

**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

CC Docket No. 03-123
(DA 05-2961)

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

The California Public Utilities Commission and the People of the State of California (CPUC or California) respond here to the Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service (petition), filed October 31, 2005 by a group of advocacy organizations and professional organizations (hereafter, collectively, “petitioners” or “filing parties”).¹ Petitioners ask the FCC to “initiate a rulemaking for the purpose of mandating captioned telephone relay service [] nationwide and

¹ 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).

**STATE OF CALIFORNIA
TELECOMMUNICATIONS ACCESS FOR THE DEAF AND DISABLED
ADMINISTRATIVE COMMITTEE
505 14TH STREET, SUITE 400 OAKLAND, CA 94612**

December 13, 2005

**Mr. Steve Larson
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298**

Dear Mr. Larson:

This letter is pursuant to direction from the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) at the December 6, 2005 meeting.

As you are aware, the Federal Communication Commission (FCC) is currently asking for public comment concerning the issue of mandated Captioned Telephone Relay Service (known as Enhanced VCO in California). Currently captioned telephone is not a mandated service nor is it funded nationally by NECA, unlike VRS, IP relay and other TRS services that are funded at the federal level, which we believe to be the correct place for those services to be funded. Because captioned telephone service is a form of existing mandated service, we see no reason not to likewise support this as well. Some states do not have the ability to collect the funds to offer captioned telephone as a standard TRS service available to anyone who needs it. To date, the state relay programs using mostly discretionary funds have funded captioned telephone. Here in California we are currently conducting a trial distributing up to 200 phones a month to qualified users so that the Telecommunications Division can provide the Commission with a very detailed use and cost analysis of the program. TADDAC does expect to formally advise the Commission in the near future that captioned telephones become standard equipment in the California Telephone Access Program (CTAP).

TADDAC is fully aware that the CPUC does have concerns about what the cost impact of a mandated service would be to the DDTP budget and its impact on the rest of the programs DDTP operates. CPUC staff has also voiced concerns that at the present time, captioned telephone service is a sole sourced technology. While these concerns are valid, it is the view of TADDAC that these concerns will be worked out at the national level because many states have already made the same points and the FCC is well aware of them.

TADDAC would prefer for the CPUC to look beyond these issues and ask two simple questions; does captioned telephone enormously help the hearing impaired community reach closer to the idea of functional equivalency? Since the answer is a resounding YES, we at TADDAC highly recommend that the California Public Utilities Commission send an immediate letter of support for the concept of mandated caption telephone service to the FCC. One need only to go to any store selling telephones and note the variety available to hearing customers is overwhelming. Once again the issue of functional equivalency comes into play when asking the question; does the hearing impaired community have choices when using Voice Carry Over (VCO) technology? The answer is a resounding NO, and again we at TADDAC believe that mandated captioned telephone service would be another step by the federal government in filling these huge gaps in functional equivalency that are very evident.

As the closing date for taking testimony is approaching quickly, TADDAC is asking, with all due respect, that the CPUC send a letter of support for mandated captioned telephone service to the FCC as soon as possible.

Should there be any questions regarding this matter please do not hesitate to contact me.

Sincerely,

**Philip H. Kaplan
Chair, TADDAC
philillini@aol.com**

**CC: Commissioner Michael Peevey
Commissioner Geoffrey Brown
Commissioner Dian Grueneich
Commissioner John Bohn
Jack Leutza, Director, Telecommunications Division
Helen Mickiewicz, Attorney, CPUC
Linda Gustafson, Telecommunications Division
TADDAC Committee members
Ann Ruth, Chair, EPAC subcommittee
Chriz Dally-Johnson, Acting Chair, CRSAC, subcommittee**

approving Internet Protocol (IP) captioned telephone for cost recovery through the Interstate Telecommunications Relay Service (TRS) Fund”.²

The CPUC will not comment here on all issues. Silence on any particular issue does not connote either agreement or disagreement with petitioners’ representations or positions on those issues.

I. BACKGROUND

In the petition, the filing parties set forth a comprehensive history of captioned telephone service (CTS), including a description of how the service works and the great value it offers to users. The CPUC does not dispute any of the representations set forth in that section of the petition.³ Indeed, California concurs with petitioners’ contention that CTS is “closer to synchronous communication than the asynchronous methods of traditional relay”. Traditional TRS involves the use of an operator who voices one participant’s typed words, while typing the other participant’s spoken conversation as text to the deaf or hard-of-hearing participant. CTS, because it involves an intermediary who *re-voices* rather than types the spoken communication to the deaf or hard-of-hearing user utilizing a unique speech-to-text technology and a proprietary CTS telephone, dramatically increases the pace of the telephonic conversation, thus improving the quality of the communications. The result is, as petitioners’ assert, a more effective means of

² Petition, p. 1.

