically significant” as measured by the \$100 million threshold, and hence not a major rule under the Congressional Review Act. This rule has not been designated as a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, titled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. HHS identifies this final rule as a deregulatory action (removing an obsolete rule from the Code of Federal Regulations). For the purposes of Executive Order 13771, this final rule is not a substantive rule; rather it is administrative in nature and provides no cost savings.

Executive Order 13777, titled “Enforcing the Regulatory Reform Agenda,” was issued on February 24, 2017. As required by Section 3 of this Executive Order, HHS established a Regulatory Reform Task Force (HHS Task Force). Pursuant to Section 3(d)(ii), the HHS Task Force evaluated this rulemaking and determined that these regulations are “outdated, unnecessary, or ineffective.” Following this finding, the HHS Task Force advised the HRSA Administrator to initiate this rulemaking to remove the obsolete regulations from the Code of Federal Regulations.

### Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of small entities. Therefore, the

regulatory flexibility analysis provided for under the Regulatory Flexibility Act is not required.

### Paperwork Reduction Act

This action does not affect any information collections.

Dated: June 4, 2018.

**George Sigounas,**

*Administrator, Health Resources and Services Administration.*

Approved: June 21, 2018.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

### List of Subjects in 42 CFR Part 130

Health care, Hemophilia, HIV/AIDS.

### PART 130—[REMOVED]

■ For reasons set out in the preamble, and under the authority at 5 U.S.C. 301, HHS amends 42 CFR chapter I by removing part 130.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 18–79]

### IP CTS Modernization and Reform

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule and clarification.

**SUMMARY:** In this document, the Commission alters the methodology for setting provider compensation rates for internet Protocol Captioned Telephone Service (IP CTS) and establishes interim compensation rates for Fund Years 2018–19 and 2019–20. The Commission also adopts rules that address the provision of volume control on IP CTS devices, require the accuracy of IP CTS information disseminated by providers, and prohibit the provision of service to ineligible users. Finally, the Commission declares that speech-to-text automation, without the participation of a communications assistant (CA), may be used to generate IP CTS captions.

### DATES:

*Effective dates:* 47 CFR 64.604(c)(10) and (c)(13)(i)–(ii) are effective July 27, 2018. The Commission will publish a document in the **Federal Register** announcing the effective date of 47 CFR 64.604(c)(11)(v) and the amendments to 47 CFR 64.604(c)(5)(iii)(D)(1), (6), and (c)(13)(iii)–(iv) of the Commission’s

rules, which contain modified information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The IP CTS compensation rate adopted for the 2018–19 Fund Year shall be effective July 1, 2018.

*Applicability date:* IP CTS providers must comply with the requirement to ensure that any volume control or other amplification feature can be adjusted separately and independently of the caption feature on or before December 8, 2018.

### FOR FURTHER INFORMATION CONTACT:

Michael Scott, Consumer and Governmental Affairs Bureau, FCC, at (202) 418–1264, or email [Michael.Scott@fcc.gov](mailto:Michael.Scott@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order and Declaratory Ruling in CG Docket Nos. 03–123 and 13–24; document FCC 18–79, adopted on June 7, 2018 and released on June 8, 2018. Document FCC 18–79 concerns the modernization and reform of the Commission’s rules for IP CTS. The Commission previously sought comment on these issues in *Misuse of internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Difficulties*, published at 78 FR 54201, September 3, 2013 (2013 IP CTS Reform FNPRM). A Further Notice of Proposed Rulemaking (Further Notice) and Notice of Inquiry are contained in document FCC 18–79 and address additional issues concerning the funding, administration, and user eligibility for this service, as well as performance goals and metrics to ensure service quality for users. The Further Notice and Notice of Inquiry will be published elsewhere in the **Federal Register**. The full text of document FCC 18–79 will be available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (844) 432–2272 (videophone), or (202) 418–0432 (TTY).

