

stringent than the Federal performance standard for the type of fuel burned. The State responded by writing that Ohio relies on the Federal New Source Performance Standards (NSPS) to set standards for appropriate units and the State emission standards are not intended to be more restrictive than NSPS. Ohio statute prohibits State rules more stringent than Federal rules. While this action appears to be a relaxation for an oil-fired unit, the backstop is the Federal NSPS. However, as comments were being considered by the State, the source (General Motors Corporation) shut down the Moraine Assembly Plant boiler. This unit was the only boiler affected by the rescinded rule. All other existing boilers of 250 million BTU per hour or larger in size are covered by the NO<sub>x</sub> SIP Call and have emissions caps during the ozone season.

#### V. What Action Is EPA Taking Today?

We are proposing to approve the State's request to rescind the rule OAC 3745-23-06. A review of the Ohio Title V permit list shows that the only permit still in the system which references this rule is for a 250 million BTU boiler formerly owned by the General Motors Corporation (GM). The GM Moraine assembly plant permit applies to a gas fired boiler (with oil back-up) which ceased operation in 2003, about a year before this action (to rescind this rule) was approved by the Ohio EPA Director. Citizens who wish to comment on this action are encouraged to do so within the time-frame noted in the front of this notice.

#### VI. Statutory and Executive Order Reviews

##### *Executive Order 12866; Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

##### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

##### *Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

##### *Unfunded Mandates Reform Act*

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

##### *Executive Order 13132 Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

##### *Executive Order 13175 Consultation and Coordination With Indian Tribal Governments*

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

##### *Executive Order 13045 Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

##### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

##### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

##### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 17, 2006.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E6-8467 Filed 5-31-06; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03-123; FCC 06-58]

#### **Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission addresses the misuse of the two Internet-based forms of Telecommunications Relay Service (TRS), Internet Protocol (IP) Relay Service and Video Relay Service (VRS), and seeks comment on possible changes to the TRS regulations to curtail their misuse.

**DATES:** Comments are due on or before July 3, 2006. Reply comments are due

on or before July 17, 2006. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before July 31, 2006.

**ADDRESSES:** You may submit comments, identified by CG Docket number 03-123 and/or FCC Number 06-58, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the PRA information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to [Kristy.L.LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at (202) 395-5167.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Hlibok, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail at [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov). For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418-0217, or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Further Notice of Proposed Rulemaking, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol Relay Service and Video Relay Service (IP Relay Fraud FNPRM)*; CG Docket No. 03-123, FCC 06-58, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104-13. It will be submitted to the Office of Management and Budget

(OMB) for review under § 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. This is a summary of the Commission's *IP Relay Fraud FNPRM*, FCC 06-58, adopted May 3, 2006, and released May 8, 2006, in CG Docket No. 03-123.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03-123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in which *ex parte* communications are subject to disclosure. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206 (b) of the Commission's rules.

*People With Disabilities:* 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 & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Initial Paperwork Reduction Act of 1995 Analysis**

The *IP Relay Fraud FNPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 31, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

*OMB Control Number:* 3060-1089.

*Title:* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; *Emergency Access NPRM and IP Relay/VRS Fraud FNPRM*, CG Docket No. 03-123.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Number of Respondents:* 8—(6 of which provides VRS and IP Relay service; 2 of which provides VRS).

*Number of Responses:* 5,001,190.

*Respondents:* Business and other for-profit entities; State, local or tribal government.

*Estimated Time per Response:* 4 to 1,000 hours.

*Frequency of Response:* Annual, one-time, and on occasion reporting requirement; Recordkeeping; Third party disclosure.

*Total Annual Burden:* 22,848 hours.

*Total Annual Costs:* \$0.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* On May 8, 2006, the Commission released a Further Notice of Proposed Rulemaking, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service (IP Relay Fraud FNPRM)*, CG Docket No. 03-123, FCC 06-58 which contains the following information collection requirements involving user registration, e.g., callers register to use VRS and IP Relay and provide their requisite information as necessary:

The *IP Relay Fraud FNPRM* seeks comment on: (1) Whether IP Relay and VRS providers should be required to implement user registration system in which users provide certain information to their providers, in advance, as a means of curbing illegitimate IP Relay and VRS calls; (2) what information should be required of the user; (3) whether there are steps that could be taken, or technology implemented, to prevent the wrongful use of registration information; and (4) whether the

Commission should require VRS and IP Relay providers to maintain records of apparently illegitimate calls that were terminated by the providers.

