

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

In the Matter of)	
)	
Petition for Clarification on the Provision)	
Of and Cost Recovery for Captioned)	CC Docket No. 98-67
Telephone as an Improved Voice Carry)	
Over Service for Telecommunications)	
Relay Service)	

**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. (“TDI”) hereby submits these Comments in support of Ultratec, Inc.’s petition requesting clarification of the Federal Communications Commission’s (“FCC” or “Commission”) rules on telecommunications relay service (“TRS”) with respect to the provision and reimbursement of Captioned Telephone (“CapTel”), an enhanced Voice Carry Over service (“VCO”).¹

The CapTel services described in Ultratec’s petition represent a significant step forward in meeting the goals of Title IV of the Americans with Disabilities Act (“ADA”) to bring about true, real-time TRS calls that are functionally equivalent to traditional voice communication services. As such, they should qualify as a telephone transmission service that is eligible to receive reimbursement from the interstate TRS fund managed by the National Exchange Carrier Association. Further, TDI supports classifying CapTel service as an optional service eligible for interstate cost recovery, and urges the Commission to clarify that certain minimum mandatory

¹ See Petition for Clarification - Provision of and Cost Recovery for CapTel, An Enhanced VCO Service, CC Docket No. 98-67, filed April 12, 2002 on the behalf of Ultratec, Inc.

standards pertaining to video relay, speech-to-speech relay, and hearing carry over are not applicable to the provision of this service.

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI's mission is to promote equal access to broadband, media and telecommunications for these constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access will these twenty-eight million Americans be able to enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society benefit from the myriad of skills and talents of persons with disabilities.

I. THE COMMISSION SHOULD RECOGNIZE CAPTEL AS BEING WITHIN THE SCOPE OF TITLE IV OF THE ADA

Ultratec's petition accurately analyzes the legal rationale for finding CapTel service to be within the definition of TRS under section 225 of the Communications Act of 1934, as amended. TDI agrees with Ultratec's analysis and urges the Commission to find that CapTel service does fall within the definition of TRS under 47 C.F.R. §64.601(7), and is an enhanced version of VCO under 47 C.F.R. §64.601(9) of the Commission's Rules. Rather than restate Ultratec's well-reasoned arguments to this effect, TDI would like to focus its comments on a couple of matters raised in Ultratec's petition.

a. Optional TRS Service.

Ultratec argues that CapTel service should not be made a mandatory component of relay, but instead be classified as an optional service eligible for interstate cost recovery. TDI supports

this request so far as such classification is done on a temporary basis. The Commission has found that VCO services should be mandatory, and as detailed in Ultratec’s petition, CapTel service is a form of VCO. However, at this stage CapTel service is still an experimental relay technology. Until the technology has been perfected, and is ready for a nationwide rollout, it is not practical to require carriers to provide this enhanced form of VCO service. Instead, the Commission should treat CapTel as an experimental technology, and therefore not mandatory. However, as detailed below, the Commission should also revisit the status of CapTel in three years to determine if it has developed to the point where it can be made a mandatory service.

b. Traditional Cost Recovery Mechanism.

Ultratec requests that the Commission find CapTel services to be eligible for interstate TRS funding, but does not indicate whether it also should be supported by intrastate TRS revenues. TDI supports the use of interstate TRS funds, but does not believe that CapTel service should be subjected to state TRS fund recovery mechanisms at this time. Section 225 of the Communications Act of 1934, as amended, governs the provision of TRS. Section 225(d)(3)(B) provides that the TRS regulations “shall *generally* provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.”² As the Commission previously concluded with respect to video relay interpreting (“VRI”), Section 225’s own terms do not require the Commission to impose strict jurisdictional cost separation in all cases. In the VRI proceeding, the Commission stated it “believe[s] the word ‘generally’ [in Section 225(d)(3)(B)] gives [it] some discretion to fund

² 47 U.S.C. § 225(d)(3)(B) (emphasis added).

intrastate service from the interstate jurisdiction.”³ Because of the experimental nature of CapTel, TDI believes the Commission is justified in making CapTel service an exception to Section 225(d)(3)(B)’s general requirement to separate costs jurisdictionally. Because technological advancements such as CapTel service were unforeseen when Section 225(d)(3)(B) was enacted, TDI believes this exercise of discretion is particularly appropriate. Further, because CapTel is still in its infancy, TDI believes interstate-only funding is the best way to promote CapTel service’s provision and use in order to maximize the benefits of this technological innovation. This service can provide a crucial link between the deaf community and the hard of hearing population, and the general populace.