## Congressional Review Act

The Commission sent a copy of document FCC 18–79 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

## Final Paperwork Reduction Act of 1995 Analysis

The Report and Order in document FCC 18–79 contains modified information collection requirements, which are not effective until approval is obtained from OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on these information collection requirements as required by the PRA. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.” *2013 IP CTS Reform FNPRM*.

## Synopsis

### IP CTS Compensation

1. IP CTS, a form of telecommunications relay services (TRS) supported by the Interstate TRS Fund (TRS Fund), allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. IP CTS providers receive compensation from the TRS Fund on a per-minute basis. The compensation rate has been determined using a methodology known as the Multistate Average Rate Structure (MARS) Plan, which calculates the weighted average per-minute compensation paid by state TRS programs to providers of intrastate CTS for the prior calendar year.

2. The Commission’s mandate in determining TRS compensation rates is to ensure that the rates correlate to actual reasonable costs. MARS is no longer an effective methodology to accomplish this. The Commission therefore terminates use of the MARS methodology.

3. The per-minute costs currently reported by IP CTS providers are not comparable to those for CTS—largely, it appears, because demand for IP CTS now greatly exceeds the demand for CTS. Specifically, from 2011 to 2017, annual CTS minutes declined from approximately 40 million to 19.9

million, while annual IP CTS minutes grew from approximately 29 million to 362 million—an amount that is more than 18 times greater than annual CTS minutes. Average per-minute expenses for IP CTS dropped from \$2.0581 in 2011 to \$1.2326 in 2017, while the MARS rate increased from \$1.7630 to \$1.9467 for the same period. The 2017–18 MARS rate exceeds the average 2017 IP CTS expenses by approximately 58 percent. This divergence invalidates the rationale for continuing to use a MARS-based rate to determine IP CTS compensation.

4. *Setting a Rate Closer to Reasonable IP CTS Costs.* The Commission finds it important to act without delay to bring provider compensation more in line with reported provider costs. IP CTS minutes have increased dramatically over the last nine years and the contribution base for the TRS Fund has been shrinking, requiring interstate and international telecommunications and VoIP service providers, and their subscribers, to contribute an ever-larger percentage of revenues to support these services. The Commission is also concerned that excessive compensation for IP CTS may increase provider incentives to recruit and register IP CTS users, regardless of their actual need for the service, leading to even greater potential for waste of TRS Fund dollars.

5. The Commission concludes that the most recently filed cost and demand data are sufficiently reliable to serve as a basis for setting interim IP CTS rates. As with video relay service (VRS) compensation rates, a weighted average of the historical per-minute expenses reported by providers for 2017 and the projected per-minute expenses for 2018, which for IP CTS is approximately \$1.28 per minute, provides a reasonable baseline for taking initial steps to move the IP CTS compensation rate toward actual cost. Further, the Commission finds it reasonable to allow an operating margin between 7.6% to 12.35% for IP CTS providers in the same “zone of reasonableness” that applies to VRS providers given the service sector similarities between VRS and IP CTS, and that the bulk of costs for both are attributable to labor rather than capital. Adding an operating margin within that reasonable range to the average IP CTS expenses of \$1.28 results in a total average cost between approximately \$1.38 and \$1.44.

6. While the Commission’s goal is to move the IP CTS rate to a cost-based level, immediately reducing the IP CTS compensation rate to this extent could produce a disruption in the IP CTS market and potentially negative consequences for both providers and

consumers. Initial rate reductions of approximately 10 percent per year, over two years, will strike a reasonable balance between the need to bring IP CTS rates in line with costs and reduce the TRS Fund contribution burden, and avoiding rate shock for IP CTS providers and potential disruption of the provision and quality of service for consumers. This approach will allow a reasonable opportunity for higher-cost providers to adjust to average-cost-based compensation by reducing unnecessary expenses—and thereby encourage multiple providers to remain in the IP CTS market. Finally, allowing the compensation rate to stay, for the present, at levels well above average allowable costs allows IP CTS providers to continue participating in research and thus will “not discourage or impair the development of improved technology.” 47 U.S.C. 225(d)(2).

