

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
Structure and Practices of the Video Relay Service Program
CG Docket No. 03-123
CG Docket No. 10-51

ORDER

Adopted: June 30, 2021

Released: June 30, 2021

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) approves per-minute provider compensation for certain telecommunications relay services (TRS) supported by the Interstate Telecommunications Relay Services Fund (TRS Fund, or Fund) for the Fund Year beginning July 1, 2021, and ending June 30, 2022 (2021-22 Fund Year).1 We also approve the total TRS funding requirement and the contribution factors that determine the amounts that telecommunications carriers and other covered service providers must contribute to the Fund.

2. For Fund Year 2021-22, the per-minute compensation for interstate TRS provided through state programs shall be: (1) for traditional (TTY-based) TRS, \$4.1944; (2) for speech-to-speech relay service (STS), \$5.3254; and (3) for captioned telephone service (CTS), \$2.3662. For Internet Protocol Relay Service (IP Relay), as described below, we approve compensation of \$1.7146 per minute for the 2021-22 Fund Year.

3. TRS Fund compensation for Internet Protocol Captioned Telephone Service (IP CTS) and video relay service (VRS) is not addressed in this Order. The IP CTS compensation level for the 2021-22 Fund Year, \$1.30 per minute, was determined by the Commission in the 2020 IP CTS Compensation Order as part of a two-year IP CTS compensation plan.2 Therefore, this Bureau-level

1 TRS enables an individual who is deaf, hard of hearing, or deafblind or who has a speech disability to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3). TRS is provided in a variety of ways. Currently, interstate TRS calls and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are supported by the Fund. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 380-81, 390, paras. 3-6, 25 (2007).

2 Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10870-71, paras. 10-12 (2020) (2020 IP CTS Compensation Order).

Order does not address comments filed in support of a one-year “freeze” of per-minute IP CTS compensation at the current \$1.42 level.<sup>3</sup> VRS compensation for the 2021-22 Fund Year will be determined by the Commission, and the current compensation level for VRS, adopted in 2017 as part of a four-year VRS compensation plan, has been extended (subject to a possible true-up) pending completion of the Commission’s rulemaking.<sup>4</sup> As ordered by the Commission, for VRS providers with more than 500,000 monthly minutes as of July 1, 2017, the applicable per-minute VRS compensation levels for the 2020-21 Fund Year are: \$4.82 per minute for a provider’s first 1,000,000 monthly minutes (Tier I); \$3.97 per minute for a provider’s monthly minutes between 1,000,001 and 2,500,000 (Tier II); and \$2.63 per minute for a provider’s monthly minutes exceeding 2,500,000 (Tier III).<sup>5</sup> For VRS providers with 500,000 or fewer monthly minutes as of July 1, 2017, the applicable per-minute VRS compensation for the 2020-21 Fund Year is \$5.29 per minute (Emergent Tier).<sup>6</sup>

4. Based on these compensation levels, projected demand for the services, and projected Fund administration expenses, we approve a funding requirement of \$1,324,922,000. We approve a carrier contribution factor of 0.01331 for support of non-IP CTS TRS, applied to contributors’ interstate and international end-user revenues. For support of IP CTS, we approve a carrier contribution factor of 0.00831, applied to contributors’ intrastate, interstate, and international end-user revenues.<sup>7</sup>

## II. BACKGROUND

5. On May 3, 2021, Rolka Loube submitted an annual report on the TRS Fund with recommendations for provider compensation, the TRS Fund budget, and contribution factors for the 2021-22 Fund Year.<sup>8</sup> Also, on May 3, T-Mobile Communications Company, L.P., filed a request for

