

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

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

Comment by
The State of New Mexico Commission for Deaf and Hard of Hearing Persons

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**STATE OF NEW MEXICO
COMMISSION FOR DEAF AND HARD OF HEARING**



**Susana Martinez
Governor**

**G. Nathan Gomme
Executive Director**

September 17, 2018

Before the Federal Communications Commission
Washington, DC 20554

Comment on FCC 18-79
Which concerns the following dockets:
CG Docket No. 13-24,
Misuse of Internet Protocol (IP) Captioned Telephone Service

And

CG Docket 03-123,
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with
Hearing and Speech Disabilities*

The New Mexico Commission for Deaf and Hard of Hearing Persons (NMCDHH) recognizes the order submitted by the Commission concerning IP-based Captioned Telephone Services (IPCTS) as well as the Commission's goal of maintaining sustainability of the IPCTS as a form of TRS, and the TRS Fund from which IPCTS draws its funding. The NMCDHH recognizes the importance of preserving the TRS Fund for all Relay services and their various consumers, as well as ensuring that the IPCTS consumers the TRS Fund serves are receiving the services they need at a quality level.

With these in mind, the NMCDHH has made the following comments regarding concerns about the manner and direction of preserving the TRS Fund that the Commission is currently considering. Our concerns stem from the following: The opacity of rates and funding, should IPCTS be transferred to state oversight; the emphasis on innovation over maintenance of access; questions of interoperability and contracting; and consumer choice.

We believe this will illuminate the concerns we have as well as encourage fruitful dialogue on the future of IPCTS and the TRS Fund, and we welcome any comments on the matter.

G. Nathan Gomme,
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1. Undetermined Rates

Commissioner Rosenworcel mentioned in her statement in FCC 18-79 that the Commission is taking a backwards approach in addressing the IPCTS situation by focusing on and promoting ASR (Automated Speech Recognition) as a new/innovative approach to providing CTS services while not really addressing the long-term problem with rates. We agree with Commission Rosenworcel on this.

Asking individual states to take over administration of a service that not only had its costs distributed across the country, but also historically has not had a clear or straightforward per-minute cost is a difficult concept to understand at this juncture. If the FCC were to provide a clear, reasonable explanation and expectation of what the per-minute cost of an IPCTS call will be, along with a clear expense structure, we would feel that the request is more comprehensive. At this time, we see that the move from the MARS methodology to a two-year “glide path” is an improvement, but it does not address the vague nature of the expense structure. In Table 2 of FCC 18-79 (page 39), the 2017 average expenses had an expense category of “Other” which averaged out to \$0.573, or roughly 46.5% of the total average expense (\$0.573/\$1.2326). Other than “subcontractor expenses” and “licensing fees”, we do not see any indication of why almost half of the expenses are being covered by the fund, nor why it needs to be covered, especially by the state. There isn’t an obvious explanation of what “Other” expenses entail besides the two categories previously mentioned, which raises the question of whether IPCTS providers are treated as individual business entities, or a Federal subsidiary. The FCC has expressed the same concerns in 2007 due to a single provider of CTS services licensing out to providers, and the FCC is now requesting quantitative data be submitted on this area, in this document.

This is however still an exceptionally gray area that states are being asked to absorb if they are delegated the task of IPCTS oversight. It would be irresponsible for any state relay administration to accept such a costly service without full knowledge of what expenses are being incurred and billed to the fund. This also could create a bizarre possibility of a state being poorly informed in terms of a potentially mandated service’s costs and financing, while risking the possibility of being punished for inadequate service by the *same* organization that potentially mandated the service *without* providing, or requiring, enough information from the providers for the state to do their part. We do not see how this could be considered an equitable expectation on the part of FCC, or how any state would feel comfortable with accepting this arrangement as is.

We are also concerned about the availability of funding for IPCTS. As Commissioner O’Rielly mentioned in his statement, it is a “strained interpretation” of Congressional authorization that the FCC is relying on to assign oversight of IPCTS – while also being able to reassign end-user funding as fit. If the FCC will ensure that the states can retain their funding, we do not see any concern in taking on the IPCTS responsibility in this area.

2. Maintenance versus Innovation

Commissioner Rosenworcel, in expressing her concern of the focus on ASR in contrast to a clear rate structure, touches upon a central concern that faces many states – the emphasis on newer, faster, cutting-edge technologies and services over having an infrastructure in place for consumers to have the access to those technologies. A point to note – we are not opposed to innovation, when done right. We however are opposed to innovation within a poorly maintained and distributed system. The rate and expense structures are examples of that system, and is now only being given maintenance in a way that makes the costs and rationale of these costs more understandable and justifiable.

We also are being asked to absorb a service that is not necessarily accessible to every resident in the state who may benefit from it, specifically due to the nature of connection (over internet protocol as opposed to over the traditional wired connection). The vague financial structure, compounded with the expectation of our providing a service in a state where some areas still do not have quality broadband access, places us in a position where we may do more harm to our own constituents in the process of complying with the Federal mandate, if we are to focus on innovation over maintenance. Does the FCC intend to seriously pursue an expansion of quality broadband access in comparable areas across the nation as part of this transfer of oversight, as well? If not, then how can we ask these individuals to be content with having newer technology and equipment that they cannot reasonably access due to an outdated infrastructure that is not under state oversight, but will be tied with the state's success in providing IPCTS?

