



November 24, 2009

URGENT – TIME SENSITIVE

Mr. Mark Stone, Deputy Chief
Consumers & Government Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mr. Mark Stone:

NorCal Services for Deaf and Hard of Hearing is requesting the FCC to interfere, by filing this complaint on behalf of deaf and hard of hearing California residents who are current and future users of captioned telephone services.

In January 2009, the California Public Utilities Commission (CPUC) issued a Request for Proposal (RFP) for relay services including Captioned Telephone Services (CTS). A provision in the RFP requires the CTS contractor (Relay Provider) to inform all parties to a CTS call by text and voice about the involvement of a Communications Assistant (CA) on the call. CPUC claims that, without disclosure, such relay service would constitute illegal wiretapping, eavesdropping, monitoring, recording, or transcribing as prohibited by state law.

By forcing the CA's disclosure of his/her presence, this provision blatantly violates FCC's regulations that the CA be a transparent conduit. FCC's regulations pre-empt state law that belies the CPUC's requirement. Concerned about the violation of their communication and civil rights, a coalition of deaf and hard of hearing consumer groups filed a Request for Intervention and Modification of the RFP, dated March 23, 2009, opposing this provision. (See attached document). To date, CPUC has not responded to this petition.

On November 2, 2009, CPUC filed supplementary comments¹ to FCC Docket No. 03-123 that included a letter² from the California Attorney General Office, dated September 1, 2009 on the subject of the Legality of Consent Requirement for Captioned Telephone Service. The California Attorney General's office concluded that the state law did not contravene the federal Americans with Disabilities Act, finding that "*While requiring notice that a CA is listening to a*

¹http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=7020244315

²http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=7020244324

communication may result in disclosure that a caller has a disability, such a disclosure does not implicate the caller's "access" to telephone services".

Through the actions of the CPUC and the AG's office, California is using state law to interfere with the protections provided by federal law. This application puts the state law in direct violation of the federal law. As eloquently summarized by the consumer coalition:

"The ADA mandates strict confidentiality and non-disclosure of the content of all Relay Services provided and prohibits Relay Services from recording any relayed calls. As such, the privacy interests of all parties to a relay call are promoted, protected, and ensured by the mandates of Title IV of the ADA. Further, a Relay Service CA is not considered a "third party" to a telephone call by users of these services, the Federal Communications Commission (FCC) or by the federal judiciary. Instead, a CA is intended to be, is considered, and should be treated as a "transparent conduit" to the greatest extent possible to achieve functional equivalency. The purpose and function of a CA is to convert an inaccessible mode of communication to an accessible mode of communication to enable two-way communication by the parties to a telephone call."

The provision remains in effect in the RFP. Relay service providers, who will be announced in February 2010, are expected to implement services in late 2010. Until this provision is removed, the state of California is violating the communications and civil rights of deaf and hard of hearing consumers.

I can be reached by email at [sfarina@norcalcenter.org](mailto:sfarinha@norcalcenter.org) or by video phone at (916) 993-3040.

We request the FCC's immediate intervention to stop this outrageous violation of our communication and civil rights.

Sincerely,

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