

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

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

CG Docket No. 03-123

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

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The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these comments in response to the *Further Notice of Proposed Rulemaking, Order and Notice of Inquiry (FNPRM, Order, NOI)*, which the Federal Communications Commission (FCC or Commission) released on August 26, 2013.<sup>1</sup> In the *Report and Order*, the FCC adopted regulations regarding regulation of Internet Protocol Captioned Telephone Service (IP CTS), and in the *FNPRM*, the Commission seeks comment on additional issues.

The CPUC comments here on many, but not all, of the issues raised in the *FNPRM*. Silence on any issue should not be construed either as support or opposition to the FCC's proposal(s).

## **I. MIGRATION TO STATE TRS PROGRAMS**

### **A. FCC Proposal**

The FCC seeks comment on “whether it should transfer the responsibilities for administering and overseeing IP CTS to State TRS programs.”<sup>2</sup> The Commission cites advantages in this proposal, noting that states are “physically closer to the residents using this service,” and that state programs “in large part, have already been undertaking the role of certifying consumers for the distribution of TRS equipment.”<sup>3</sup> Accordingly, the

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<sup>1</sup> *Report and Order and Further Notice of Proposed Rulemaking 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, (Report and Order, FNPRM)*; CG Docket No. 13-24; CG Docket No. 03-123 (FCC 13-118), rel: August 26, 2013.

<sup>2</sup> *FNPRM*, ¶ 131.

<sup>3</sup> *Id.*, ¶ 132

FCC reasons, it makes sense for the states “to take on the role of ensuring the provision of IP CTS only to individuals who are eligible to use it, as well [as] administering this service’s operations.”<sup>4</sup>

The CPUC opposes the transfer of the IP CTS program to the states *unless* the FCC ensures that states can adequately fund the program and that states are afforded sufficient time to transition the program in a manner that does not discommode program users. Specifically, California urges the FCC to ensure that any shift of responsibility for IP CTS includes funding that is made available for both the administration of the program and for the intrastate calls.

At this point, it is not clear that operators of the federal program are able to separate the interstate and intrastate portions of any particular call. Indeed, in the *FNPRM*, the FCC asks if it would be possible to separate the inter- and intrastate portions of a call.<sup>5</sup> Yet, the answer to this inquiry is critical to the states, if the Commission expects them to shoulder the financial burden of providing IP CTS. In this vein, the states also would need access to information about call volumes, the number of people using IP CTS, and usage forecasts. To date, this information has not been made available to the states, thus hindering their ability even to “guesstimate” the fiscal impact on their existing relay service programs. For example, the model California uses for authorizing

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, ¶ 136. “Insofar as calls associated with IP CTS are often mad using the PSTN, we believe that IP CTS providers are able to ascertain the origination and destination of IP CTS calls in a manner that would allow for compensation for these calls to be billed to the state or the Fund, and seek comment on whether this assumption is accurate.”

users of captioned telephone service is quite different from the one that the FCC is proposing in the *FNPRM*. If the Commission were to adopt the rules it has proposed, the result would be a major shift in how the CPUC’s relay service program operates, with likely commensurate financial effects.

## **B. Scope of State Authority**

Consistent with California’s concerns about the potential financial impact, the CPUC recommends that the FCC preserve the ability of the states to implement one or more alternative registration processes that would include protections against waste, fraud, and abuse. In this way, the Commission would be establishing a benchmark for states with more limited resources, but would allow states, such as California, with an extensive, multi-vendor TRS program to tailor the registration process to more closely align with existing state processes. This approach also would track the FCC’s view that states “are physically closer to the residents using this service” and “have already been undertaking the role of certifying consumers” who receive state-provided equipment to participate in existing CTS programs.<sup>6</sup>

Further, states have varying degrees of authority to regulate IP-based services. For example, California Public Utilities (PU) Code § 710, enacted in 2012, “prohibits” the CPUC from exercising “regulatory jurisdiction or control over Voice Over Internet Protocol [VoIP] and Internet Protocol [IP] enabled services” subject to certain exceptions

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<sup>6</sup> *FNPRM*, ¶ 132.

set forth in that section or elsewhere in state statute, or” as expressly delegated by federal law.” From the CPUC’s perspective, the “express delegation” must be both explicit and very clear. The CPUC notes the position of many service providers that IP-enabled services are “information” services, over which states have no jurisdiction.<sup>7</sup> And, the FCC has not classified IP-enabled services as telecommunications services; were they so classified, states would have clear authority. In the absence of clarity, the states face endless disputes with service providers over a state commission’s ability to compel service providers to comply with state rules intended to protect consumers using IP CTS, and to protect the program against waste, fraud, and abuse.

