

**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)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	

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via electronic filing
September 17, 2018

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Summary

For many Americans who are hard of hearing, deaf, or DeafBlind, there is no substitute for IP CTS. IP CTS is a captioning telephone service that allows hundreds of thousands of people who are hard of hearing, deaf, or DeafBlind to communicate with family and friends, maintain an independent lifestyle, and remain in the workforce. Within the broader landscape of TRS, IP CTS has increasingly become an important part of the fabric of communication for people who are deaf, or hard of hearing, or DeafBlind.

Though the Commission suspects that this increased usage is a result of waste, fraud, and abuse, we see no evidence of such abuse of the system, and no documents or enforcement proceedings by the Commission support this proposition. Given no evidence to the contrary, we believe the increased use is the result of an aging population that is becoming more generally aware of accessibility technologies like IP CTS. Nearly 25 percent of Americans aged 65 to 74 and a full 50 percent of Americans aged 75 and older experience disabling hearing loss. Accordingly, the increase in demand for IP CTS minutes likely is based on increased awareness of the program as well as legitimate need and growth in the hard of hearing, deaf, and DeafBlind communities rather than the waste, fraud, and abuse that has been alleged. We urge the Commission to bear this in mind in updating the contours of the program.

Against that backdrop, eligibility criteria for IP CTS should remain non-burdensome for consumers; imposing a burdensome eligibility regime risks precluding legitimate users from IP CTS's profound benefits. The current framework of self-certification is ideal for consumers. However, should the Commission move away from a self-certification regime, it should steer the program toward assessments by third-party professionals as opposed to states. The Commission should also maintain federally standardized control over all eligibility criteria for consumers, rather than opening the door to a patchwork system of state requirements where a consumer may lose access to a vital service simply because he or she moves from one state to another.

For similar reasons, the Commission should decline to transfer IP CTS administration to individual states. Not only would state authority over IP CTS result in a patchwork system of

requirements, but the resulting administrative burden would require both additional personnel and knowledge about setting criteria and standards that states do not possess and lack the resources to develop. Moreover, many states would face legislative barriers to funding IP CTS, meaning that they would be forced to undergo major legislative restructuring or be unable to support the program.

The Commission, rather than states, should also continue to certify providers. States do not have the expertise or resources to set certification requirements and requiring them to do so would result in consumers receiving disparate services from state to state. Consumers should not suffer the consequence of varying service quality as a result of the state in which they live. State certification would require providers to meet individual certification requirements, wasting time and resources.

In updating the program, the Commission should include a portion of intrastate revenue in the TRS Fund. This critical and common-sense step will help ensure longevity of the Fund.

The Commission's goal of preventing misuse is laudable, but the Commission must ensure that any rule toward this end does not place an undue burden on consumers or deter legitimate use, which would risk violating the right of consumers who are hard of hearing, deaf, or DeafBlind to equal access to communications technology. Marketing communications should be accurate and complete, and consumers must be able to learn about the service and how it may serve their needs. Likewise, the Commission should take steps to prevent unauthorized use of IP CTS, but should not burden consumers to continually recertify eligibility, given that hearing loss leading to the need for IP CTS rarely reverses itself. Lastly, easily accessible on and off buttons for captions should be present on IP CTS devices, so long as they do not discourage legitimate IP CTS users from turning or leaving captions on when needed.

Finally, we urge the Commission to ensure that ASR-based offerings provide quality sufficient for reliable use in emergency situations. Likewise, the Commission should not force consumers who rely on IP CTS to rely on alternative communications services to reduce reliance on IP CTS. Doing so would exclude legitimate users of IP CTS from accessing the service.

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Discussion

The Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the American Association of the Deaf-Blind (AADB), Deaf Seniors of America (DSA), the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (“Consumer Groups”) and the Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) and the Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) respectfully submit these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced docket.¹ The Consumer Groups represent and advocate for the interests of 48 million Americans who are hard of hearing, deaf, or DeafBlind, with the help of the research outputs and technical guidance of the RERCs. We have been in direct contact with current and potential IP CTS users via email, letters, social media, and conferences. We have worked closely with IP CTS providers and Commission officials who oversee the national TRS program. Our filings over the past several decades, including the 2011 TRS Policy Statement from many of the Groups,² reflect our unique expertise and experience in representing the community of consumers that benefit from using IP CTS, which has empowered their communicative relationships with family, friends, and coworkers.

Section 225 of the Communications Act directs the Commission to provide functionally equivalent access to current telecommunications technology to people who are hard of hearing,

¹ *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, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, CG Docket Nos. 13-24, 03-123, FCC No. 18-79, (June 8, 2018) (“2018 FNPRM,” “2018 Declaratory Ruling,” and “2018 NOP”).

² *See generally* Consumer Groups’ TRS Policy Statement (April 12, 2011), <https://ecfsapi.fcc.gov/file/7021748013.pdf> (“TRS Policy Statement”).

deaf, or DeafBlind.³ Furthermore, after Congress passed Title IV of the Americans with Disabilities Act (ADA), the Commission adopted legally mandated minimum standards for TRS programs.⁴ Together, these statutory provisions require the Commission to offer, regulate, and fund TRS services.

