

from text to voice and from voice to text between two end users of TRS. CA supersedes the term “TDD operator.”

(6) *Hearing carry over (HCO)*. A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

(7) *Telecommunications relay services (TRS)*. Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device. TRS supersedes the terms “dual party relay system,” “message relay services,” and “TDD Relay.”

(8) *Text telephone (TT)*. A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TT supersedes the term “TDD” or “telecommunications device for the deaf.”

(9) *Voice carry over (VCO)*. A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

§ 64.602 Jurisdiction.

Any violation of this subpart by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations pre-

scribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

§ 64.604 Mandatory minimum standards.

(a) *Operational standards*—(1) *Communications assistant (CA)*. TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) *Confidentiality and conversation content*. Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay

user specifically requests summarization.

(3) *Types of calls.* Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(b) *Technical standards—(1) ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting

to reach a party through the voice telephone network.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) *Functional standards—(1) Enforcement.* Subject to §64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

(3) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(4) *Jurisdictional separation of costs—(i) General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under §64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter

referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of its relative share of gross interstate revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least \$100 per year. Service providers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet," which shall be published in the FEDERAL REGISTER. The worksheet sets forth information that must be provided by the contribu-

tor, the formula for computing the contribution, the manner of payment, and due dates for payments. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions.

(C) *Data collection from TRS Providers.* TRS providers shall provide the administrator with true and adequate data necessary to determine 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 operating expenses and total TRS investment in general accordance with part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) *Payments to TRS Providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate

TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(4)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or

(2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(3) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(4)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and fail-

ure to file may exclude the TRS provider from eligibility for the year.

(H) *Administrator reporting, monitoring, and filing requirements.* The administrator shall perform all filing and reporting functions required under paragraphs (c)(4)(iii)(A) through (J), of this section. Beginning in 1994, TRS payment formulas and revenue requirements shall be filed with the Commission on October 1 of each year, to be effective for a one-year period beginning the following January 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually (in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(5) *Complaints*—(i) *Referral of complaint*. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) *Jurisdiction of Commission*. After referring a complaint to a state under paragraph (c)(5)(i) of this section, or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(1) 180 days after the complaint is filed with such state; or

(2) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under § 64.605.

(iii) *Complaint procedures*—(A) *Content*. A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(1) The name and address of the complainant,

(2) The name and address of the defendant against whom the complaint is made,

(3) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(4) The relief sought.

(B) *Amended complaints*. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) *Number of copies*. An original and two copies of all pleadings shall be filed.

(D) *Service*—(1) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(2) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) *Answers to complaints and amended complaints*. Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) *Replies to answers or amended answers*. Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(G) *Defective pleadings*. Any pleading filed in a complaint proceeding that is not in substantial conformity with the

requirements of the applicable rules in this subpart may be dismissed.

[56 FR 36731, Aug. 1, 1991, as amended at 58 FR 12176, Mar. 3, 1993; 58 FR 39673, July 26, 1993; 61 FR 36642, July 12, 1996]

EFFECTIVE DATE NOTE: At 62 FR 47152, Sept. 8, 1997, paragraph (a)(3) of § 64.604 was suspended from Sept. 8, 1997, through Aug. 26, 1998.

§ 64.605 State certification.

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the FEDERAL REGISTER.

(b) *Requirements for certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(c) *Certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

§ 64.606 Furnishing related customer premises equipment.

(a) Any communications common carrier may provide, under tariff, customer premises equipment (other than hearing aid compatible telephones as defined in part 68 of this chapter, needed by persons with hearing, speech, vision or mobility disabilities. Such equipment may be provided to persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers and TTs.

(b) Any carrier which provides telecommunications devices for persons with hearing and/or speech disabilities, whether or not pursuant to tariff, shall respond to any inquiry concerning:

(1) The availability (including general price levels) of TTs using ASCII, Baudot, or both formats; and

(2) The compatibility of any TT with other such devices and computers.

§ 64.607 Provision of hearing aid compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in § 68.316 of this chapter, and provide related installation and maintenance services for such telephones on a