**Note:** The Commission is merging the *IP Relay Fraud FNPRM* collection with the *Emergency Access NPRM* collection to avoid duplications.

### Synopsis

IP Relay is a form of text-based TRS that uses the Internet, rather than the Public Switched Telephone Network (PSTN). See *Provision of Improved TRS and Speech to Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking; published at 67 FR 39863, June 11, 2002 and 67 FR 39929, June 11, 2002 (*IP Relay Declaratory Ruling*) (recognizing IP Relay as a form of TRS). VRS is a form of TRS that allows communication via American Sign Language (ASL) using video equipment. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-5154, paragraphs 21-27 (March 6, 2000); published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000 (*Improved TRS Order and FNPRM*) (recognizing VRS as a form of TRS); 47 CFR 64.601 (17) (defining VRS). Currently, if IP Relay and VRS are offered in compliance with the TRS mandatory minimum standards, see 47 CFR 64.604; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dockets 90-571 and 98-67 and CG Docket 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking; published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004 (*2004 TRS Report and Order and FNPRM*) (discussing how TRS works), the costs of providing the services are reimbursed from the Interstate TRS Fund (Fund), which is overseen by the Commission. *Improved TRS Order and FNPRM*, 15 FCC Rcd 5152-5154, paragraphs 23-27. Generally, the Interstate TRS Fund compensates providers for providing interstate TRS services, and the states compensate providers for providing intrastate TRS services. Presently, however, all VRS and IP Relay calls are compensated from the Interstate TRS Fund. The question of whether the Commission should adopt a mechanism for the jurisdictional separation of costs for these services is

pending. *2004 TRS Report and Order and FNPRM*, 19 FCC Rcd at 12561-12564, paragraphs 221-230 (IP Relay), at 12567, paragraphs 241-242 (VRS).

### Misuse of IP Relay

The Commission continues to receive complaints and anecdotal evidence that IP Relay is being misused by persons without a hearing or speech disability to defraud merchants by making purchases over the telephone using stolen, fake, or otherwise invalid credit cards, and to make harassing or "prank" calls. See generally *FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert*, Public Notice, 19 FCC Rcd 10740 (June 18, 2004) (*IP Relay Fraud Public Notice*); published at 69 FR 41478, July 9, 2004. Although such conduct may be illegal, because IP Relay calls reach the relay center via the Internet, and the calling party and the communications assistant (CA), the TRS provider employee who handles the call, communicate only by text, the CA presently receives no identifying information. Consequently, IP Relay affords users a degree of anonymity that is generally not possible with PSTN-based relay calls. Because TTY based TRS calls are made over the PSTN, the call to the relay center includes identifying information such as the calling party's number. That information is used to determine if the call is interstate or intrastate for compensation purposes under Section 255 of the Communications Act, but also has the effect of deterring the misuse of TRS because the relay provider knows where the inbound call is coming from. As a result, some persons have discovered that they may misuse IP Relay. In a typical scenario involving fraudulent credit card purchases, a person places an IP Relay call, usually from outside the United States, to a business located within the United States, places an order for goods (most often commodity items that can be quickly resold), pays with a stolen or fraudulent credit card, and arranges for the goods to be shipped to a location outside the United States.

Such misuse is harmful both to the merchants who are victimized and legitimate IP Relay users who may no longer be able to convince merchants to accept their orders for merchandise. In addition, the Commission is concerned about the impact that such misuse may have on the Fund. For example, interstate telecommunications carriers that pay into the Fund (and generally pass those costs on to their customers) should not be paying more because of the misuse of funded services.

The Commission has previously alerted the public and the business community to take precautionary steps to ensure that the credit card information received through IP Relay is legitimate. See (*IP Relay Fraud Public Notice*). The Commission noted that IP Relay providers are developing methods to determine which calls are attempts to make fraudulent purchases, and have successfully prevented some fraudulent purchase calls that can be identified as originating overseas from reaching their intended victims. The Commission also recommended that merchants report any suspected fraudulent purchase calls to the Federal Trade Commission, Federal Bureau of Investigation, or their state authorities. Although the Commission has worked with the providers on ways to eliminate or minimize these fraudulent purchase calls, it does not appear that the frequency of such calls has diminished.