CTS opened the door for *all* consumers who use their voice to engage in functionally equivalent telephone calls, and IP CTS has widely expanded this benefit to people who are hard of hearing, deaf, or DeafBlind. As compared to other forms of CTS, consumers prefer IP CTS because it gives them more flexibility, direct access to others without the additional cost of a two-line system, and the ability to connect to a digital phone line. Also, because IP CTS captions are available in varying fonts and sizes, people with low vision who are also hard of hearing or deaf can use IP CTS. Consequently, IP CTS takes a critical step towards functional equivalency. Moreover, hearing callers on IP CTS calls benefit from IP CTS; without it, hearing callers cannot easily communicate with their friends, family members, and co-workers who experience disabling hearing loss.

In the most recent IP CTS rulemaking, the Commission challenged provider practices in response to increases in IP CTS usage.⁵ Thereafter, the Commission promulgated interim rules designed to address IP CTS waste, fraud and abuse. These rules took effect on September 3, 2013. In its most recent FNPRM, the Commission seeks to update the program to make the IP CTS service financially sustainable.

In addressing the questions raised by the FNPRM, the Commission should:

- Avoid increasing the burden of determining eligibility for IP CTS services;
- Maintain authority over IP CTS, rather than defer administration of the service to the states;

³ 47 U.S.C. § 225(b)(1), (a)(3).

⁴ 42 U.S.C. §§ 12101-12213; 47 C.F.R § 64.604.

⁵ *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 and Further Notice of Proposed Rulemaking, CG Docket Nos. 13-24, 03-123, 28 FCC Rcd. 13,420, 13,477, ¶ 120 (Aug. 26, 2013) (“2013 FNPRM”).

- Expand the TRS Fund base by including intrastate contributions;
- Ensure that communications *about* IP CTS from providers remain accurate and complete without deterring eligible consumers from learning about or registering for IP CTS services;
- Consider the risks and burdens to consumers when taking steps to prevent unauthorized IP CTS use;
- Ensure that providers include a user-friendly way to turn captions on and off;
- Ensure that ASR provides an equivalent quality service to that of CA-assisted IP CTS before adopting ASR technology for use in emergency calls; and
- Decline to encourage alternative communication services to reduce reliance on IP CTS.

I. The Commission should not require eligibility assessments for IP CTS. (¶¶ 117-138)

To prevent use of IP CTS where it is not necessary for functional equivalence, the Commission seeks comment on imposing an eligibility assessment that IP CTS users would be required to receive before using the service.⁶ Because the extent to which a person may require IP CTS—as opposed to an amplified telephone or other assistive technology—depends on a variety of factors, the Commission proposes an assessment that focuses on the consumer’s functional ability to hear and understand speech over the telephone.⁷ The purpose of imposing this new requirement, according to the Commission, is to limit IP CTS use where it is not necessary and lower associated TRS Fund spending.⁸ The Commission proposes and seeks comment on two means of achieving this end: assessments by state programs and assessments by third party professionals.⁹

Imposing an additional eligibility assessment on consumers—regardless whether it is through the states or through third party professionals—will create an unnecessary and unreasonable barrier to access IP CTS. The current system of self-certification enables individuals who need and will

⁶ *Id.* at ¶ 122.

⁷ *Id.* at ¶ 118.

⁸ *Id.* at ¶ 119.

⁹ *Id.* at ¶¶ 123, 129.

immediately benefit from this service to receive it without a separate, administrative trip to their hearing health professional. Furthermore, since many potential users are elderly and may also have mobility or other disabilities, imposing additional requirements such as this will have a profound chilling effect on legitimate IP CTS use.

Despite proposing to replace the existing system with a more burdensome alternative, the Commission cites little specific evidence to link current eligibility requirements to an increase in unnecessary use of IP CTS.¹⁰ An aging, technologically-literate population is the driving factor in this trend, not an overly relaxed eligibility framework.

Therefore, the Commission should reject these proposals in favor of self-certification, the best choice for consumers. If the Commission nevertheless chooses to impose a more stringent eligibility framework, third-party professional certification is preferable to delegation to the states. Lastly, should the Commission impose eligibility requirements, assessments should not include decibel level thresholds and should not be required for existing users.

A. The Commission should continue to permit consumers to self-certify. (¶ 119)

Self-certification remains the ideal method to identify users. Allowing individuals to personally attest to their need for IP CTS is not only the least burdensome option for consumers, but it is also the most fiscally prudent for the TRS Fund.

Self-certification enables consumers to become eligible and receive access to IP CTS in a reasonably short period of time, as the ADA requires.¹¹ Any increase in the time or cost associated with applying for IP CTS will impose additional burdens on the consumer and adopting more

¹⁰ *Id.* at ¶ 118.

¹¹ *See* 47 U.S.C. § 225(b)(1) (providing that telecommunications relay services, like IP CTS, are made available to hearing impaired consumers “in the most efficient manner.”).

stringent eligibility requirements will do just that. The result will be similar to the Commission's captions-off requirement, which led to significant confusion among elderly users.¹²

Furthermore, increased eligibility requirements are particularly problematic for people who traditionally have required IP CTS, many of whom are elderly or have mobility disabilities.¹³ Self-certification effectively eliminates this problem, allowing consumers to verify their need for IP CTS on their own, without having to overcome this administrative hurdle by consulting with a hearing health professional.

When weighing the additional barrier to access that eligibility assessments would impose, the Commission should consider that many providers already have effective certification procedures.¹⁴ Thus, new eligibility requirements have the potential to increase state or federal TRS Fund spending on an expense that is already being incurred by the private sector. Because the Commission seeks to mitigate the increasing expenses of IP CTS, absorbing the cost of assessing eligibility into the TRS Fund would be counterproductive.

