

MEMORANDUM

Date: September 6, 2018

To: The Commission
(Meeting of September 13, 2018)

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Subject: FCC's Request for Comments on Funding, State Administration, and Assessment of IP-Captioned Telephone Service

RECOMMENDATION: The CPUC should file comments in response to the *Further Notice of Proposed Rulemaking (FNPRM)* released on June 8, 2018 by the Federal Communications Commission (FCC) regarding regulation of Internet Protocol Captioned Telephone Service (IP CTS) – a form of telephone relay service for the hearing disabled.¹ The FCC is seeking comment on a proposal to transfer management and costs of the intrastate portion of IP CTS which it currently manages to the states. The long term goal of this *FNPRM* is to effect national changes to the current program that would be acceptable to states.

In the *FNPRM*, among other issues, the FCC seeks comment on whether, and if so, the extent to which funding, administration, and user eligibility determination should become the responsibility of the states. In previous comments submitted to the FCC in response to an *FNPRM* issued in August 2013, the CPUC addressed many of the same issues

¹ These comments are in response to the Report and Order, Declaratory Ruling, *Further Notice of Proposed Rulemaking, and Notice of Inquiry* (R.O., D.R., *NPRM, Order, NOI*), which the Federal Communications Commission (FCC or Commission) released on June 8, 2018. 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.

presented here² The CPUC has not changed its positions from those advocated five years ago. Staff suggests continued opposition to transferring the program to the states unless the FCC provides detailed information regarding potential state impacts, requisite funding, and sufficient transition time which would be necessary to effect statutory changes in California.

Staff recommends that the Commission file supplemental inputs to the FCC *FNPRM* which could provide greater understanding of issues when and if the IP CTS program is transferred to the states. This additional information would specifically address (1) the restructuring of IP CTS funding, (2) the State role in the administration of intrastate funding and provider certification and (3) the State's ability to properly assess client needs. Comments are due September 17, 2018.

BACKGROUND: IP CTS is a form of telecommunications relay service that allows people who can speak, but have a hearing difficulty, to communicate directly with another party on a telephone call, as well as to use an IP-enabled device to simultaneously listen to the other party and read the captions of what the other party is saying. Essentially, IP CTS combines traditional TRS with IP Relay service. According to the FCC, IP-CTS employs a connection via the PSTN or VoIP for the voice part of the call and a broadband connection for the text part.³

In the *FNPRM*, the FCC seeks comment on several topics related to the funding, administrative control, and rules for implementing the IP CTS program. Significantly, the FCC seeks comment on the “further changes to the rules and compensation structure for the IP CTS program to enable us to more efficiently and efficiently administer and support this service and prevent waste, fraud, and abuse”⁴ as the FCC continues to explore “whether certified TRS programs should be allowed or required to take a more active role in the administration of IP CTS”.⁵

Today, the California Relay Service (CRS), as part of the CPUC's Deaf and Disabled Telecommunications Program (DDTP), consists of two components:⁶ 1) CRS, which

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*, Further Notice of Proposed Rulemaking, CGC Docket No. 113-24, CG Docket No. 03-123; rel. August. 26, 2013 (*FNPRM*). See California Comments, CG Docket Nos. 13-24 and 03-123, at 3-4 (filed Nov 4, 2013 *FNPRM* Comments).

³ <http://www.fcc.gov/guides/telecommunications-relay-service-trs>. Visited Sept. 9, 2013.

⁴ *FNPRM* ¶ 67.

⁵ *FNPRM* ¶ 111.

⁶ The DDTP and programs were set up under the following legislative directions: Senate Bill 597 (1979) DDTP, Senate Bill 244 (1983) California Relay Service, Senate Bill 60 (1985) Supplemental Telecommunications Devices for the Disabled.

provides TTY users with 24-hour contact with any other telephone user, and 2) the California Telephone Access Program (CTAP), which lends equipment to eligible consumers. Landline captioned telephone service is a part of the CRS program.

The CPUC requires that users of the CRS program register with the DDTP and requires verification of a disability before a CTAP phone is provided. However, there is no income threshold consumers must meet to receive service. California does not have a program for IP relay service, IP captioned telephone service, or video relay service.

