

**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
In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	CG Docket No. 03-123

**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 *Further Notice of Proposed Rulemaking (FNPRM)*, which the Federal Communications Commission (FCC or Commission) released on June 8, 2018.¹ The FCC is seeking comment on a number of issues pertaining to regulation of Internet Protocol Captioned Telephone Service (IP CTS) – a form of telephone relay service for the hearing-disabled.

In the *FNPRM*, the FCC seeks comment on a proposal to transfer to the states management and costs of the intrastate portion of IP CTS which the Commission currently oversees. The long-term goal of this *FNPRM* is to work with the states to effect national changes to the current program. The FCC also seeks comment on whether, and if so, the extent to which funding, administration, and user eligibility determination should become the responsibility of the states.

In previous comments submitted to the FCC in response to an *FNPRM* issued in August 2013, the CPUC addressed many of the same issues presented here.² The CPUC has not changed its positions from those advocated five years ago. The CPUC still cannot support transferring the program to the states unless the FCC provides detailed

¹ *Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, In the Matter of 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, 03-123, Released: June 8, 2018.

² *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CGC Docket No. 113-24, CG Docket No. 03-123; rel. August. 26, 2013 (*FNPRM*). See California Comments, CG Docket Nos. 13-24 and 03-123, at 3-4 (filed Nov 4, 2013 *FNPRM* Comments).

information regarding potential state impacts, requisite funding, and sufficient transition time which would be necessary to effect statutory changes in California.

The CPUC also is providing additional information which could foster a greater understanding of relevant issues when and if the IP CTS program is transferred to the states. This additional information will specifically address: (1) the restructuring of IP CTS funding, (2) the State role in the administration of intrastate funding and provider certification and (3) the State's ability to properly assess client needs.

I. BACKGROUND

In the *FNPRM*, the FCC seeks comment on several topics related to the funding and administrative control, as well as the rules for implementing the IP CTS program. Significantly, the FCC seeks comment on the “further changes to the rules and compensation structure for the IP CTS program to enable us to more effectively and efficiently administer and support this service and prevent waste, fraud, and abuse”³ as the FCC continues to explore “whether certified TRS programs should be allowed or required to take a more active role in the administration of IP CTS.”⁴

Today, the California Relay Service (CRS) is one of the three components that comprise the CPUC's Deaf and Disabled Telecommunications Program's (DDTP): 1) the California Telephone Access Program (CTAP), which lends equipment to eligible consumers; 2) CRS, which provides TTY and captioned telephone users with 24-hour contact with any other telephone user; and 3) the Speech Generating Device Program

³ *FNPRM* ¶ 67.

⁴ *Id.*, ¶ 111.

(SGD), which provides funds of last resort for durable medical equipment used for communications purposes.⁵

The CRS program only includes analog landline captioned telephone service. Federal and state law limit state authority over IP-enabled or video services, and partly for that reason, California does not yet have a program for IP relay service, IP captioned telephone service, or video relay service.

In 2004, the FCC proposed moving two programs – IP Relay Service and Video Relay Service (VRS) – to the states. In comments opposing that proposal, the CPUC stated that it was not possible to separate interstate from intrastate costs. Further, the CPUC argued the fund for the California DDTP program could not support additional services.

A significant portion of the costs of IP Relay and VRS would need to be paid by the states if the Commission decided to shift reimbursement costs to the states. Most, if not all, states do not have the TRS funds to assume these costs and would find these costs to be a significant unsustainable burden. The tenuousness of funding for IP Relay and VRS could potentially disrupt these services and undermine the viability of both. In addition, providing adequate state funding for IP Relay and/or VRS could jeopardize funding availability for traditional TRS and state equipment programs.⁶

In later comments submitted in response to a 2005 *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, the CPUC reiterated its appreciation of the benefits of the program to the

⁵ See, California Public Utilities Code §§ 2881(a), (b), and (d), respectively.

⁶ CPUC Comments, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and No. 98-67, CG Docket. No. 03-123, filed October 18, 2004, p 5.

disabled community, and again opposed a mandate to provide service without federal funding.⁷ In 2009, the CPUC again opposed an unfunded federal mandate for IP CTS, and provided further information about California pilots and programs.⁸ And again, in 2013, the CPUC opposed the transfer of the IP CTS program to the states *unless* the FCC ensures that states can adequately fund the program and that states are afforded sufficient time to transition the program in a manner that does not inconvenience program users. Specifically, California urges the FCC to ensure that any shift of responsibility for IP CTS includes funding that is made available for both the administration of the program and for the intrastate calls.⁹

II. DISCUSSION AND RECOMMENDATIONS

A. How to restructure the funding of IP CTS

Seeking to grow IP CTS, the FCC enacted an interim measure in 2007 to support IP CTS solely from interstate service subscriber contributions. The FCC now proposes to expand the contribution base for IP CTS to include a percentage of annual intrastate revenues from telecommunications carriers and VoIP service providers,

⁷ CPUC Comments, *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, CC Docket 03-123, filed December 29, 2005, p 7. The parties appearing as signatories to the petition are as follows: Self Help for Hard of Hearing People (SHHH), the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American Academy of Audiology (AAA), the American Association of People with Disabilities (AAPD), the American Speech-Language-Hearing Association (ASHA), the Association of Late-Deafened Adults (ALDA), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the League for the Hard of Hearing (LHH), the National Association of the Deaf (NAD), the National Cued Speech Association (NCSA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the California Association of the Deaf (CAD), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH).

