

Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF
THE KENTUCKY PUBLIC SERVICE COMMISSION

David L. Armstrong, Chairman

James W. Gardner, Vice Chairman

Linda Breathitt, Commissioner

INTRODUCTION AND SUMMARY

On August 26, 2013, the Federal Communications Commission (“FCC”) released a Report and Order and Further Notice of Proposed Rulemaking (FCC 13-118) regarding Internet Protocol Captioned Telephone Service.¹ In the Further Notice of Proposed Rulemaking (“FNPRM”) the FCC is proposing to transfer responsibilities for administering and overseeing Internet Protocol Captioned Telephone Service to state telecommunications relay service (“TRS”) programs. Among other things, this would transfer the responsibility for registering and certifying the eligibility of new Internet Protocol Captioned Telephone Service users from providers to the state relay programs. The FCC also asks for comments on whether captioned telephone service such as CapTel in Kentucky and Internet Protocol Captioned Telephone Service should be mandated services to ensure all states will participate in the provision of these services. In addition, the FCC is proposing that states assume the costs of providing intrastate Internet Protocol Captioned Telephone Service.

On September 3, 2013, the FNPRM was published in the Federal Register announcing a comment due date of October 18, 2013, and a reply comment due date of November 18, 2013. The Kentucky Public Service Commission (“KPSC”) submits these comments in response to the FNPRM regarding Internet Protocol Captioned Telephone Service. The KPSC encourages the FCC to consider the following:

¹ Internet Protocol Captioned Telephone Service is an Internet-based form of telecommunications relay service that permits an individual who can speak, but who has difficulty hearing, to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With Internet Protocol Captioned Telephone Service, the connection carrying the captions between the relay service provider and the relay service user is via the Internet. With Kentucky’s CapTel service, the connection carrying the captions between the relay service provider and the relay service user is via the landline telephone network.

1. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of Internet Protocol Captioned Telephone Service;

2. If a decision is made to require states to assume intrastate Internet Protocol Captioned Telephone Service costs, the FCC must allow time for states to make legislative changes;

3. In order for the KPSC to assume responsibility for Internet Protocol Captioned Telephone Service, the FCC would have to mandate it as a TRS Service, and;

4. Mandating Internet Protocol Captioned Telephone Service as part of the TRS program may eliminate competition for these services in Kentucky since historically Kentucky has had only one relay service provider.

DISCUSSION

1. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of Internet Protocol Captioned Telephone Service; The KPSC believes the jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining any jurisdiction and associated finding of Internet Protocol Captioned Telephone Service. Since Internet Protocol Captioned Telephone Service calls are Internet-based services, the FCC must first decide whether IP-Enabled Services are “telecommunications services” or “information services” before any allocation of intrastate and interstate responsibilities are attempted. Until such time, the

KPSC believes Internet Protocol Captioned Telephone Service should continue to be compensated from the interstate TRS Fund.

In Docket No. WC 04-36 (IP-Enabled Services), the FCC has pending jurisdictional issues related to Internet-based services, including whether these services are “telecommunications services” or “information services” and how to determine whether calls are interstate or intrastate. If the Commission determines in its IP Enabled Services docket that IP calls are interstate information services subject to the exclusive jurisdiction of the FCC, then Internet Protocol Captioned Telephone Service calls should be recovered solely as interstate calls from the interstate TRS Fund. However, if the Commission finds that IP calls are subject to mixed jurisdiction, then the KPSC contends that the same jurisdictional ruling decided in the IP Enabled Services docket should be applied to Internet Protocol Captioned Telephone Service. The KPSC believes that the FCC must resolve the issues in its IP-Enabled Services proceeding prior to determining the jurisdiction and funding of Internet Protocol Captioned Telephone Service calls.

2. If a decision is made to require states to assume intrastate Internet Protocol Captioned Telephone Service costs, the FCC must allow time for states to make legislative changes. Section 225 of the Telecom Act directs the FCC to implement regulations for TRS cost recovery that provide for the “jurisdictional separation” of TRS costs; i.e., the costs caused by interstate TRS generally are to be recovered from all subscribers for interstate services, and the costs caused by the provision of intrastate TRS are to be recovered from each intrastate jurisdiction.

Presently, Internet Protocol Captioned Telephone Service is funded through the interstate TRS fund on a national level. A primary underlying reason for the FCC's decision to have the interstate TRS fund reimburse providers for Internet Protocol Captioned Telephone Service calls was the difficulty in ascertaining the location of calls made using IP transmissions. The FCC now opines that Internet Protocol Captioned Telephone Service providers are able to ascertain the origination and destination of Internet Protocol Captioned Telephone Service calls in a manner that would allow for compensation for these calls to be billed to the states. The FCC believes that it should reconsider its prior decision to treat Internet Protocol Captioned Telephone Service as an entirely interstate service and propose instead that this service be treated like traditional captioned telephone service. However, Internet Protocol Captioned Telephone Service, unlike traditional captioned telephone service, is provided in part using a broadband internet connection. Previously, the FCC has determined that regardless of the termination, telephone calls using broadband internet connections would be solely under interstate jurisdiction and not subject to any intrastate jurisdiction. If state relay programs would be required to compensate providers for intrastate Internet Protocol Captioned Telephone Service calls this would be contrary to previous holdings of the FCC.

