

**Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of	)	
	)	
Misuse of Internet Protocol (IP) Captioned	)	CG Docket No. 13-24
Telephone Service	)	
	)	
Telecommunications Relay Services and	)	
Speech-to-Speech Services for Individuals	)	CG Docket No. 03-123
with Hearing and Speech Disabilities	)	
	)	
IP CTS Modernization and Reform	)	FCC Docket No. 18-79

**COMMENTS OF THE KANSAS CORPORATION COMMISSION REGARDING THE  
IP CTS PORTION OF THE TRS PROGRAM**

1. The Kansas Corporation Commission (KCC) is the administrative agency in Kansas charged with regulating public utilities and common carriers in the state. The KCC is also charged with establishing state level mechanisms to fund dual party relay services (DPRS) for Kansans who are speech or hearing impaired.<sup>1</sup>

2. From April 2016-March 2017, Kansas's Telecommunications Access Program (TAP) provided 80 Captioned Telephones to users with disabilities, of which 39 were Internet compatible. From April 2017-March 2018, Kansas's TAP provided 58 Captioned Telephones, of which 29 were Internet compatible. Kansas's state level program for DPRS provides reimbursement for non-Internet Protocol (non-IP) based Captioned Telephone Service (CTS) usage. Kansas did not experience an increase in CTS usage during the 2016-2017 calendar years.

3. Having reviewed the Federal Communications Commission's (FCC's) June 8, 2018, *Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice*

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<sup>1</sup>See K.S.A. § 66-2002(g).

*of Inquiry* (“Order” or “FNPRM”)<sup>2</sup> in the above captioned dockets, the KCC has several comments regarding the administration of the FCC’s Internet Protocol Captioned Telephone Service (IP-CTS) portion of the TRS program.

## **Comments**

4. For ease of understanding which paragraphs of the June 8, 2018, Order the KCC is responding to, a citation to the paragraph will be provided, followed by a response.

**Paragraph 112: “at least some commenters responding to the 2013 IP CTS Reform NPRM question whether it would be desirable for states to take on IP CTS funding and administration before issues related to user eligibility, uncontrolled growth of IP CTS demand, and standards of service have been addressed at the federal level”**

5. The KCC agrees that it would not be desirable to implement state administration of the IP-CTS portion of the TRS program before identifying and reducing waste, fraud, and abuse in the way IP-CTS phones are currently being distributed and the way user eligibility is currently being determined by some distributors. Nor would it be desirable to implement state administration of IP-CTS when usage is uncontrolled and the costs to administer IP-CTS at the state level are unknown.

6. To pursue state administration prior to implementing rules and regulations to control and reduce waste, fraud, and abuse of the existing problems at the federal level would only spread the problems over a larger audience. Furthermore, administration could be different in every state, leading to confusion.

7. Additionally, standards of service need to be addressed at the federal level first to ensure states that offer certified programs under 47 C.F.R. § 603(b) know what will be required of its intrastate providers. Since Kansas currently requires its contracted TRS provider to abide by

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<sup>2</sup>Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 2018 WL 2932192 (F.C.C.) (Rel. June 8, 2018).

47 C.F.R. § 64.601 through § 64.636, it would be important to know exactly what responsibilities that would entail before considering funding or administration issues.

**Paragraph 123: Assessments by State Programs; “we seek comment on whether state TRS programs should be required (as a condition of FCC certification under section 225(f)) to fulfill this user eligibility obligation – whether on their own, through state EDPs, or through contracting entities.”**

8. The KCC recommends prohibiting IP-CTS Telecommunications Relay Service (TRS) providers from assessing the need for or providing CTS phones to users of the TRS program. Instead, CTS phones should only be provided pursuant to state equipment distribution programs. For those states who currently do not have an equipment distribution program, those users could be referred to a federal group, possibly the National Blind Deaf Equipment Distribution Program (NBDEDP) for assistance obtaining a phone. It would appear the most effective way to stop waste, fraud, and abuse of the TRS dollars would be to first stop the widespread distribution of the equipment by those who stand to gain the most from the proliferation of the units to end users: the IP-CTS TRS providers themselves.

9. To attempt to circumvent any unauthorized use, Kansas has included a requirement in its current state TRS RFP that only allows winning providers to provide CTS phones to individuals who meet the requirements of the Kansas TAP program. To allow a TRS provider to provide a phone and also financially benefit from the usage of the phone seems to invite the waste, fraud and abuse that is currently being experienced. The incentive to provide more phones to inflate the TRS revenues from those same phones needs to be carefully considered. Kansas recommends TRS providers not be allowed to provide any phones, but particularly prevent the distribution of IP CTS phones.

