

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

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

REPLY COMMENTS OF IDT TELECOM, INC.

IDT Telecom, Inc.

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INTRODUCTION

On November 4, 2015, pursuant to Section 1.401 of the Commission’s rules,¹ IDT Telecom, Inc. and its subsidiaries and affiliates (collectively “IDT”), requested that the Commission issue a Notice of Proposed Rulemaking (“NPRM”) to review and revise the Commission’s rules and policies establishing the contribution methodology for the Interstate Telecommunications Relay Service (“TRS”) Fund and implement a contribution methodology that includes intrastate revenue within the TRS Fund contribution base. On December 18, 2015, the Commission issued a Public Notice² of the filing and on January 20, 2016, the Public Notice was published in the Federal Register.³ On or about February 4, 2016, comments were filed by several parties.

¹ 47 CFR § 1.401.

² *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Public Notice, DA 15-1453 (December 18, 2015).

³ 81 Fed. Reg. 3085-86 (January 20, 2016).

I. IDT’S PETITION RECEIVED CONSIDERABLE SUPPORT FROM THE RELAY SERVICE USER, ADMINISTRATOR AND PROVIDER COMMUNITIES

IDT was greatly pleased to see that the communities whose support it most sought – relay service users and the organizations that represent their interests - believe that IDT’s proposal is legally sound and good for the community (“The Consumer Groups support the Petition because including intrastate revenue in the federal TRS contribution base is consistent with the ADA’s requirement to provide a functionally equivalent service to consumers who are deaf, hard of hearing, deaf-blind and deaf with mobility issues.”⁴). IDT was similarly pleased to see that members of the relay service provider community also support IDT’s proposal (“CAAG/Star VRS fully supports IDT’s proposal in its entirety, believes it is well within statutes and purview of the FCC to implement, and encourages the Commission to swiftly issue a[n] [NPRM] on the matter.”⁵ and “Expanding the TRS Fund contribution base ... is well within the Commission’s authority and is also more equitable because it will ensure that contributions correspond more closely with the services compensated from the TRS Fund.”⁶). Our proposal was crafted to ensure that the needs and concerns of those groups – a large, stable contribution base to support relay services – was addressed. We are greatly pleased that our proposal has hit the mark for these critical constituencies.

⁴ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; “Comments Supporting the IDT Petition for Proposed Rulemaking – Telecommunications for the Deaf and hard of Hearing, Inc.; National Association of the Deaf; Deaf and hard of Hearing Consumer Advocacy Network; Hearing Loss Association of America; Association of late-Deafened Adults, Inc.; Cerebral Palsy and Deaf Organization; Deaf Seniors of America; California Coalition of Agencies Serving the Deaf and Hard of Hearing,” CG Docket 03-123 (February 4, 2016) at 2.

⁵ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; “Comments of Hancock, Jahn, Lee & Puckett, LLC,” CG Docket 03-123 (February 3, 2016) at 2.

⁶ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; “Joint Comments of Sorenson Communications, Inc. and CaptionCall, LLC on IDT Petition for Rulemaking Regarding Interstate Telecommunications Relay Service Fund Contribution,” CG Docket 03-123 (February 4, 2016) at 1.

And while we were less pleased to see opposition or conditional support from some contributors to the TRS Fund, we were not surprised that our proposal was not unequivocally supported. We take comfort, however, in that those who submitted oppositional or conditional comments failed to present legal arguments or even well-reasoned policy reasons demonstrating why the FCC should not proceed and issue an NPRM. Moreover, these commenters failed to offer solutions on how to address the diminishing TRS Fund contribution base and the skyrocketing TRS Fund contribution factor. We provide some thoughts on these opposing and/or conditional comments below.

II. IDT OPPOSES THE CONDITIONS RECOMMENDED BY SPRINT

Sprint supports IDT's request to reform the TRS Fund contribution methodology⁷ but it conditions its support on broader reforms including reform of the Universal Service Fund ("USF"). IDT does not feel compelled to opine on the need for reform of the USF because we consider the issue far outside the scope of IDT's Petition. However, we do feel compelled to voice our opposition to Sprint's suggestion that reform of the USF be a prerequisite for TRS reform. The reasons for our opposition are many, including, but not limited to:

1. The reform IDT has proposed for the TRS Fund is elegant in its simplicity; USF reform is deeply complex. The reforms proposed by IDT can be implemented quickly whereas USF reforms, which have been underway for a decade or more, have proven to be so complex, divisive and difficult as to ensure that they will not be implemented quickly and/or easily.
2. IDT considers the present TRS Fund contribution methodology to be a violation of Section 225.⁸ Furthermore, we consider the continued reliance of interstate and

⁷ ("Sprint agrees that reform of the contribution mechanism for TRS ... is desperately needed and long overdue.") *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; "Comments of Sprint Corporation," CG Docket 03-123 (February 4, 2016) at 1 ("Sprint Comments").

