

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Misuse of Internet Protocol (IP) Captioned Telephone Service	)	CG Docket No. 13-24
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> is pleased to submit its comments in response to the Federal Communications Commission’s (Commission) above referenced Order and Notice of Proposed Rulemaking (*Notice*).<sup>2</sup> In its *Notice*, the Commission seeks comment on proposed rules relating to the provision and marketing of the Internet Protocol Captioned Telephone Service (IP CTS).

USTelecom and its members have a long history of supporting communications access for people with disabilities that reaches back to the very foundations of our industry. In fact, in addition to participating in the establishment and deployment of telecommunications relay services (TRS), many of our members provide specialized offerings to members of the disability community, including free directory assistance, or text- and data-only plans, so that people who

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> See, Order and Notice of Proposed Rulemaking, *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, FCC 13-13, 78 Fed. Reg. 8030 (February 5, 2013) (*Notice*).

are deaf or have hearing loss will not pay for voice communications services they are unable to use.<sup>3</sup>

Given our industry's long involvement with members of the disability community, USTelecom shares the Commission's stated concerns that "recent and dramatic spike" in reimbursement requests to the Interstate TRS fund are of such a "sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed."<sup>4</sup> Americans are more reliant than ever on communications devices and networks in their daily lives, particularly those in the disability community. USTelecom therefore supports permanent adoption of the Commission's narrowly tailored and reasonable interim steps designed to ensure the long term viability of the IP CTS for consumers in the disability community.

**I. TO PROTECT THE INTEGRITY OF THE TRS FUND, THE FCC SHOULD ENSURE THESE SERVICES ARE USED ONLY BY CONSUMERS FOR WHOM THEY WERE INTENDED.**

USTelecom is appreciative of the Commission's willingness to explore possible refinements to its IP CTS rules. There is ample evidence in the Commission's Order justifying the need for reforms to ensure the continued viability of the TRS fund.<sup>5</sup> Among other things, the IP CTS has experienced "unprecedented and unusually rapid growth" in recent months,<sup>6</sup> representing a "sudden and sharp departure from the trend of declining rates of growth in usage

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<sup>3</sup> See, Testimony of Walter B. McCormick, Jr., President and CEO, United States Telecom Association before the House Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet, *The Twenty-First Century Communications and Video Accessibility Act of 2009*, June 10, 2010.

<sup>4</sup> Notice, ¶1.

<sup>5</sup> *Id.*, ¶¶ 6 – 9.

<sup>6</sup> *Id.*, ¶ 7. Noting that in October 2012, alone, requested minutes exceeded the minutes budgeted for this service by the Fund Administrator by 38%, and as a consequence, the total requested payout also exceeded the budgeted amount by 38%, almost \$4 million.

of this service over three prior years.”<sup>7</sup> The growth in outlays for the IP CTS is placing all forms of TRS funding in jeopardy, and “absent Commission action, there could be insufficient funds available in this Fund year to meet the needs of the Fund, potentially triggering a violation of the Anti-Deficiency Act and otherwise threatening the availability of the service for consumers of this and other relay services supported by the Fund.”<sup>8</sup>

USTelecom therefore supports the Commission’s decision to adopt rules designed to protect the integrity of the TRS Fund. In its Order, the Commission adopted interim rules that require certification of users for IP CTS users, as well as a requirement that IP CTS-specific designed devices and software be set to default to the “captions off” position to prevent inadvertent use of the service. The proposed rules strike an appropriate balance between ensuring the continued availability of the IP CTS, and reasonable measures to protect the continued integrity of the TRS fund. For these reasons, each of the narrowly tailored and reasonable interim steps should be permanently adopted by the Commission.

**A. To Ensure the Integrity of the IP CTS, the Commission Should Implement its Certification Proposal.**

In the *Notice*, the Commission proposes to implement requirements that each IP CTS provider certifies the eligibility of their customers to use the service.<sup>9</sup> Specifically, the Commission proposes that each IP CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to IP CTS users, must: 1) register each new IP CTS user for service; 2) obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS services; and 3) obtain from the user a certification from an independent,

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<sup>7</sup> *Id.*, ¶ 7.

<sup>8</sup> *Id.*, ¶ 6.

<sup>9</sup> *Notice*, ¶¶ 42 – 50.

third party professional attesting to the same where the consumer accepts IP CTS equipment for less than \$75 from any source other than a governmental program.<sup>10</sup> The Commission also asks whether this certification requirement should be adopted for both new and existing users.<sup>11</sup>

USTelecom supports the certification proposal for both new and existing users. As the Commission notes in its Order adopting these same rules on an interim basis, certification is necessary since the marked increase in IP CTS minutes “not only threatens the long-term viability of this service for those who truly need it, but also, on a more immediate basis, it threatens to exhaust monies currently available in the Fund for this and other approved TRS within the next few months.”<sup>12</sup>

Given the substantial increase in compensation for the IP CTS, such an approach is not only in the public interest, but is also a common practice for ensuring the integrity of other federally funded benefits programs. As the Commission noted in its recent Lifeline order, certification mechanisms are consistent with enrollment requirements in nearly all federal benefits programs and have the potential to achieve substantial savings for federally funded benefits programs.<sup>13</sup>

Finally, given the wide range of acceptable third party certifying agents, the Commission’s adoption of a certification process for new and existing users should not place an

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<sup>10</sup> *Id.*, ¶ 42.

<sup>11</sup> *Id.*, ¶ 42.

<sup>12</sup> *Id.*, ¶ 19.