At this stage in its development, a joint, federal-state cost recovery scheme would be grossly inefficient and therefore likely to impede CapTel service development.⁴ Section 225(d)(2) directs the Commission to “ensure that regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology in the delivery of relay services.”⁵ Strict adherence to jurisdictional cost separation, however, would trigger the unwieldy intrastate reimbursement requirements of Section 225(f). From the state perspective, joint federal-state cost recovery may also trigger burdensome procedural requirements, further discouraging CapTel service’s proliferation. States are not currently obliged to provide CapTel service and it would likely be time-consuming and burdensome for them to do so individually. Significantly, with respect to

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 15 FCC Rcd 5140, 5154 (2000) (“*VRI Order*”).

⁴ *VRI Order*, 15 FCC Rcd at 5153. In the case of VRI, the Commission exercised discretion with respect to its cost recovery rules to improve the efficiency of the service: “It is not efficient to have relay interpreters associated with one state or an interstate relay center with down time while there are people throughout the country who want to make calls through VRI but cannot because of the jurisdictional cost recovery rules.” *Id.*

⁵ 47 U.S.C. § 225(d)(2).

VRI, the Commission found that authorizing interstate funding was necessary to be “consistent with [Section 225(d)(2)'s] mandate” and to promote its deployment.⁶ The Commission should utilize this same approach to promote CapTel service. It would be unreasonable for the Commission to compromise the higher equal access goals of Section 225 through an unduly strict interpretation of its jurisdictional cost separation provisions, particularly when the cost provisions have built-in flexibility to avoid this undesired result.

c. Revisit the Interstate Funding Mechanism and Optional Service Status.

Although TDI believes making CapTel service an optional service subject to interstate cost recovery is appropriate at this time, TDI believes it would be prudent for the Commission to revisit this finding periodically.⁷ TDI believes a three-year review cycle provides the appropriate balance of regulatory certainty, to encourage providers to enter the market, and flexibility to adapt to change as needed. This procedure would facilitate the implementation and growth of CapTel service, while providing the Commission a ready vehicle to make it a mandatory service and/or alter the cost allocation scheme should technological advances or other circumstances make it reasonable to do so. Periodic Commission review of the CapTel service status and cost allocation scheme will help to ensure that the Commission’s regulations remain responsive to the needs of the various segments of the general population with disabilities and ensure equal access to innovative telecommunications services.

⁶ *VRI Order*, 15 FCC Rcd at 5154. In the *VRI Order*, the Commission encouraged VRI deployment in a variety of ways: “[I]n order to encourage [VRI] technology, as is our statutory mandate . . . we intend to establish special funding arrangements for VRI to speed its development. During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund. . . . We also believe our approach will reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use VRI, without burdening state relay programs.” *Id.* at 5153.

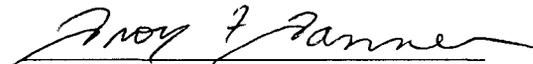
⁷ Similarly, the Commission declined to make interstate funding of VRI permanent. *See VRI Order*, 15 FCC Rcd at 5154.

II. CONCLUSION

For the reasons described herein, the Commission should find that CapTel service is a telephone transmission service that is eligible to receive reimbursement from the interstate TRS fund managed by the National Exchange Carrier Association. Further, the Commission should classify CapTel service as an optional service. To ensure that its regulations remain responsive to the needs of the deaf community and hard of hearing population, and consistent with the latest advances in CapTel technology, TDI asks the Commission to periodically review its optional service classification, and its interstate cost allocation scheme every three years.

Respectfully submitted,

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