

**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

CG Docket No. 03-123

CG Docket No. 10-51

Structure and Practices of the Video
Relay Service Program

Misuse of Internet Protocol Relay
Service

CG Docket No. 12-38

**COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

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The California Public Utilities Commission (California or CPUC) submits these comments in response to the *Notice of Proposed Rulemaking (NPRM)*, which the Federal Communications Commission (FCC or Commission) released on November 20, 2020.¹ This proposal follows the FCC’s adoption of the *Internet Protocol Captioned Telephone Service Contributions Order (IP CTS Contributions Order)* in 2019, which expands the Telecommunications Relay Services (TRS) Fund contributions to include intrastate as well as interstate end-user revenues.² Here, the FCC proposes to amend the TRS Fund contribution rules for two other forms of TRS—Video Relay Service (VRS) and Internet Protocol Relay Service (IP Relay). If approved, the TRS Fund administrator will calculate support by applying a single contribution factor to the total end-user revenues of each interstate and intrastate telecommunications carrier and Voice over Internet Protocol (VoIP) service provider—in the same manner as current contributions to support IP CTS. The rule change would not affect the total contributions needed to support VRS and IP Relay.

I. DISCUSSION AND RECOMMENDATIONS

A. Implementation and Inclusion of VRS and IP Relay in State Programs

In the *NPRM*, the FCC asserts that section 225 of the Communications Act of 1934 (the Act) permits it to expand the contribution base to include intrastate service

¹ *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; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Released: November 20, 2020.

² *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 (2019) (*IP CTS Contributions Order*).

providers for VRS and IP Relay service. The FCC cites the 2019 *IP CTS Contributions Order* to explain its jurisdictional authority: “[S]ection 225 expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery.”³ The FCC maintains section 225 is an “express carve out of the Act’s general reservation of state authority over intrastate communications” and responsibility for administering TRS is “shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority.”⁴ The *NPRM* states that this analysis permits the Commission to adopt a similar approach to include funding from *intrastate* revenues for VRS and IP Relay, and seeks comment on how the Commission should proceed if a state requests certification to include these services in a state TRS program.

California supports the efficient administration of a federal or state-run TRS program that fairly apportions contribution costs of VRS and IP Relay between interstate and intrastate contributors. The CPUC’s long-established Deaf and Disabled Telecommunications Program (DDTP) includes California Relay Service (CRS) which offers a full range of traditional Relay services (e.g., TTY, visually assisted speech-to-speech, etc.) to facilitate 24-hour contact of captioned callers with any other telephone user.⁵ The DDTP also provides qualified Californians with assistive telephone equipment

³ NPRM, para. 15; *IP CTS Contributions Order*, 34 FCC Rcd at 11270, para. 13.

⁴ *Id.*

⁵ *See*, Cal. Pub. Util. Code §§ 2881(a) and (b).

and specialized devices at no cost through the California Telephone Access Program (CTAP).⁶ The CPUC funds the DDTP by assessing telephone corporations and interconnected VoIP service providers a surcharge rate of 0.50% on intrastate revenues collected from end-users for telecommunications services subject to surcharge. Currently, California does not offer IP relay service, IP captioned telephone service, or video relay service, due in part to the federal and state law restrictions of the CPUC's authority to provide IP-enabled or video services. For this reason, most of the specialized equipment the CTAP offers only function with a landline.

The CPUC acknowledges the FCC's conclusion that it can recover VRS and IP Relay administrative costs from both interstate and intrastate revenues pursuant to the Commission's "general authority" granted by section 225(b)(2). Accordingly, it is reasonable for the FCC to apply the proposed a single contribution factor to a contributor's total end-user revenues, regardless of the proportion of VRS and IP Relay minutes and costs that might be deemed interstate or intrastate. But as states seek certification to include IP enabled Relay services in their state TRS program portfolio, the FCC should reassess the cost recovery rules and if necessary, refer the issue to the Federal-State Joint Board to determine the separation between interstate and intrastate costs and minutes. However, the *NPRM's* goal to mend the current contribution arrangement's "inherent inequities" is meaningless should the Commission exercise its reservation of authority to offer TRS *in addition to* certified state programs. In response

⁶ See, Cal. Pub. Util. Code §§ 2881 (c).