Accordingly, the FCC must provide the states with guidance as to how they may administer provision of a service over which they have uncertain authority. To that end, and to the extent that it may under federal law, the FCC should delegate authority to the states to oversee the providers of IP CTS. This is especially critical if the FCC assumes that the states will be committing their public financial resources to fund provision of IP CTS.

Finally, should the FCC move forward with the transfer of IP CTS administration to the states, the CPUC urges the FCC to allow the states some flexibility in administering their programs. As is the case today with TRS, California includes in its CRS program elements that exceed federal requirements. The CPUC would want the

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<sup>7</sup> See e-mail from AT&T to the CPUC’s Consumer Affairs Branch, responding to a CPUC data request seeking the number of VoIP customers AT&T serves. A copy of the e-mail is attached hereto as Appendix A.

same flexibility in overseeing IP CTS. And, that flexibility should include allowing states enforcement authority so as to ensure that eligible consumers are able to access the service, the service is provided consistent with FCC and state rules, and that waste, fraud, and abuse can be prevented and, ultimately, eliminated.

### **C. Need for a Mandate and Timing of Transfer**

The FCC asks “[i]f a mandate for IP CTS were adopted, how quickly would state programs be capable of taking on the responsibilities associated with managing IP CTS operations and funding IP CTS?”<sup>8</sup> California notes, here, that the *FNPRM* is posing two fundamental questions – 1) whether the program should be transferred to the states, and 2) whether provision of IP CTS should be mandated. Since California already offers a TRS program, the CPUC does not take a position here on whether the FCC should mandate provision of IP CTS. We do, however, reserve the right to take a position on that question at a later time. Here, California speaks only to the practical implications of a transfer of administration, with or without a mandate, given that California offers CTS to consumers today.

The FCC specifically asks the states “to provide recommendations for the time period necessary for this transfer to take place, and to identify specific factors and constraints that support their recommendations”.<sup>9</sup> Without knowing the details of funding sources, registration requirements, and other possible FCC rules pertaining to

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<sup>8</sup> *Id.*, ¶ 140.

<sup>9</sup> *Id.*, ¶ 134.

how the program would operate, the CPUC information about the process we would employ to implement the potential transfer and our best estimate on overall timing.

Broadly speaking, we anticipate that we would undertake a five-step process, likely in the following sequence (although some stages might overlap):

- 1) Evaluate what the program would look like, how to implement it, and associated costs;
- 2) Propose potentially necessary legislative changes;
- 3) Propose any changes required for the state budget cycle;
- 4) Propose the procurement and the contracting for service providers; and
- 5) Transition the program elements and migrate users.

Each of these stages could take 12-18 months; we describe the steps in more detail below.

The California Relay Service (CRS), along with its captioned telephone service (CTS) component, is funded by a surcharge assessed by service providers on all intrastate services to which customers subscribe.<sup>10</sup> Though the CPUC initially levied the surcharge under its own constitutional authority, that authority is now codified in PU Code § 2881(g), which specifies that the surcharge amount is “not [to] exceed one-half of 1 percent.” In addition, PU Code § 2881(k) requires the CPUC to “annually review the surcharge level and the balances in the funds established” and within the limit set by

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<sup>10</sup> In fact, California’s entire Deaf and Disabled Telecommunications Program (DDTP) is funded by the surcharge codified in PU Code § 2881(g).

statute, the Commission “may make ... necessary adjustment to the surcharge to ensure that the programs supported thereby are adequately funded ...”

At present, the annual budget for the CPUC’s Deaf and Disabled Telecommunications Program (DDTP) is funded within the one-half of one percent cap the state Legislature has mandated. Assuming the FCC, as it proposes, were to transfer administration for IP CTS to the states, and in the worst case scenario, California must then absorb all intrastate costs associated with IP CTS, the additional funding amount to support IP CTS currently is unknown. Should the amount the CPUC must budget for the DDTP, including a new IP CTS component, appear to exceed the one-half of one percent statutory cap, the CPUC would need to seek a legislative change in order to raise the surcharge level above that cap. Obtaining that legislative change would require a minimum of one year, and more likely, 18 months.

