

Synopsis

In this *Fifth Report and Order*, the Commission eliminates the requirement that common carriers provide coin sent-paid toll TRS calls from payphones. The Americans with Disabilities Act (ADA) requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls" 47 U.S.C. 225(d)(1)(E). In the *First Report and Order* on TRS, 56 FR 36729, August 1, 1991, the Commission interpreted this mandate to require TRS providers to handle "any type of call normally provided by common carriers," and placed the burden of proving the infeasibility of handling a particular type of call on the carriers, 6 FCC Rcd 4657 (1991). The Commission interpreted "any type of call" to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone, 6 FCC Rcd at 4661 n.18. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the current suspension remains in effect until publication of the final rules adopted in this *Fifth Report and Order*. Because no current technological solution to the coin sent-paid toll TRS issue appears feasible, this *Fifth Report and Order* eliminates the coin-sent paid toll TRS requirement affirms that credit and calling cards may be used to bill toll TRS calls made from a payphone, and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. As proposed in the *Coin Sent-Paid Further Notice*, this *Fifth Report and Order* mandates that local payphone calls made to and through TRS centers be provided by common carriers on a cost-free basis. This *Fifth Report and Order* also encourages specific outreach and education

programs to inform TRS users of their options when placing TRS calls from payphones. Finally, the *Fifth Report and Order* mandates carriers via the Industry Team to submit a report on these outreach and education efforts to the Commission twelve months after publication of this *Fifth Report and Order* in the **Federal Register**. The report will facilitate the Commission's efforts to ensure that TRS consumers have the information they need to complete local as well as toll TRS calls from payphones.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. Seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. 104-121, Title II, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*. Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5803 (2001), 66 FR 18059, April 5, 2001, including comment on the IRFA. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking*, including comment on the IRFA. The comments received discussed only the general recommendations, not the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604.

1. Need for, and Objective of This Fifth Report and Order

This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services using payphones that are functionally equivalent to those available to persons without hearing or speech disabilities. Our specific concern was to address the inability to make coin sent-paid local and toll TRS calls from payphones. Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Second Further Notice of Proposed Rulemaking* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users. This *Fifth Report and Order* addresses the means by which persons with hearing and speech

disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coin sent-paid toll TRS calls.

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

No comments were filed in response to the IRFA in this proceeding. No comments on the NPRM were received concerning the small business issues. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and as discussed in Section 5, *Infra*, has concluded that the rules adopted impose no significant economic burden on small businesses.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(2)(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 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriated to the activities of the agency and published 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.

Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information available at this time regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, is data the Commission publishes annually in its *Telecommunications Provider Locator Report*, regarding FCC Form 499-A.