to the CPUC’s arguments that opposed any FCC effort to attach intrastate revenues where a state itself is managing and funding a TRS program, the *IP CTS Contributions Order* explained that “the Commission’s broad section 225 authority to ensure the availability of TRS must be construed to include the ability to require appropriate funding of those forms of TRS not covered by state programs.”⁷ The *NPRM* seeks comment regarding its analysis of its sharing responsibility for administering TRS with the states.⁸

The CPUC cannot see how TRS administration can effectively be a shared responsibility under the FCC’s scenario without first addressing the feasibility of such an arrangement. The *IP CTS Contributions Order* affirms, “Where a form of TRS is not offered in state TRS programs, the Commission’s discretion includes reasonable measures to ensure equitably distributed contributions from all interstate and intrastate service providers subject to the Commission’s section 225 authority.”⁹ But the Order falls short of illustrating how the FCC intends “reasonable measures” to ensure interstate and intrastate TRS Fund contributions remain equitable. Nevertheless, the *NPRM* seeks comment on how the FCC can ensure program costs are “fairly apportioned” and TRS Fund contributors are not subjected to double payment of their share of intrastate VRS or IP Relay costs.

⁷ *NPRM*, fn 35; citing *IP CTS Contributions Order*, 24 FCC Rcd at 11270-1, paras. 14-16.

⁸ *NPRM*, para. 15.

⁹ *IP CTS Contribution Order*, para. 17; Footnote 35 (“We note that this Report and Order only addresses how TRS support obligations are calculated as a percentage of each contributor’s end-user revenues. The rule we adopt does not dictate how a contributing service provider recovers its TRS Fund contributions in the service rates charged to end users or how a state may choose to regulate a carrier’s or other service provider’s recovery of its costs—including TRS Fund contributions to support the captioning of intrastate telephone calls—in the rates for communications services subject to its jurisdiction.”)

The FCC cannot ensure the fair apportionment of TRS program costs if it continues to attach intrastate revenues after granting certification to a state that chooses to manage its own IP-enabled TRS. If a state includes VRS and IP Relay in a state administered TRS program, the FCC should transfer authority to the state to manage the TRS program with minimal interference. As a practical matter, the need for the FCC to identify and offer TRS to supplement a certified state TRS program is unnecessary. State certification to provide IP-enabled service already requires FCC review to confirm that the state offers a comprehensive TRS program, including the provision of adequate procedures and remedies for enforcement purposes.¹⁰ As a condition to FCC-certification of IP-enabled services, section 225(f)(2) also requires state TRS programs available “in a manner that **meets or exceeds** the requirements of regulations prescribed by the Commission under subsection (d).”¹¹ The FCC fails to explain on what grounds or describe potential scenarios such intervention by the Commission would be necessary once certification has been granted.¹² Any deficiencies of a state TRS program from the minimum standard would presumably be addressed before certification even occurs. Absent a determined need, the FCC

¹⁰ 47 U.S. Code 225(f)(1).

¹¹ *Emphasis added.* 47 U.S. Code 225(d) requires the FCC to: establish functional requirements, guidelines, and operations procedures for TRS; establish minimum standards for the provision of service; require TRS operate at all hours of the day, everyday; require TRS users pay rates no greater than the rates of functionally equivalent voice communication services; prohibit relay operators from refusing calls or limiting the length of calls that use TRS; prohibiting relay operators from disclosing or from keeping records of conversations beyond the duration of the call; and prohibit relay operators from intentionally altering relayed conversation.).

¹² *IP CTS Contributions Order*, 24 FCC Rcd at 11270-1, para. 17.

should refrain from exercising its federal reach to provide IP-based Relay services in addition to the services offered in a certified state TRS program.¹³

B. Economic Impact

The *NPRM* seeks comment on its analysis of the economic impact of expanding the TRS Fund contribution for both VRS and IP Relay to include intrastate revenues.¹⁴ While the FCC is charged by Congress to ensure the availability of interstate and intrastate TRS, it must do so “to the extent possible and in the most efficient manner.”¹⁵ The FCC’s potential involvement in providing additional services on top of an existing state TRS program is neither feasible nor practicable from an administrative or cost-recovery standpoint. Separately run TRS programs at the federal and state level invite potential redundancies and increased costs. And as noted above, the added complexity to cost recovery in this scenario will also frustrate the Commission’s objective of ensuring fairness to both interstate and intrastate TRS Fund contributors. The *IP CTS Contributions Order* appears to recognize this tension: “We conclude that such permitted discretion is especially broad where, as here, no state is either required to or even seeking to include IP CTS in a state TRS program.”¹⁶ While it is true no state presently includes IP enabled services in its TRS

¹³ The FCC already has recourse to address shortcomings of a state TRS program—the Commission may suspend or revoke such certification if, after notice and opportunity for hearing, it determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the FCC “will take such steps as may be necessary,” consistent with the governing statute, to ensure continuity of telecommunications relay services. *See*, 47 U.S.C.A. § 225(f)(4).