The Commission also noted the present difficulty in preventing fraudulent purchase calls because of the nature and purpose of TRS. Due to the transparent nature of the CA's role in handling a TRS call, the CA may not interfere with the conversation. The Commission also noted that the TRS statutory and regulatory regime does not contemplate that CAs should have a law enforcement role by monitoring the conversations they are relaying. The current TRS regulations, for example, prohibit CAs from refusing calls, and generally prevent CAs from disclosing or keeping records of the contents of any call. In addition, the regulations prohibit the CAs from intentionally altering a relayed conversation, and require them to relay all calls verbatim. The Commission adopted these regulations as part of the functional equivalency principle to ensure that relay users, like voice telephone users, may access the telephone system and have any conversation they want, confidentially, despite the fact that the call involves a third person (the CA).

#### *Misuse of VRS as Substitute for an In-Person Interpreter or a Video Remote Interpreting (VRI) Service*

The Commission continues to receive anecdotal evidence that VRS is being used in circumstances that do not involve access to the telephone system, and therefore are not appropriate for a relay service. VRS is not to be used as a substitute for in-person interpreting services or for Video Remote Interpreting (VRI). See, e.g., *Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot be Used as a Substitute for "In-Person" Interpreting Services or*

*Video Remote Interpreting (VRI)*, Public Notice, DA 05-2417 (September 7, 2005) (*VRS-VRI Public Notice*), published at 70 FR 59346, October 12, 2005 (noting that the Commission continues to receive reports that this is occurring, and reminding, in part, that VRS "is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system"); see *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order on Reconsideration, 6 FCC Rcd 4054, at 4058 (June 5, 2000), paragraph 10; see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration (2005 ASL-to-Spanish VRS Order), 20 FCC Rcd 13154, paragraph 32, note 109; published at 70 FR 54294, September 14, 2005. Generally, in-person interpreters are contracted and paid on a fee-for-service basis. Similarly, VRI is a commercial service that is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with in-person interpreters, VRI services are generally contracted and paid on a fee-for-service basis. The Commission recently noted that although "VRS providers generally have procedures in place to terminate calls where VRS is being used as a way to obtain free interpreting services, \* \* \* persons misusing VRS may be doing so in ways to avoid detection, and are also publicizing these methods via consumer bulletin boards and other means."

#### **Discussion**

##### *Misuse of IP Relay*

The Commission seeks comment on whether it should waive or modify certain TRS rules to permit IP Relay providers and their CAs to screen out and, where appropriate, terminate calls they determine are not legitimate TRS calls. These include, for example, calls made by hearing persons to merchants to purchase goods with stolen or fraudulent credit cards. The Commission notes that in other contexts, e.g., Speech-to-Speech (STS), the Commission has permitted the CA to step out of the role of strictly being a transparent conduit that relays the call. See *Improved TRS Order and FNPRM*, 15 FCC Rcd 5140, at 5162-5165

paragraphs 49-58 (modifying certain rules for STS calls, including the requirement that the CA relay the call verbatim); see also *2004 TRS Report and Order and FNPRM*, 19 FCC Rcd at 12571-12573, paragraphs 249, 255-258 (June 30, 2004) (*FNPRM* raises the issues whether VRS CAs should be able to ask questions to the VRS user during call set-up, and whether the TRS provider or CA should be given the discretion to decline to handle or terminate abusive calls directed at the CA or called party). At the same time, the Commission recognizes that permitting CAs to step out of their role as invisible conduits in a call may create tension with the functional equivalency principle. The Commission invites comment on steps the Commission might take, consistent with Section 225 of the Communications Act, to permit providers to prevent or terminate such calls, even if that means waiving, amending or modifying for IP Relay some of the Commission's TRS mandatory minimum standards.

More particularly, the Commission seeks comment on whether the IP Relay provider or CA should be given the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, alert the merchant who receives the call that the call may be fraudulent, or take some other steps to prevent the misuse of IP Relay. The Commission also seeks comment on whether it should adopt rules to guide the exercise of that discretion.

Moreover, the Commission seeks comment on whether an IP Relay provider and its CAs can generally determine whether a call to a merchant is for the purpose of fraudulently purchasing goods, and therefore is likely not by a person with a hearing or speech disability seeking access to the telephone system. For example, we understand that there are many readily identifiable indicia of IP Relay calls to merchants by persons seeking to make fraudulent credit card purchases, including that the caller will only pay via credit card; offers more than one credit card number for payment; will not identify him or herself or provide a company name; uses names in reverse (last name as first, first as last); does not negotiate price; will not agree to pay in advance via a check, bank wire, or bank draft; has few questions about the product and lacks knowledge about the product; refuses to call back using the state's relay service; and changes the payment or delivery arrangements after an order has been approved. The Commission seeks comment on whether there are other ways in which a provider

may determine if a particular call is not a legitimate relay call?