In addition, today California’s CRS program is provided on a multi-vendor basis, through carrier-specific contracts. The California public contracting process demands commitment of significant personnel resources, and is complex, multi-faceted, and time-consuming. Given the need to develop requests for proposal, to review those proposals and select successful bidder(s), to negotiate contracts and then obtain contract approval from the relevant California fiscal control agencies also will require one year to 18 months.

Further, the CPUC is concerned that the transition of IP CTS to the states may make it impossible for the CPUC to continue to provide relay service on a multi-vendor

basis. California may be the only state in the country that currently offers consumers more than one choice for relay service, and has done so since 1997. In California, the constituent base has advocated for choice among service providers. The consumer response to multiple vendors for CRS has been very favorable. The CPUC supports rules governing the provision of IP CTS and/or the transfer of administration to the states that would provide the states the flexibility to offer IP CTS on a multi-vendor basis.

Finally, given the FCC's new rules, adopted in the *Order*, and the intense focus on waste, fraud, and abuse, the timing of the potential transfer of responsibility could be better accomplished after unauthorized users have been removed, and a baseline of users and their associated calling patterns have been established. At that point, the states would be better positioned to determine how best to transfer the program.

## **II. IMPLEMENTATION ISSUES**

### **A. Mandatory Minimum Requirements**

The FCC seeks comment on “the need for and propriety of imposing certain mandatory minimum requirements for IP CTS,” for example, for the speed of captioning or error rate.<sup>11</sup> The CPUC does not object to federal standards for performance requirements; however, we urge the FCC to allow for states to set higher standards.

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<sup>11</sup> *Id.*, ¶ 141.

California has commented on this issue previously, noting that relay providers generally do not provide service above the minimum standard.<sup>12</sup> The CPUC's specific TRS program needs exceed Federal standards and may not mirror the needs of other states. As an example, California requires provision of Spanish-language service, including parity of relay services for a Spanish-speaking population and the ability for service providers to report anomalies in the delivery of Spanish-speaking services. For instance, to ensure that anomalies in delivery will not be lost in the averaged results, it is necessary that the ability Spanish language service levels can be audited independently from the total English speaking service levels. The national standard for service level reporting blends the service data, masking potential service problems for Spanish speakers.

Another example is access to emergency services. An essential aspect of California's response to disasters in this state is reliable access to 9-1-1 service by all people in California, including those who require communications assistance and people who do not speak English. Faced with the realities of wildfires, earthquakes, tsunamis, major storms and other disasters, first responders must be able to communicate with the public.

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<sup>12</sup> CPUC Reply Comments, *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), filed August 10, 2009, p. 7.

Another example of California's particular needs is the right to privacy, set forth in the California Constitution, that communications assistants must preserve when they handle relay telephone calls.

**B. Centralized Registration and Verification of IP CTS Users**

The FCC asks whether "... the centralized registration and verification processes that we recently adopted for VRS [video relay service] should also apply to IP CTS."<sup>13</sup> If the program remains under federal jurisdiction, then the CPUC has no opinion on the implementation details.

If, however, the FCC mandates that the states assume responsibility for IP CTS, then California recommends that the states determine registration and verification processes.<sup>14</sup> In California, when an eligible consumer applies for landline CTS, the DDTP requires verification of disability before lending a device to a user.<sup>15</sup> For captioning telephone service costs to be reimbursed, the CPUC limits operation of landline captioned telephone devices to California. In addition, the CPUC's administrator assesses landline CTS users for appropriateness of other equipment (e.g. amplified phones, etc.), potentially in lieu of or in addition to landline CTS. If the FCC

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<sup>13</sup> *FNPRM* ¶ 128. In its *VRS Structural Reform Order*, the FCC directed the creation of a user registration database (TRS-URD) and implementation of centralized eligibility verification requirements to ensure that VRS registration is limited to those who have a hearing or speech disability.

<sup>14</sup> This concern harkens back to the issue of how much authority a state commission will have over the providers of IP CTS. Without requisite authority, a state IP CTS program could be limited to only what the FCC authorizes; it could be jurisdictionally impossible to add elements or features, even in the face of strong consumer demand.

<sup>15</sup> The Deaf and Disabled Telecommunications Program consists of the California Relay Service (CRS) and the California Telephone Access Program (CTAP) which lends equipment to eligible subscribers.

adopts a centralized database (TRS-URD) which would include IP CTS, then whether California would retain this verification and registration system, or adopt a different system, would depend on several factors: the historical data of number of users and volume of calls, usage forecasts for all programs, and evaluations of existing and potential future program contracts. The data to be gleaned would provide useful indicators to enable the CPUC to determine how best to continue California's assistive communications programs for deaf and disabled communities.

