

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

Americans with Disabilities Act of 1990

CC Docket No.98-67

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF
THE STATE OF CALIFORNIA**

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The People of the State of California and the California Public Utilities Commission (California or CPUC) hereby file these comments in response to the Notice of Proposed Rulemaking (NPRM), released June 17, 2003, by the Federal Communications Commission (Commission or FCC). In the NPRM, the Commission seeks comment on additional Telecommunications Relay Service (TRS) issues, including the appropriateness of technological advances to TRS; whether TRS facilities should be eligible for priority restoration in the event of a disaster or a breakdown of the infrastructure supporting a TRS facility's telecommunications; TRS outreach; and eligibility for funding from the Interstate TRS Fund. The Commission has set forth a number of issues in this *NPRM* and the CPUC comments here only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with the Commission's proposals.

I. BACKGROUND

TRS is a national and international program that provides functional equivalency of access to public switched telecommunications network services by persons who are deaf, hard-of-hearing, or speech disabled. The basis upon which relay services work is the use of 800 number access to call center agents, called "Communications Assistants" (CAs) or "Relay Operators" (ROs) who "relay" typed messages from deaf, late-deafened, hard-of-hearing, and speech disabled persons to hearing persons by speaking the contents of the typed message, and by typing the voiced message. TRS calls can be initiated by deaf, hard-of-hearing, or hearing persons. With regard to "Speech to Speech" (STS) service, the CA is specially trained to understand words spoken by persons with speech disabilities when most hearing and speaking persons might not.¹ The STS CA facilitates the

¹ Individuals using STS include those with cerebral palsy, Parkinson's disease, a laryngectomy, ALS, stuttering, muscular dystrophy, stroke, and other conditions affecting clarity of speech.

conversation between people by repeating what is spoken by the person with speech disabilities.

The Commission sets minimum required standards for TRS operations, and requires and certifies that each state meets those standards. Each state is independently responsible for acquiring and administrating its own TRS. California is unique in that it is currently the only state that uses more than one TRS vendor and is in the process of unbundling elements of TRS.

In California, TRS is called the California Relay Service (CRS). CRS is an outsourced service and is part of the Deaf and Disabled Telecommunications Program (DDTP). The DDTP was established by the California Public Utilities Commission (“CPUC”) to administer and oversee programs that provide telecommunications services and equipment for persons with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information. To achieve program goals the DDTP goods and services are routinely procured by contract. Presently, two vendors, MCI WorldCom, Inc. and Sprint, provide CRS services.

California’s planned new CRS structure would allow for CRS providers to provide discrete, unbundled elements of CRS service, rather than the current bundled CRS service. California believes that, as proposed, this unbundling of TRS services encourages entrants into the market and clearly separates the costs of TRS service, allowing market forces to determine the optimal cost of service. Consequently, CRS contracts can be established with both common carriers and non-common carriers in a multiple vendor environment.² Relay services are

² *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-67, FCC 00-56 (rel.3/6/2000), paragraphs 36 and 37, in which the Commission has previously determined, and on which the CPUC has relied upon, that it believes giving consumers a choice among different TRS providers might well improve the quality of TRS service and that nothing in the statute or the Commission’s rules restricts the states to using only one relay provider. The Commission further provided that “[r]ecognizing that one purpose of the Telecommunications Act of 1996 (“1996 Act”) is to facilitate the introduction of competition to telecommunications markets, we encourage states to consider whether the single- or the multi-vendoring model best meets their constituents’ particular needs.” “[W]e encourage states to continue experimenting with ways to allow competitive forces to improve the quality of TRS service.”

comprised of two different functions: a network component and a relay component. The network component, which carries the calls, is made up of the 800 number inbound long distance service that transports the consumer's call to the relay call center, and the outbound long distance service that connects the relay call center to the called party. The second component is the relay call center itself. This is where the relay operators, who relay the calls, are located. The additional third component of the planned CRS structure will be the network management services provider, which will independently measure the performance of the other two components. The network services provider will also provide database services for consumers to register their choices of relay providers when dialing 711. With regard to California's planned CRS structure, there will be one carrier for the network portion, four contractors for the relay call center providers, and one network management services administrator. It is anticipated that the new planned CRS structure will result in more choice and simple access, improved relay service quality, reduced cost, and more types of new relay services. California believes that expanding its TRS contracting capabilities to both carriers and non-carriers will bring enhanced TRS options and choices to consumers and is therefore consistent with the Commission's intent.