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<sup>3</sup> See ClearCaptions Comments at 1-6; Sorenson Comments at 3; InnoCaption Comments at 1, 3-4; Hamilton Comments at 2, 3-4; T-Mobile USA, Inc. Reply Comments at 4-5 (T-Mobile Reply); see also Letter from Dixie Ziegler, Hamilton Relay, Inc., Cristina Duarte, Mezmo Corporation d/b/a InnoCaption, Michael Strecker, ClearCaptions, LLC, Bruce Peterson, CaptionCall, LLC, Scott R. Freiermuth, T-Mobile USA, Inc., and Erik Strand, MachineGenius, Inc. (Joint Providers), to Marlene H. Dortch, FCC, CG Docket Nos. 13-24 and 03-123 (filed May 25, 2021) (Joint Providers May 25 Letter), <https://ecfsapi.fcc.gov/file/10525399911136/Joint%20Provider%20Ex%20Parte%20on%20IP%20CTS%20rate%20freeze%20-%20Final.pdf>. We note that there is a pending petition for reconsideration of the Commission’s decision on IP CTS compensation in the *2020 IP CTS Compensation Order. Internet Protocol Captioned Telephone Service: Comment Dates for Reconsideration Petitions*, CG Docket Nos. 13-24, 03-123, and 10-51, Public Notice, DA 21-238 (CGB 2021).

<sup>4</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, FCC 21-61 (May 21, 2021); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Report and Order and Order, 32 FCC Rcd 5891, 5925, para. 66 (2017) (*2017 VRS Compensation Order*).

<sup>5</sup> *2017 VRS Compensation Order*, 32 FCC Rcd at 5934, Appx. A.

<sup>6</sup> *Id.* at 5916-17, paras. 49-50.

<sup>7</sup> See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, 34 FCC Rcd 11265, 11268-70, paras. 7-12 (2019) (*2019 IP CTS Contribution Base Order*) (including intrastate revenues in contribution base for IP CTS).

<sup>8</sup> Rolka Loube Associates LLC, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51 (filed May 3, 2021), <https://ecfsapi.fcc.gov/file/10503519213438/2021%20TRS%20Fund%20Annual%20Report.pdf> (2021 TRS Report). Each May, the Fund administrator recommends TRS payment formulas and revenue requirements for the next Fund Year. 47 CFR § 64.604(c)(5)(iii)(E), (H).

waiver of certain Commission rules affecting the compensation plan for IP Relay.<sup>9</sup> By Public Notice issued May 11, the Bureau sought comment on the administrator's recommendations and T-Mobile's waiver request.<sup>10</sup> On May 27, 2021, Rolka Loube filed a supplement to its report updating the recommended contribution factors.<sup>11</sup>

### III. DISCUSSION

#### A. Compensation for Traditional TRS, STS, and CTS

6. For traditional TRS, STS, and CTS, we approve Rolka Loube's proposed per-minute compensation for the 2021-22 Fund Year: \$4.1944 for interstate traditional TRS; \$5.3254 for interstate STS; and \$2.3662 for interstate CTS. These compensation levels represent an increase of approximately 12% for traditional TRS, 9% for STS, and 2% for CTS, relative to the 2020-21 Fund Year compensation levels for those services.<sup>12</sup> Under the Multi-State Average Rate Structure (MARS) methodology adopted by the Commission in 2007, per-minute compensation for an interstate relay service is determined by collecting each state program's payments and minutes of use for the corresponding intrastate relay service in the previous Fund Year and dividing the total state payments by total intrastate minutes.<sup>13</sup> The calculation of MARS support levels for the current year is shown in Rolka Loube's report.<sup>14</sup> No party opposes Rolka Loube's recommended compensation amounts.<sup>15</sup> We conclude that Rolka Loube's recommended amounts correctly apply the MARS methodology and should be adopted.

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<sup>9</sup> See T-Mobile, Request for Interim Waivers, CG Docket No. 03-123 and RM-11820 (filed May 3, 2021), <https://ecfsapi.fcc.gov/file/1050310600939/IP%20Relay%20Waiver%20Request%20-%202021%20FINAL.pdf> (T-Mobile Waiver Request).