7. Applying these interim rates for a period of two years will allow the Commission to fully evaluate the appropriateness of some categories of allowable costs for this service, as well as the extent to which compensation for this service should be subject to price-cap-index adjustments. In addition, this period will afford the Commission an opportunity to determine how best a fully automated method of providing IP CTS should be compensated.

8. The Commission directs that the IP CTS compensation rate be reduced in two steps of approximately 10 percent each: First, a \$0.19467 reduction from the \$1.9467 per minute rate currently in effect, to a rate of \$1.75 per minute for the 2018–19 Fund Year, from July 1, 2018, to June 30, 2019; and second, a further \$0.17 reduction of the compensation rate from \$1.75 to \$1.58 per minute for the 2019–20 Fund Year, from July 1, 2019, to June 30, 2020. These reductions will save the TRS Fund a minimum of \$399 million over two years, as compared to applying the MARS rate. If the Commission finds that actual costs are substantially below the interim rates, the Commission may adjust those rates accordingly.

9. While the use of provider cost data adds complexity, and may require detailed analysis, it would not be reasonable for the Commission, in order to avoid such complexity, to continue to rely on a proxy that does not bear a reasonable relationship to actual costs. Any burden arising from switching to a more complex rate methodology is outweighed by the benefits of having a more accurate compensation rate, including the benefit of savings to the Fund.

10. Setting interim rates for two years, rather than a single year, will provide a

greater degree of rate certainty for providers and can mitigate the risk of rewarding inefficiency, discouraging innovation, and incentivizing providers to incur unnecessary costs, all potential effects of annual cost-of-service rate setting. A multi-year approach allows individual providers to gain additional profit during each multi-year period from any innovations and efficiency enhancing measures that reduce their per-minute costs during that period.

11. The TRS Fund administrator's cost calculations used to establish the interim rates are based on the same categories of provider costs that generally have been deemed allowable in calculating rates for other forms of TRS. Provider objections to these categories raise no significant arguments that have not been addressed and previously resolved in the Commission's prior rulings.

12. *Collecting Additional Cost Information for Setting Future IP CTS Rates.* The Commission remains concerned that some of the expenses incurred by IP CTS providers have not been reported in sufficient detail to enable the Fund administrator to confirm their allowability and reasonableness. Some IP CTS providers, who contract with other entities for the provision of call centers, CA staffing, and other services, as well as the licensing of intellectual property, report payments to contractors as "subcontractor expenses," with no breakdown into specific expense reporting categories. Given that the expenses classified in this manner comprise an unusually large portion of total reported IP CTS costs, such reporting obscures the nature of a substantial portion of reported IP CTS costs and hinders review of such costs incurred by such providers to assess their allowability and reasonableness. Accordingly, the Commission directs the TRS Fund administrator to require IP CTS providers that contract for the supply of services used in the provision of TRS to include information about payments under such contracts classified according to the substantive cost categories specified by the administrator, including, *e.g.*, allocation of subcontractor expenses between call center expenses and intellectual property licensing fees, and how the provider determined or calculated the portion of contractual payments attributable to each cost category. All cost reports submitted in the future by IP CTS providers shall provide such a breakdown and explanation. The Commission also directs the Fund administrator, to the extent that the administrator reasonably deems

necessary for the purpose of determining the allowability and reasonableness of costs reported to be incurred in the provision of TRS, to require providers to submit additional detail on such contractor expenses, including the submission of complete copies of such contracts and related correspondence or other records and information relevant to determining the nature of the services provided and the allocation of the costs of such services to cost categories. This additional transparency will help the Commission ensure that the costs reported by providers are reasonable.

13. The Commission believes that its current authority to collect the above information is contained in rules that require TRS providers to provide the TRS Fund administrator "true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments," and which authorize both the TRS Fund administrator and the Commission "to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments." 47 CFR 64.604(c)(5)(iii)(D)(1), (6). To further clarify such authority, however, and to provide for greater consistency in the rules, the Commission amends its rules to explicitly provide for the collection of information laid out in the preceding paragraph. In addition, the Commission further amends its rules to provide that, in the course of an audit or otherwise upon demand, an IP CTS provider must make documentation, including contracts with entities providing services or equipment directly related to the provision of IP CTS, available to the Commission, the TRS Fund administrator, or any person authorized by the Commission or TRS Fund administrator to conduct an audit.