³ Petition, pp. 5-8.

providing the served segment of the population with “functionally equivalent telephone service”.⁴

II. IF THE FCC MANDATES CTS, IT SHOULD MANDATE FEDERAL REIMBURSEMENT

A. CTS Users Greatly Value the Service

The CPUC does not dispute the importance or value of CTS to the many users of the service nationwide. California is well aware of the popularity of CTS in California, as the community of users has pressed the CPUC to include CTS in the California Relay Service (CRS) program, which currently includes both traditional relay service and speech-to-speech relay service. The CPUC authorized a CTS trial several years ago, which is expected to expand under a new contract with Sprint, the sole provider of CTS in California.⁵

California has a universal service program called the Deaf and Disabled Telecommunications Program (DDTP), with an advisory committee that meets monthly to provide guidance to the CPUC on matters of interest and importance to the deaf, disabled, and hard-of-hearing communities. At its December meeting, the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) voted to recommend to the CPUC that California support the instant petition before the FCC. The TADDAC chair submitted a letter to the

⁴ Petition, p. 13. The filing parties assert that CTS is “the single most effective means” of providing functional equivalency. The CPUC is not prepared to endorse that particular characterization, but certainly acknowledges that CTS users consider the service to be extremely valuable.

⁵ The CPUC appreciates the statement that Hamilton also is a vendor of CTS, but Hamilton does not provide the service in California. *See* petition, p. 8.

CPUC, expressing the committee members' strong support for mandated CTS. A copy of that letter is attached for the FCC's consideration.

Bearing in mind the strong interest the community holds for expanding the availability of CTS to California users, the CPUC has no objection to the FCC mandating CTS as a part of a federal program. The CPUC, however, urges that several critical provisos, set forth below, must be included in any decision the FCC issues expanding authorization of CTS.

B. The States Should Not Bear the Burden of Paying for Federally-Mandated CTS

California had the opportunity to comment in this docket on IP Relay and Video Relay Service (VRS). In comments in response to a *Further Notice of Proposed Rulemaking*, the CPUC addressed some technical considerations which do not apply to CTS. At the same time, the CPUC offered the following comments on the cost issues associated with VRS and IP Relay.

[T]he Commission should not shift the reimbursement of IP Relay or VRS calls to the states at this time. Because of the significant unsustainable burden that would be placed on the states and the potential to disrupt and undermine the viability of IP Relay and VRS, the Commission needs to continue the funding for IP Relay and VRS from the Interstate TRS Fund. The position we advocate here is consistent with comments California has filed previously with the Commission in which we argued that funding for IP Relay should continue to come from the Interstate TRS Fund. . . . California maintains that reimbursement for IP Relay and VRS minutes should continue to come from the Interstate TRS Fund.⁶

⁶ See *Comments of the People of the State of California and the California Public Utilities*

The CPUC advocates a similar and consistent position here. While California values the importance of CTS, the CPUC believes the states should not be required to reimburse for this service out of state funds. Because CTS is so popular and demand is great while funding is limited, California is continuing to provide CTS on a trial basis within the state. In addition, California pays for its intrastate relay service program via an end-user surcharge assessed against the intrastate billings for all telecommunications service providers.⁷ The CPUC adjusts the surcharge on an annual basis to reflect changes that may affect the amount of revenue generated by the surcharge. The annual adjustment can include changes in carrier billings, in program offerings, and/or in the number of program users. The governing statute, Public Utilities Code § 2881(d) sets a cap on the surcharge of “one-half of 1 percent”.

CTS has two cost components: 1) the per-minute charge for CTS, and 2) the initial expense of purchasing consumers’ equipment to enable use of CTS. California is advocating that, if the FCC mandates provision of CTS, it also mandate reimbursement for the CTS per-minute charge from the Interstate Relay Fund. Over time, the CPUC expects that the per-minute charge for CTS will be the major expense item associated with provision of the service.

Commission, CC Docket No. 90-571, filed October 18, 2004, p. 5.

⁷ Currently, this group includes wireless as well as wireline providers, but excludes Voice over Internet Protocol providers.

The second CTS component – equipment purchase – is the more immediate big expense item. The FCC’s universal service program aimed at the deaf and disabled does not cover equipment, whereas California’s DDTP includes an equipment loan program, fully funded by the state-imposed surcharge. If the FCC mandates CTS, California will have to include purchase of CTS-enabling equipment for loan to eligible DDTP participants. CTS equipment is significantly more expensive than traditional relay equipment and will be a major initial expense that would have to be incorporated into the DDTP budget.