II. DISCUSSION

A. National Security/Emergency Preparedness

The Commission tentatively concludes that it is appropriate to assign at least the same National Security and Emergency Preparedness ("NS/EP") recovery priorities³ to TRS that apply to LECs or other telecommunications services available to the general public. (NPRM, ¶ 105) The Commission seeks comment on whether its rules should be amended to provide for the continuity of operations of TRS facilities in the event of an emergency. The Commission also invites

³ Generally, NS/EP priorities are those services necessary to respond to and manage any event or crisis (local, national, or international) that causes, or could cause, serious harm to life or property.

comment on other means by which the Commission might ensure equal treatment of LEC facilities and TRS facilities in this context. The Commission seeks comment on whether TRS providers and state TRS programs must provide an operational plan, beyond that already required in the Commission's rules, to ensure the survivability and continued operations of TRS facilities in case of an emergency. (NPRM, ¶ 105.)

California believes that the Commission's rules should allow for continuity of TRS facility operations in the event of an emergency. Currently, California CRS providers have some emergency preparedness mechanisms in place. However, there are potentially significant technical concerns in having TRS and TRS facilities provided with NS/EP recovery priority status commensurate with that given to LEC facilities. Therefore, California believes states should be provided additional time to assess the feasibility of these requirements, and to assess potential costs and impacts on the TRS providers and the states. California believes states should have the flexibility to have an emergency plan that can be implemented in a TRS environment. Moreover, any federal rules should account for a multi-vendor environment that may provide cost-effective mechanisms for implementing NS/EP standards. As a corollary to the potential cost effectiveness of implementing NS/EP standards, inflexible NS/EP standards may unduly burden providers of some elements of TRS, limiting choice and increasing the expense of providing the service. Due to California's multi-vendor environment, California's CRS NS/EP may differ from other states. For example, in California's planned CRS framework, different vendors provide different aspects of relay service, i.e., the call center, the network services, and the network administrator. Consequently, a network services provider's responsibilities may differ from a call center provider's responsibilities. Also, with a multi-vendor environment, California's CRS may already have some inherent back-up. Although California's CRS emergency plan may be different than other states, the goal of survivability

and continued operations of TRS facilities in case of an emergency should be the same.

B. Security of IP Relay Calls

The Commission seeks comment on whether IP Relay calls should be provided with the level of security using encryption that is commonly used in commercial transactions over the Internet. The Commission also invites comment to determine whether alternative security measures exist or are expected that could be used by IP Relay providers to ensure the security of IP Relay transmissions.

(NPRM, ¶ 107)

Previously, California has stated that IP Relay users should be guaranteed the same standards of security and confidentiality that apply to traditional TRS. In our recent RFP for California Relay Service, however, California did not specify any requirements for security levels, methods or procedures for the RFP's version of IP-Relay. Instead, bidders could describe any types of proposed security that they would offer. California believes that individual IP Relay vendors may choose to offer different levels of security for its consumers. Consumers who choose to use IP Relay may access any particular IP Relay provider they desire, including those that offer a higher level of security. IP Relay providers can take steps to use technology to establish firewalls or other similar provisions to protect the privacy of the IP Relay callers and their personal identification information so that no aspect of relayed conversation is retrievable in any form. However, levels of security over the Internet should not be mandated. In fact, some consumers may not want to be burdened with some of the steps associated with higher security, such as user registration, sign-ins, or passwords. Additionally, it is important to keep in mind that encryption is a security mechanism for transmission, not for anything that may appear on a screen before or after being transmitted. Finally, California points out that a non-relay user using the Internet for communication such as instant messaging or email is not guaranteed encryption. The Commission may want to consider IP Relay to be functionally equivalent to other means of

public Internet communications, not to commercial transactions. In fact, mandating security levels over the Internet may potentially dampen the development or application of new technologies for Internet access to relay.

C. Wireless 911

The Commission seeks comment on what it would entail for TRS facilities to route a wireless TRS call to the same PSAP that would receive the call if the same caller dialed 911 on a wireless telephone. (NPRM, ¶ 109)

California believes wireless TRS 911 is a complex issue and the Commission should allow for a sufficient amount of time to research this new prospect in light of California's anticipated unbundled multi-vendor CRS environment, and to explore possible solutions. Therefore, we cannot comment on this topic at this time.