<sup>10</sup> *Rolka Loube Associates Submits Payment Formulas and Funding Requirements for the Interstate Telecommunications Relay Services Fund for the 2021-2022 Fund Year; Consumer and Governmental Affairs Bureau Seeks Comment on Sprint's Request for IP Relay Compensation Waivers*, Public Notice, DA 21-556 (CGB 2021) (2021 TRS Report Public Notice). The Commission received comments on May 25, 2021, from USTelecom – the Broadband Association (USTelecom), ClearCaptions, LLC (ClearCaptions), Hamilton Relay, Inc. (Hamilton), IDT Telecom, Inc. (IDT), Mezmo Corporation d/b/a InnoCaption (InnoCaption), and Sorenson Communications, LLC and CaptionCall, LLC (Sorenson). On June 4, 2021, T-Mobile filed reply comments.

<sup>11</sup> Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate Supplemental Comment, CG Docket Nos. 03-123 and 10-51 (filed May 27, 2021), <https://ecfsapi.fcc.gov/file/1052752135766/2021%20Supplemental%20TRS%20Fund%20Annual%20Report.pdf> (2021 TRS Report Supplement).

<sup>12</sup> 2021 TRS Report at 13-14. Consistent with compensation determinations in past years, the STS plan includes a supplemental per-minute amount (\$1.1311) to be used for STS outreach. *Id.* at 13; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20170, para. 57 (2007) (2007 TRS Compensation Methodology Order). The weighted state-average compensation levels for traditional TRS, STS, and CTS continue to increase as demand for each service declines and more states transition to a flat rate for service, increasing the compensation paid per minute in those states. 2021 TRS Report at 12-14; Exhs. 1-1, 1-2.

<sup>13</sup> *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20151-61, paras. 16-38.

<sup>14</sup> 2021 TRS Report at 30, Exh. 1-1. Rolka Loube requests authorization to identify the compensation levels and demand by states in future annual reports, unless the reporting state requests confidentiality. For this report, Rolka Loube has not identified the states in deference to provider requests for confidentiality. 2021 TRS Report at 13; *see also id.* at 30, Exh. 1-1. Rolka Loube's request is not addressed in this Order.

<sup>15</sup> Hamilton supports the TRS Fund administrator's proposed compensation levels for traditional TRS, STS, and CTS. Hamilton Comments at 2-3.

## B. Compensation for IP Relay

### 1. Per-Minute Compensation

7. For IP Relay, we approve per-minute compensation of \$1.7146 for the 2021-22 Fund Year, the same as in Fund Year 2020-21. The 2021-22 Fund Year is the last year of a three-year compensation plan.<sup>16</sup> Under the price-cap-like methodology adopted by the Commission in 2007, the base compensation established at the beginning of the cycle remains in effect for the entire three-year period, subject to possible adjustments for inflation, efficiency, and exogenous costs.<sup>17</sup> A new three-year compensation cycle began in 2019, at which time the base compensation level was set at \$1.67 per minute and adjustment factors for inflation and efficiency that are equal to each other were approved.<sup>18</sup> In 2020, however, recognizing that there had been an unforeseen increase in provider labor costs, the Bureau waived the compensation methodology to the extent necessary to increase the compensation level to \$1.7146 per minute.<sup>19</sup>

8. Rolka Loube recommends retaining the current compensation level of \$1.7146 per minute.<sup>20</sup> No party other than T-Mobile commented on Rolka Loube's recommendation. T-Mobile requests an increase in the recommended compensation level to cover indirect overhead costs, pursuant to a waiver request that we deny, as discussed below.<sup>21</sup>

9. Rolka Loube's report shows that the unforeseen labor cost increases that led the Bureau to adjust the compensation level upward for 2020-21 are unlikely to abate significantly in 2021-22.<sup>22</sup> Therefore, consistent with Rolka Loube's recommendation, and to ensure sufficient TRS Fund support for the continued provision of this service by its sole provider, on our own motion, we renew last year's waiver of the price-cap-like methodology to the extent necessary to maintain the current compensation level of \$1.7146 per minute for the 2021-22 Fund Year, the third year of the current compensation period.

