

**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
(DA 05-2961)

**REPLY 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) submit these Reply Comments in response to the Public Notice released June 26, 2009.¹ The Public Notice set forth a schedule for filing of comments and reply comments on the Supplement to Petition to Mandate Captioned Telephone Relay Service² (Supplement) filed June 10, 2009.³ As noted in the CPUC's Comments, California submitted both Comments and Reply Comments in response to the original Petition for Rulemaking filed in 2005. We respond here to a few issues raised by other parties in their comments.

¹ *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Petition to Mandate Captioned Telephone Relay Service* (CTS), DA 09-1436 in CG Docket No. 03-123, Released: June 26, 2009.

² Captioned Telephone Relay Service is more commonly called Captioned Telephone Service, or CTS.

³ The Supplement augments the initial Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service filed by many of the same parties on October 31, 2005.

I. NEED FOR A RULEMAKING

In our Comments on the Supplement, the CPUC did not address a threshold question – whether the FCC should open a rulemaking, as Petitioners have requested, to consider the issues raised in the Petition and in the Supplement. California does not object to the opening of a rulemaking on whether CTS should be mandated, and if so, how provision of the service as a national mandate should be financed. Indeed, a rulemaking may be the more appropriate forum for resolving the issues raised both in the Petition and in the Supplement – whether CTS should be made mandatory – and issues raised in comments – how federally-mandated CTS would be funded.

Certainly, if the FCC is considering a mandate for providing CTS, a rulemaking would be the proper venue for the FCC to evaluate the need for national standards, what such standards, if any, should be, and who would have authority to enforce the standards. Further, in a rulemaking, the Commission could determine whether and to what extent states could include in their CTS contracts requirements which exceed the national standards. In the event the FCC should open a rulemaking, the CPUC would request that its comments here be incorporated into the record for the rulemaking.⁴

⁴ See Comments of the California Public Utilities Commission and the People of the State of California, filed December 29, 2005, and Reply Comment of the California Public Utilities Commission and the People of the State of California, filed January 17, 2006 (CPUC's Comments).

II. STATE-SPECIFIC RESTRICTIONS ON CTS ARE NOT BY DEFINITION WRONG OR INAPPROPRIATE

A. California Has Imposed Restrictions to Limit Misuse of CTS Equipment

In its Comments, AT&T notes that “as long as CTS is an optional form of TRS, it is subject to varying restrictions and standards throughout the country ...”.⁵ California, indeed, has imposed certain restrictions on use of CTS equipment. We have done so because of concerns about misuse – whether intentional or inadvertent – of CTS equipment, which is intended for a very specific use, and for which California ratepayers are paying. While other forms of TRS that are ratepayer funded are not realizing growth at this time, nationwide the number of billed minutes for CTS is expanding significantly. From the CPUC’s perspective, these increased costs simply ratchet up the need for heightened vigilance to prevent misuse and even potentially fraudulent use of captioned telephone equipment and service.

It is indisputable that a CapTel telephone is an empowering device for users, but it also is an excellent amplified telephone in its own right.⁶ Conceivably, states or the manufacturer, Ultratec, could distribute this equipment to those who do not require the captioning service, and the relevant state could be responsible for paying for CTS made available by virtue of such a distribution, regardless of actual need. For example, in the past, CapTel telephones have been distributed to some states and their consumers free of charge, with the costs of the distribution recovered from relay revenues. Petitioners and

⁵ AT&T Comments, p. 3.

⁶ “CapTel” is the trademarked name of Ultratec’s CTS telephone, and the relay service developed to support this device is known as CapTel Inc., or CTI.

other parties in the 2006 round of comments seem not to recognize that a CapTel telephone, unlike a traditional TTY, can easily and perhaps inadvertently be used by a member of the household who does not need captions. Even the manufacturer offers that “[e]veryone can use the CapTel phone – simply turn off the captions feature to use it as a traditional telephone”.⁷ But, turning off the captions and the relay service billing cost is not *required* before “everyone”, including someone not in need of its specialized functions, may use the device as a traditional telephone. Because the Ultratec CapTel telephone is designed to automatically engage its relevant CTS relay center when put into use, significant unnecessary relay costs are highly probable. Further, without some control over the distribution of the CapTel amplified telephones to consumers who verifiably need the unique capabilities of the device, i.e., the captioned services, states likely will incur unwarranted expense.

B. Restrictions on Roaming Limit Unreasonable Costs

In its Comments, Ultratec challenges restrictions on CTS roaming.

Every time a CTS call is placed, it must be evaluated by the CTS relay provider – and allowed or disallowed for processing – depending on (1) the user’s enrolled state, (2) where the user is located at the time the particular call is made, and (3) the destination of the user’s call.

* * *

Specifically, as explained in the Supplement, many states do not allow calls made outside their states on equipment that they have distributed, others permit such calls only if one leg of the call begins or terminates in the states.⁸

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⁷ See the CapTel website – www.captel.com/about-captel.php.

⁸ Ultratec Comments, p. 2.