*Measures To Limit Unnecessary IP CTS Use and Waste of the TRS Fund*

14. The dramatic growth in IP CTS call volume appears to result in part from provider practices that promote over-use of IP CTS, including by people with hearing loss who may be able to achieve functionally equivalent telephone service using other forms of off-the-shelf or assistive technologies. The Commission concludes that the following steps are needed to minimize such unnecessary use, and the consequent waste of TRS Fund resources.

15. *Volume Control and Caption Settings.* The Commission amends its rules to prohibit IP CTS providers from linking the volume control and

captioning functions of an IP CTS device or software application. Allowing users to enable volume control only when captions are turned on promotes waste, in that it forces the costly generation of captions even when the user only requires increased volume to communicate effectively by phone. In addition, decoupling these features will enable consumers who are not registered IP CTS users to access the amplification features of IP CTS devices without the captions. Compliance with a delinking requirement will not impose a substantial cost on IP CTS providers, and any likely cost will be more than offset by the efficiency gain resulting from the reduction in unnecessary captioning services.

16. The compliance deadline for making this change is December 8, 2018. IP CTS providers must ensure that all IP CTS devices—as well as user software for such devices—that they *newly distribute* to users after December 8, 2018 are configured to allow volume control to be adjusted independently of the captioning feature. The Commission also requires providers to ensure that all *previously distributed* devices are delinked by December 8, 2018.

17. *Website, Advertising and Educational Information Notifications.* The Commission amends its rules to require IP CTS providers to include both of the following factual notifications in a clear and prominent location on their advertising brochures, websites, user manuals, and other informational materials and websites:

- IP captioned telephone service may use a live operator. The operator generates captions of what the other party to the call says. These captions are then sent to your phone.
- There is a cost for each minute of captions generated, paid from a federally administered fund.

The first part of the notification is not required from those IP CTS providers who do not use live CAs. In the case of websites, The Commission requires such language to be included on the home page, each page that provides consumer information about IP CTS, and each page that provides information on how to order IP CTS or IP CTS equipment.

18. Requiring these notifications will enhance the Commission's efforts to prevent casual or inadvertent use of IP CTS and will not impose a significant burden that outweighs their benefits. When captioning devices are turned on by default, it is critical to make potential users aware through "multiple and repeated sources of information" that IP CTS involves significant costs and must not be used by individuals who do not

need it. Persons that truly need this free service for functionally equivalent telephone service have every incentive to obtain it. Rather than deter IP CTS use by such individuals, these notices will help to ensure that individuals who might be attracted to it are aware of its functions and financing.

19. *General Prohibition on Providing Service to Users Who Do Not Need It.* The Commission modifies the current prohibition on VRS providers engaging in fraudulent, abusive, and wasteful practices by amending it to include IP CTS providers. As amended, the rule prohibits both IP CTS and VRS providers from engaging in practices that the provider knows or has reason to know will cause or encourage (1) the unauthorized use of TRS, (2) false or unverified TRS Fund compensation claims, (3) the making of TRS calls that would not otherwise be made, and (4) the use of TRS by consumers who do not need the service in order to communicate by telephone in a functionally equivalent manner.

20. The Commission clarifies that “unauthorized use” of IP CTS, under clause (1) above, means use by an individual who is not registered with a provider. Further, a practice is prohibited where it artificially stimulates TRS usage, enables or encourages participation by unauthorized users, or uses financial incentives to attract new TRS users or to increase usage. However, the Commission allows IP CTS providers to be compensated for calls made by unregistered users when such calls are made from temporary, public IP CTS devices set up in emergency shelters. When service for such a device is initiated at the shelter, the IP CTS provider must notify the TRS Fund administrator of the date of such activation and termination.