10. The Kansas equipment distribution program currently provides many different types of equipment for hearing and speech disabled Kansans, including CTS phones. The

applicant must take a form provided by the program to their qualifying physician. By KCC order, to qualify for the program, the applicant must meet income eligibility guidelines and obtain a signature from their Physician, Physician Assistant, Nurse Practitioner, Audiologist, Certified Speech Pathologist, Ophthalmologist, Vocational Speech Rehabilitation Counselor, or an Optometrist. The medical professional assesses the individual and indicates that individual's disability or disabilities on the form and indicates what type of telecommunications device(s) would be most helpful, depending upon their specific disability. The applicant is also required to provide an unsworn written declaration pursuant to K.S.A. 53-601(b) under penalty of perjury. The equipment can be replaced every four years or sooner if the applicant experiences additional issues that requires replacement or additional specialized equipment.

11. Kansas currently provides many different types of telecommunications equipment including CTS phones (analog and IP compatible) through the state equipment distribution program. The existing state requirements provide for consideration and assessment by a certified medical professional and the equipment demonstration by one of the Kansas TAP demonstration centers. The demonstration centers are staffed by extremely knowledgeable individuals, but they are not healthcare professionals. The assessment portion of the applicant's disability must be performed by a trained medical professional. To employ those professionals in the state demonstration centers would be cost prohibitive. Kansas has specific medical professionals from which the assessment will be accepted, as indicated above. By only accepting assessments from these certified and/or licensed professionals, the opportunity for personal gain is lessened. It is unlikely that these specific professionals would have a marketing agreement with a phone or TRS provider. The concern of these marketing agreements for personal gain was stated in paragraph 131 of the FNPRM. By allowing the applicant to attend a live demonstration of the different

equipment options available, also lessens the chance of equipment being provided to the applicant when it is not needed. Where the decision is ultimately the applicant's, by allowing them to experience the benefits of different types of phones, Kansas demonstration centers have found that many times the applicant chooses the amplified set as opposed to the CTS phone, as was noted by the Telecommunications Equipment Distribution Program Administration (TEDPA) in paragraph 118 of the FNPRM.

**Paragraph 146 states: "To minimize the risk of inappropriate IP CTS use resulting from such churn, we propose to require that IP CTS providers biennially obtain from their users a self-certification of their continuing need to use IP CTS to achieve functionally equivalent telephone communication, and retain copies of each self-certification, as well as other registration information, for a period of ten years."**

**Paragraph 147 states: "We also seek comment on whether to require IP CTS providers to notify each individual who receives an IP CTS device, at the time of such receipt and initial registration, that the user has an obligation to ensure that the provider is notified if such user discontinues use of the captioning service... We further seek comment on whether to adopt a rule requiring the provider to either disable the IP CTS capability of an end-user device or ensure that the consumer (or his designee) returns the device to the provider after notification that the authorized user is no longer using the device for IP CTS."**

12. The majority of applicants will not regain their hearing once they lose it. Therefore, a two year recertification period appears to put these particular applicants at an unfair disadvantage and unfairly penalizes this part of the disabled community. If the user is properly vetted as indicated in the prior paragraphs, prior to receiving the equipment initially, the biennial certification would not be necessary.

13. Requesting the phone be returned in the case of death or in the event the applicant no longer requires this type of phone, and implementing a penalty against the individual abuser appear to be better options to reduce waste, fraud and abuse than implementing a two year certification period.

14. What is the penalty for abuse of the IP CTS by the end user? The Order indicates the provider will not be compensated, but there does not appear to be penalties for the abuser to discourage repeated attempts. Without attempting to correct the behavior of the user, there is no incentive to change. Kansas recommends the FCC consider adopting penalties for end users who abuse the program.

15. Currently, the equipment provided to the Applicants under the Kansas TAP program become the users' property. In order to implement the requirement that the units be returned to the TAP program in the case of death, or in the event of the improvement of the users' hearing; would require establishing a process for returns; establishing a storage location and/or disposal process; and notifying the existing users that are utilizing the equipment currently installed of the necessity to return it when no longer needed. Additional time would be required to establish this process and to educate the users. The KCC would recommend that while implementing the notification proposed to be provided with every IP CTS phone in paragraphs 41-43, and 147 of the Order, a notification should be included indicating the phones are government property and must be returned when no longer needed, and to allow space to add the indication of where they are to be returned, and contact information to help carry out the requirements. In the event of the death of the user, the family or caregivers settling the estate may not be aware of the need to return the device. With the equipment clearly labeled the opportunity is greater to achieve the intended result.

16. If the certification and equipment return proposals are adopted, it will impact the contracted administrator of the Kansas TAP equipment program by requiring additional resources and possible contract renegotiation between the administrator and the State to cover the additional

expenses. A four-year timeframe would be preferable to implement the proposals, if adopted, to allow for planning, implementation, and negotiations.