The Commission seeks comment on whether additional steps, such as user registration, might be adopted to curtail the misuse of IP Relay. If the Commission adopted registration as a means of curbing illegitimate IP Relay calls, how might registration be implemented and what information should be required of the user? Are there steps that could be taken, or technology implemented, to prevent the wrongful use of registration information?

The Commission further seeks comment on whether there is any statutory bar to the Commission adopting rules that would give the TRS providers a role in curtailing the misuse of IP Relay. In addition, the Commission seeks comment on whether any procedures should be employed to safeguard legitimate calls and ensure consumers' confidence in the integrity and confidentiality of IP Relay service. Assuming an IP Relay provider or CA is permitted to terminate a call determined to be illegitimate, should the provider nevertheless be compensated for the conversation time of the call prior to termination? Further, if the Commission were to allow the IP Relay provider and the CA discretion to disconnect apparently illegitimate calls, should the provider be required to maintain records of such terminated calls, consistent with Section 225(d)(F) of the Communications Act? Would it be appropriate to include in such records the date, time, and nature of the call and the reason why the provider or CA determined that the call was illegitimate?

Finally, the Commission requests commenters to consider whether Section 705 of the Communications Act, 47 U.S.C. 605, or any other federal or state statute, would restrict the Commission's authority to take any of the remedial actions discussed above. Section 705 of the Communications Act prohibits, in part, persons who assist in receiving and transmitting telephone calls from divulging or publishing the existence or contents of a call except in certain enumerated circumstances. See 47 U.S.C. 605(a). The Commission seeks comment, for example, on whether Section 705 of the Communications Act applies to TRS CAs and, if so, whether permitting a CA to terminate a relay call based on information derived from the CA's role in relaying the call would be precluded by this provision. The Commission also requests parties to provide any additional information that may be relevant to preventing the misuse of IP Relay.

#### *Misuse of VRS as Substitute for an In-Person Interpreter or a Video Remote Interpreting Service*

The Commission seeks comment on whether, and if so, how, it can ensure that VRS is not used as a substitute for hiring an in-person interpreter or a VRI service. Is it possible for VRS providers and their CAs to determine whether a particular VRS call is a legitimate call or is being used as a substitute for an in-person interpreting service or VRI? Do VRS providers presently have procedures in place to ensure that the VRS calls they handle and submit to the Fund administrator for payment are legitimate VRS calls? If not, what procedures could be implemented to prevent such abuse?

The Commission further seeks comment on whether the VRS provider or CA should be given the discretion to make the determination that a call is not a legitimate VRS call, and to terminate the call. If so, should it adopt rules to guide the exercise of this discretion? Should the Commission waive or modify any of the TRS regulations to enable VRS providers to ensure that the calls they handle are legitimate?

The Commission also seeks comment on whether additional steps, such as user registration, might be adopted to curtail the misuse of VRS. How might registration be implemented and what information should be required of the user? Are there steps that could be taken, or technology implemented, to prevent the wrongful use of registration information?

The Commission further seeks comment on whether any procedures should be employed to safeguard legitimate calls and ensure consumers' confidence in the integrity and confidentiality of VRS. Assuming a VRS provider or CA is permitted to terminate a call determined to be illegitimate, should the provider nevertheless be compensated for the conversation time of the call prior to termination? Further, if the Commission were to allow the VRS provider and the CA discretion to disconnect apparently illegitimate VRS calls, should the provider be required to maintain records of such terminated calls, consistent with Section 225(d)(i)(F) of the Communications Act? 47 U.S.C. 225(d)(i)(F) (prohibiting CAs from "keeping records of the content" of any call beyond the duration of the call). Would it be appropriate to include in such records the date, time, and nature of the call and the reason why the provider or CA determined that the call was illegitimate?

Finally, the Commission requests commenters to consider whether

Section 705 of the Communications Act, 47 U.S.C. 605, or any other federal or state statute, would restrict the Commission's authority to take any of the remedial actions discussed above. The Commission also requests parties to provide any additional information that may be relevant to our resolution of this issue.