21. In addition, an IP CTS provider shall not seek payment from the TRS Fund for any minutes of service that it knows or has reason to know are resulting from such prohibited practices. Any IP CTS provider that becomes aware of such practices being or having been committed by any person shall, as soon as practicable, report such practices to the Commission or the TRS Fund administrator. All monies paid from the TRS Fund to providers who are found by the Commission to be in violation of this new IP CTS rule shall be recoverable by the TRS Fund administrator, and such providers may also be subject to forfeitures and other enforcement actions.

### **Declaratory Ruling on Automatic Speech Recognition**

22. In document FCC 18–79, the Commission determines that the provision of CTS and IP CTS using automated speech recognition (ASR) to generate captions without the involvement of a CA is a form of relay service eligible for compensation from the TRS Fund if provided in compliance with applicable TRS mandatory minimum standards. Specifically, the Commission concludes that such services are included within the statutory definition of TRS, as “telephone transmission services that provide the ability” to engage in communication by wire or radio “in a manner that is functionally equivalent” to voice communications service. 47 U.S.C. 225(a)(3).

#### *Benefits of ASR*

23. The use of ASR to generate captions for CTS and IP CTS has several benefits. First, ASR can better achieve near simultaneous communication than is possible with CA-assisted captions. Second, the substantially lower costs of operation for ASR can allow for the provision of IP CTS with far greater efficiency. Finally, as a fully automated method of generating captions that is not dependent on human intervention, ASR can allow enhanced call privacy and ensure the seamless continuation of communications when exigent circumstances, such as severe weather events, threaten IP CTS call center operations.

24. Improvements in accuracy, coupled with ASR’s advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for CTS and IP CTS. IP CTS providers and others have shown heightened interest in utilizing this method for the provision of captions, and the Commission has received two applications for certification to provide IP CTS using ASR. Additionally, ASR-only products are being trialed and adopted internationally as a means of generating captions from speech, for people with hearing and speech disabilities.

25. The Commission is not mandating ASR as the sole means of offering IP CTS. IP CTS providers will be able to choose among three methods of providing Fund-supported IP CTS: (1) IP CTS using fully automated ASR; (2) IP CTS using CA-assisted ASR; and (3) stenographic-supported IP CTS. Consumers will continue to be able to select an IP CTS provider based on the overall quality of service each provider offers by means of the available

methods. As IP CTS providers begin offering fully automated ASR, the Commission will be able to gather data that can inform the Commission’s adoption of further measures to improve its utility. Any provider offering ASR must ensure that its service complies with the mandatory minimum standards of § 64.604 of the Commission’s rules in order to obtain and retain certification to provide IP CTS.

#### *Consistency With Commission Precedent*

26. The use of ASR is consistent with the Commission’s prior rulings authorizing CTS in both its analog and internet forms. The definition of IP CTS does not specify how captions must be generated, including whether they should be generated through automation or human-assisted methods. In this regard, the Commission already has approved a form of IP CTS that relies on automated speech recognition programs (assisted by CAs) to convert speech to captions during an IP CTS call. The only differences between ASR and CA-assisted ASR is that with CA-assisted ASR, CAs “train” speech recognition programs to understand their voices when they re-voice a caller’s speech, and have a limited opportunity to make corrections to the captions that are produced. Advancements in ASR reduce the need for such training and human editing, and use of this technology for IP CTS without CA involvement does not fundamentally change the functional role of the service, which is to produce captions from a user’s speech.

#### *Statutory Authority*

27. Using ASR for the provision of IP CTS is fully consistent with the Commission’s statutory authority. The provision of IP CTS utilizing ASR will contribute to functional equivalence by enabling providers to enhance the privacy, ensure seamless communications, and reduce the latency of IP CTS offerings. Section 225 of the Act is neutral as to the technology and method used to achieve functional equivalency and expressly requires the Commission to encourage technological innovation in TRS. Further, offering an ASR option that will largely eliminate personnel costs associated with IP CTS will help fulfill Congress’s directive to provide TRS in the most efficient manner.