<sup>13</sup> Report and Order and Further Notice of Proposed Rulemaking, *Lifeline and Link Up Reform and Modernization, Lifeline Order*, 27 FCC Rcd 6656, ¶ 105 (2012); *see also*, Public Notice, *Wireline Competition Bureau Issues Final Report on Lifeline Program Savings Target*, DA 13-130 (released January 31, 2013) (stating that recent reforms to the Lifeline program have generated over \$213 million in savings to the Universal Service Fund in 2012.).

undue burden on legitimate IP CTS users.<sup>14</sup> Any minimal burdens associated with the Commission’s certification process are significantly outweighed by the substantial public interest in preventing the misuse of this service.

**B. Devices and software should be set to default to the “off” position to prevent inadvertent use of the service.**

To further ensure that the IP CTS is used only by the consumers for whom they were intended, the Commission also proposes to adopt a captions-off default setting for these services. USTelecom agrees with the Commission’s assessment, that such a default setting is a reasonable mechanism that can more greatly prevent the inadvertent use of the service.<sup>15</sup>

As the Commission notes, the IP CTS is “distinguishable from most other forms of TRS by its unusual ease and convenience of use.”<sup>16</sup> Unlike other forms of TRS service – such as video relay services providing American Sign Language interpreters – the IP CTS is provided in such a way that its automated nature is “invisible to both parties to the call.”<sup>17</sup> As a result, there is indeed a “greater risk, compared with other forms of TRS, that the IP CTS is being used (with consequent billing of the Fund for the minutes used) by individuals who do not need the service.”<sup>18</sup>

The proposed adoption of a captions-off default setting is narrowly tailored and reasonable solution for ensuring misuse of the IP CTS. Given that such a setting involves the mere pushing of a button, USTelecom agrees with the Commission that any nominal burden is

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<sup>14</sup> *Notice*, ¶ 23.

<sup>15</sup> *Id.*, ¶ 27.

<sup>16</sup> *Id.*, ¶ 19.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, ¶ 20.

“outweighed by the substantial public interest in preventing the misuse of this service.”<sup>19</sup> In addition, several states have already adopted such a requirement, and several of the disability community’s leading advocacy groups do not oppose its implementation.<sup>20</sup> Given the favorable implications that adoption of this proposal could have for the ongoing viability of the TRS fund, it should be adopted by the Commission.

## **II. QUESTIONABLE MARKETING PRACTICES AND MISUSE OF THESE SERVICES JEOPARDIZE THE SUSTAINABILITY OF THE FUND.**

USTelecom also supports the Commission’s decision to adopt interim rules prohibiting all referrals for rewards programs or other financial inducements to subscribe to the IP CTS.<sup>21</sup> Given its important public policy benefits, the Commission should make its interim proposal permanent.

There is ample evidence in the Order supporting the proposal to permanently prohibit referral fees.<sup>22</sup> Similar to the the proposed certification process, a ban on referral fees is simply another way for the Commission to ensure that only qualified users benefit from the provision of the IP CTS. The Order states that referral programs “may indirectly encourage consumers to sign up for [IP CTS] service, whether or not they actually need the service to communicate in a functionally equivalent manner.”<sup>23</sup>

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<sup>19</sup> *Notice*, ¶ 33.

<sup>20</sup> *Notice*, ¶ 28 (acknowledging that the Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., and the Deaf and Hard of Hearing Consumer Advocacy Network, do not oppose implementation of the captions-off proposal.

<sup>21</sup> *Id.*, ¶ 39.

<sup>22</sup> *Id.*, ¶¶ 13 – 18.

<sup>23</sup> *Id.*, ¶ 14.

USTelecom agrees that the widespread use of referral programs is having “a profound detrimental impact” on the long-term viability of the TRS fund. Financial inducements are inconsistent with the very purpose of the TRS program. Rather than ensuring that qualified subscribers gain access to the IP CTS, such referral programs instead diminish the availability of limited TRS resources by encouraging consumers who would not qualify for IP CTS to order the service just to gain the incentive benefit. Since some referral programs are designed to enlist subscribers to the IP CTS by raising money for disability-related programs, such referrals can have the perverse effect of diminishing funds available to the disability community through the TRS for such services.<sup>24</sup>

Similarly, USTelecom agrees with the Commission’s proposal to prohibit all provider programs that give away or loan equipment to potential or existing IP CTS users at no cost or at de minimis cost.<sup>25</sup> The Commission correctly notes that because such devices are modern, attractive, and often provide enhanced sound amplification, they are “likely to entice consumers with or without hearing loss to seek their acquisition.”<sup>26</sup> Much in the same way that referral programs lure users other than those in the disability community, the free distribution or loan of IP CTS-enabled devices may be contributing to heightened usage by the broader public.

### **III. CONCLUSION**

The Commission’s narrowly tailored proposals are reasonable measures that will ensure the long term viability of IP CTS services for consumers in the disability community. The

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<sup>24</sup> *Id.*, ¶¶ 14 – 15. The *Notice* discusses various instances where disability-related organizations make donations to charities contingent on a consumer’s receiving a certain providers’ IP CTS phone and service. The *Notice* cites one such advertisement stating that “urges users to ‘get a high-quality captioned phone for free while you raise money for [the Center for Hearing and Communication]!’”. *Notice*, ¶ 14, n. 39.

<sup>25</sup> *Id.*, ¶¶ 40 – 41.

<sup>26</sup> *Notice*, ¶ 40.

dramatic spike in reimbursement requests to the Interstate TRS fund constitutes a serious threat to the TRS fund. Permanent adoption of the Commission's proposals will ensure that the IP CTS continues to be available to the consumers for whom they were intended. USTelecom looks forward to working with both the Commission and the disability community to ensure the continued success of the IP CTS.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By:

A handwritten signature in black ink, appearing to read "Kevin Rupy", is written over a horizontal line.

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