⁸ CPUC Comments, *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, CC Docket 03-123, filed July 27, 2009.

⁹ See, California Comments, CG Docket Nos. 13-24 and 03-123 (filed Nov 4, 2013).

which is about 60% of total end-user revenues. The FCC seeks comment on the potential benefits and costs of expanding the contribution base to include intrastate voice service revenues¹⁰

B. Statutory Authority to Require Intrastate Support of IP CTS

The FCC is proposing to impose a surcharge on *intrastate* end-user revenues of telecommunications carriers' and VoIP service providers to support the provision of intrastate IP CTS calls, including in situations where the state does not assume funding responsibility.¹¹ In making this proposal, the FCC identifies three reasons it believes the Commission has “ample statutory authority to collect contributions from ... intrastate end-user revenues to support the provision of intrastate IP CTS calls....”¹² Those reasons, and the CPUC's responses, are set forth below. The following discussion of statutory authority is premised on situations in which states administer IP CTS either on a voluntary basis or because the FCC mandates that they must do so.

First, the FCC asserts that section 225(d)(3) of the Communications Act requires the Commission to “prescribe regulations that ‘generally’ provide that TRS costs caused by interstate and intrastate jurisdictions are each recoverable from the subscribers of their respective jurisdictions.” The CPUC does not dispute that § 225(d)(3) reads as quoted. However, the second sentence in that provision reads as follows: “In a State that has a certified program under subsection (f), a State commission shall permit a common carrier

¹⁰ *FNPRM*, ¶¶ 102-104.

¹¹ *Id.*, ¶ 109.

¹² *Id.*

to recover the costs incurred in providing intrastate *telecommunications relay services* by a method consistent with the requirements of this section.” (Emphasis added.) In this second sentence Congress recognized that states oversee their own programs and manage the funding for those programs. Corollary to that is a recognition of state authority to attach intrastate revenues to fund intrastate programs. The “general” authority to which the FCC refers does not confer any *specific* express delegation of authority to the FCC to *independently* dip into intrastate revenues and attach them for purposes of funding the very same intrastate program the state administers and funds.

The FCC’s second reason for suggesting it can attach intrastate revenues is that the FCC itself has consistently “ruled that by use of the term ‘generally’, Congress intended for the Commission to have broad authority to determine how TRS costs will be recovered.”¹³ Again, that “general” authority cannot be read to allow the FCC to step over a state Commission that is managing its intrastate program to surcharge the same revenues for purposes of funding the very program the state administers. The FCC is proposing to rely on its own previous statutory interpretation which permitted recovery of intrastate IP CTS costs as well as intrastate VRS and intrastate IP Relay calls. But that previous FCC action is not dispositive. States have not established IP CTS programs, nor do they oversee and fund VRS and IP Relay, largely because of jurisdictional concerns. FCC action to attach intrastate funds in the absence of a state program is one thing; for the FCC to attach intrastate revenues when the state is administering and funding its own state program is another. Should the FCC transfer authority to the states to manage

¹³ *Id.*

IP CTS, the jurisdictional question would be alleviated, and the states could then manage the IP CTS program with the FCC's approval. In that context, the FCC has no basis for surcharging intrastate revenues to fund the state program.

Third, the FCC notes that section 225(c)(1) provides where a state does not “establish a Commission-certified TRS program, the provision of intrastate TRS must be directly supervised by the Commission.”¹⁴ California does not dispute that reading of § 225(c)(1). But making the leap from that premise to the conclusion that the FCC can supervise intrastate funding even where the state *has* established an FCC-certified TRS program is untenable.

The CPUC opposes any FCC effort to attach intrastate revenues where the state is itself managing and funding a TRS program, including IP CTS.

C. The State role in the administration of IP CTS

The FCC seeks comment on whether states should take a more active role in IP CTS administration, and whether State legislative authority may be needed to allow for this transition.¹⁵

The CPUC would support a more active state role in IP CTS administration, if a number of critical issues are addressed first. Those issues include the need for additional funding to support IP CTS at the state level, the need for the FCC to eradicate fraud and misuse in the program, statutory changes needed at the state level (in particular, in California) to address state jurisdiction, the need for detailed state-specific

¹⁴ *Id.*

¹⁵ *Id.*, ¶¶ 111-112.

data concerning the current program costs, and whether and how multiple IP CTS providers would be incorporated into the program.