3. IPCTS Device Cost and Information

We also wish to receive a satisfactory response regarding IPCTS devices and related information. We do not have a clear indication, if IPCTS oversight is to be transferred to the states from the FCC, of how each state relay administrator is expected to handle the fee-based, self-certified device process the FCC now oversees. Our state legislature does not permit our agency to perform any monetary transactions outside of the channels or bounds they have authorized. Legislatures in other states may have similar expectations for their respective relay administrators and/or equipment distribution programs.

We are also still unsure of how, if any, costs tied to overseeing the IPCTS will be covered by the states. We will need a manner of accessing data related to the IPCTS, including the costs involved, so we can follow trends, verify that there is no duplication in distribution of devices to consumers, and ensure that compensation involved is appropriate. We will need to have a clear understanding of how funding will work if the IPCTS oversight is transferred to the states, especially in terms of the devices being distributed.

If the FCC intends to continue covering the remainder of the IPCTS devices' cost in that process, will the states see that funding transferred along with the self-certified device process?

If compensation requests, instead of transfers of funding, will be used to cover the remainder of the self-certified device costs, will the FCC work with states to find a common verification process?

4. Interoperability

If the states were to receive the responsibility of administering IPCTS in their areas, we would also be asked to do so without knowledge or proof of whether an IPCTS provider's platform and equipment will work with another IPCTS provider's platform and equipment. Should a resident change IPCTS providers, that change would potentially require a change in their equipment. This would limit a resident's ability to perhaps get the service of their choice, while at the same time using the equipment that works best for them. We did not see any sort of documentation or mention in the FCC 18-79 document, and we would like to see proof of interoperability for IPCTS platforms and their equipment.

5. Contracting

The state currently faces three positions with regards to contracting for IPCTS services under the scenario the FCC has laid out.

a. The state would enter a price agreement which may not be in its best interest. A lack of transparency in the rate and expense structures coupled with difficult to find information places the state in a position of making guesses, which doesn't benefit anyone within the state;

b. The state would enter into contracts with each IPCTS vendor, which will require the administrative agency to encumber an unknown/inadequately justified amount of funding, absorb increased administrative expenses due to multiple contracts and points of contact, and potentially have in-state competition between their contractors for consumers while using state/federal funds, an issue the FCC has identified;

c. The state would enter into a single contract with a IPCTS vendor. That may bring litigation, and the vendor may be suitable for parts of the state population due to their residency, and depending on the equipment and technology, their quality of broadband access. This also may reduce or eliminate services that were available to some residents under a different vendor.

These concerns exist due to lack of information on interoperability. If consumers are required to switch their equipment to be able to receive the services of a particular IPCTS provider, it is conceivable that they may be without service during the switchover, and it is also conceivable that they may see a degradation or loss of service.

However, we want to make it clear that should the FCC address our concerns about funding, interoperability and rates, we would explore the possibility of taking on the responsibility of contracting and providing IPCTS within the state.

6. Choice

The lack of clarity on the rates and expense structures, as well as interoperability, would not only complicate how to administer or contract the services, but also runs the risk of consumers losing the opportunity to choose the service provider that may best fit their situation. At this time, many states contract with one TRS provider, and often those providers also subcontract for IPCTS if they do not offer it. This leaves the consumer and state at the whim of business decisions within the contract terms.

For most relay services, however, the consumer does have the choice of what equipment best fits their needs to access these services, and they can expect consistency and interoperability from the service and equipment. This is not necessarily true for IPCTS/CTS. There is the possibility that a TRS provider with IPCTS ability, or a TRS provider eventually obtaining the ability to directly provide IPCTS, could capture a state relay agency or equipment distribution program through the requiring of its platform and compatible equipment be used to receive services. While a seemingly minor point now, it stands to be examined due to the explosion of IPCTS minute usage in recent years, as well as the associated income for IPCTS vendors. If the rate and expense structures were clear, and interoperability assured with proof, this would minimize concerns on this end.

7. Conclusion

The State of New Mexico is willing to explore the transfer of IPCTS responsibility, provided these items are addressed and documented:

1. True transparency in rates, oversight and expenses;
2. Ensured funding for states;
3. True interoperability for IPCTS;
4. An emphasis on maintaining and expanding the infrastructure to ensure that those who want IPCTS can access it;
5. Addressing the matter of provider choice;
6. A fair and equitable opportunity for the state to contract appropriately in order to provide the best possible service in the most beneficial manner to both state and its residents.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Nathan Gomme', with a stylized, flowing script.

G. Nathan Gomme

Executive Director

State of New Mexico Commission for Deaf and Hard of Hearing Persons

A handwritten signature in blue ink, appearing to read 'Richard Bailey', with a stylized, flowing script.

Richard Bailey

Community Engagement Specialist

State of New Mexico Commission for Deaf and Hard of Hearing Persons