D. Non-English Language TRS

The Commission seeks comment on whether the Commission should allow TRS that employs a non-shared language translation service (e.g., Spanish to English) to be reimbursable from the Interstate TRS Fund. (NPRM, ¶ 114.) The Commission asks commenters to address whether provision of such a service is consistent with, or necessary under, the Commission's functional equivalency mandate. (NPRM, ¶ 114) The Commission seeks comment on whether multi-lingual relay services should be required on an intrastate and/or interstate basis, and if so, how it should be funded.

In California, one of our current CRS providers offers Spanish to English relay service and all providers under the new unbundled CRS structure will offer Spanish to English relay service. However, California cautions against a mandate for any non-shared language translation. A non-relay user does not have the value-added option of a translation service between parties that speak different languages. However, states should be allowed to require their own TRS providers to provide any non-shared language translation according to the needs of the state.

States may want to take into consideration factors such as ethnic makeup and demographic patterns. As long as non-shared language calls are also relay calls that meet the Commission's minimum standards, reimbursement from the Interstate TRS fund is appropriate for interstate calls, however California cautions that the potential for abuse is significant and the mechanisms to detect it are limited.

E. Speed of Answer and Call Set-up Time

The Commission seeks comment on how call set-up can be effectively and efficiently handled.⁴ (NPRM, ¶ 117) The Commission also seeks comment on whether the Commission should require a specified call set-up time for various types and forms of TRS calls, and if so, how such set-up time should be measured. (NPRM, ¶ 117.)

California believes the Commission should not mandate a specified call set-up time for various types and forms of TRS calls. Since vendor TRS reimbursement is based on conversation minutes, which excludes call set-up time, TRS providers have an existing incentive to reduce the speed of answer and call set-up time. In addition, the current TRS rules allow for new technologies to be used to reduce the speed of answer and call set-up time. Moreover, set-up time for TRS users is not one-size fits all. Some TRS users require longer set-up times than others and TRS providers should be able to take as much time as necessary to ensure quality TRS service, recognizing that it is in their interest to make that time period as short as possible. In addition, a multi-vendor environment, such as California's, may promote higher service quality since a consumer has a choice of relay providers.

⁴ In general, call set-up is the length of time it takes to set up certain forms of TRS, such as STS and VRS, and certain types of non-traditional TRS calls, such as one and two-line VCO, and one and two-line HCO.

F. TRS Facilities

1. CART

The Commission seeks comment to determine whether TRS providers should offer communication access real-time translation (CART)⁵ or CART-type services to improve the speed of TRS. (NPRM, ¶ 119.)

California asks the Commission to allow states time to do research, trials, and testing of CART to see how it will work in a TRS setting. The use of CART for TRS presents many issues that pertain principally to the suitability of CART for relay, and the cost and availability of people trained in CART. Would the error rates be significant or would additional technology and training mitigate the problem? What would the cost be to train CART personnel and how would that affect TRS costs? CART is a professional skill which requires significantly more time and training to develop proficiency than is required to become a proficient TRS communication assistant (CA). Certified CART professionals are in much shorter supply than trained CAs and CART professionals earn significantly more than trained CAs. California surmises it may take years to develop a sufficient number of certified CART professionals who would work in the area of TRS. Requiring TRS providers to offer CART would significantly increase the cost of TRS, and consequently, increase the costs borne by the states and contributors to the Interstate TRS Fund. The Commission should also consider the accuracy of CART personnel. California also questions whether CART will be fully compatible with the traditional TTY machines. These issues and others should be resolved before CART is required of TRS providers.

2. Interrupt functionality

The Commission seeks additional information about how interrupt functionality⁶ is being provided, whether any non-proprietary TTY protocols are

⁵ CART is a real-time stenographic form of typing, reported by others in the FCC document to capture conversation at 150 to 200 words per minute. Rate of accuracy is not reported.

able to support interrupt functionality, and consumer use of interrupt functionality. (NPRM, ¶ 120.)

California is unaware of any widely-used non-proprietary TTY protocols that are able to support interrupt functionality. Interrupt functionality is currently being provided by CRS providers and will be provided by new providers under the new CRS structure as well, but requires the consumer to have a compatible TTY.

3. TRS consumers' LEC offerings

The Commission seeks comment on anonymous call rejection,⁷ call screening,⁸ and preferred call-forwarding,⁹ LEC features offered to voice users. (NPRM, ¶ 121.)