⁸ IDT understands that the Commission is not likely to concede that the TRS Fund contribution methodology is unlawful. But when deciding whether to implement reform, the Commission has to weigh the consideration that if it chooses to not implement reform, IDT and/or others will seek a determination of the methodology's lawfulness in

international revenue to support intrastate IP-based relay services to be contrary to the Orders authorizing *interim* compensation for these services. Thus, we assert that reform of the TRS Fund contribution methodology is needed to correct a violation of the law and Commission policy. While Sprint argues that the contribution for the USF is “untenable and irrational,”⁹ we do not believe the policies underlying contributions to the USF are unlawful, thus differentiating the need for reform.

3. TRS is not a part of the USF. It is a completely separate fund: it was created from an entirely different statute and the rules and policies which apply to the USF do not necessarily apply to TRS – something the Commission has long acknowledged¹⁰ - and there is no legal requirement to tie reform of one fund to reform of the other. Indeed, the Commission could very easily take the position that reforming the USF should be separate and apart from reforming TRS (or NANPA or LNPA) and there is no guarantee that reform of the USF contribution methodology would apply across the board to the other funds. Moreover, one can argue that by seeking to reform the contribution methodology for the USF, TRS, NANPA and the LNPA all at once, the Commission would be creating a more difficult, complex proceeding because it would need to account for the legal and policy implications across not just one, but four funds.
4. The Commission has already undertaken stand-alone reform of the TRS Fund countless times¹¹ including, for example, when it expanded the Fund’s contribution base to include non-interconnected VOIP.¹² Unlike reform of the USF, which has been “under construction” since the Bush Administration, the Commission has demonstrated an ability to implement reforms to the TRS Fund contribution methodology quickly and efficiently. This precedent bodes well for the reform proposed by IDT and its success counters the argument that reform must be across the board for all funds under the guise of ease and efficiency.

court. And should a court conclude the methodology is unlawful, such a finding could compel a far more drastic, abrupt revision of the methodology than that proposed by IDT.

⁹ Sprint Comments at 1.

¹⁰ (“Telco Group’s *Petition* is premised on the congruence between Section 254 of the Act, which establishes Universal Service requirements, and Section 225 of the Act, which establishes requirements for the provision of TRS. Sections 254 and 225, however, differ in fundamental and, in this case, dispositive ways.”) *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, DA 06-1043 at para 7 (May 16, 2006).

¹¹ See generally, <https://www.fcc.gov/general/2016-trs-history-docket> (last viewed: February 16, 2016).

¹² See, *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 11-47, Report and Order, FCC 11-150 (October 7, 2011.) IDT also notes that this proceeding can serve as a model in an additional way: the Commission issued a NPRM to consider expanding the contribution base on March 7, 2011 and it completed the proceeding seven months later – in time to implement the expansion for reporting and collection per the 2012 FCC Form 499-A. We urge the Commission to model the timeline of the current proceeding on the “Non-interconnected VOIP” proceeding so as to strengthen the TRS Fund contribution base for the coming year.

In sum, IDT requests that the Commission reject Sprint's comments and not condition reform of the TRS Fund contribution methodology upon reform of the USF and/or any other funds.

III. IDT OPPOSES UNITED STATES TELECOM ASSOCIATION'S REQUEST TO ALTER THE SCOPE OF THE PROPOSED RULEMAKING

IDT is not entirely sure how to respond to the policy and legal analysis provided by the United States Telecom Association ("US Telecom") because no analysis is actually provided. US Telecom suggests that the Commission not take any action without "a thorough review of the legal and policy implications"¹³ and concludes "[w]ithout taking any formal position on the IDT petition"¹⁴ that "now is not the time for the Commission to consider substantive changes to the contribution methodology for the TRS fund."¹⁵ US Telecom appears confused: IDT's Petition is to have the Commission issue an NPRM and it is in that NPRM that the Commission can consider the legal and policy implication including the impact on industry participants. In what other forum would the FCC consider these implications? US Telecom declines to say. And when exactly is the time? Again, US Telecom does not say.

After dismissing IDT's request that the Commission issue an NPRM to consider TRS Fund contribution methodology reform, US Telecom proceeds to argue in favor of the Commission ... implementing TRS Fund contribution methodology reform - specifically reform of the TRS contribution factor schedule. IDT does not feel compelled to address the substantive claims raised by US Telecom because the issue is outside the scope of the Petition presented by IDT. However, we cannot help but note that it is curious how US Telecom believes now is not the time for contribution methodology reform except to the degree that such reform is undertaken

¹³ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; "Comments of The United States Telecom Association," CG Docket 03-123 (February 4, 2016) at 2.