### 2. T-Mobile's Waiver Requests

10. *Background.* The base compensation amount for IP Relay includes an allowance for recovery of outreach expenses pursuant to a temporary waiver of the Commission's allowable cost rules.<sup>23</sup>

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<sup>16</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 34 FCC Rcd 5171, 5174-75, para. 8 (CGB 2019) (2019 TRS Compensation Order).

<sup>17</sup> 2007 TRS Compensation Methodology Order, 22 FCC Rcd at 20163-64, paras. 43-46.

<sup>18</sup> 2019 TRS Compensation Order, 34 FCC Rcd at 5174-75, para. 8.

<sup>19</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 6649, 6656-57, para. 19 (2020) (2020 TRS Compensation Order). These unforeseen labor cost increases began prior to the pandemic. Rolka Loube, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51, at 18 (filed May 1, 2020), <https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf>.

<sup>20</sup> 2021 TRS Report at 19. Rolka Loube notes that if compensation for 2021-22 were recalculated based on an average of historical 2020 and projected 2021 costs, the resulting compensation level would be \$1.7098 per minute. *Id.*

<sup>21</sup> See T-Mobile Reply Comments at 2. As also discussed below, we grant T-Mobile's request for renewal of its waiver to permit recovery of outreach costs, which are included in the cost basis for Rolka Loube's recommended compensation level.

<sup>22</sup> 2021 TRS Report at 19. Although, based on an average of historical 2020 and projected 2021 costs, the resulting compensation level would be \$1.7098 per minute, Rolka Loube recommends maintaining the current, slightly higher compensation level "due to the uncertainty associated with the impact of Covid-19 on demand and cost." *Id.*

In 2016, the Bureau granted a partial waiver of the Commission's prohibition on TRS Fund support of provider outreach activity<sup>24</sup> to permit T-Mobile, currently the sole provider of IP Relay service, to recover its expenses for outreach to individuals who are deafblind.<sup>25</sup> The waiver was granted for a one-year period, but has been renewed each year since 2016.<sup>26</sup> In 2019, the Bureau expanded the scope of the waiver to permit T-Mobile to recover expenses for outreach to the broader community of current and potential IP Relay users.<sup>27</sup> For Fund Year 2021-22, T-Mobile requests renewal of this outreach waiver. T-Mobile also requests an additional waiver of the allowable-cost rules to permit recovery of an allocation of T-Mobile's general overhead costs.<sup>28</sup> Rolka Loube recommends that the Commission continue to permit recovery of an allowance for outreach activities.<sup>29</sup> No party opposes T-Mobile's waiver requests.

11. *Waiver Standard.* In considering T-Mobile's requests for waiver of various rules on allowability of costs, we note that the Commission's rules may be waived for good cause shown.<sup>30</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>31</sup> In determining whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>32</sup> Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule and if such a deviation will serve the public interest.<sup>33</sup>

12. *Outreach.* We find good cause to renew T-Mobile's outreach waiver for an additional year. As we have previously determined, outreach to people who are deafblind, who often rely on IP Relay as their sole or primary means of communicating by telephone,<sup>34</sup> requires specifically targeted

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<sup>23</sup> See *2019 TRS Compensation Order*, 34 FCC Rcd at 5178-80, paras. 16-19.

<sup>24</sup> See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8634-39, 8696, paras. 31-39, 192 (2013) (disallowing the recovery of outreach expenses in VRS and IP Relay compensation).

<sup>25</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 31 FCC Rcd 7246, 7251-52, para. 19 (2016) (*2016 TRS Compensation Order*).

<sup>26</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 32 FCC Rcd 5142, 5145-46, paras. 11-13 (CGB 2017); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 33 FCC Rcd 6300, 6304, para. 11 (CGB 2018) (*2018 TRS Compensation Order*); *2019 TRS Compensation Order*, 34 FCC Rcd at 5178-79, para. 16; *2020 TRS Compensation Order*, 35 FCC Rcd at 6654-55, paras. 12-14.

