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
	)	

To: The Commission

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (VON),[1] by its attorneys, respectfully files these comments in response to IDT Telecom, Inc.'s ("IDT") Petition for Rulemaking in the above-captioned proceeding (the "Petition").[2] In its Petition, IDT proposes to expand the contribution base for the Telecommunications Relay Service ("TRS") Fund to include intrastate revenues. VON opposes the Petition.

INTRODUCTION

IDT has failed to demonstrate a legally adequate basis for expanding the contribution base for the interstate TRS Fund (the "Fund") to include intrastate revenue. Contrary to IDT's assertions, the Commission lacks authority to collect such revenue from telecommunications and VoIP providers. VON therefore requests that the Commission dismiss IDT's Petition without initiating a rulemaking proceeding.

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[1] VON is the leading advocacy organization for the Internet communications industry, working with legislators, regulators, and other policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information see www.von.org.

[2] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Petition for Rulemaking, IDT Telecom, Inc., CG Docket No. 03-123 (filed Nov. 25, 2015).

DISCUSSION

I. The Commission Lacks Authority to Expand the TRS Contribution Base to Include Intrastate Revenue.

The Communications Act of 1934 (the "Act") created a dual system of federal and state telecommunications regulation.[3] In so doing, Congress restricted the Commission's authority to regulating interstate telecommunications, and generally reserved regulation of intrastate telecommunications for the states. Certain provisions of the Act give the Commission limited oversight responsibilities over state programs; for example, Section 225's mandate that the FCC certify under certain guidelines state programs to implement intrastate TRS. But, nothing in Section 225 permits the Commission to include intrastate revenue as part of the contribution base for the TRS Fund.

IDT contends that Section 225(b)(2) of the Act grants the Commission blanket authority to regulate intrastate TRS in the same manner as the Commission regulates interstate TRS and, consequently, the Commission has authority to expand the contribution base to include intrastate revenue. But IDT's overly expansive reading of the statute ignores the surrounding context and overall legislative scheme of the Act. This specific provision, titled "Use of General Authority and Remedies" enables the Commission to subject intrastate common carriers who violate Section 225 to "the same remedies, penalties, and procedures *as are applicable to a violation of this Act* by a common carrier engaged in interstate communication." In other words, Section 225(b)(2) grants the Commission some enforcement authority over intrastate common carriers

[3] *See* Preamble to Communications Act of 1934 ("AN ACT To provide for the regulation of *interstate and foreign* communication . . . ") (emphasis added); *see also* 47 U.S.C. § 151 ("For the purpose of *regulating interstate and foreign commerce* in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . and for the purpose of securing a more effective execution of this policy by centralizing authority *with respect to interstate and foreign commerce* in wire and radio communication, there is hereby created a commission to be known as the 'Federal Communications Commission' . . . .") (emphasis added.)

that fail to comply with the Act and FCC regulations promulgated thereunder that, for example, require that TRS operate every day for 24 hours per day or prohibit TRS operators from refusing calls or limiting the length of calls that use TRS. In granting this enforcement authority, Section 225(b)(2) does nothing to negate the statutory limits Congress imposed on the Commission's authority to collect intrastate revenue for contribution to the federal Fund.

IDT also argues that, because the Communications Act does not compel the states to establish state programs to administer intrastate TRS, the Act "implicitly allows for the FCC to regulate the provision of and recovery for intrastate relay services."[4] But this argument is flawed for three reasons. First, that a *federal* statute regulating *interstate* telecommunications does not mandate the manner in which a state regulates intrastate services does not support evisceration of federal-state separation of powers and, if anything, speaks only to Congress's limitations under the Constitution's Commerce Clause.[5] Second—as IDT acknowledges—"all states have chosen to establish programs to manage the provision of and recovery for intrastate relay services," rendering IDT's proposed federal takeover of this function by the Commission unnecessary. Lastly, the Commission has appropriately exercised its statutory authority to encourage adequate and accessible provision of both interstate and intrastate relay services, and has determined that where challenges currently arise in distinguishing between inter- and intrastate services, the Commission may, on an interim basis, compensate intrastate IP Relay and VRS providers from the Fund without expanding the contribution base.

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[4] IDT Petition for Rulemaking, at 10.

[5] U.S. Const. Article I, Sec. 8, Clause 3.

II. The Commission Is Well Within Its Statutory Authority to Preserve the Current Contribution Methodology.

Title IV of the Americans with Disabilities Act "requires common carriers offering telephone voice transmission services to also provide TRS throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so."[6] Recognizing that "one of the fundamental premises underlying the TRS regulatory scheme is the distinction between interstate and intrastate TRS,"[7] the FCC has explained that:

> As a general matter, the costs caused by *intra*state TRS are recovered by each state. No specific funding is required for *intra*state TRS or state TRS programs. States generally recover the costs of interstate TRS either through rate adjustments or surcharges on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs. Most states presently select one provider to offer TRS within the state.[8]

Also realizing that Section 225 requires that the "Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States," the Commission has authorized, on an interim basis, the recovery of intrastate IP Relay and VRS costs from the interstate TRS Fund.[9] The Commission appropriately determined that because "VRS and IP Relay have presented regulatory challenges not necessarily contemplated by a regulatory scheme largely based on the determination whether a particular call is interstate or intrastate,"[10] cost recovery for these services from the interstate Fund will best protect and promote the availability of these services without infringing on states' authority under the Act.

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[6] *Telecommunications Relay Servs*., 19 F.C.C. Rcd. 12475, 12479-80 (2004).

[7] *Id*. at 12481.

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 43 CR 2039, FCC 06-106 (July 20, 2006).

[9] *Telecommunications Relay Servs.*, 19 F.C.C. Rcd. at 12550 (emphasis added).

[10] *Id*. at 12481.

IDT itself "finds its proposed methodology to not be perfect," and fails to demonstrate why dividing the administration of intrastate relay services between the states and the Commission would be more efficient than the Commission's current contribution policy.

CONCLUSION

For the foregoing reasons, VON respectfully requests the Commission dismiss IDT's Petition for Rulemaking.

Respectfully submitted,

VON COALITION

/s/

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