**Paragraph 149 states: “We propose to require providers to ensure that their IP CTS equipment provides an easy way to turn captions on or off, either before placing a call or while a call is in progress.”**

17. Kansas agrees with the proposal to require an “easy way” to turn captions on and off. For an applicant with family members or other acquaintances that reside in the same household, the IP CTS phone may be the only phone available. As stated above, the participants in Kansas are required to meet a minimum household income. For financial reasons it may not be feasible to have multiple phones in the home. Therefore, the need to be able to easily change the caption option on the phone is required. Defaulting to “off” for the captions is a recommendation if repeated unnecessary usage can cause penalties or reporting of usage violations. Upgrading the embedded base of CTS phones may be required to assure all existing phones meet the requirements.

**Paragraph 116 states: “If either the funding or certification functions – or the broader function of administering IP CTS – is transferred to state TRS programs, we seek comment on the amount of time state TRS programs will need to secure the necessary resources and regulatory changes at the local level for their implementation”**

18. The KCC would request an implementation timeframe of at least four years.

19. Items requiring adequate time to implement include, but are not limited to:

a. A change in the list of approved professionals or form redesign to allow recommendation and sign off on evaluation of applicants, as proposed in paragraph 130 and the resulting footnote 359.

b. A determination of the amount of additional Kansas Universal Service Fund (KUSF) funding required, and obtaining approval for changes necessary to obtain such funding. Sufficient time to implement and begin collecting the needed funding in anticipation of the states taking over the administration of IP CTS. Currently, the KUSF does not provide the financial flexibility to take on additional program costs, especially when the current impact to Kansas is unknown. Regulatory changes would be required to change the current contribution rate to support the additional expense of IP CTS TRS once the cost, specific to Kansas, is identified. To properly fund the additional expense would

also require the ability to implement the increase prior to accepting the responsibility for the IP CTS to allow sufficient funds to be collected prior to the expense being billed to the state.

c. Possible renegotiation of contracts to cover additional proposed requirements with TAP program administrators.

d. Time and resources required to follow up on continuing qualifiers for IP CTS users to bring the existing IP CTS phones already installed up to the proposed requirements and to educate the existing users on the new rules applicable to the IP CTS phones.

e. Possible development required for disability specific authorization forms to meet the proposed requirements of paragraph 130. The Kansas form is a single form for all types of disabilities.

f. Time to figure out how to store, dispose of, and track phones that are returned due to death or no longer needing equipment as proposed in paragraph 147.

g. Time to determine how to track professionals and how many times specific professionals certify users for the IP CTS program. By utilizing specific healthcare professionals, Kansas is of the opinion this requirement would not be necessary. Per paragraph 130 and 131, the FNPRM proposes annual reporting of which professionals refer users to IP CTS and how many times they have made referrals and tracking if the professional has a family or social relationship with the TRS provider.

h. Establish an appeals process if approved, for rejected applicants for CTS participation as proposed in paragraph 132.

i. Establish a process to retain all documents for ten years after termination of service by the user, as proposed in paragraph 134.

j. Additional resources to purchase IP CTS phones for use in demonstration centers in the event the FCC requires states to deal with multiple IP CTS providers instead of just one (referred to in paragraph 115).

**Paragraph 115 states: "If states handle such certifications, to what extent should states be required to offer consumers a choice of providers, given that most state TRS programs presently have a single TRS vendor?"**

20. The KCC does not support the states being required to offer consumers a choice of providers. The current TRS provider in Kansas is provided under contract as a result of an RFP, which is a competitive bidding process. The current contract will soon expire and Kansas has issued an RFP and will then negotiate a new multi-year contract. Intrastate TRS is not contracted from multiple suppliers, but rather by a single supplier. Moving the responsibility to the states will require that process to be revisited, possibly negotiating contract addendums to provide the IP CTS, or submitting new RFPs. Having multiple providers for IP CTS and a single provider for all other TRS seems unnecessarily complex to administer. The process of the state assuming



responsibility for all IP CTS will require additional time to identify regulatory and contractual requirement changes as well as the contract negotiation process. Additional timeframes would be required to implement the IP TRS function at the state level.

**Paragraph 73 states: “Expenses reported in the “Other” category, which currently average around \$.58 per minute – about 45 percent of the total – consist mainly of undifferentiated “subcontractor expenses”... Here we seek comment on whether the Commission has the authority to, and should, require such subcontractors to submit directly to the TRS fund administrator their underlying cost data for the fees charged to certified IP CTS providers...”**

21. Kansas has a contract with its TRS provider. With that contract, the specifics of what the TRS contractor must furnish regarding the TRS service is provided as part of the contract. If the TRS provider chooses to subcontract the work that decision is their choice, but it is ultimately their responsibility to assure their subcontractors meet the minimum requirements. The contractor is also ultimately responsible for providing the data requested per their contract and meeting the KCC’s minimum standards. The KCC does not support bypassing the contractor to receive information directly from a subcontractor, but does support assuring the contractor furnishes all data required whether provided by the contractor or a subcontractor of their choice, to support the contract requirements and agreement the contractor made to function as a TRS provider – or risk not receiving payment.