<sup>27</sup> *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, paras. 17-18.

<sup>28</sup> T-Mobile IP Relay Waiver Request at 3-10; see also T-Mobile Reply at 2-3; *2019 TRS Compensation Order*, 34 FCC Rcd at 5175, 5178-80, para. 10, 16-19.

<sup>29</sup> 2021 TRS Report at 18.

<sup>30</sup> 47 CFR § 1.3.

<sup>31</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>32</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>33</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>34</sup> See, e.g., *2016 TRS Compensation Order*, 31 FCC Rcd at 7250, para. 14.

efforts that take account of these consumers' unique disabilities.<sup>35</sup> Further, given the relatively low overall usage of IP Relay, it appears likely that more effective outreach is needed to ensure that all potential users are aware of the availability of the service.<sup>36</sup> And as we determined in 2019, given that there is currently only one IP Relay provider, provider-driven outreach in this context is more likely to be effective—compared to when the outreach ban was adopted—in reaching new-to-category users (rather than merely attracting existing users from competing providers), particularly as the relevant population changes over time.<sup>37</sup> In addition, as we determined in the *2019 TRS Compensation Order* and the *2020 TRS Compensation Order*, the IP Relay registration safeguards previously adopted by the Commission will continue to protect IP Relay from individuals who would misuse the program.<sup>38</sup>

13. The semi-annual reports filed by T-Mobile regarding its outreach expenditures indicate that T-Mobile's outreach activities have been appropriately targeted for the above purposes.<sup>39</sup> Noting that many in-person outreach events had to be canceled due to the COVID-19 pandemic, T-Mobile reports that it was able to participate in virtual events to ensure its outreach activities continued.<sup>40</sup>

14. As with previous waivers granted for outreach, this waiver is conditioned on periodic reporting to ensure that the costs incurred and activities undertaken pursuant to this waiver advance the purposes of the TRS program. As in the *2020 TRS Compensation Order*, we require two reports per year, which shall include an itemized list of each new hire, each type of outreach activity conducted, the total amounts expended on general outreach and deafblind outreach, respectively, an explanation of how common expenses are allocated between general outreach and outreach to the deafblind community, and a count of active registered users as of the end of each reporting period (*i.e.*, all registered users who have placed or received at least one IP Relay call in the last 12 months).<sup>41</sup> These reports shall be filed with the TRS Fund administrator and CGB and shall be due October 1, 2021 (covering the six months from March 1 through August 31, 2021), and April 1, 2022 (covering the six months from September 1, 2021, through February 28, 2022).<sup>42</sup>

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<sup>35</sup> See, e.g., *id.* at 7250, 7251-52, paras. 14, 18-19; *2019 TRS Compensation Order*, 34 FCC Rcd at 5178-79, para. 16; see also 2021 TRS Report at 18.

<sup>36</sup> T-Mobile IP Relay Waiver Request at 5-6; see also *2019 TRS Compensation Order*, 34 FCC Rcd at 5179, para. 17. Outreach conducted pursuant to this waiver will not duplicate the efforts of the National Outreach Program. *Id.*; see also T-Mobile IP Relay Waiver Request at 6.

<sup>37</sup> See T-Mobile IP Relay Waiver Request at 6-7; see also *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, para. 18.

<sup>38</sup> See *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, para. 18 & n.57; *2020 TRS Compensation Order*, 35 FCC Rcd at 6654-55, para. 13.