1. Intrastate Funding

The FCC asks whether it should require or permit state programs to administer intrastate funding for the costs of IP CTS to their residents (i.e., to "opt-out" of having revenues from their intrastate carriers contribute to the TRS Fund, so that they can handle such funding on their own).¹⁶

The CPUC understands that California could only administer intrastate funds if the CPUC assumes the jurisdiction and administration of the IP CTS program as well as the distribution of equipment, and assuming other issues identified above have been addressed. It would be difficult if not impossible for the CPUC to administer funding deposited in the FCC's TRS fund. Additionally, to evaluate the potential impact of California's funding of IP CTS, the CPUC must obtain detailed cost information to develop an accurate estimate of the associated costs of assuming program administration.

This is a growing program, which the CPUC anticipates will continue to expand, meaning the costs of administering the program also will grow exponentially. Based on very rough estimates, if California assumes administration of IP CTS, the amount of spending for CTS could increase twenty times, necessitating a need to raise the statutory

¹⁶ *Id.*, ¶ 114.

cap on the surcharge that funds the DDTP.¹⁷ The CPUC emphasizes to the FCC how critically important state-specific cost data is, and that California cannot give a definitive response to the FCC without obtaining and analyzing cost information.

2. Provider certification

The FCC asks whether the States should be responsible for certifying IP CTS providers, and whether states should be required to offer consumers a choice of providers, given that most state programs presently have a single TRS vendor.¹⁸

The FCC has been certifying providers for all types of TRS programs including Speech-to-Speech (STS), CTS, IP CTS, TTY, Video Relay Service (VRS) and IP Relay. The FCC's questions raise a jurisdictional issue. It is not immediately obvious whether, and if so, how the CPUC could certify a provider of services over which California may have limited authority.¹⁹ However, it may be that IP CTS provider certification could be included among the CPUC's contract requirements for providers if the CPUC assumes administration of the IP CTS program.

3. Transition Time

The FCC seeks comment on the amount of time state programs would need to secure necessary resources and regulatory changes.²⁰ The CPUC estimates that a transition to full state administration of IP CTS would involve many moving parts,

¹⁷ See Public Utilities code § 2881(g) which mandates that the CPUC “establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent...”

¹⁸ *FNPRM*, ¶ 115.

¹⁹ The question arises because IP CTS is an “IP-enabled” service.

²⁰ *FNPRM*, ¶ 116.

including Legislative involvement, and could take up to five years to complete. The transition would require several steps, including cost evaluation, legislative and budget changes, new contracts, and migration of uses. Each of these elements could take a year, although some of them may run concurrently.²¹

4. State ability to properly assess client needs

The FCC proposes that assessments of IP CTS user needs must be specifically focused on the consumer's ability to hear and understand speech over the telephone, and on whether the consumer's communication needs can be met by other assistive technologies.²²

The CPUC supports the proposal that assessment for IP CTS should include evaluation of other assistive technologies including amplified phones. California's Deaf and Disabled Telecommunications Program (DDTP) has a multi-step process for users wishing to participate in the program, and that process can determine that a captioned phone is not always needed and that other equipment, such as an amplified phone, may be more appropriate. Our program views the evaluation process as an "assessment for a user with a special need" like hearing or vision loss rather than "assessment for a particular device." A California Telephone Access Program (CTAP) certified user is usually assessed on a number of devices that are available for each specialized need.

²¹ See California Comments, CG Docket Nos. 13-24 and 03-123 (filed Nov 4, 2013).

²² *Id.*, ¶ 117.

a) Assessments by State programs

The FCC seeks comment on whether state programs should be required to independently access client needs, either on their own, or through state Equipment Distribution Programs or through contracting entities.²³ The FCC further asks whether all such assessments should comply with FCC-established standards and practices for nationwide application, or should each state be permitted to establish its own eligibility criteria and processes for IP CTS screenings. And, the FCC asks about the current capacity of state programs to take on this task, and what amount of time may be needed to obtain the necessary resources and begin conducting such assessments.²⁴

The CPUC supports requiring CTAP to fulfill user eligibility provided that California's DDTP program is the administrator (with jurisdictional authority) of IP CTS service and equipment and receives additional funding.

The DDTP already has a robust process in place that works very well in containing costs as well as fitting the needs of our clients. The CPUC urges the FCC to allow states to establish their own eligibility criteria to determine which equipment and services provide the user the best access to telecommunication services.

²³ *FNPRM*, ¶ 123.

²⁴ *Id.*, ¶ 124.

b) Additional Measures

The FCC seeks comments on additional steps the FCC or providers can take to help prevent waste, fraud, and abuse in the provision of IP CTS.²⁵

The CPUC supports a thorough FCC audit of IP CTS providers including all aspects of the program, such as distribution, registration, call records, call center functions, call patterns and volume, as well as originating and terminating call data, and the tracking of registered electronic serial number of each device. In addition, the CPUC recommends analysis of provider financials, marketing and outreach, sub contracts, and billings, as well as user and provider interviews. The CPUC urges the FCC to identify evidence of fraud and misuse and to take necessary actions before requiring states to assume responsibility of the IP CTS service.

III. CONCLUSION

The CPUC appreciates this opportunity to provide input to the FCC in response to its proposals concerning the potential transition of IP CTS to the states. We hope to continue to work with the FCC to address and resolve the myriad issues such a transition would raise.

²⁵ *Id.*, ¶ 153.

Respectfully submitted,

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