California’s DDTP revenues to provide such new equipment, however, are constrained by the aforementioned state-imposed surcharge cap. Use of these revenues moreover, is further constrained by community pressure to augment the program to provide other new services, such as VRS and CTS. Also, affected communities are pressing the CPUC to add newer products such as wireless telecommunications devices to the equipment loan program. If CTS is mandated, additional CTS-related equipment would have to be added to the DDTP as well. If the CPUC granted all requests to augment the DDTP, the budget for the DDTP would rise significantly. The CPUC could find the entire program on the verge of exceeding the statutory revenue cap limit, and in need of Legislative assistance to raise the cap. Our experience in recent years, in light of state budgetary constraints, is that the members of the State Legislature are disinclined to raise the cap for this program or other universal service programs. The total amount collected from consumers’ bills to fund all state universal service programs,

coupled with FCC mandated surcharges, has risen in recent years, prompting concern among legislators.⁸

Alternatively, the CPUC could face the prospect of reducing available services or types of equipment for the DDTP. While modifying program offerings is probably inevitable, given rapid technological advances, California would prefer to avoid reassessing the program in a crisis brought on by a sudden unfunded federal mandate.

The bottom line for California is that the CPUC does not oppose a federal mandate for provision of CTS, *as long as* the states are not required to fund that mandate. If the FCC is inclined to require states to fund CTS at the state level for all takers, then the CPUC would oppose a mandate for provision of CTS.

III. THE PETITION MISCHARACTERIZES CALIFORNIA'S CTS TRIAL

A. California Has Not Resisted Establishing CTS, Nor Imposed Undue Restrictions

Petitioners allege that California is one of several states that have “either been resistant to establishing captioned telephone programs or have unduly restricted their programs”.⁹ Specifically, petitioners allege that California’s initial trial has “dragged on for nearly three years”.¹⁰ In addition, petitioners claim that California’s efforts to expand the trial have been hampered because the “state’s

⁸ The CPUC is mindful of the potential for lost surcharge revenues as a result of customers switching from surcharged services, to services, such as VoIP, that are not surcharged. The impact of that transition will not be known for some time.

⁹ Petition, p. 15.

¹⁰ *Id.*

bureaucracy continues to delay this process”.¹¹ The clear implication of these remarks is that the CPUC and its staff are simply indifferent to the affected community’s interest in the availability of CTS. Nothing could be further from the truth.

The CPUC has reported to its advisory committee, the TADDAC, on a regular basis that CPUC staff have been engaged in extensive negotiations with Sprint, the sole-provider of CTS relay service in California, and with WCI, the sole-distributor for the CTS-enabling equipment, to expand the trial on a limited and managed basis. The process was complicated, as the TADDAC was informed repeatedly, by the fact that the CTS trial expansion was just *one* component of a new contract with Sprint for the provision of California Relay Service. The contract negotiations were complex because California is the only state in the nation with competitive provisioning of traditional relay service. The proposal to move towards competitive provisioning of CRS originated with the consumer-driven DDTP itself, and the CPUC adopted the idea after being persuaded that competitive provisioning of CRS would enable California’s relay consumers to select their preferred provider based on consumers’ service expectations, as well as to offer a better-quality and lower- cost service.

The relay service contract negotiation process is complete, and the CTS trial is being expanded to provide more users in California with access to CTS. What petitioners refer to as the “state’s bureaucracy” is nothing more than the

¹¹ *Id.*

CPUC doing its job of trying to provide service at a reasonable price for ratepayers, consistent with California's state contracting rules. The cost of CTS service remains a concern. The CPUC and Sprint spent considerable time negotiating over the per-minute price for CTS. While the new contract allows for expanded access to CTS, as noted above, available funding for access to CTS is limited in light of other services the DDTP provides. It is worth noting that the filing parties' petition says relatively little about cost issues, which are of paramount importance to California and likely other states.

B. CTS Is Enabled by a Technology Available from Only One Provider

Again, petitioners acknowledge but do not fully represent the significance of the technology enabling CTS as being currently and for the foreseeable future available from only one company, Ultratec. The relay service component of the CTS offering is through another related privately-owned firm, CTI, whose principals are generally believed to be associated with Ultratec's investors, management and distributors. In addition, as mentioned earlier, within our multi-vendor relay provider environment, only one provider, Sprint, is permitted by Ultratec to offer CTS in California. Under the terms of its agreement with Ultratec/CTI, Sprint does not actually provide the service. Rather, Sprint contracts with the State and the CTS relay service function is performed by a CTI-owned call center. The CTS relay service product provided under license through Sprint is deemed proprietary, and thus no other company at present can offer the

technology or service unless it is through an agreement for services provided by CTI. This presents a dilemma to a public agency charged with the responsibility to contain costs. When only one company provides the technology, quite frankly, the company can charge what the market will bear, absent regulatory oversight. So far as the CPUC is aware, Ultratec/CTI is not subject to FCC or state regulatory jurisdiction, and thus, no regulator has authority to review or set Ultratec's fee for provision of the licensed technology.