Finally, it is critical that the Commission not impose additional barriers on IP CTS users that are not imposed on users of other TRS services. This disparate treatment amounts to discrimination that violates the letter and spirit of the ADA.

B. Any non-self-certification eligibility assessments should be conducted by third-party professionals. (¶¶ 123-138)

As an alternative to the current system of self-certification, the Commission proposes requiring potential IP CTS users to obtain a written certification from a third-party professional verifying their need for the service.¹⁵ Specifically, the Commission proposes to “require that providers only be

¹² See generally Ex Parte from Dr. George Ghorpade, *Misuse of Internet Protocol Captioned Telephone Service*, CG 13-24; *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG 03-123 at 2 (Aug. 12, 2013), <https://ecfsapi.fcc.gov/file/7520937327.pdf>.

¹³ See generally *Sorenson Communications, LLC. v. FCC*, 755 F.3d 702 (D.C. Cir. 2014).

¹⁴ 2018 FNPRM at ¶ 117.

¹⁵ *Id.* at ¶ 129.

permitted to accept user assessment certifications signed by physicians specializing in otolaryngology, audiologists, or other state certified or licensed hearing health professionals.”¹⁶

Again, any eligibility requirement more stringent than self-certification would impose unnecessary burdens on consumers. However, should the Commission make the misguided decision to adopt a heightened eligibility requirement, federally standardized third-party assessments will be less burdensome for consumers than allowing states to independently direct this process.

If a third-party eligibility regime is adopted, the Commission should not overly limit the type of medical professionals who can provide IP CTS certification. Specifically, we urge the Commission to broaden its list of authorized hearing health professionals who can certify users for IP CTS to include primary care physicians. For many seniors with hearing loss, their primary care physician is the medical professional they are most likely to see, and a need to seek a referral to a hearing specialist would impose an additional burden. This burden would be particularly magnified for rural consumers where the authorized hearing health professionals could be miles away—a result that would contradict the Commission’s numerous explicit commitments to facilitating rural healthcare.¹⁷ As Commissioner Carr has noted, lengthy drives are “never easy” and “[a]nd weather conditions often [make these] trip[s] impossible.”¹⁸ In practice, imposing a specialist requirement could deny access to a vast number of rural consumers with hearing loss.

Furthermore, allowing only specialized hearing health professionals to certify for IP CTS has the potential to effectively precondition the eligibility for IP CTS on an existing hearing disability. For instance, the only people who interface with otolaryngologists or audiologists on a regular basis are those who have taken steps to mitigate their hearing disability or who have a disease of the ear. Many people who age into hearing loss are reluctant, or even opposed, to see a hearing health care

¹⁶ *Id.* at ¶ 130.

¹⁷ *E.g., Promoting Telehealth for Low-Income Consumers*, Notice of Inquiry, WC Docket No. 18-213, at ¶ 3 (Aug. 3, 2018), <https://docs.fcc.gov/public/attachments/FCC-18-112A1.pdf>.

¹⁸ *See id.* (Statement of Commissioner Brendan Carr).

professional or purchase a hearing aid.¹⁹ If only an otolaryngologist or audiologist may certify for an IP CTS phone, even when a primary care physician diagnoses a patient with hearing loss, the patient would need to schedule, attend, and possibly pay out of pocket for an entirely separate specialist appointment to become eligible for IP CTS. This is an unreasonable burden for consumers. The Commission should broaden its conception of who can certify for IP CTS to include at least the primary care physician.

C. The Commission should not delegate authority over eligibility assessments to states. (¶¶ 123-128)

In addition to considering a third-party eligibility framework, the Commission also proposes allowing states to determine eligibility criteria for IP CTS consumers.²⁰ However, to do so, the Commission erroneously relies on the assumption that all states have the necessary resources and expertise to determine IP CTS eligibility.²¹ Furthermore, opening the door for states to establish different eligibility assessments would be burdensome for consumers that move between states.

Decentralized standards would require each state to devote time and resources to establishing eligibility requirements. Again, this will impose additional strain on the TRS Fund.²² Administrative costs will increase as states must pay to develop, implement, and apply IP CTS eligibility standards. The Public Service Commission for the District of Columbia (“DC PSC”), for example, has explained that because its current TRS administration does not have the resources to certify and register all IP CTS users in DC, it would be required to hire additional personnel to tackle this unfamiliar responsibility.²³ This would not only be expensive, but would put more pressure on

¹⁹ National Academies of Sciences, Engineering, and Medicine, *Hearing Health Care for Adults: Priorities for Improving Access and Affordability* at 75 (2016), <http://nationalacademies.org/hmd/reports/2016/hearing-health-care-for-adults.aspx>.

²⁰ 2018 FNPRM at ¶ 123.

²¹ *Id.*

²² See discussion *supra*, Part I.A.

²³ Comment of the Public Service Commission of the District of Columbia, CG Docket Nos. 13-24, 03-123, at 3-4 (Nov. 1, 2013), <https://ecfsapi.fcc.gov/file/7520955323.pdf>.

understaffed state administrators. To mitigate these newfound administrative costs, states might increase IP CTS eligibility standards with the sole purpose of limiting usage. Consequently, consumers who need the IP CTS service would be unfairly and unlawfully excluded from a state's IP CTS program.