¹⁴ *NPRM*, para. 21.

¹⁵ 47 U.S. Code 225(b)(1).

¹⁶ *IP CTS Contributions Order*, 24 FCC Rcd at 11270-1, para. 24.

programs, the shift to state administration of these services grows increasingly feasible.¹⁷ Before commencing the state TRS certification process, the FCC must reconcile its interpretation of its broad discretion to collect contributions from intrastate revenues with its statutory obligation ensure TRS availability “in the most efficient manner.” Accordingly, the FCC should refrain from using its authority to attach intrastate revenues where the state is itself managing and funding a TRS program.

Lastly, the *NPRM* acknowledges “broadening of the base on which TRS Fund contributions are made would tend to reduce any current distortions in the relative prices of intrastate and interstate services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals.”¹⁸ While this would likely reduce the TRS funding contributions that are passed on by contributing providers to users of interstate and international telecommunications and VoIP services, the CPUC is concerned about the concomitant increase in support that will be passed on to end-users of **intrastate** services. The FCC presumes “some one-off implementation costs” will be *de minimis* and the benefits of the added efficiencies will exceed any implementation costs.¹⁹ The FCC maintains the redistribution “ensure[s] fair

¹⁷ Cal. Pub. Util. Code § 710, which severely restricted the CPUC from “exercising regulatory jurisdiction or control” over VoIP and IP-enabled services except as required or delegated by federal law to regulate broadband services, expired by its own terms on December 31, 2020.

¹⁸ *NPRM*, para. 21.

¹⁹ *Id.*

treatment of intrastate and interstate service providers and users in TRS funding and the long-term sustainability of the TRS Fund.²⁰ Again, this proposal only remains reasonable based on the current TRS Fund administrative processes being managed solely by the FCC. As stated above, the CPUC currently funds California’s traditional relay services by charging intrastate telephone corporations and interconnected VoIP service providers a surcharge rate—should the CPUC seek state certification to expand its TRS program to include IP CTS, VRS, or IP Relay, its administrative and program costs would assuredly increase. But the impact to intrastate providers and end-users remains uncertain—the CPUC must obtain detailed cost information to develop an accurate estimate of the associated costs of assuming program administration. Increased costs shifts the burden even further to intrastate providers and end-users as efficiencies decrease, which would certainly occur if the FCC calls upon its section 225 authority to fund the federal TRS program with intrastate revenues despite a state also offering IP-enabled TRS. To reduce the impact of its proposed redistribution on intrastate service providers and customers, the CPUC recommends the FCC consider additional rules expanding the contribution base to include Internet Service Providers, who interconnect with the Public Switch Telephone Network (PTSN) or otherwise non-switched “information service” lines.²¹

²⁰ *Id.*

²¹ Notably, in the *Restoring Internet Freedom Order on Remand*, the FCC clarified the states’ ability to support broadband-only services in state universal service programs was not limited in the Commission’s reclassification broadband Internet access service as an “information service”:

“This authority is broad enough for the states to accomplish their universal service goals without forcing a burdensome federal regulatory regime (i.e., Title II) on

II. CONCLUSION

The CPUC appreciates this opportunity to provide input to the FCC in response to its proposals concerning expanding the TRS Fund contribution base for VRS and IP Relay service. We look forward to working with the FCC to address and resolve the issues raised in the comments above.

Respectfully submitted,

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broadband Internet access service offerings. It is true that the text specifically references telecommunications services, but that reference is part of a larger list of areas where states can act as long as the state action is not inconsistent with section 254.[] Section 254 not only permits a state to work with telecommunications carriers in the state to support its own universal service programs, but it also allows states to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state.[] As long as those state actions do not rely on or burden Federal universal support mechanisms, then a state is permitted to structure its programs in a way that it deems best to promote universal service.

Restoring Internet Freedom Order on Remand, 35 FCC Rcd 12328 (15), para. 102.