<sup>39</sup> See Letters from Scott R. Freiermuth, Sprint Corporation to Eliot Greenwald, FCC and David Rolka, TRS Fund Administrator (filed Nov. 2, 2020, Apr. 1, 2021) (confidential) (each with an attachment entitled "Sprint IP Relay, Service Improvements & Outreach Activities, Biannual Report"). For example, T-Mobile reports it made presentations at local and national events across the United States, made informational material available in accessible formats, and provided in-person and remote support to new and potential users for both its general outreach and its outreach to the deafblind community. T-Mobile also reported on the impact the COVID-19 pandemic had on its ability to do outreach and improvements to its IP Relay service. See Sprint IP Relay, Service Improvements & Outreach Activities, Biannual Report at 1-6 (Nov. 2, 2020); Sprint IP Relay, Service Improvements & Outreach Activities, Biannual Report at 1-3 (Apr. 1, 2021).

<sup>40</sup> T-Mobile IP Relay Waiver Request at 4 n.9.

<sup>41</sup> See *2020 TRS Compensation Order*, 35 FCC Rcd at 6654-55, para. 13.

<sup>42</sup> In 2020, we reduced the frequency of the required reports from semi-annually to quarterly and set an earlier filing date for the final report (April 1 instead of June 1 as in previous orders) to provide more time for review of the final report before the waiver's expiration date. As a result, each reporting period for the 2020-21 Fund Year covered

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15. *Indirect Overhead.* We deny T-Mobile's request for a waiver to enable recovery of indirect overhead costs in the IP Relay compensation.<sup>43</sup> As we found to be the case last year, T-Mobile has not demonstrated with particularity good cause to depart from the general rule prohibiting indirect recovery of overhead on a non-cost-causative basis.<sup>44</sup> The Commission adopted this rule specifically to address the types of cost allocation issues posed by service providers that, like T-Mobile, "operat[e] an extensive portfolio of non-TRS communications offerings."<sup>45</sup> Thus, while T-Mobile makes a general claim that it would be "precluded from reasonable cost recovery" that it needs to provide high-quality service,<sup>46</sup> it has not shown specifically that the Commission's rule burdens T-Mobile in ways not considered when the rule was adopted.

### C. Funding Requirement and Carrier Contribution Factors

16. To calculate the annual funding requirement, the Fund administrator sums the projected payments to TRS providers for each form of TRS (determined by multiplying the proposed compensation plan for each service category by the projected minutes of use for that category), adds administrative expenses and other funding requirements, and subtracts the projected surplus from the previous Fund Year.<sup>47</sup>

17. For traditional TRS, STS, and CTS, Rolka Loube projects demand using recent historical data, an approach that has provided reasonably accurate results for these services.<sup>48</sup> For VRS, IP Relay, and IP CTS, Rolka Loube takes as a starting point the providers' aggregate demand projections for 2021-22, which in recent years have generally produced reasonably accurate results.<sup>49</sup> After the onset of the COVID-19 pandemic in March 2020, however, demand for these services sharply increased, and Rolka Loube anticipates that demand will remain higher than normal for the duration of the pandemic.<sup>50</sup> In light of the uncertainty caused by the pandemic, Rolka Loube has recommended a 10% increase to provider-projected demand for VRS and IP CTS for the months July 2021 through June 2022.<sup>51</sup> We find that

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five months rather than six, with the final report covering the period ending February 28, 2021. Starting with the 2021-22 Fund Year, the reports once again will collectively cover an entire year. Thus, the first report will cover the six-month period commencing March 1, 2021, and the final report will cover the six-month period ending on February 28, 2022. Information on general outreach and outreach to the deafblind community (which may be combined in one report) shall be presented separately and shall clearly delineate expenses for each of the two types of outreach.

<sup>43</sup> See T-Mobile IP Relay Waiver Request at 6-10.

<sup>44</sup> *2020 TRS Compensation Order*, 35 FCC Rcd at 6655-56, para. 15; see also *2019 TRS Compensation Order*, 34 FCC Rcd at 5180-81, para. 20 (footnotes omitted); *2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20169, para. 75.

<sup>45</sup> T-Mobile IP Relay Waiver Request at 8; see also *2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20169, para. 75. At the time the rule was adopted, a number of telecommunications carriers were offering some form of TRS, and the Commission had expressed concern, for example, "about the extent to which some salaries of corporate officers and executives have been included in submitted costs" for TRS. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12544, para. 182 n.520 (2004).