#### **Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *IP Relay Fraud FNPRM*. See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law Number 104-121, 110 Statute 857 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *IP Relay Fraud FNPRM* provided in paragraph 24 of the *IP Relay Fraud FNPRM*. The Commission will send a copy of the *IP Relay Fraud FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

#### **Need for, and Objectives of, the Proposed Rules**

Providers of telecommunications relay services (TRS), mandated by Title IV of the Americans with Disabilities Act of 1990, relay telephone calls between persons with hearing and speech disabilities and persons without such disabilities. See 47 U.S.C. 225. Under the Commission's regulations, the communications assistant (CA) may not refuse calls or disclose the contents of any call. The Commission adopted these regulations as part of the functional equivalency principle to ensure that relay users, like voice telephone users, may access the telephone system and have any conversation they want, confidentially, despite the fact that the call involves a third person (the CA). See 47 U.S.C. (a)(3). IP Relay and VRS offer consumers anonymity because the call is placed via the Internet, and not the PSTN, the Commission has become aware that these services are being misused. Persons have been using IP Relay to purchase goods from merchants using

stolen or fraudulent credit cards. Such misuse is harmful both to the merchant who is defrauded and legitimate relay users who may no longer be able to convince merchants to accept orders via relay. With respect to VRS, the Commission has expressed concern that it is being misused as a substitute for hiring a Video Remote Interpreting (VRI) service or an in-person interpreter. The Commission is also concerned that the rapid and steady increase in the size of the Interstate TRS Fund may in part be a result of such misuse of IP Relay and VRS. Therefore, the *IP Relay Fraud FNPRM* seeks comment on whether the Commission should waive or modify certain TRS rules to permit IP Relay and VRS providers to screen out and, where appropriate, terminate, IP Relay calls involving fraudulent credit card purchases or VRS calls that are illegitimate.

These TRS rules might include those that prevent a CA from refusing calls, generally prohibit a CA from disclosing or keeping records of the content of a call, prohibit a CA from intentionally altering a relayed conversation, and required CAs to relay calls verbatim. See 47 CFR 64.604(a)(2)(i) and (ii).

More specifically, the *IP Relay Fraud FNPRM* provisionally considers granting the IP Relay provider or CA the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, alert the merchant who receives the call that the call may be fraudulent. The *IP Relay Fraud FNPRM* also asks for any recommendation on a possible alternative measure to prevent the misuse of IP Relay. In doing so, the Commission contemplates adopting new rules that guide the provider and the CA the exercise of that discretion. Further, the proposed user registration is being contemplated as an additional measure to curtail the misuse of IP Relay. The *IP Relay Fraud FNPRM* also asks for an alternative measure.

The IP Relay *IP Relay Fraud FNPRM* provisionally proposes that, assuming an IP Relay provider or CA were granted the discretion to disconnect apparently illegitimate calls, the provider should be required to maintain records of such terminated calls, consistent with Section 225 (d)(i)(f) of the Communications Act. 47 U.S.C. 225 (d)(i)(f) (prohibiting CAs from “keeping records of the content” of any call beyond the duration of the call). The *IP Relay Fraud FNPRM* contemplates on any rule changes permitting IP Relay providers or CAs to terminate apparently illegitimate calls be made permanently or temporarily.

The *IP Relay Fraud FNPRM* seeks input on whether Section 705 of the Communications Act, 47 U.S.C. 605, or any other federal or state statute, may restrict the Commission’s authority to take any of the remedial actions discussed above. See, e.g., 18 U.S.C. 2511 (which is noted in Section 705 of the Communications Act). Finally, the *IP Relay Fraud FNPRM* asks whether the providers that terminated these apparently illegitimate calls should be compensated from the Interstate TRS Fund nonetheless.

In contemplating an appropriate measure to ensure that VRS is not used as a substitute for an in-person interpreter of VRI service, the *IP Relay Fraud FNPRM* asks for recommendation on how the Commission can ensure that VRS is not being misused. The *IP Relay Fraud FNPRM* proposes a possible rule change that grants the VRS provider or CA the discretion to make the determination that a call is not a legitimate VRS call, and to terminate the call. The *IP Relay Fraud FNPRM* also tentatively considers waiving or modifying certain TRS regulations to enable VRS providers to ensure that the calls they handle are legitimate.

In addition, the proposed user registration is being contemplated as an additional measure to curtail the misuse of VRS. The *IP Relay Fraud FNPRM* contemplates whether rule changes permitting VRS providers or CAs to terminate apparently illegitimate calls should be made permanent or temporary. Finally, the *IP Relay Fraud FNPRM* asks whether the provider that terminated these apparently illegitimate calls should be compensated from the Interstate TRS Fund nonetheless.