**Paragraph 79 states: “We seek comment on whether we should allow outreach expenses to be compensable from the TRS Fund as part of an IP CTS provider’s reasonable expenses.”**

**Paragraph 80 states: “...we are concerned about having the TRS Fund support marketing activities that have the potential to promote widespread use of the service by individuals who may not need it to obtain functionally equivalent telephone service. Therefore, we seek comment on whether compensation for marketing expenses should be disallowed or, in the alternative, limited.”**

**Paragraph 81 states: “In general, should the TRS Fund administrator’s current definitions of “outreach” and “marketing” be modified, and if so, in what respect”**

22. The KCC does not support the TRS providers' current process of supplying IP CTS telephones. The current process incentivizes the TRS provider by allowing a portion of the per-minute charges to include the marketing of the very telephones that cause the per-minute charges to accrue. This process is directly inflating the per-minute usage and the subsequent charges that result. Outreach and marketing expense should be utilized to promote the TRS service as a whole, and explaining the benefit of the relay service to the users at large. TRS providers should not be allowed to provide particular phones and encourage the utilization of the particular IP enabled model(s) of phones. Encouraging the purchase of particular models without the determination of the user's actual needs or qualifications for the phone models promoted is a disservice to the user community and the constituents who pay through their monthly telephone bills to support this program. The TRS providers' function is to provide relay service not provide equipment. The KCC supports the modification of the current outreach and marketing expense to be limited to the promotion of the TRS relay service itself, with appropriate limitations put on TRS providers of IP-only TRS service to encourage the utilization of TRS relay service, not IP TRS only.

**Paragraph 99 states: "How should overhead and other common costs be allocated between CA-assisted and IP CTS provided using ASR? To what extent would it be appropriate to set the ASR-only IP CTS compensation rate higher than a cost-based level, to create incentives for providers to integrate ASR into their IP CTS platforms where functional equivalence can be achieved?"**

23. Kansas does not support a higher than cost-based level of compensation for Automatic Speech Recognition (ASR). The benefit of mechanization in itself is an incentive for the TRS provider. The machine, while initially having a higher up-front expense should not continue to have a higher expense than human assisted loaded labor rate expense over time. In fact, a cost reduction should be experienced as the mechanization handles more calls over time without the additional expenses of requiring as many Communications Assistants (CAs) on the

payroll and the associated personnel costs. To set the rate artificially high allows the TRS provider to be over-compensated over time as the ASR mechanization costs begin to decline. To allow a higher than cost-based compensation to ASR also encourages the TRS provider to utilize the machine, even when a CA-assisted call would be a better quality choice for the user. A misinterpreted word or phrase can totally change the meaning of a conversation, so care should be exercised in the utilization of ASR. Kansas supports the utilization of ASR, if in fact it can be proven to handle the TRS calls to a high enough level of quality to be equivalent with utilizing a CA, but not at an elevated rate of compensation.

**Paragraph 102 states: "...we propose to expand the contribution base for IP CTS to include a percentage of annual intrastate revenues from telecommunications carriers and VoIP service providers."**

24. If the contribution base for IP CTS is expanded to include a percentage of annual intrastate revenues from telecommunications carriers and VoIP service providers, it should only be done after the actual impact for states (Kansas) has been identified, rules have been established at the federal level for IP CTS, and necessary regulatory changes have been made at the state level to cover the identified revenue needed, as previously discussed.

**Paragraph 143 states: "It also has come to our attention that providers may be offering or providing incentives to caregivers and other professionals who provide services to senior citizens to give them the names of potential new users or to encourage clients to register for and use IP CTS."**

25. Again, Kansas does not support the TRS relay providers also providing telephone sets. Kansas recommends this activity be stopped as soon as possible. By compensating TRS relay providers, especially IP TRS providers for both providing telephone sets (through claimed outreach/marketing expense) and for the usage created by the end user utilizing those same sets, the opportunity for waste, fraud, and abuse is created. By stopping the promotion and provisioning of the telephone sets by the TRS relay provider, stopping the subsequent incentive and

compensation to the caregivers and other professionals to refer these end users, and stopping the encouragement of those same users to request IP CTS telephones if that is not the right equipment solution for the user – the existing waste, fraud, and abuse in the program will be greatly reduced.

### **Conclusion**

26. The KCC appreciates the opportunity to comment and requests that the FCC consider the same in deliberating these matters.

Respectfully submitted,



Shari Feist Albrecht, Chair of the Kansas Corporation Commission



Jay Scott Emler, Commissioner



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