Moreover, the resulting array of disparate eligibility standards across states would mean that consumers who move to a different state would face a new set of burdensome eligibility requirements and must re-establish eligibility anew each time. This would be an unacceptable but inevitable byproduct of a decision to delegate authority over eligibility requirements to the states, and the Commission should decline to do so.

D. The Commission should not require any quantitative decibel hearing loss threshold. (¶ 118)

Whatever regime, if any, is used to assess eligibility, the Commission should not include an individual's decibel hearing loss threshold among the criteria considered when assessing whether that person will benefit from IP CTS. Hearing loss threshold testing has limited probative value. This type of clinical measure is a poor predictor of speech recognition performance by people with hearing loss and is in no way reflective of the conversational task that takes place on a telephone call. Environmental factors, like an unfamiliar accent or intrusive background noise, can significantly affect consumers' experiences in everyday phone conversations, but do not arise in quantitative threshold testing. Moreover, such a standard will arbitrarily exclude users from IP CTS who have a legitimate need for the service. For example, individuals with Meniere's disease have hearing loss that periodically varies, with episodic symptoms that can last from 20 minutes to 4 hours.²⁴ Thus, to the

²⁴ *Committee on Hearing and Equilibrium guidelines for the diagnosis and evaluation of therapy in Meniere's disease*, American Academy of Otolaryngology–Head and Neck Surgery, 113(3), 181-85 (Sept. 1995). See generally American Academy of Otolaryngology-Head and Neck Surgery, *Mènière's Disease*, <https://www.entnet.org/content/menieres-disease>; Crystal VanDerHeyden and Jaynee A. Handelsman, *Evaluation and Management of Mènière's Disease*, <https://www.asba.org/Articles/Evaluation-and-Management-of-Menieres-Disease/> (May 2010).

extent that new standards for eligibility are adopted, threshold hearing loss measurements should not be utilized.

E. Any eligibility assessment regimes should apply only to new users. (¶ 122).

Even if it imposes a new eligibility assessment regime, the Commission should not require existing users to undergo additional eligibility assessments. Extending such a requirement to existing users is unfairly burdensome, particularly given the population traditionally using IP CTS. For instance, many IP CTS users are elderly and may have mobility disabilities that make traveling for eligibility re-certification more difficult and time-consuming. Furthermore, many providers already have an eligibility certification process in place, so requiring existing users to recertify would be duplicative and wasteful. Accordingly, to the extent that new rules on eligibility are imposed, assessments should be limited to new users only.

II. The Commission should not allow or require states to administer IP CTS. (¶¶ 111-116, 123-126)

The Commission asks whether state TRS programs should be allowed or required to take a more active role in IP CTS administration.²⁵ The Commission concludes that state TRS programs, given their greater proximity to residents using IP CTS within their jurisdictions, have the expertise, demonstrated skills, and on-the-ground experience to assume administrative functions with respect to IP CTS.²⁶ Additionally, the Commission seeks comment on whether a more limited form of state regulation of IP CTS would be desirable to the extent that states may be reluctant to assume responsibility for the service.²⁷ Specifically, the Commission asks whether (1) intrastate funding or (2) provider certification may be appropriate mechanisms by which to transfer some IP CTS authority to the states.²⁸

²⁵ 2018 FNPRM at ¶ 111.

²⁶ *Id.* at ¶ 112.

²⁷ *Id.* at ¶ 113.

²⁸ *Id.*

The Commission should neither allow nor require states to take over administration of IP CTS in any capacity. The Commission explicitly recognizes that many states are reluctant to assume this authority.²⁹ Beyond burdening states with an authority they may not want, transitioning IP CTS authority to the states could result in a balkanized system of IP CTS eligibility and quality requirements, an underfunded program, a decrease in consumer choice, and a failure to reach those consumers who truly need IP CTS. For these reasons, it is imperative that the Commission neither allows nor requires states to take over any part of the administration of IP CTS.

A. State caps on TRS surcharges would create barriers to funding IP CTS (¶ 114)

The Commission seeks comment on permitting states to administer intrastate funding for the costs of IP CTS to their residents and excluding consumers in those states from federal IP CTS administration.³⁰ Currently, the Commission does not require states to administer IP CTS programs. Consequently, some states may choose to avoid the financial burden of administering an IP CTS program.

However, even if all states were required to administer IP CTS, some states might not be able to fund the program. Since state TRS surcharges are capped, states may not be able to reimburse all the IP CTS minutes that consumers need.³¹ For example, to fund its state relay program, California adds a surcharge to all end user billings for intrastate telecommunications services.³² California caps this surcharge, by statute, at one half of one percent.³³ To fully fund IP CTS and other relay services, the California relay commission would be required to amend a statute to raise the TRS surcharge cap. However, states may be unwilling or unable to do so. California predicts difficulty in getting legislative approval to increase the cap without a mandate from the Commission to provide the

²⁹ *Id.*

³⁰ *Id.* at ¶ 114.

³¹ *See* Comment of California Public Utilities Commission and the People of the State of California, CG Docket No. 03-123, at 5 (filed Jul. 27, 2009).

³² *Id.*

³³ California Public Utilities Code § 2881(d).

service.³⁴ Nebraska, for example, noted that state legislators may be hesitant to make the requisite statutory changes to fund IP CTS.³⁵ Without adequate funding, people who depend on IP CTS will not have the ability to use the IP CTS service and will be deprived of the ability to communicate.