<sup>46</sup> T-Mobile IP Relay Waiver Request at 8.

<sup>47</sup> See 2021 TRS Report at 25-26.

<sup>48</sup> *Id.* at 22-24.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 23-24.

<sup>51</sup> *Id.* at 23.

Rolka Loube's TRS demand projections are reasonable for budgeting purposes.<sup>52</sup>

18. We approve Rolka Loube's proposed funding requirements, which total \$11,702,005 for relay services that use the MARS methodology—traditional TRS, STS, and CTS—\$11,910,556 for IP Relay, \$579,320,133 for VRS, and \$851,014,202 for IP CTS.<sup>53</sup> The total funding requirement for payments to TRS providers is \$1,453,946,896.

19. In addition to projected payments for TRS, Rolka Loube includes in its proposed funding requirement a \$10,000,000 funding allocation for the National Deaf-Blind Equipment Distribution Program (NDBEDP).<sup>54</sup> Rolka Loube recommends a total of \$22,000,000 for Fund administrative costs, including expenditures for VRS reform implementation, database administration, Fund administration, the data collection agent, the Interstate TRS Fund Advisory Council, service provider audits, bankruptcy representation, an independent financial audit of the Fund, the development and implementation of an improper-payments audit plan approved by the Office of Management and Budget, and TRS user identity verification.<sup>55</sup> No comments were received regarding these allocations. We find the recommended expenditures to be fair and consistent with prior year Fund administrative expenses.<sup>56</sup>

20. Rolka Loube also recommends a two-month payment reserve, totaling \$148,494,616 for IP CTS and \$101,232,537 for other TRS, for a total reserve of \$249,727,153.<sup>57</sup> No party opposes this recommendation. We find that a two-month reserve, which has been maintained for the past seven Fund Years,<sup>58</sup> is a reasonable precautionary measure to guard against the possibility of unanticipated demand for TRS that can unexpectedly increase the need for Fund payments in the course of a Fund Year.<sup>59</sup> To the extent that it goes unused, the payment reserve is not wasted. Rather, the remaining portion is turned

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<sup>52</sup> Sorenson comments that “setting a funding requirement and contribution rate are necessary tasks,” but the 2020 and 2021 data for IP CTS and VRS should not be used as “projections for [compensation] rate setting purposes.” Sorenson Comments at 11; *see also* ClearCaptions Comments at 1-6. As noted above, per-minute compensation for IP CTS and VRS is not addressed in this Order.

<sup>53</sup> 2021 TRS Report, Exh. 2. We decline to adopt IDT Telecom's recommendation that the Commission adopt a budget for VRS only through December 31, 2021, IDT Telecom Comments at 1-2, because that is the time period through which the current VRS compensation plan is extended, and adopt a budget for VRS for the second half of the 2021-22 Fund Year after the Commission adopts a new VRS compensation plan. The Commission's rules provide that TRS funding requirements and contribution factors are determined annually. *See, e.g.*, 47 CFR § 64.604(c)(5)(iii)(B), (H). We note that, to the extent that contributions made in the current year exceed Fund expenditures, the surplus is retained for use in the following year, and the required contributions for that year are decreased accordingly. *See id.* § 64.604(c)(5)(iii)(B).

<sup>54</sup> 2020 TRS Report at 25; *see also* 47 CFR §§ 64.6201-19.

<sup>55</sup> 2021 TRS Report at 25.

<sup>56</sup> *See, e.g.*, 2020 TRS Compensation Order, 35 FCC Rcd at 6658, para. 25; 2019 TRS Compensation Order, 34 FCC Rcd at 5181-82, para. 24; 2018 TRS Compensation Order, 33 FCC Rcd at 6306-07, para. 18.

<sup>57</sup> 2021 TRS Report at 26-27 & Exh. 2.