[This restriction] denies the consumers the right to make calls freely when they travel or move to a state other than the one in which they have secured a CTS phone.⁹

California is mindful of the CTS user's desire to roam freely and have unlimited access to the service even when the equipment is being used outside the state in which the telephone is registered. What CTS users want, and Ultratec endorses, is unlimited use of CTS on a national basis, comparable to a wireless telephone plan with unlimited local calling throughout the entire continental United States. Unfortunately, unlike the wireless customer who can select the most appropriate plan and pay accordingly, the CTS user's per-minute costs, are either paid by the state being visited, or picked up by the state in which the device is registered. In the case of the California CTS trial, the CPUC has determined that it is not reasonable to impose CTS guest roaming costs on California ratepayers. Nor should California ratepayers be responsible for the charges attributed by CTI to CapTel telephones California distributes and manages when those intrastate charges are being incurred in other jurisdictions.

The scenario Ultratec posits would be fair only if the service is funded entirely at the federal level, instead of being split, as it currently is, between state and federal funding. As noted in California's Comments, and repeated here, the CPUC restricts roaming because of the inherent unfairness of having California ratepayers paying for intrastate calls in other states, where the residents are not paying for the CTS provided to equipment acquired and registered in California.¹⁰

⁹ *Id.*, p. 8.

¹⁰ *See* CPUC's Comments, pp. 6-7.

Further, without appropriate safeguards in place to determine a potential CapTel user's qualified need before a state or the equipment manufacturer hands out the device, a prematurely-mandated service could create problems for states. If an unqualified user moved to California or sold the device on eBay, for example, California would lose the ability to enforce its legislative mandate that CTS users be certified under our state rules before becoming eligible either to receive the CapTel telephone or to generate relay expenses for our state program.¹¹ These concerns, which underlie the CPUC's restriction on roaming, will not be obviated by a federal mandate that foists funding onto the states absent the ability for the states to control costs.

III. MINIMUM STANDARDS SHOULD NOT BE MAXIMUM STANDARDS

Several parties suggest that a federal mandate is necessary to ensure that provision of CTS is subject to minimum standards imposed by the FCC. AT&T expressed concerns about "varying restrictions and standards throughout the country",¹² while Purple Communications offers the following:

Minimum standards should be looked at in its [sic] totality. Purple is supportive of establishing minimum standards for CTS.¹³

In its CTS trial and in the pending Request for Proposal to make CTS a permanent offering, the CPUC has imposed reporting and performance requirements for its relay

¹¹ In California, pursuant to statute, to receive our state's relay equipment, a potential user, including a CTS user, must be certified by a licensed physician or audiologist, or by a hearing aid dispenser who has previously issued an "amplified device" to the individual seeking certification. *See* California Public Utilities Code § 2881(a).

¹² AT&T comments, p. 3.

¹³ Comments of Purple Communications, p. 3.

providers which exceed the FCC's "minimum requirements. Many other states have not taken this step. In California's experience, if not specified or required in state contracts, relay providers generally are not voluntarily providing services above the FCC's minimum standards. CTS providers, including those offering CapTel services, claim to have established these minimums as their service goal(s). Yet, California's consumers, while supportive of broadening the availability of CTS, also raise concerns about the quality and consistency of the current CTS offerings. States should be able to consider and address the unique relay service requirements particular to their residents, even if these vary from the national minimum standards. In California, these requirements include parity of relay services for our Spanish-speaking population, as well as the ability to require transparent reporting so that anomalies in Spanish service levels can be accurately audited independently, and not be distorted through blending into the significantly better English traffic reporting, as is the national standard.

Against this backdrop, the CPUC does not want to lose its ability to hold the CTI/Ultratec provider of CapTel relay service to the higher standards California has imposed. Without that ability, the CPUC could be forced to offer a service with significantly less specific accountability than is presently incorporated into our program and required of the CTS providers, as well as of the providers of other relay services in California. The CPUC urges the FCC not to mandate provision of CTS without allowing states the ability to impose higher service and reporting standards,

IV. REGULATORY TREATMENT OF IP-RELAY AND RELATED SERVICES

In its Comments, Purple Communications raises an issue that should not be resolved in the context of a Petition for Rulemaking. Specifically, Purple recommends the following:

[A]ll Internet enabled relay services including Video Relay, text relay, and IP CTS, belongs in the same category and should be regulated by the Commission. Purple believes that those Internet enabled relay services are fundamentally an interstate service – and thus should be considered jurisdictionally interstate. With that in mind, Purple urges the Commission to declare all internet enabled relay services as 1) a mandated service that is 2) fundamentally an interstate service 2) to be regulated only by the Commission. [Sic]

The CPUC will not respond here to Purple’s argument that all “Internet enabled relay services” should be deemed jurisdictionally interstate. The CPUC notes that in comments submitted to the FCC in other dockets, California has urged the FCC to resolve the long-standing question of how IP services, including Voice over Internet Protocol service, should be regulated, and by whom. The FCC has not spoken on this broad question since issuance of the *Vonage* decision in 2004,¹⁴ despite repeated entreaties from numerous parties that an answer is very much in demand. Pending resolution of that larger question, it would be inappropriate for the FCC here to deem IP-based relay services as purely interstate, especially given that the Commission has provided no notice to the parties that it would be considering such a move in this context.

¹⁴ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, FCC 04-267, WC Docket No. 03-211, Released: November 12, 2004.

V. CONCLUSION

The CPUC supports continued discussion of and consideration of how CTS, and specifically the CapTel service, may be more widely promoted. California hopes the Commission will focus on improved minimum standards to guarantee equal access for consumers, accuracy in *quality-of-service* accountability and reporting, restrictions in distribution methodologies to ensure qualification of users, and the ability of states to provide their consumers a standard of service consistent with the needs of those consumers.

Respectfully submitted,

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