B. State marketing practices fail to reach consumers who need IP CTS. (¶ 112)

States should not be required or allowed to assume IP CTS administration because state marketing operations generally lack the necessary resources and expertise needed to reach the countless Americans who need but are unaware of the availability of IP CTS services and how to access them.³⁶

- For example, states may not understand or know how to reach communities who most need IP CTS including consumers who are hard-of-hearing, who age into hearing loss, who are deaf or hard of hearing but don't use sign language, or who are on a fixed income.
- While states may include information on their websites about IP CTS, people with sudden hearing loss or elderly consumers are often unaware that these websites exist—or even that the programs they advertise exist.
- There are many consumers who live in rural areas or on Tribal Lands where broadband access is lacking who are also unaware of these websites and services.

C. The Commission must continue to establish minimum mandatory quality requirements. (¶¶ 112-113)

The Commission proposes maintaining its control over quality standards for IP CTS service, rather than handing this authority over to the states.³⁷ We strongly agree that the Commission should maintain its centralized authority over IP CTS quality.

³⁴ Comment of California Public Utilities Commission and the People of the State of California, CG Docket No. 03-123, at 5 (filed Jul. 27, 2009).

³⁵ Comment of the Nebraska Public Service Commission, CG Docket Nos. 13-24, 03-123, at 3 (Nov. 1, 2013).

³⁶ TRS Policy Statement at 4.

³⁷ 2018 FNPRM at ¶ 112.

The Commission is currently considering IP CTS quality in three distinct contexts: the FNPRM's associated Declaratory Ruling on ASR,³⁸ the associated Notice of Inquiry seeking comment on appropriate performance goals and metrics for IP CTS,³⁹ and Sprint's Petition for Reconsideration on the ASR Declaratory Ruling.⁴⁰ The Declaratory Ruling establishes that ASR technology is eligible for reimbursement from the TRS Fund,⁴¹ while the NOI seeks comment on what the Commission should consider as performance goals and metrics when creating IP CTS quality standards.⁴²

In concert, these proceedings demonstrate that the Commission has left unclear how it will evaluate the quality of ASR applicants, deferring the development of performance goals and measures—which should be critical components of evaluating all types of IP CTS providers—not even to the FNPRM, but to an NOI whose resolution may be years away. In other words, the Commission has put itself in the position of advancing a new technology without any type of framework, or even a timeline for implementing a framework, to evaluate the extent to which that technology satisfies Section 225's functional equivalency standard for quality.

The simultaneous pendency of these proceedings underscores the importance of the Commission maintaining their centralized authority over not only the establishment of quality standards, but over all facets of IP CTS service, rather than further complicating the issue by deferring its resolution to states, many with limited experience and reluctance to become involved in administering the program. Outside of these proceedings, the Government Accountability Office has recognized that “the lack of specific performance goals [and measures make it] difficult to determine in an objective, quantifiable way if TRS is making available functionally equivalent

³⁸ *2018 Declaratory Ruling* at ¶ 51.

³⁹ *2018 NOI* at ¶ 156.

⁴⁰ *See* Petition of Sprint Corporation for Clarification or in the Alternative, Reconsideration, CG Docket Nos. 13-24, 03-123 (July 9, 2018), <https://www.fcc.gov/ecfs/filing/107091809005003>.

⁴¹ *2018 Declaratory Ruling* at ¶ 48.

⁴² *2018 NOI* at ¶ 156.

telecommunications services...”⁴³ Should the Commission give any authority over IP CTS to the states, consumers who rely on IP CTS will not only face confusion about the quality of IP CTS offerings, but will have no central decision-making body to whom they can turn with questions, comments, and concerns. IP CTS users will be subject to more than 50 separate authorities, each with their own rules, procedures, and requirements—a burden not borne by their hearing counterparts when it comes to simply communicating with friends, family, or any other TRS users.

D. States certifying providers would be inefficient and lead to inconsistent certification standards. (¶ 113)

The Commission seeks comment on whether states should be permitted or required to certify providers of IP CTS for consumers in their states.⁴⁴

States lack the expertise to certify IP CTS providers. The Commission has historically certified IP CTS providers and thus possesses the information and resources needed to assess providers. If states assume this role, each state must hire specialists to analyze the requisite certification standards for providers to effectively set criteria. Transferring certification authority to the states would also require providers to certify in every state they wish to operate, which limits consumers’ choice of providers and hinders competition while increasing costs on providers. As the Commission currently possesses the expertise to continue certifying providers and updating criteria, it is a more efficient use of public funds for the federal government to certify providers for service in all states.

To continue providing equivalent services to consumers across states, the Commission must continue to establish consistent certification standards. The Commission is best situated to analyze changes in provider offerings as it receives comments on certification applications. When emergent technology advances or existing technology declines, the Commission can react more quickly than states, which may not routinely monitor all changing conditions that impact provider certification.

⁴³ Telecommunications Relay Service: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities, *U.S. Government Accountability Office*, GAO-15-409 (April 2015), <https://www.gao.gov/assets/680/670005.pdf>.

⁴⁴ 2018 FNPRM at ¶ 113.

For example, the Commission has noted in a related context “that eligibility through methods other than certification by the Commission has failed to ensure that providers are qualified to provide VRS or to provide the Commission with the requisite information to determine compliance with [its TRS] rules,” and has “expressed concerns that these alternative eligibility methods have permitted participation in the VRS program by unqualified, non-compliant providers, and have hampered the Commission’s efforts to exercise stringent Commission oversight over entities providing service.”⁴⁵

Routine reassessment of certification standards better ensures the provision of equivalent services to consumers, regardless of the state in which they may live or use the service. Federal provider certification standards allow the federal government to better ensure providers seek out competitive practices, such as decreasing costs and improving service quality.