In 2004, the FCC proposed moving two programs -- IP Relay Service and Video Relay Service (VRS) -- to the states. In comments opposing that proposal, the CPUC stated that it was not possible to separate interstate from intrastate costs. Further, the CPUC argued, the fund for the California DDTP program could not support additional services.⁷

In later comments submitted in response to a 2005 *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, the CPUC reiterated its appreciation of the benefits of the program to the disabled community, and again opposed a mandate to provide service without federal funding.⁸ In 2009, the CPUC again opposed an unfunded federal mandate for IP CTS, and provided further information about the California pilots and programs.⁹ And again, in 2013, the CPUC opposed 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.¹⁰

⁷ CPUC Comments, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dkt. No. 90-571, CC Dkt. No. 98-67, CG Dkt. No. 03-123, filed October 18, 2004, p. 5.

⁸ CPUC Comments, *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, CC Dkt. 03-123, filed December 29, 2005, p 7. The parties appearing as signatories to the petition are as follows: Self Help for Hard of Hearing People (SHHH), the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American Academy of Audiology (AAA), the American Association of People with Disabilities (AAPD), the American Speech-Language-Hearing Association (ASHA), the Association of Late-Deafened Adults (ALDA), the Deaf and Hard of Hearing Consumer.

Advocacy Network (DHHCAN), the League for the Hard of Hearing (LHH), the National Association of the Deaf (NAD), the National Cued Speech Association (NCSA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the California Association of the Deaf (CAD), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH).

⁹ CPUC Comments, *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service*, CC Dkt. 03-123, filed July 27, 2009.

¹⁰ See California Comments, CG Docket Nos. 13-24 and 03-123 (filed Nov 4, 2013).

DISCUSSION AND RECOMMENDATIONS: Staff recommends that the CPUC file comments on the following specific issues raised in the Public Notice.

1. How to restructure the funding of IP CTS

Background: In order to grow IP CTS, the FCC enacted an interim measure in 2007 to support IP CTS solely from interstate service subscriber contributions. The FCC now proposes to expand the contribution base for IP CTS to include a percentage of annual intrastate revenues from telecommunications carriers and VoIP service providers which is about 60% of total end-user revenues. The FCC seeks comment on the potential benefits and costs of expanding the contribution base to include intrastate voice service revenues¹¹

Statutory Authority to Require Intrastate Support of IP CTS

The FCC is proposing to impose a surcharge on *intrastate* end-user revenues of telecommunications carriers' and VoIP service providers to support the provision of intrastate IP CTS calls, including in situations where the state does not assume funding responsibility.¹² The FCC seeks comment on this proposal, and on whether the FCC has authority to collect intrastate contributions.

Staff recommends that the CPUC oppose the proposal for the FCC to seek contributions from *intrastate* revenues. States can expand collection from the IP CTS base for intrastate traffic, but the FCC's claim that it has authority to do so seems contrary to the regulatory construct in the Communications Act.

2. The State role in the administration of IP CTS

The FCC seeks comment on whether states should take a more active role in IP CTS administration, and whether State legislative authority may be needed to allow for this transition.¹³

Staff recommends that the CPUC support a more active role in IP CTS administration, but only if a number of issues are addressed first. Those issues include the need for additional funding to support IP CTS at the state level, the need for the FCC to eradicate fraud and misuse in the program, statutory changes needed at the state level (in particular, in California) to address state jurisdiction, the need for detailed state-specific data concerning the current program costs, and whether and how multiple IP CTS providers would be incorporated into the program.

¹¹ *FNPRM*, ¶¶ 102-104.

¹² *Id.*, ¶ 109.

¹³ *Id.*, ¶¶ 111-112.

a. Intrastate Funding

The FCC asks whether it should require or permit state programs to administer intrastate funding for the costs of IP CTS to their residents (i.e., to "opt-out" of having revenues from their intrastate carriers contribute to the TRS Fund, so that they can handle such funding on their own).¹⁴

Staff recommends that the CPUC inform the FCC that California could only administer intrastate funds if the CPUC assumes the jurisdiction and administration of the IP CTS program as well as the distribution of equipment, and assuming other issues identified above have been addressed. It would be difficult if not impossible for the CPUC to administer funding deposited in FCC's TRS fund. Additionally, to evaluate the possibility of California's funding of IP CTS, the CPUC must obtain detailed cost information to develop an accurate estimate of the cost of assuming administration of IP CTS.