With regard to anonymous call rejection, call screening, and preferred call-forwarding, California is concerned there may be significant technical and operational challenges in implementing the above features in a TRS environment, and especially within California's multi-vendor unbundled environment. It is California's understanding that these features are primarily provided by the local exchange carrier, either the ILEC or CLEC. The CPUC recommends the Commission allow for a sufficient amount of time for testing and research to see if offering these features in a TRS environment is feasible before mandating any of them.

⁶ Interrupt functionality allows a TTY user to interrupt incoming text messages in order to convey a message back to the Communications Assistant. This allows the TRS conversation to be more like a conventional telephone conversation in which each party can begin speaking before the other party has finished speaking.

⁷ Anonymous call rejection is a feature that automatically rejects calls to the user's number when the calling party has blocked his or her Caller ID information.

⁸ Call screening or selective call blocking allows a user to create a list of telephone numbers (no-call list) from which the user does not wish to accept calls. Calls from numbers on the no-call list receive an announcement that informs the caller that the called party is not receiving calls at this time. All calls not on the no-call list are placed to the called party.

⁹ Preferred call-forwarding allows a user to create and maintain a list of "special" telephone numbers where, if a call is received from one of those numbers, the call will be forwarded to another number.

4. Talking Return Call

The Commission seeks comment on whether talking return call functionality should be required as a mandatory minimum standard.¹⁰ (NPRM, ¶ 124)

California is concerned there may be significant technical and operational challenges in implementing talking return call in a TRS environment. In particular, in a multi-vendor environment, any individual CRS provider will not know the identification of the last party who called the CRS consumer through CRS unless the call was made through that specific CRS provider. The CRS consumer who receives the call will not know which CRS provider was used by the caller. Talking return call could be confusing to consumers in California, unless the talking return call (with TTY interface) was able to display the identity of the CRS provider on the call. The CPUC recommends the Commission allow for a sufficient amount of time for testing and research to see if offering this feature in a TRS environment is feasible before mandating it.

G. Speech and recognition technology

The Commission seeks comment on the current status of the development of speech recognition technology. (NPRM, ¶ 125)

California is unaware of any nonproprietary technology for speech recognition in TRS. California concurs with the Commission's concern about being locked into proprietary technology even though the function seems beneficial. If the Commission decides to mandate a protocol we ask that the protocol not be proprietary to a particular carrier but rather be available industry wide in order to ensure competition.

H. Public Access to Information and Outreach

The Commission seeks comment on whether the states should have the obligation to reimburse intrastate TRS providers for any additional outreach

¹⁰ Talking return call functionality provides the consumer with a voice message of the phone number of the last

requirement, and whether the Interstate TRS Fund should reimburse interstate TRS providers for such outreach. (NPRM, ¶ 131.) The Commission asks for comment on whether the interstate TRS Fund may be used to compensate third parties (i.e., non-providers) for the cost of a coordinated outreach program. (NPRM, ¶ 133) The Commission also invites comment to determine whether the cost recovery provisions of section 225 require that portions of an outreach campaign designed for implementation at the state level much be paid for by the states. (NPRM, ¶ 133.)

As stated in previous comments, California would support a nationwide awareness campaign that is funded by the interstate TRS Fund. It is uncertain whether, in the NPRM, the Commission is seeking comment on whether a state's certification program should include, and budget for, *nationwide* outreach efforts. If so, California opposes using California DDTP surcharge funds to finance a national outreach effort. We note that the California DDTP already budgets for and implements its own state outreach program, which includes outreach specialists, as well as media advertising.

One option the Commission might want to consider for outreach is to allocate funds from the Interstate TRS Fund to the states to be used for outreach, so long as the states determine the kind of outreach to be used. As stated further below, states are in the best position to understand the needs of its consumers. In addition, the Interstate TRS Fund may be used to compensate third parties (i.e., non-providers) for the cost of a coordinated outreach program. Outreach is a necessary part of TRS and entities that provide TRS outreach should be reimbursed from the interstate TRS Fund, regardless of whether the entity is a provider or not. However, this funding should go through the state commissions, which can control and regulate the manner in which these funds are used.

