

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Misuse of Internet Protocol (IP) Captioned
Telephone Service

CG Docket No. 13-24

Telecommunications Relay Services and Speech-
to-Speech Services for Individuals with Hearing
and Speech Disabilities

CG Docket No. 03-123

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

The Nebraska Public Service Commission (NPSC) respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) adopted by the Federal Communications Commission (FCC) on June 7, 2018, and released on June 8, 2018.¹ In the FNPRM, the FCC seeks comment on many issues regarding the possible migration of intrastate Internet Protocol Captioned Telephone Services (IP CTS) to state telecommunications relay service (TRS) programs. The NPSC appreciates the opportunity to offer comments on the issues raised by the FCC. While the FNPRM seeks comments on many specific questions, the NPSC will

¹ *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24 and *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, FCC 18-79, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry (released June 8, 2018) (“FNPRM”).

limit its comments to those issues likely to affect the State of Nebraska, those related to possible administration of the program by the states, and other issues which are unique to our state.

I. Nebraska Law Does Not Allow the NPSC to Administer IP CTS

The NPSC previously commented within this docket in response to the Notice of Proposed Rulemaking (NPRM) released by the FCC on August 26, 2013.² Each of the issues described in those comments remains applicable to the current FNPRM. However, the NPSC's primary concern relates to Section C, "State Role in the Administration of IP CTS."³ Nebraska law does not allow Nebraska to collect, administer, or contract to provide IP CTS under the current Nebraska telecommunications relay system (TRS) program. Specifically, Neb. Rev. Stat. §§ 86-302 and 86-311 provide for a statewide TRS system for "conventional telephone systems" only. There is no provision for IP CTS within Nebraska law at the moment.⁴

Because Nebraska's laws do not currently allow for Nebraska to administer IP CTS, a transition to state administration of this program would take some time. Nebraska's Legislature is in session only a few months out of each year. If the FCC were to put forth an order requiring Nebraska to administer an IP CTS program, a significant amount of time would be necessary to find a senator to sponsor a bill, introduce the legislation, and enact it into law. Once statutory changes were enacted, the NPSC would need several months first to draft regulations through a

² *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24 and *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking, and Notice of Inquiry (rel. August 26, 2013); Nebraska Comments, CG Docket Nos. 13-24 and 03-123 (filed November 1, 2013) ("Nebraska Comments").

³ FNPRM at 53.

⁴ *See generally* Nebraska's Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-301 – 315.

rulemaking procedure, and then to obtain the approval of the draft regulations from the Governor's office, before any regulations could be adopted and thus enforced.⁵ The NPSC would then need to contract with IP CTS providers to administer the program. Because Nebraska uses a Request for Proposal process for its contracts, the NPSC would need an additional eight months to a year to finalize a contract with an IP CTS provider.

The NPSC also has some concerns about the costs associated with administering an IP CTS program. Within Nebraska, the monthly surcharge collected to fund the TRS program is capped by statute at twenty cents per telephone number or functional equivalent per month.⁶ It is unclear from data currently available what state administration of IP CTS might require in terms of a monthly surcharge. However, Nebraska has historically kept this surcharge at a bare minimum; Nebraska's TRS surcharge is currently set at a rate of one cent per telephone number or functional equivalent per month.⁷ As such, an increase to levels sufficient to fund state administration of an IP CTS program would be likely to create a hardship to state residents. Given Nebraska's political and economic climate, it is likely that the NPSC would face significant challenges with state legislators in coming into compliance with any new and unfunded requirements from the FCC.

Altogether, the NPSC anticipates that a minimum transition period of five years would be necessary for Nebraska to bring itself into compliance with an FCC requirement that it administer

⁵ The NPSC is subject to Nebraska's Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 *et seq.*

⁶ Neb. Rev. Stat. § 86-313(1)(a).

⁷ See NPSC Application No. C-4967, *In the Matter of the Commission, on its own motion, to determine the surcharge for the statewide Telecommunications Relay System to be effective July 1, 2018*, Order Setting Surcharge (entered March 27, 2018).

an IP CTS program. Therefore, Nebraska recommends that if the FCC wishes to move towards state administration of IP CTS, the states be given a transition period of at least five years before administration of the program becomes mandatory.

II. More Data Is Needed to Understand the Proposed Changes

In the NPSC's initial comments on this docket, the NPSC discussed the impracticability of Nebraska taking a position on the migration of IP CTS administration to the states, unless and until more data specific to IP CTS usage, costs, and growth projections were released.⁸ These concerns have not been alleviated since the NPSC submitted its initial comments in this docket. Nebraska continues to urge the FCC to conduct studies and release data specific to IP CTS usage and growth within each state, so that the states can adequately comment on the FCC's plans and prepare for any changes which may be made. Until this data is released, Nebraska and other states will not be in a position to comment on many of the changes proposed to the IP CTS model.

III. The Proposed Changes Require the FCC to Delegate Authority over Internet-Based Services to the States

Pursuant to the initial NPRM in 2013, the NPSC expressed a number of concerns related to the jurisdictional issues inherent to transitioning the administration of an internet based service to the states.⁹ Nebraska's position on these issues has not changed. While the FNPRM does set forth more detail as to how the administration of IP CTS by the states might work, it does not resolve the jurisdictional issues inherent to giving individual states control over a fundamentally internet-based service. As described in the FNPRM, IP CTS is a growing and changing technology, and there are current concerns about reducing waste, fraud, and abuse within the program. If states

⁸ Nebraska Comments at 2.

⁹ Nebraska Comments at 2-3.

are to administer this program, they will need the authority to issue orders or otherwise take action to ensure the appropriate growth and usage of IP CTS. As such, Nebraska hereby restates its position that in order to proceed as contemplated in the FNPRM, the FCC must be prepared to explicitly repeal its previous position that internet based services are exclusively under Federal jurisdiction.¹⁰ Only with such authority could the states, including Nebraska, appropriately administer IP CTS and pursue any accompanying cost recovery. Accordingly, Nebraska urges the FCC to refer this issue to the Federal-State Joint Board on Separations, to determine issues related to separations between interstate and intrastate costs and minutes, and any jurisdictional determinations which necessarily follow from these issues.¹¹

Conclusion

The NPSC appreciates the opportunity to provide comment on the proposed migration of the administration of intrastate IP CTS services to the states. However, Nebraska is not prepared at this time to take on this obligation, both because of the current state of Nebraska law, and because significant jurisdictional challenges remain that have not been adequately addressed. If the FCC wishes to pursue the adoption of the strategies set forth in the FNPRM, the NPSC cautions that significant time will be needed for states, including Nebraska, to come into compliance with the proposed changes. The FCC could make use of this transition period to resolve some outstanding concerns voiced by Nebraska and other states regarding the dissemination of data regarding IP CTS usage, and to set forth a more clear description of the interplay between state

¹⁰ See also California Comments, CG Docket Nos. 13-24 and 03-123, at 3-4 (filed Nov. 4, 2013) (arguing that state authority over IP-based services requires authority to be “expressly delegated” by federal law).

¹¹ See also Colorado Comments, CG Docket Nos. 13-24 and 03-123, at 3-6 (filed Sept. 5, 2018) (advocating for this matter to be referred to the Federal-State Joint Board on Separations).

and federal jurisdiction that would result from state administration of the IP CTS program. Responsible stewardship of state and federal dollars requires that these issues be resolved before the described program changes are enacted.

Respectfully submitted,

/s/ Sallie V. Dietrich
Sallie V. Dietrich, Legal Counsel
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
(402) 471-0255
sallie.dietrich@nebraska.gov

September 14, 2018