This is a growing program, which staff anticipates will continue to expand, meaning the costs of administering the program also will grow exponentially. Based on very rough estimates, if California assumes administration of IP CTS, the amount of spending for CTS could increase as much as twenty times, necessitating a need to raise the statutory cap on the surcharge that funds the DDTP.¹⁵ The CPUC should emphasize to the FCC how critically important state-specific cost data is, and that California cannot give a definitive response to the FCC without obtaining and analyzing cost information.

b. Provider certification

The FCC asks whether the States should be responsible for certifying IP CTS providers, and whether states should be required to offer consumers a choice of providers, given that most state programs presently have a single TRS vendor.¹⁶

The FCC has been certifying providers for all types of TRS programs including Speech-to-Speech (STS), CTS, IP CTS, TTY, Video Relay Service (VRS) and IP Relay. The FCC's questions raise a jurisdictional issue, as it is not immediately obvious whether and how the CPUC could certify a provider of services over which California has no jurisdictional or administrative authority.¹⁷ However, it may be that IP CTS provider certification could be included among the CPUC's contract requirements for providers if the CPUC assumes administration of the IP CTS program.

¹⁴ *Id.*, ¶ 114.

¹⁵ *See* Public Utilities code § 2881(g) which mandates that the CPUC "establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent..."

¹⁶ *FNPRM*, ¶ 115.

¹⁷ The question arises because IP CTS is an "IP-enabled" service.

c. Transition Time

The FCC seeks comment on the amount of time state programs would need to secure necessary resources and regulatory changes.¹⁸ Staff estimates that a transition to full state administration of IP CTS would involve many moving parts, including the need for Legislation, and could require as long as five years to complete. The transition would require several steps, including cost evaluation, legislative and budget changes, new contracts, and migration of uses. Each of these elements could take a year, although some of them could run concurrently.

3. State ability to properly assess client needs

The FCC proposes that assessments of IP CTS user needs must be specifically focused on the consumer's ability to hear and understand speech over the telephone and on whether the consumer's communication needs can be met by other assistive technologies.¹⁹

Staff recommends that the CPUC support the proposal that assessment for IP CTS should include evaluation of other assistive technologies including amplified phones. The DDTP has a multi-step process for users wishing to participate in the program, and that process can determine that a captioned phone is not always needed and that other equipment, such as an amplified phone, may be more appropriate. Our program views the evaluation process as an “assessment for a user with a special need” like hearing or vision loss rather than “assessment for a particular device”. A CTAP certified user is usually assessed on a number of devices that are available for each specialized need.

Assessments by State programs

The FCC seeks comment on whether state programs should be required to independently access client needs, whether on their own, or through state Equipment Distribution Programs (EDPs), or through contracting entities.²⁰ The FCC further asks whether all such assessments should comply with FCC-established standards and practices for nationwide application, or should each state be permitted to establish its own eligibility criteria and processes for IP CTS screenings. And, the FCC asks about the current capacity of state programs to take on this task, and what amount of time may be needed to obtain the necessary resources and begin conducting such assessments.²¹

¹⁸ *FNPRM*, ¶ 116.

¹⁹ *Id.*, ¶ 117.

²⁰ *FNPRM*, ¶ 123.

²¹ *Id.*, ¶ 124.

Staff supports requiring CTAP to fulfill user eligibility provided that California's DDTP program is the administrator (with jurisdictional authority) of IP CTS service and equipment and receives additional funding.

The DDTP program already has a robust program that has worked very well in containing costs as well as fitting the needs of our clients. Staff recommends that the CPUC urge the FCC to allow states to establish their own eligibility criteria to determine which equipment and services provide the user the best access to telecommunication services.

Additional Measures

The FCC seeks comments on additional steps the FCC or providers can take to help prevent waste, fraud, and abuse in the provision of IP CTS.²²

Staff recommends that the CPUC support FCC auditing of IP CTS providers thoroughly starting from distribution, registration, call records, call center functions, call patterns and volume, as well as originating and terminating call data, and tracking of the registered electronic serial number for each device. In addition, the CPUC should recommend analysis of provider financials, marketing and outreach, sub contracts, and billings, as well as user and provider interviews. The CPUC should urge the FCC to identify evidence of fraud and misuse and to take necessary actions before requiring states to assume responsibility of the IP CTS service.

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²² *Id.*, ¶ 153.