#### *Provider Certification and Other Requirements*

28. The Commission authorizes the Consumer and Governmental Affairs Bureau (Bureau) to review and approve

applications for certification to provide IP CTS by means of ASR in whole or in part. The Bureau may determine on a case-by-case basis the extent to which an applicant's proposed method of providing ASR will enable it to provide IP CTS in a manner that meets the Commission's minimum TRS standards for functionally equivalent service. To assist the Bureau in making this assessment, where use of ASR in conjunction with CA-assisted caption generation is proposed, applicants should include in their certification applications a detailed description of the criteria that will be used to determine when to use and transfer between each of these methods. Applicants should support all claims regarding their use of ASR and its efficacy through documentary and other evidence and should provide information about measures they will take to ensure the confidentiality of call content. The Bureau will not approve any application to provide IP CTS using ASR that does not demonstrate that the applicant will meet the Commission's mandatory minimum standards for functional equivalency.

29. Certifications for the provision of IP CTS using ASR may be granted on a conditional basis, to enable the Commission's assessment of an applicant's actual performance in meeting or exceeding the mandatory minimum standards. In addition, to the extent deemed necessary, certification of a provider may be conditioned on the submission of periodic data to help confirm whether ASR-driven IP CTS is providing functionally equivalent service.

30. If a currently operating IP CTS provider wishes to incorporate ASR in its offerings, it must first receive approval from the Bureau to provide IP CTS in this manner. In order to obtain approval, any provider operating under conditional certification or interim eligibility must update its application for permanent certification to describe the change, and may be asked to provide additional data—beyond what was submitted in its initial application for certification—to demonstrate how modifications to its service will ensure the provision of a relay service that is functionally equivalent to voice telephone service through compliance with the Commission's mandatory minimum standards.

#### Compensation

31. The Commission reminds all providers that its rules require TRS providers seeking compensation from the TRS Fund to "provide the administrator with true and adequate

data, and . . . information reasonably requested to determine the TRS Fund revenue requirements and payments." 47 CFR 64.604(c)(5)(iii)(D)(1). Requests from the TRS Fund administrator for information that would help establish whether payments are justified and help determine the costs for ASR IP CTS could reasonably include:

- A breakdown, in the provider's monthly call detail report, indicating minutes for which ASR is substituted for CA-assisted IP CTS;
- Estimates of the difference in the costs incurred to handle ASR and CA-assisted calls, with a detailed breakdown of the specific variable costs incurred for each type of call, as well as underlying assumptions and calculations; and
- Documentation of incremental costs incurred in providing ASR, including any incremental costs associated with engineering and technical implementation, marketing, administrative and management support (including oversight, evaluation, and recordkeeping) and, for hybrid forms of IP CTS, any costs associated with enabling transfers back and forth between ASR and CA-assisted IP CTS.

#### Final Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *2013 IP CTS Reform FNPRM*. The Commission sought written public comment on the proposals in the *2013 IP CTS Reform FNPRM*, including comment on the IRFA. No comments were received in response to the IRFA.

#### Need For, and Objectives of, the Rules

33. Document FCC 18–79 adopts an interim rate for IP CTS reflecting a weighted, cost-of-service methodology based on an analysis of providers' actual and projected costs.

34. In addition, the Commission directs the TRS Fund administrator to require IP CTS providers that contract for the supply of services used in the provision of TRS to include information about payments under such contracts classified according to the substantive cost categories specified by the administrator.

35. Document FCC 18–79 also adopts three rule changes to facilitate the Commission's efforts to reduce waste, fraud, and abuse and improve its ability to efficiently manage the IP CTS program. First, the Commission prohibits linking volume control and captioning use on IP CTS devices. Second, the Commission requires IP CTS providers to include the following

notifications in a clear and prominent location on their advertising brochures, websites, user manuals, and other informational materials and websites:

- IP captioned telephone service may use a live operator. The operator generates captions of what the other party to the call says. These captions are then sent to your phone.
- There is a cost for each minute of captions generated, paid from a federally administered fund.