Kentucky's ability to provide Internet Protocol Captioned Telephone Service under its current state statutes could be adversely impacted if the FCC requires the states to fund the intrastate portion of Internet Protocol Captioned Telephone Service. Presently, KRS 278.5461 of the Kentucky Statutes, states:

"Broadband" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per second in at least one direction; or any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services. **Nothing in this definition shall be construed to include any intrastate service,** other than digital subscriber line service, tariffed at the commission as of July 15, 2004. (emphasis added)

The Kentucky statute provides that Broadband services are not intrastate services and therefore not subject to jurisdiction of the KPSC. If the FCC decides to require states to assume intrastate Internet Protocol Captioned Telephone Service costs, the Kentucky Legislature may have to consider a change to the statute as to how the Kentucky Relay program is provided. To that end, the FCC should allow a minimum of five years for states to make possible legislative changes and to accept the possibility that the state legislature may not make the necessary changes.

3. In order for the KPSC to assume responsibility for Internet Protocol Captioned Telephone Service, the FCC would have to mandate it as a TRS Service. Mandating Captioned Telephone Service is necessary prior to shifting jurisdictional responsibility for the Internet Protocol Captioned Telephone Service to the States. The FCC states in the order at footnote 419 that every state and the District of Columbia offer Captioned Telephone Service.² It is also upon information and belief that all Internet Protocol Captioned Telephone Service providers likewise provide service in all fifty states and the District of Columbia. Without being mandated to, the providers have expanded services nationwide. However a mandate would be required to shift jurisdictional responsibility to the states. The KPSC lacks legislative authority to

² *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* CG Docket No. 13-24 and 03-123, Order FCC 13-118, Released August 26, 2013.

assume responsibility of Internet Protocol Captioned Telephone Service because it is provided in part over the internet. It would likely take up to 5 years to change state law to allow the KPSC to assume jurisdiction over services provided over the internet. In addition, prior to mandating Internet Protocol Captioned Telephone Service, the FCC would have to mandate that equipment provided to Internet Protocol Captioned Telephone Service users be interoperable. Without standard equipment switching providers or using different services is not possible without obtaining the necessary proprietary equipment. Because none of the Internet Protocol Captioned Telephone Services are interoperable it would take the industry a number of years to develop and agree on standards that would make equipment interoperable.

4. Mandating Internet Protocol Captioned Telephone Service as part of the TRS program may eliminate competition for these services in Kentucky because, historically, Kentucky has only one relay service provider. Competition in Kentucky between providers of Internet Protocol Captioned Telephone Service may be diminished if the FCC mandates that Internet Protocol Captioned Telephone Service becomes a required service of TRS in order to meet the FCC state certification requirements. KRS 278.548 of the Kentucky Statutes, provides:

The commission shall establish a program to make telecommunications relay services available not later than October 1, 1991, and shall make interstate telecommunications relay services available no later than July 1, 1992. The telecommunications relay service, whether intrastate or interstate, shall be operated seven (7) days a week for twenty-four (24) hours per day for all deaf, hard-of-hearing, or speech-impaired telephone subscribers within the Commonwealth. In order to determine the most cost effective method of providing telecommunications relay services that will meet the requirements of the deaf, hard of hearing, and speech-impaired, the commission shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of the deaf, hard-of-hearing persons, and

speech-impaired persons and the organizations serving them. The commission may assist the Commission on the Deaf and Hard of Hearing in the TDD distribution program established pursuant to KRS 163.525.

Consumers currently have a choice of several providers of Internet Protocol Captioned Telephone Service in Kentucky because Internet Protocol Captioned Telephone Service is regulated by the FCC. Should the FCC mandate that Internet Protocol Captioned Telephone Service become part of a state's TRS program, Kentucky may have only one contracted provider pursuant to its current statute. In Order FCC 00-56, the FCC affirmed its belief that competition among TRS providers is preferred, stating:

We agree with commenters that competitive forces are generally the preferred way to improve service quality and bring new services to customers. Although using a single vendor may not automatically lead to poor service quality, we believe that giving consumers a choice among different TRS might well providers might well improve the quality of TRS service in different states.

In the 2007 Internet Protocol Captioned Telephone Service Declaratory Ruling³, the FCC concluded, on an interim basis, that all Internet Protocol Captioned Telephone Service calls would be compensated from the interstate TRS Fund. The FCC explained that this approach was consistent with the treatment of VRS and IP Relay calls, and would provide an incentive for competition among multiple providers to offer this service on a nationwide basis in a manner that would “enhance consumer choice, service quality and available features”. TRS in Kentucky historically has had only one provider because this was determined to be the most cost effective manner to provide service. Inclusion of Internet Protocol Captioned Telephone Service in Kentucky's TRS contract

³ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for individuals with Hearing and Speech Disabilities Internet-based Captioned Telephone Service* CG Docket No 03-123 FCC 06-182, released January 11, 2007.

would provide a funding mechanism for the intrastate portion of the service for no other provider except the one under contract with the KPSC. To this end, the KPSC urges the FCC not to include Internet Protocol Captioned Telephone Service as a mandatory service of TRS.

CONCLUSION

The KPSC opposes the shift of jurisdictional responsibility of Internet Protocol Captioned Telephone Service to the states for the reasons stated herein. The KPSC encourages the FCC to consider the proposed recommendations noted in these comments.

Respectfully submitted,

/s/

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