<sup>58</sup> *See, e.g.*, 2020 TRS Compensation Order, 35 FCC Rcd at 6658, para. 24; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 29 FCC Rcd 8044, 8053, para. 23 (CGB 2014).

<sup>59</sup> *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703, 707 n.20 (2013) (noting that the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(A), provides that an officer or employee of the federal government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation).



over for use in the next Fund Year.<sup>60</sup>

21. In summary, we conclude that Rolka Loube's demand projections are reasonable and that, subject to the adjustments discussed above, its funding proposals are consistent with the Commission's rules on contribution computations.<sup>61</sup> We therefore adopt a total funding requirement of \$1,324,922,000 (after subtracting the estimated surplus from the current year and adding the estimated amount to be paid to T-Mobile pursuant to the accompanying Order on Reconsideration).

22. *Contribution Factors.* Rolka Loube proposes TRS Fund contribution factors of 0.01331 for non-IP CTS TRS and 0.00831 for IP CTS for the 2020-21 Fund Year.<sup>62</sup> The use of two different contribution factors is mandated by the Commission's 2019 IP CTS Contribution Base Order.<sup>63</sup> The non-IP CTS contribution factor, which is applicable to interstate and international end-user revenues, is the ratio of the estimated non-IP CTS funding requirement to total interstate and international end-user revenues for the prior calendar year. The IP CTS contribution factor, which is applicable to intrastate, interstate, and international revenues, is the ratio of the estimated IP CTS funding requirement to the total intrastate, interstate, and international end-user revenues for the prior calendar year.<sup>64</sup> No party opposes the proposed contribution factors. We find that the contribution factors were correctly calculated, and they are approved.<sup>65</sup>

#### IV. PROCEDURAL MATTERS

23. *Accessible Materials.* 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

#### V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and section 64.604(c)(5)(iii) of the Commission's rules, 47 CFR § 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

25. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the Request for Interim Waivers by T-Mobile Communications Company, L.P., is GRANTED in part and DENIED in part.

26. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the period from July 1, 2021, through June 30, 2022, in the amount of \$4.1944 per interstate conversation minute.

27. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate STS, for the period from July 1, 2021, through June 30, 2022, in the amount of

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<sup>60</sup> See 47 CFR § 64.604(c)(5)(iii)(B).

<sup>61</sup> *Id.* § 64.604(c)(5)(iii)(A), (B).

<sup>62</sup> 2021 TRS Report Supplement at 1-2.

<sup>63</sup> *IP CTS Contribution Base Order*, 34 FCC Rcd at 11273-74, para. 21 & n.57.

<sup>64</sup> 2021 TRS Report at 4-6. The IP CTS revenue requirement includes the portion of the reserve requirement attributable to IP CTS. *Id.* at 5.

<sup>65</sup> USTelecom requests that the Commission provide a longer timeframe between release of an order establishing the new TRS Fund budget and contribution factors and the effective date for the contribution factors, claiming that the timeframe does not allow sufficient time for carriers to plan for the cost impact of such changes. USTelecom Comments at 3. Addressing USTelecom's request would require an amendment of the Commission's rules governing the timeframe, which is beyond the scope of this proceeding. See 47 CFR § 64.604(c)(5)(3)(H) (requiring administrator to file proposed payment formulas and revenue requirements on May 1 to be effective July 1).

\$5.3254 per interstate conversation minute.

28. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate CTS, for the period from July 1, 2021, through June 30, 2022, in the amount of \$2.3662 per conversation minute.

29. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP Relay service for the period from July 1, 2021, through June 30, 2022, in the amount of \$1.7146 per conversation minute.

30. IT IS FURTHER ORDERED that the TRS Fund revenue requirement for Fund Year 2021-22 shall be \$1,324,674,049, and the TRS Fund carrier contribution factors shall be 0.01331 for non-IP CTS TRS and 0.00831 for IP CTS.

31. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief  
Consumer and Governmental Affairs Bureau