The first part of the notification is not required from those IP CTS providers who do not use live CAs. Third, the Commission adopts a general prohibition against providing IP CTS to consumers who do not genuinely need the service. Providers that become aware of prohibited practices must report them to the Commission or the TRS Fund administrator.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

36. No comments were filed in response to the IRFA.

#### Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

37. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rules in this proceeding.

#### Small Entities Impacted

38. The rules adopted in document FCC 18–79 will affect obligations of IP CTS providers. These services can be included within the broad economic category of All Other Telecommunications.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

39. The rule implementing a general prohibition against providing IP CTS to consumers who do not genuinely need the service and the requirement to separate volume control and captioning functions on IP CTS devices do not create direct reporting, recordkeeping or other compliance requirements on IP CTS providers.

40. In transitioning away from the MARS methodology for IP CTS, the Commission will require IP CTS providers to file annual cost and demand data reports with the TRS Fund administrator. There is no additional burden on IP CTS providers to file these reports, as IP CTS providers have been voluntarily submitting such reports to the TRS Fund administrator since 2011. The Commission has received approval to require the collection of such

information pursuant to the PRA, and the Commission is requiring the IP CTS providers to submit their cost and demand data for 2017. In addition, the Commission is requiring providers to supplement their cost data filings with information about payments made by providers to subcontractors for the provision of call centers, CA staffing, and other services by classifying such payments according to the substantive cost categories specified by the administrator. These requirements, which place minimal additional filing burdens on IP CTS providers, will be offset by the benefit to the TRS Fund and its contributors by the increased precision of calculating cost-based rates resulting from increased accuracy of TRS cost data submitted to the TRS Fund administrator.

41. The adoption of a requirement for IP CTS providers to include a notice on IP CTS websites and informational materials to inform consumers about the process, cost, and source of funding will place only a minimal burden on IP CTS providers. It will be offset by the benefit to the TRS Fund and contributors to the Fund resulting from the reduction of casual or inadvertent use of IP CTS that such notice may provide by educating consumers via multiple sources of information.

42. The requirement for providers that become aware of prohibited practices to report them to the Commission or the TRS Fund administrator should not be burdensome and is needed to prevent waste, fraud, and abuse of the TRS Fund.

#### *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

43. The interim rates for IP CTS will apply only to providers who are or may become certified by the Commission to offer IP CTS in accordance with its rules. The Commission adopts these interim rates to: (1) Ensure that rates compensate providers for their reasonable cost; (2) reduce waste of TRS Fund resources and the amounts that TRS Fund contributors pay to the fund; and (3) ensure that TRS is made available to the extent possible and in the most efficient manner. The requirement to file cost and demand data annually will not increase the burden on IP CTS providers because they have been submitting such data to the TRS Fund administrator since 2011. The Commission is requiring providers to supplement their cost data filings with information about payments made by providers to subcontractors for the provision of call centers, CA staffing, and other services by classifying such

payments according to the substantive cost categories specified by the administrator. This requirement, which places minimal additional filing burdens on IP CTS providers, will be offset by the benefit to the TRS Fund and its contributors by the increased precision of calculating cost-based rates resulting from increased accuracy of TRS cost data submitted to the TRS Fund administrator.

44. Separating the volume control and captioning functions on IP CTS devices will place a minor burden on IP CTS providers and device manufacturers to reconfigure the functionality. Such costs will be offset from the likely decrease in waste and misuse of IP CTS, as individuals will be able to use a device's amplification features without also being required to use the device's captioning features. Providers have until December 8, 2018, to ensure that new and previously distributed devices are in compliance.

45. The general prohibition on practices resulting in IP CTS use by ineligible individuals, the requirement for providers that become aware of prohibited practices to report them to the Commission or the TRS Fund administrator, and the requirement for IP CTS providers to include notices on their informational materials and websites should not be burdensome and are necessary to combat waste, fraud, and abuse. These requirements will help ensure the efficiency of the TRS program, control the expenditure of public funds, reduce the amounts paid by contributors to the TRS Fund, and ensure the future viability of the TRS Fund and the provision of IP CTS.