E. States contracting with one provider risks eliminating providers’ incentive to innovate. (¶ 115)

Likewise, states must not be permitted or required to take over certifying providers because many states contract with only one IP CTS provider. Contracting with only one provider short-circuits needed competition and eliminates providers’ incentive to innovate. Consequently, transferring certification authority to the states is likely to result in decreased technological innovation of the kind that could improve the quality of the service or serve to reduce waste and fraud.

To alleviate the administrative burden that IP CTS places on state administrative bodies, it is likely that states may choose to contract with only one IP CTS provider. Further, some states are required to contract with only one TRS provider.⁴⁶ For example, Missouri’s Public Service Commission (“MoPSC”) engages in a bidding process that results in MoPSC selecting only one

⁴⁵ *Structure and Practices of the VRS Program*, Second Report and Order and Order, CG Docket No 10-51, 26 FCC Rcd. 10,898, 10,902, ¶ 7 (July 28, 2011).

⁴⁶ Comment from the National Association for State Relay Administration (NASRA), CG Docket No. 13-24, 03-123 at 3 (Nov. 13, 2013).

provider to provide its state TRS programming.⁴⁷ Texas also contracts with only one provider for TRS programming.⁴⁸

Ultimately, contracting with one IP CTS provider will decrease competition and incentives for IP CTS providers to innovate and improve its IP CTS service.⁴⁹ Contracting restrictions not only risk preventing IP CTS providers from innovating in their offerings, but risk limiting consumer's ability to choose an IP CTS service that best fits their needs. In the past, the Commission itself has asserted that the interstate fund encourages competition and provides the requisite incentive for providers to constantly improve their offerings.⁵⁰ Transitioning to states administering IP CTS may eliminate this incentive. Florida, for example, stated that by statute it is required to host only one provider.⁵¹ By hosting only one provider, Florida opines that competition among IP CTS providers will diminish if the states administer these programs.⁵² We share Florida's fear that quality and innovation will decline if states are permitted to take over IP CTS provider certifications.

F. States should not determine IP CTS eligibility criteria (¶¶ 123-125)

As described above, the Commission should neither allow nor require the states to determine IP CTS eligibility criteria.⁵³ A patchwork system of eligibility requirements risks upending a vital service that many Americans depend upon, and this fragmentation of eligibility criteria will be

⁴⁷ Comment from the Public Service Commission of the State of Missouri, CG Docket Nos. 13-24, 03-123, at 2 (Nov. 1, 2013).

⁴⁸ Ex Parte Comments of the Public Utility Commission of Texas, CG Docket Nos. 13-24, 03-123 at 3 (March 10, 2014).

⁴⁹ Comment of the Florida Public Service Commission, CG Docket Nos. 13-24, 03-123 at 2, 7 (Sep. 27, 2013) (“2013 Florida Comment”) (explaining that mandating state administrated IP CTS “may eliminate competition for those services in Florida since, by statute, Florida can have only one relay service provider” and that “[c]onsumers currently have a choice of several providers of Internet Protocol Captioned Telephone Service in Florida because Internet Protocol Captioned Telephone Service is regulated at the Federal level”).

⁵⁰ 2018 FNPRM at ¶ 101.

⁵¹ 2013 Florida Comment at 7-9.

⁵² *Id.*; see also Florida Stat. 427.704(1)

⁵³ See discussion *supra*, Part I.C.

echoed in every other component of IP CTS should the Commission hand any authority over the service to the states.

III. The Commission should expand the TRS Fund base to ensure sustainability of the Fund over time. (¶¶ 102-110)

The Commission asks whether it should expand the TRS Fund base to include a percentage of annual intrastate revenues from providers.⁵⁴ The Commission further seeks comment on whether it has the statutory authority to collect intrastate revenues.⁵⁵ Currently, the Commission relies only on revenues collected from interstate calls to fund TRS services but compensates for both interstate and intrastate IP CTS calls.⁵⁶

The Commission should expand the TRS Fund base as it would allow for continued relay provision and investment into new technology.⁵⁷ Since the Commission first elected to fund TRS using interstate revenues, both the market from which those revenues are drawn and the market for IP CTS have changed substantially.⁵⁸ As the number of eligible consumers who use the service increases, the size of the TRS Fund base has declined.⁵⁹ The Commission compensates both intrastate and interstate IP CTS minutes.⁶⁰ Since many eligible consumers use their phones for intrastate calls, expanding the base to include revenues from intrastate calls is reasonable.⁶¹

Moreover, the Commission has the statutory authority to assess intrastate revenue under Section 225(b)(2), which explicitly grants to the FCC authority over carriers engaged in intrastate communications for purposes of administering and enforcing the section. Additionally, IP CTS is

⁵⁴ 2018 FNPRM at ¶¶ 104, 106, 108.

⁵⁵ *Id.* at ¶¶ 109-110.

⁵⁶ *Id.* at ¶¶ 103-104.

⁵⁷ Petition for Rulemaking of IDT Telecom, Inc. (IDT), CG Docket No. 13-24, 03-123 (November 25, 2015) <https://ecfsapi.fcc.gov/file/60001345008.pdf> (“IDT Petition”).

⁵⁸ 47 U.S.C. § 225(c)(2).

⁵⁹ IDT Petition at 6-7.

