

MEMORANDUM

Date : July 8, 2016

To : The Commission
(Meeting of July 14, 2016)

From : Helen M. Mickiewicz
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Subject: FCC's Request for Comments on Transitioning from TTYs to Real-Time Text (RTT) Technology

RECOMMENDATION: The CPUC should file comments in response to the Federal Communications Commission's (FCC) *Notice of Proposed Rulemaking (NPRM)* on Transition from TTY to Real-Time Text Technology, released on April 29, 2016. In its *NPRM*, the FCC proposes to "update its rules to facilitate a transition from text telephone (TTY) to a reliable and interoperable means of providing real-time (RTT) communication over Internet Protocol (IP) enabled network and services."¹ More specifically, the FCC is proposing to replace current rules affecting obligations of wireless service providers and equipment manufacturers with rules that would define the obligations of these same entities to support RTT over IP-based wireless voice services.

CPUC Staff (CD and Legal) proposes that the CPUC provide information to the FCC about the provision of TTY services and equipment in California as part of the CPUC's Deaf and Disabled Telecommunications Program (DDTP). Staff also proposes to identify and address jurisdictional issues that are implicated by the FCC's proposal. The FCC's specific request for comment and staff's proposed response are detailed below.

¹ *Notice of Proposed Rulemaking, In the Matter of Transition from TTY to real-Time text Technology; Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology (NPRM)*, CG Docket No. 16-145; GN Docket No. 15-178, Released April 29, 2016, ¶ 1.

Comments are due July 11, 2016, but the CPUC can submit late-filed comments after the Commission has approved staff's recommendations. Reply comments are due July 25, 2016.

This *NPRM* largely addresses issues pertaining to wireless providers and equipment. The CPUC's program is wireline based. However, some of the FCC's proposals for wireless services and equipment could have implications for the CPUC because the DDTP equipment program now includes wireless phones. Accordingly, staff would like authority also to address in reply comments issues pertaining to wireless service and equipment that are of importance to the CPUC, consistent with existing CPUC policies.

BACKGROUND: As part of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),² Congress explicitly asked the FCC's Emergency Access Advisory Committee (EAAC) to consider "the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficient technologies and methods to enable access to emergency services by individuals with disabilities."³ The EAAC recommended against "imposing any deadline for phasing out TTY at the PSAPs until the analog phone system (PSTN [Public Switched Telephone Network]) no longer exists, either as the backbone or as peripheral analog legs" unless relevant facilities are able to convert to RTT.⁴

Since receiving the EAAC recommendation, however, the FCC's Disability Advisory Committee (DAC) has requested that the FCC "consider a TTY sunset period when declining wireline TTY minutes reaches a certain threshold to be determined, while addressing the needs of people who are deaf-blind, speech disabled, and have cognitive impairments as well as for relay services and rural access."⁵

In light of these developments, the FCC has opened this *NPRM*, in which the FCC acknowledges that it has "long sought to ensure that the communications needs of people with disabilities are addressed" in its telecommunications policies.⁶ TTY technology enables consumers to type back and forth to other users of the same technology, and the FCC has adopted certain rules requiring support for TTY use and for manufacturers of the devices used to provide the service. These requirements pertain to Commercial Mobile Radio Services (CMRS – also known simply as "wireless providers"), "common

² *NPRM*, ¶ 65; See 47 U.S.C. 615c(c)(6)

³ *Id.*

⁴ *Id.*

⁵ *NPRM*, ¶ 65, citing to DAC's recommendation #1 from Oct. 2015.

⁶ *NPRM*, ¶ 4.

carriers,”⁷ and VoIP providers⁸ to the extent they provide Telecommunications Relay Service (TRS) and access to 711, and to other providers as well as to equipment manufacturers for purposes of establishing and maintaining signal compatibility.⁹ It is the rules pertaining to CMRS, or wireless, providers that the FCC proposes to update in this *NPRM*. The FCC also asks about the possibility of ultimately abandoning analog-based relay service.