#### *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals*

46. None.

#### **Ordering Clauses**

Pursuant to sections 1, 2, 201(b), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 201(b), 225, document FCC 18–79 is *adopted*, and part 64 of Title 47 is *amended*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 18–79, including the Final 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.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

#### **Final Rules**

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

#### **PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

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

**Authority:** 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 616, 620, and the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraphs (c)(5)(iii)(D)(1) and (6), (c)(10), adding paragraph (c)(11)(v), and revising paragraph (c)(13) to read as follows:

#### **§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(D) *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. In annual cost data filings and supplementary information provided to the administrator regarding such cost data, IP CTS providers that contract for the supply of services used in the provision of TRS shall include information about payments under such contracts, classified according to the substantive cost categories specified by the administrator. To the extent that a third party's provision of services covers more than one cost category, the resubmitted cost reports must provide an explanation of how the provider determined or calculated the portion of contractual payments attributable to each cost category. To the extent that

the administrator reasonably deems necessary, providers shall submit additional detail on such contractor expenses, including but not limited to complete copies of such contracts and related correspondence or other records and information relevant to determining the nature of the services provided and the allocation of the costs of such services to cost categories.

\* \* \* \* \*

(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. In the course of an audit or otherwise upon demand, an IP CTS provider must make available any relevant documentation, including contracts with entities providing services or equipment directly related to the provision of IP CTS, to the Commission, the TRS Fund administrator, or any person authorized by the Commission or TRS Fund administrator to conduct an audit.

\* \* \* \* \*

(10) *IP CTS settings.* Each IP CTS provider shall ensure that, for each IP

CTS device it distributes, directly or indirectly:

(i) The device includes a button, key, icon, or other comparable feature that is easily operable and requires only one step for the consumer to turn on captioning; and

(ii) On or after December 8, 2018, any volume control or other amplification feature can be adjusted separately and independently of the caption feature.

(11) \* \* \*

(v) IP CTS providers shall ensure that their informational materials and websites used to market, advertise, educate, or otherwise inform consumers and professionals about IP CTS include the following language in a prominent location in a clearly legible font: "FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING INTERNET PROTOCOL (IP) CAPTIONED TELEPHONES WITH THE CAPTIONS TURNED ON. IP Captioned Telephone Service may use a live operator. The operator generates captions of what the other party to the call says. These captions are then sent to your phone. There is a cost for each minute of captions generated, paid from a federally administered fund." For IP CTS provider websites, the language shall be included on the website's home page, each page that provides consumer information about IP CTS, and each page that provides information on how to order IP CTS or IP CTS equipment. IP CTS providers that do not make any use of live CAs to generate captions may shorten the notice to leave out the second, third, and fourth sentences.

\* \* \* \* \*

(13) *Unauthorized and unnecessary use of VRS or IP CTS.* (i) A VRS or IP CTS provider shall not engage in any practice that the provider knows or has reason to know will cause or encourage:

(A) False or unverified claims for TRS Fund compensation;

(B) Unauthorized use of VRS or IP CTS;

(C) The making of VRS or IP CTS calls that would not otherwise be made; or

(D) The use of VRS or IP CTS by persons who do not need the service in order to communicate in a functionally equivalent manner.

(ii) A VRS or IP CTS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from the practices listed in paragraph (c)(13)(i) of this section or from the use of IP CTS by an individual who does not need captions to communicate in a functionally equivalent manner.

(iii) Any VRS or IP CTS provider that becomes aware of any practices listed in paragraphs (c)(13)(i) or (ii) of this section being or having been committed by any person shall, as soon as practicable, report such practices to the Commission or the TRS Fund administrator.

(iv) An IP CTS provider may complete and request compensation for IP CTS calls to or from unregistered users at a temporary, public IP CTS device set up in an emergency shelter. The IP CTS provider shall notify the TRS Fund administrator of the dates of activation and termination for such device.

\* \* \* \* \*

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