⁶⁰ *See id.*

⁶¹ *See id.*

federally administered in states that do not manage their own TRS services.⁶² Because the FCC does not collect carrier contributions based on their intrastate revenue but compensates providers for intrastate IP CTS calls, the FCC uses interstate and international revenue to fund all IP CTS minutes.⁶³ As long as the federal government administers and funds intrastate IP CTS, it should include intrastate revenue when it calculates carrier contributions to the TRS Fund base.

IV. The Commission should ensure IP CTS provider practices and communications are accurate, fair, and complete, and do not deter eligible consumers from learning about or registering for IP CTS. (¶¶ 139-151)

The Commission raises concern that provider practices—including marketing and communications, registration and renewal processes, and the design of the on/off switch for captions—may be contributing to the rise in IP CTS spending over recent years.⁶⁴

While we agree that communications should not encourage IP CTS use where it is unnecessary and provider practices should not incentivize superfluous use, these rules should not go so far that legitimate IP CTS users or potential users are unable to learn about or register for the service. While the Commission is justified in wanting to ensure truth and accuracy in provider practices, it is imperative that any rules promulgated on this issue do not deter or impede legitimate use of IP CTS.

A. The Commission should prohibit communications that are misleading or create improper financial incentives and should encourage dissemination of accurate information. (¶¶ 139-145)

In response to concern around misleading (or incomplete) marketing materials and the current incentive structure, the Commission seeks to limit the type of promotional and informational materials providers of IP CTS can use.⁶⁵ Specifically, the Commission seeks to ensure that complete information is provided in marketing materials and during installation, and that financial incentives to offer or accept IP CTS when it is not necessary are eliminated.

⁶² 47 U.S.C. § 225(c)(2).

⁶³ See *IDT Petition* at 2-4.

⁶⁴ 2018 FNPRM at ¶¶ 139-151.

⁶⁵ *Id.* at ¶¶ 139-145.

Additionally, we agree that consumers should be given full information regarding IP CTS's functionality and cost-structure upon installation. Recognition by consumers of how costs are tabulated likely will have the effect of limiting unnecessary IP CTS use.

Likewise, the Commission should permanently adopt its interim rule prohibiting reward programs or other financial incentives to subscribe to IP CTS. We agree that these types of programs and incentives could serve to encourage consumers to use IP CTS services, regardless of whether they need IP CTS to communicate.⁶⁶ Consumers should only use IP CTS services after making an informed decision that IP CTS will fulfill their everyday communication needs.

Moreover, referral programs, like the ones described by the Commission, can tend to encourage audiologists and other hearing health professionals to work with a single provider.⁶⁷ Consumers should always have access to information about all service providers so they can choose the services that best fit their needs.

Consequently, we support IP CTS consumer education that serves to accurately reflect the service as well as inform consumers about the proper use of IP CTS. We do not support communications that mislead with the intent of artificially inflating consumer demand and increasing providers' revenues. Any policy to the contrary would be inconsistent with the ADA.⁶⁸

B. The Commission should promulgate new rules around registration renewal and phone reclamation procedures only to the extent they do not deter legitimate use of IP CTS. (¶¶ 146-148)

The Commission proposes taking additional measures to require biennial self-certification of need and to ensure equipment is reclaimed after a person stops using IP CTS.⁶⁹ Specifically, the

⁶⁶ 47 U.S.C. § 225(a)(3).

⁶⁷ 2018 FNPRM at ¶ 141.

⁶⁸ 42 U.S.C. § 12101 (“in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers”).

⁶⁹ 2018 FNPRM at ¶¶ 146-148.

Commission is concerned with preventing unauthorized users from gaining possession of IP CTS devices and incurring expenses without authorization.⁷⁰

While we agree that providers must ensure compensable costs are valid, we urge the Commission to adopt rules that do not discourage legitimate IP CTS use. Requiring biennial self-certification of continuing need to use IP CTS would place undue and illogical burden on consumers to continually attest to their hearing loss. Hearing loss generally does not get better as time progresses; it gets worse.

Additionally, the Commission proposes to require IP CTS providers to notify each individual who uses an IP CTS device at the time of receipt and initial registration that the user has an obligation to ensure the provider is notified if such user discontinues captioning service.⁷¹ Again, while we agree with the general goal of preventing IP CTS misuse, the burden should not be on the consumer to notify the provider.

C. The Commission should require providers to include an intuitive and user-friendly way to turn captions on and off. (¶¶ 149-151)

Responding to concern that users may be leaving captions on when they are unnecessary, the Commission proposes that IP CTS equipment provide a clear way to turn captions on and off.⁷²

The Commission should require an easy and intuitive way to turn captions on and off, so long as doing so does not discourage legitimate IP CTS users from turning or leaving captions on when needed. Just as people who sign can choose whether they want to use sign language to communicate, people who use IP CTS should be able to choose which calls they want to caption. There may be circumstances where IP CTS users need to turn off the captions, such as where caption quality or latency become untenable. The Commission should ensure consumer choice by making caption on/off features intuitive and easy to use.

⁷⁰ *Id.*

⁷¹ *Id.* at ¶ 147.

⁷² *Id.* at ¶ 149.