Should the FCC transfer administration of IP CTS to the states, California and other states would need to know the extent to which states would retain responsibility for current IP CTS users and equipment. Specifically, the states would need to know how to dispose of, register, redeploy, or otherwise repurpose existing equipment from the federal program. Beginning a new program and transferring an existing one are very different propositions. For instance, if users already have equipment under the federal program, how would California verify their intended usage under the California program? What if the current IP CTS equipment were not interoperable with the chosen California contractor (s)? The CPUC would need time to work with its advisory boards, user community, contracting agencies and equipment and service providers to determine program rules.

If the FCC orders the transfer of IP CTS programs to the states, then California recommends that the FCC clean and verify its database of users so that the CPUC could more easily determine the authorized number of users in California. After determining

the number of users, California would request the calling patterns of those users, including time of day, holding time, and call origination and termination information. Without this information, it would not be possible for California to evaluate how to proceed to contracting with potential service suppliers.

### **C. Low-Income Consumers**

In the *Report and Order*, the FCC adopted a rule prohibiting TRS providers from receiving compensation from the federal Fund for any IP CTS minutes of use generated by IP CTS equipment that they distribute to consumers, directly or indirectly, for free or for less than \$75, except for equipment provided through an equipment distribution program administered by a state or local government.<sup>16</sup> The FCC asks if there should be a “low-income exception” to this prohibition.<sup>17</sup>

The CPUC supports the exception for equipment distribution programs administered by a state or local government, and the proposed FCC low-income exception to the \$75 equipment fee.

### **D. Default Caption OFF Requirement**

For handling of 9-1-1 emergency calls, the FCC seeks comment on whether “it is technically feasible for all IP CTS equipment to be defaulted to ‘captions turned on’ for 911 emergency calls, and if so, whether we should require IP CTS providers to so

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<sup>16</sup>*Report and Order*, ¶ 35.

<sup>17</sup> *FNPRM.*, ¶ 144.

configure their equipment.”<sup>18</sup> The CPUC supports this requirement if it is “readily achievable” by equipment manufacturers offering equipment in California.<sup>19</sup> The term “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, the FCC should consider the following factors:

- (A) The nature and cost of the action needed under this chapter;
- (B) The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
- (C) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (D) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity

**E. Website, Advertising, and Educational Information Notification**

The FCC seeks comment on expanding the messaging on program materials to read “FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING IP CAPTIONED TELEPHONES WITH THE CAPTIONS TURNED ON.”<sup>20</sup> The CPUC supports such messaging as a means to restrict

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<sup>18</sup> *Id.*, ¶ 146.

<sup>19</sup> See 47 USC § 255 (a) (2). The term “readily achievable” has the meaning given to it by section 12181 (9) of title 42.

<sup>20</sup> *FNPRM*, ¶ 152.

unlawful use of IP CTS and contain program costs. If the FCC mandates messaging on existing equipment (e.g. the distribution of stickers or other notification), then the CPUC would prefer to select appropriate language consistent with our own program.

**F. General Prohibition of Providing Service to Users Who Do Not Need the Service**

The FCC seeks comment on whether to be more proactive in preventing fraudulent use of CTS. Specifically, the Commission asks whether it

should adopt a general prohibition on IP CTS providers from providing service to consumers who do not genuinely need the service, that is, consumers who do not need an assistive technology to understand a telephone conversation or consumers who can understand a telephone conversation utilizing an assistive technology, such as an amplified phone, that does not entail the expenditure of money from the Interstate TRS Fund.<sup>21</sup>

The CPUC supports efforts to control waste, fraud and abuse, and understands the balance between providing service to people who need the service and those who would abuse the system. Should the FCC mandate transfer of IP CTS administration to the states, the CPUC supports such a prohibition on the service providers as a means to restrict unlawful use of IP CTS, and to contain program costs.

**III. CONCLUSION**

All of the timing and implementation concerns set forth in these comments lead the CPUC to oppose the transfer of administration to the states, unless the FCC establishes funding, processes, and timelines that would defer to the states' needs. The

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<sup>21</sup> *Id.*, ¶ 153.

CPUC reserves the right to comment at a later time on whether the FCC should mandate provision of IP CTS.

Respectfully submitted,  
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