The FCC notes that “TTY technology was developed more than fifty years ago as a means of enabling people who are deaf, hard of hearing, and speech disabled to use the legacy PSTN.”¹⁰ In light of the FCC’s National Broadband Plan, adopted in 2010, and its on-going proceeding devoted to managing the transition to an all-IP network, the FCC acknowledges that “technical and functional limitations of TTY technology have resulted in a steady decline in its use in favor of other forms of text communication that offer greater ease of use, improved features, and practicability.¹¹ Accordingly, the FCC is exploring “RTT or an alternative text technology as a replacement for TTY technology for newly deployed IP-based voice devices and services.”¹²

DISCUSSION AND RECOMMENDATIONS: Staff recommends that the CPUC file comments on the following specific issue raised in the *NPRM*.

What events or measures should trigger a sunset of the residual obligation for wireless networks to be interoperable with TTY technology?

California provides TTY service as part of the DDTP, and has done so since the program was created in the late 1980’s. For the past year, an average of 14,000 TTY calls has been completed every month. The program has seen the number of TTY calls decline over the past decade, which is consistent with the FCC’s experience demonstrating that TTY use generally is declining nationwide.

Currently, analog based TTY legacy equipment, such as that the DDTP provides to eligible program participants, is designed to work on legacy circuit-switched systems. TTYs do work to some degree on current IP based systems, but do so imperfectly. Often, users experience garbling, dropped calls, missed characters, and, depending on the service provider, connection problems.

⁷ Under federal law, a common carrier is a provider of telecommunications services. *See* 47 USC 153(42).

⁸ To date, the FCC has declined to classify VoIP providers as common carriers.

⁹ *NPRM*, ¶ 5.

¹⁰ *Id.*, ¶ 11.

¹¹ *Id.*, ¶ 12.

¹² *Id.*, ¶ 13.

Because the DDTP's relay service is analog-based, and its equipment is imperfectly compatible with IP-based service, existing users of the DDTP's TTY equipment will be significantly degraded in the event of an abrupt shift to real-time text technology. Accordingly, staff recommends that RTT be interoperable with analog-based TTYs.

Further, because the number of existing TTY customers participating in the DDTP has been declining, it seems unnecessary to set a "sunset" date for TTYs. The users who would be affected are those who have used TTYs the longest, and are likely the least equipped to adapt to RTT. Over time, the number of users will diminish through attrition. Accordingly, staff recommends that the RTT/TTY compatibility requirement not sunset as long as the analog telephone system is in place.

Jurisdictional Issues

A transition to RTT poses significant jurisdictional questions for the CPUC. Because the existing TTY program is analog-based, it falls squarely within the CPUC's jurisdiction over services that are not IP based or that are purely intrastate. Public Utilities Code 710, however, mandates that the CPUC "shall not exercise regulatory jurisdiction or control over Internet Protocol enabled services."¹³ Section 710 contains certain exceptions, none of which apply to California's public programs, including the DDTP. The statute does provide for an exception for authority that is "required or expressly delegated by federal law."¹⁴

In addition, it is unclear how the FCC proposes to treat RTT. If the FCC determines that RTT is a purely interstate service, the CPUC would be barred from regulating it because the FCC has exclusive jurisdiction over interstate telecommunications services.¹⁵ If the CPUC is barred from regulating RTT, then the DDTP's relay service program, as it is offered today, likely would have to be terminated at some point in the future.

Staff proposes to identify these issues in comments on the *NPRM*, and recommend that the FCC consider 1) not classifying RTT as a purely interstate service so that state relay programs can continue,¹⁶ or 2) if classifying RTT as purely interstate, the FCC explicitly delegate authority to states to oversee provision of RTT at the state level, so as to enable state commissions to maintain an interface between consumers and service providers.

¹³ PU Code § 710(a).

¹⁴ *Id.*

¹⁵ This raises yet another question, whether the FCC would classify RTT as a "telecommunications" or an "information" service. We do not address that question here.

¹⁶ This approach might also require an amendment to PU Code § 710.