#### *Legal Basis*

The authority for the actions proposed in this *IP Relay Fraud FNPRM* may be found in Sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218 and 225, and §§ 64.601–64.608 of the Commission’s regulations, 47 CFR 64.601–64.608.

#### *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, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally 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 the Small Business Act, 15 U.S.C. 632). Pursuant to the 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, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

As noted above, the *IP Relay Fraud FNPRM* seeks comment on whether IP Relay and VRS providers should be given the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, or (for IP Relay) alert the merchant who receives the call that the call may be fraudulent, or take some other steps to prevent the misuse of IP Relay and VRS. As a result, the Commission believes that the entities that may be affected by the proposed rules are only those TRS providers that offer IP Relay and VRS. Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110. Currently, there are eight TRS providers that offer VRS and/or IP Relay, which consist of interexchange carriers, local exchange carriers, other common carriers, and non-profit organizations. Approximately three or fewer of these entities are small businesses under the SBA size standard. See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

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

The *IP Relay Fraud FNPRM*’s proposed rules would permit CAs to terminate certain IP Relay and VRS calls in circumstances where they believe the

call is illegitimate. A registration requirement, if adopted, might require VRS and IP Relay providers to register each user so that the provider would have identifying information of the person making the call, and might require the provider or user to update this information as necessary. The rules, if adopted, might also require the providers to keep records of calls that are terminated.

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

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

The Commission considers the proposed rule changes in the *IP Relay Fraud FNPRM* as a possible means of achieving the competing public policy goals of ensuring that TRS works as a transparent conduit for the calling and called parties and preventing the misuse of IP Relay and VRS services. The *IP Relay Fraud FNPRM* invites comment on a number of alternative means by which IP Relay and VRS providers might undertake to curtail illegitimate calls. For example, the *IP Relay Fraud FNPRM* asks if the Commission should amend TRS rules to allow providers the discretion to refuse or terminate illegitimate IP Relay and VRS calls.

The *IP Relay Fraud FNPRM* also seeks comment on other means by which the Commission might curtail the misuse of IP Relay and VRS, including by adopting a registration requirement. The Commission also asks if there may be alternatives to requiring registration or imposing new obligations on providers, such as waiving certain TRS calls. These alternatives could mitigate any burden the proposed registration requirement might have on small businesses.

The Commission notes that by promulgating the rules in allowing the provider and the CA the discretion to terminate apparent illegitimate calls, it would lessen an adverse economic impact on small businesses. The

proposed rule change would save many small businesses that may be affected by these illegitimate calls. For instance, small businesses are more vulnerable with illegitimate calls involving fraudulent credit card purchases because they often are not equipped to verify the credit card numbers. The proposed rule change that calls for granting the provider and the CA the discretion to terminate apparent illegitimate calls would not create an additional financial burden on any provider, including small businesses.

The *IP Relay Fraud FNPRM* contemplates requiring the providers to maintain records of terminated calls, and seeks comment on what these records should include. The *IP Relay Fraud FNPRM* notes, however, that such a requirement might conflict with the Commission’s rules, and also seeks comment on this issue. The *IP Relay Fraud FNPRM* therefore contemplates that it may not be possible to require providers to maintain any records.

Further, the *IP Relay Fraud FNPRM* also invites comment on whether any proposed rule change and/or requirement should be permanent or temporary. To the extent the adopted measure requiring the providers to maintain records is temporary, any burden on small businesses would be lessened.

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

None.

#### Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, this *Further Notice of Proposed Rulemaking is adopted*.

The Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. E6–8489 Filed 5–31–06; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AT92

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Monardella linoides* ssp. *viminea* (willow monardella)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Monardella linoides* ssp. *viminea* (willow monardella) and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the November 9, 2005, proposed critical habitat rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

**DATES:** Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before July 3, 2006.

**ADDRESSES:** If you wish to comment on the proposed rule or draft economic analysis, you may submit your comments and materials identified by RIN 1018–AT92, by any of the following methods:

(1) E-mail: [fw8cfwomolivi@fws.gov](mailto:fw8cfwomolivi@fws.gov).

Include “RIN 1018–AT92” in the subject line.

(2) Fax: 760/431–9624.

(3) Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) Hand Delivery/Courier: You may hand-deliver written documents to our office (see **ADDRESSES**).

(5) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431–9440; facsimile, 760/431–9624.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

We will accept written comments and information during this reopened