Petitioners may be correct that, "if a captioned telephone mandate is put into place, other companies will find a way to compete with Ultratec's CapTel service". But up to now, Ultratec has been the only game in town. Given this very significant constraint, petitioners' characterization of the CPUC's continuation of a trial CTS offering is unreasonable. The CPUC must impose reasonable limits when it comes to providing services pursuant to state mandated universal service programs. Presumably this concern also is true at the federal level. The CPUC urges the FCC to consider very carefully how to address the dilemma of one provider offering a technology that enables a service very much in demand by the deaf, deafened, and hard-of-hearing community.

IV. CONCLUSION

The CPUC does not oppose a federal mandate for CTS, as long as providers are reimbursed the per-minute costs of CTS from the Interstate TRS Fund. The CPUC would absolutely oppose a mandate for TRS that requires states to fund the service.

Respectfully submitted,

RANDOLPH WU
LIONEL B. WILSON
HELEN M. MICKIEWICZ

By: /s/ HELEN M. MICKIEWICZ

Helen M. Mickiewicz

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1319
Fax: (415) 703-4592

Attorneys for the California
Public Utilities Commission
and the People of the
State of California

December 29, 2005

**STATE OF CALIFORNIA
TELECOMMUNICATIONS ACCESS FOR THE DEAF AND DISABLED
ADMINISTRATIVE COMMITTEE
505 14TH STREET, SUITE 400 OAKLAND, CA 94612**

December 13, 2005

**Mr. Steve Larson
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298**

Dear Mr. Larson:

This letter is pursuant to direction from the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) at the December 6, 2005 meeting.

As you are aware, the Federal Communication Commission (FCC) is currently asking for public comment concerning the issue of mandated Captioned Telephone Relay Service (known as Enhanced VCO in California). Currently captioned telephone is not a mandated service nor is it funded nationally by NECA, unlike VRS, IP relay and other TRS services that are funded at the federal level, which we believe to be the correct place for those services to be funded. Because captioned telephone service is a form of existing mandated service, we see no reason not to likewise support this as well. Some states do not have the ability to collect the funds to offer captioned telephone as a standard TRS service available to anyone who needs it. To date, the state relay programs using mostly discretionary funds have funded captioned telephone. Here in California we are currently conducting a trial distributing up to 200 phones a month to qualified users so that the Telecommunications Division can provide the Commission with a very detailed use and cost analysis of the program. TADDAC does expect to formally advise the Commission in the near future that captioned telephones become standard equipment in the California Telephone Access Program (CTAP).

TADDAC is fully aware that the CPUC does have concerns about what the cost impact of a mandated service would be to the DDTP budget and its impact on the rest of the programs DDTP operates. CPUC staff has also voiced concerns that at the present time, captioned telephone service is a sole sourced technology. While these concerns are valid, it is the view of TADDAC that these concerns will be worked out at the national level because many states have already made the same points and the FCC is well aware of them.

TADDAC would prefer for the CPUC to look beyond these issues and ask two simple questions; does captioned telephone enormously help the hearing impaired community reach closer to the idea of functional equivalency? Since the answer is a resounding YES, we at TADDAC highly recommend that the California Public Utilities Commission send an immediate letter of support for the concept of mandated caption telephone service to the FCC. One need only to go to any store selling telephones and note the variety available to hearing customers is overwhelming. Once again the issue of functional equivalency comes into play when asking the question; does the hearing impaired community have choices when using Voice Carry Over (VCO) technology? The answer is a resounding NO, and again we at TADDAC believe that mandated captioned telephone service would be another step by the federal government in filling these huge gaps in functional equivalency that are very evident.

As the closing date for taking testimony is approaching quickly, TADDAC is asking, with all due respect, that the CPUC send a letter of support for mandated captioned telephone service to the FCC as soon as possible.

Should there be any questions regarding this matter please do not hesitate to contact me.

Sincerely,

**Philip H. Kaplan
Chair, TADDAC
philillini@aol.com**

**CC: Commissioner Michael Peevey
Commissioner Geoffrey Brown
Commissioner Dian Grueneich
Commissioner John Bohn
Jack Leutza, Director, Telecommunications Division
Helen Mickiewicz, Attorney, CPUC
Linda Gustafson, Telecommunications Division
TADDAC Committee members
Ann Ruth, Chair, EPAC subcommittee
Chriz Dally-Johnson, Acting Chair, CRSAC, subcommittee**