V. The Commission must ensure that IP CTS providers offer high-quality service for 911 calls regardless of the underlying technology. (¶ 153)

The Commission asks how to ensure call quality for 911 IP CTS calls.⁷³ The Commission seeks comment on the role of ASR in emergency calls and the unique challenges that the technology poses.⁷⁴

IP CTS services have two main indicia of quality: 1) error rates and 2) delay between speech and text appearance. Adopting ASR for 911 calls without ensuring that these quality metrics are met could exacerbate the error rates and delays already shown to be problematic to the new technology. For instance, researchers at Clark University recently concluded that “current [2017] state of the art technology for conversational speech would work [well] for fewer than 10% of all calls.”⁷⁵ Indeed, a study from two Microsoft researchers shows that speech recognition technology makes more semantic errors—another measure of service quality—than a human transcriber.⁷⁶

ASR technology is still nascent and poses problems that could hinder the very purpose of emergency calls. Before incorporating the use of ASR into emergency calls for IP CTS users, the Commission must ensure that IP CTS itself is a quality service, and that ASR matches the service provided by CAs. Just as technology will not replace human classroom aides until the automation matches or surpasses human quality, the Commission should not deploy ASR, especially in the emergency context, until the technology can do a better job than a human caption assistant.

As providers transition from using CAs to using ASR technology to perform captioning for 911 calls, the Commission must also ensure that consumers can rely on IP CTS for an accurate, complete, and understandable text display of what was said. Consumers can rely on IP CTS as a

⁷³ *Id.* at ¶ 153.

⁷⁴ *Id.* at ¶¶ 152, 153.

⁷⁵ Ex Parte of CaptionCall, CG Docket Nos. 13-24, 03-123, at 27 (Nov. 28, 2017), <https://www.fcc.gov/ecfs/filing/1128015005927>.

⁷⁶ Andreas Stolcke and Jasha Droppo, *Comparing Human and Machine Errors in Conversational Speech Transcription* at 3 (2017), <https://arxiv.org/pdf/1708.08615>.

means of emergency communication only if they can understand the conversation, and the Commission must ensure this quality of service before deploying use of ASR for 911 calls.

VI. The Commission should not rely on alternative communication services to reduce reliance on IP CTS because of the many unique advantages of IP CTS. (¶ 154)

The Commission seeks comment on the extent to which alternative communication services such as HD Voice, video with voice and real-time-text, and other services that are not funded through the TRS Fund may substitute or complement IP CTS to reduce reliance on the TRS Fund.⁷⁷

These alternative solutions may be appropriate substitutes for IP CTS for some consumers in some situations. For example, HD Voice may make an IP CTS phone more usable for more people in ideal settings. But currently, HD Voice operates in a silo: while individual service providers and phone makers do provide HD Voice, no interoperable services are available. Unless and until all service providers and makers of phones ensure interoperability, it is useless to suggest to consumers they should move to HD Voice.

We look forward to a time when HD Voice, real-time-text, and video are available to all consumers. This may well help reduce pressure on the TRS Fund by providing alternate access to telephonic communications for some consumers. However, IP CTS provides a functional equivalent service for many consumers that is not currently and will not be equaled by any other for years to come. The Commission's proposal to consider alternative solutions contradicts Congress's stated purpose of telecommunications relay services.⁷⁸ IP CTS is as close as possible to a functionally equivalent service for many users with hearing loss and should have an assured place in the menu of options for consumers.

Moreover, the proposed alternative communication services would require consumers who rely on IP CTS to purchase an additional device, download apps, use additional mobile data, use additional phone battery, and take extra time to communicate. Some alternative services, such as

⁷⁷ 2018 FNPRM at ¶ 154.

⁷⁸ See 47 U.S.C. 225(b)(1).

Skype, do not integrate with ten-digit phone numbers, which is the point of providing relay service. For instance, doctors' offices and police stations do not receive or make calls that require video or internet capabilities.

Because hearing people who do not have a speech disability do not encounter these hardships to call their families, friends, doctors, employers, teachers, banks, students, customers, or anyone else they may contact via the telephone, people who are hard of hearing, deaf, or DeafBlind should not face them either. To remain active and connected to the world, communication should be as easy for people with hearing or speech disabilities as it is for hearing people without speech impairment.

VII. The Commission should continue funding outreach to further the goals of section 225. (¶¶ 77-79)

The Commission asks whether prior outreach efforts are sufficient to reach everyone who would benefit from the service in the future.⁷⁹ The Commission notes that there are many people currently using the service as supporting evidence.⁸⁰

There is still a critical need to outreach to eligible consumers who are unaware of the service. As long as there are people who would benefit from IP CTS whose needs are unmet because they have not heard of the service, the Commission has an obligation under Section 225 to reach those people.⁸¹ In addition to people who are eligible now, the Commission should consider the needs and awareness of people who will be eligible in the future. Without additional funding, prior outreach efforts will not reach people who will need the information when they become eligible and seek resources explaining the service.

The Commission is right to scrutinize reported costs that result from competitive advertising. Ensuring that outreach costs are legitimate is crucial to preserving the TRS Fund for those who need it. If outreach funds are used by providers to compete for existing IP CTS consumers, rather

⁷⁹ 2018 FNPRM at ¶ 79.

⁸⁰ *Id.*

⁸¹ *See* 47 U.S.C. § 225(b)(1).

than reaching out to people who need this service, the Commission should take measures to halt those practices.

However, the Commission should not stop funding legitimate outreach, because many people who age into hearing loss have never heard of IP CTS or other relay services, are spread across the country in different communities, and can be difficult to reach. It is imperative that the Commission continue finding ways to support outreach so that everyone who needs IP CTS is aware of the service.