¹⁴ *Id.*

¹⁵ *Id.*

on behalf of interests near and dear to US Telecom. Of greater concern to IDT, however, is that US Telecom's proposal does nothing to address the skyrocketing TRS Fund contribution factor or the inequities of funding intrastate relay services from the interstate and international jurisdictions. For these reasons, IDT requests that the Commission not condition consideration of IDT's proposed reforms upon consideration of US Telecom's proposed reforms to the TRS Fund contribution methodology.

IV. THE LEGAL ANALYSIS PROVIDED BY THE VOICE ON NET COALITION IS WRONG

The Voice on the Net Coalition ("VON") states that the Commission lacks the authority to collect contributions based on intrastate revenue.¹⁶ This is untrue. For example, the Commission compels contributions to the NANPA and LNPA funds from intrastate revenue.¹⁷ While those funds have different statutory bases than TRS, staying within the confines of Section 225, one can still find authority for the Commission to compel contributions to the TRS Fund based on intrastate revenue. Under 225(b)(1), the Commission has the obligation to ensure that intrastate relay services are available to the extent possible and in the most efficient manner.¹⁸ Under 225(b)(2), the Commission has the authority to administer and enforce rules for intrastate relay services to the same degree as for interstate relay services.¹⁹ And under 225(d)(3), the Commission has the obligation to ensure that costs caused by the provision of intrastate relay

¹⁶ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; "Comments of The Voice on Net Coalition," CG Docket 03-123 (February 4, 2016) at 1 ("VON Comments").

¹⁷ See, "2016 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A)," <http://www.usac.org/res/documents/cont/pdf/forms/2016/2016-FCC-Form-499A-Form-Instructions.pdf> at page 47 (last viewed February 16, 2016).

¹⁸ IDT asserts that the Commission can conclude that the "most efficient manner" is to secure compensation for IP-based intrastate relay services from intrastate revenue reported to the Commission via the 499-A rather than on an individual state-by-state basis.

¹⁹ These rules include, for example, the information about a relay service call required to be provided by the service provider to the administrator to secure compensation for the call: this information must be provided for calls that originate and terminate within as well as without the same state.

services are recovered from the intrastate jurisdiction: there is nothing within the language of the statute to indicate that intrastate cost recovery must be imposed by an intrastate *entity*. The inescapable fact of Section 225 is that it grants the Commission an extraordinarily powerful role in regulating intrastate relay services. This role cannot – and should not – be expanded beyond the statutory confines of Section 225. But within those confines, the Commission’s authority cannot be denied.

It is also worth noting that VON wildly mischaracterizes IDT’s proposal as a “federal takeover.”²⁰ To the contrary, if there ever was a “federal takeover” of relay services, it was when the Commission first approved the provision of intrastate IP Relay, IP CTS and VRS and chose to *not* compel state relay administrators to manage such services and secure compensation for those intrastate services. VON’s inaccurate claim aside, what IDT is simply trying to do is have the Commission acknowledge that it has funded all (including intrastate) IP-based relay services from the interstate and international jurisdictions for more than a decade and a half and it is time to acknowledge this undeniable fact by securing compensation for these intrastate services from a source consistent with Section 225(d)(3): the intrastate jurisdiction.

Indeed, one has to wonder if VON even understood IDT’s proposal, which it characterizes as “dividing the administration of intrastate relay services between the states and the Commission.”²¹ IDT has not called for the Commission to compel the administration of and compensation for intrastate IP-based relay services from individual states (although we believe that is an option and one within the FCC’s authority.) Rather, IDT has argued for the opposite: IDT believes it is likely in the interest of the relay service user community and the relay service

²⁰ VON Comments at p. 3.

²¹ VON Comments at p. 5.

provider industry for the FCC to maintain its role in managing the compensation of IP-based relay services. We simply request that the Commission expand the TRS Fund contribution base to reflect the fact that the TRS Fund's base is comprised near-exclusively of costs associated with IP-based relay services and that the majority of the calls (and, by extension, the costs) made using these services are intrastate.

CONCLUSION

In conclusion, members of the relay service industry – relay service users, administrators and providers - support IDT's Petition that the Commission issue an NPRM to consider expanding the TRS Fund contribution base to strengthen and secure the TRS Fund. Certain contributors to the Fund have opposed IDT's Petition or provided only conditional support. None of the opposing or conditional arguments presented are grounded in law or even rational policy. Indeed, the comments greatly appear motivated by the concern to retain the *status quo* rather than to address a pressing problem: the diminishing TRS Fund contribution base and the skyrocketing TRS Fund contribution factor. It is noteworthy that not one of the opposing or conditional arguments addresses these concerns. IDT urges the FCC to move forward with IDT's proposed NPRM and begin the steps necessary to ensure that relay services are fully, fairly and lawfully funded by all applicable communications service providers, thereby securing the availability of relay services for those who need them and a stable contribution base to those carriers who provide these valuable services.

Respectfully submitted,

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