As mentioned above, the Commission should not mandate state outreach requirements. The Commission should not require specific customer education

incoming caller, whether the call was answered or not.

and outreach methods because different Relay providers will have different capabilities. For example, some IP Relay providers might be established telecommunications companies or Internet Service Providers with access to extensive customer lists. Other providers might be non-profit organizations with no retail or customer presence. Establishing specific outreach standards or dollar requirements would not treat all providers fairly.

States are better equipped to determine the kind of outreach which best suits the needs of its consumers, taking into consideration, for instance, the state's ethnic makeup, consumer markets and demographic patterns. Because many methods exist, the Commission should not prescribe methods states must use for outreach. As the Commission provided, the 1996 Act envisioned a federal-state partnership in preserving and advancing universal service. Moreover, in a multi-vendor environment there is competitive pressure to provide outreach to consumers.

I Procedures for determining TRS Provider's eligibility for receiving payments from the Interstate TRS Fund

The Commission seeks comment on whether it should establish a federal certification process for interstate TRS providers. (NPRM, ¶ 137) The Commission seeks comment on whether the Commission should require all interstate TRS providers seeking reimbursement from the Interstate TRS Fund to apply to the Commission, regardless of their involvement in a certified state program. (NRPM, ¶ 137) The Commission seeks comment on whether the Commission should institute a certification process specifically for IP Relay, VRS, and any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate, for the period of time that such services are reimbursed from the Interstate TRS Fund. (NPRM, ¶ 139)

Currently, an interstate TRS provider may seek reimbursement from the Interstate TRS Fund only after it demonstrates that it is an approved provider in a

state TRS program that has been certified by the Commission. California believes that the Commission should continue allowing interstate TRS providers to be reimbursed from the Interstate TRS fund so long as the TRS providers participate in a certified state TRS program, without having a federal certification requirement. As mentioned above, state TRS providers are required to meet the federal minimum TRS requirements and in fact, states such as California, may have more stringent requirements than the federal minimum. In California, the CPUC has contracts with each of its CRS providers. These contracts ensure that the CRS provider will provide service that meets the standards mandated by the Commission and also those standards required by the CPUC. In addition, states that generate support from the intrastate jurisdiction have an incentive to control fraud, waste, and abuse of the support mechanism. California, therefore, believes it is unnecessary and perhaps duplicative to require federal certification for providers that already participate in a certified state TRS program. Moreover, as is currently, states' TRS providers should receive funds from the interstate TRS fund for providing interstate services such as IP Relay or VRS, so long as the state's certification requirements have been met.

For TRS providers that provide interstate TRS and are *not* providers in a state TRS program that has been certified by the Commission, California would not be opposed to a federal certification requirement. This would also apply to providers of IP Relay, VRS and other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate, including those providers that are not common carriers and so long as they are not providers in a state TRS program certified by the Commission. However, any federal certification should include a process of auditing and performance measurement and not rely solely on consumer complaints.

However, if the Commission chooses to require federal certification in order to receive funds from the interstate TRS Fund, the Commission should

ensure that the requirements for federal certification do not exclude companies outside of the U.S.

California supports the reimbursement of IP Relay minutes from the Interstate TRS Fund as a funding mechanism to encourage development. Section 225 of the Act provides that “regulation governing TRS cost recovery shall ‘generally’ provide that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.” The CPUC agrees with the Commission’s interpretation that the term “generally” gives the Commission discretion to fund intrastate service from the interstate jurisdiction. As the Commission has stated without some sort of a log-on or registration process, relay providers will not know the location of the call originator. This, however, should not create a barrier to reimbursement. The reimbursement rate should be set at a level that encourages providers to offer the service.

The Commission’s provision of TRS and the eligibility of TRS providers to receive compensation from the Interstate Fund should ensure that the Commission’s rules do not preclude companies, which are providing TRS services under contract to a state in compliance with Commission regulations and that are not common carriers, from receiving reimbursement from the NECA TRS fund. California’s planned unbundled CRS structure allows for contracts to be established with both common carriers and non-common carriers in a multiple vendor environment. The success of this approach relies upon the availability of NECA TRS funds to non-carriers as well as to carriers for TRS reimbursement. California believes that expanding its TRS contracting capabilities to both carriers and non-carriers will bring enhanced TRS options and choices to consumers and is therefore consistent with the Commission's intent.

III. CONCLUSION

The CPUC supports the Commission's efforts to further refine TRS policies, but urges the Commission to refrain from adopting certain mandates until more research has been done.

Respectfully submitted,

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