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Public Service Commission

September 27, 2013

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments of the Florida Public Service Commission in CG Docket No. 13-24, Misuse of Internet Protocol (IP) Captioned Telephone Service; and CG Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above dockets regarding Internet Protocol Captioned Telephone Service.

Curtis Williams at 850-413-6924 is the primary staff contact on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf

cc: James Bradford Ramsay, NARUC

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

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

**COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN RONALD A. BRISÉ

COMMISSIONER LISA POLAK EDGAR

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September 27, 2013

INTRODUCTION AND SUMMARY

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

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

1. The FCC should provide Internet Protocol Captioned Telephone Service minutes and number of Internet Protocol Captioned Telephone Service units by state as soon as

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

possible so states can make informed decisions on possible migration of Internet Protocol Captioned Telephone Service to state relay programs;

2. If state funding of intrastate Internet Protocol Captioned Telephone Service is mandated, it should not occur until the FCC is assured that problems noted in the Internet Protocol Captioned Telephone Service Interim Order² are corrected;
3. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of Internet Protocol Captioned Telephone Service;
4. If a decision is made to require states to assume intrastate Internet Protocol Captioned Telephone Service costs, the FCC must allow time for states to make legislative changes; and,
5. Mandating Internet Protocol Captioned Telephone Service as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

1. The FCC should provide Internet Protocol Captioned Telephone Service minutes and number of Internet Protocol Captioned Telephone Service units by state as soon as possible so states can make informed decisions on possible migration of Internet Protocol Captioned Telephone Service to state relay programs.

Currently, states do not know the extent of potential obligation they would incur by assuming the intrastate costs of Internet Protocol Captioned Telephone Service. The FCC is proposing that states assume the responsibility of intrastate Internet Protocol Captioned Telephone Service, but has not provided information as to how many Internet Protocol

² In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service. CG Docket No. 13-24. Order FCC 13-13, Released January 25, 2013.

Captioned Telephone Service minutes are historically used in each state, and how many Internet Protocol Captioned Telephone Service units are currently in use in each state. The FPSC urges the FCC to provide historical Internet Protocol Captioned Telephone Service minutes and units by state as soon as possible so states can make informed decisions on possible migration of Internet Protocol Captioned Telephone Service to state relay programs.

2. If state funding of intrastate Internet Protocol Captioned Telephone Service is mandated, it should not occur until the FCC is assured that problems noted in Order FCC 13-13 are corrected.

In Order FCC 13-13, the FCC stated that there was dramatic growth in the number of minutes of Internet Protocol Captioned Telephone Service use in 2012, primarily due to misuse. From January to June 2012, the number of minutes increased by 30% and the average monthly rate of growth doubled for the period June to October 2012. The FCC believes that this growth is being caused by the offering of incentives for referrals to use this service, as well as usage of this service by people without a hearing loss. The FCC's interim rules set forth in FCC 13-13 and made final in FCC 13-118 should curb this abuse. However, the FCC should maintain oversight of Internet Protocol Captioned Telephone Service until such time as the abuses are known to be cured and no new abuses occur.

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

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

Service calls are Internet-based services, the FCC must first decide whether IP-Enabled Services are "telecommunications services" or "information services" before any allocation of intrastate and interstate responsibilities are attempted. Until such time, the FPSC believes Internet Protocol Captioned Telephone Service should continue to be compensated from the Interstate TRS Fund.

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

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

Section 225 of the Telecom Act directs the FCC to implement regulations for TRS cost recovery that provide for the "jurisdictional separation" of TRS costs; *i.e.*, the costs caused by *interstate* TRS generally are to be recovered from all subscribers for interstate services, and the

costs caused by the provision of *intrastate* TRS are to be recovered from each intrastate jurisdiction.

Presently, Internet Protocol Captioned Telephone Service is funded through the interstate TRS fund on a national level. A primary underlying reason for the FCC's decision to have the interstate TRS Fund reimburse providers for Internet Protocol Captioned Telephone Service calls was the difficulty in ascertaining the location of calls made using IP transmissions. The FCC now opines that Internet Protocol Captioned Telephone Service providers are able to ascertain the origination and destination of Internet Protocol Captioned Telephone Service calls in a manner that would allow for compensation for these calls to be billed to the states. The FCC believes that it should reconsider its prior decision to treat Internet Protocol Captioned Telephone Service as an entirely interstate service and propose instead that this service be treated like traditional captioned telephone service, wherein state relay programs would be required to compensate providers for intrastate Internet Protocol Captioned Telephone Service calls.

Florida's ability to provide TRS under its current state statutes could be adversely impacted if the FCC requires the states to fund the intrastate portion of Internet Protocol Captioned Telephone Service. Presently, Section 427.704(4)(a)(1.), Florida Statutes, states:

[The commission shall] require all local exchange telecommunications companies to impose a monthly surcharge on all local exchange telecommunications company subscribers on an individual access line basis, except that such surcharges shall not be imposed upon more than 25 basic telecommunications access lines per account bill rendered. (emphasis added)

The Florida statute provides that the TRS surcharge be collected from only local exchange company access lines. If the FCC decides to require states to assume intrastate Internet Protocol

Captioned Telephone Service costs, the Florida Legislature may have to consider a change to the statute as to how the Florida Relay program is funded. To that end, the FCC should allow a minimum of five years for states to make possible legislative changes.

5. Mandating Internet Protocol Captioned Telephone Service as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

Competition in Florida between providers of Internet Protocol Captioned Telephone Service may be diminished if the FCC mandates that Internet Protocol Captioned Telephone Service becomes a required service of TRS in order to meet the FCC state certification requirements. Section 427.704(1), Florida Statutes, in part states:

[The commission shall] establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are hearing impaired or speech impaired, or others who communicate with them. The telecommunications access system shall provide for the purchase and distribution of specialized telecommunications devices and the establishment of statewide single provider telecommunications relay service system which operates continuously. . . (emphasis added)

Consumers 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. Should the FCC mandate that Internet Protocol Captioned Telephone Service become part of a state's TRS program, Florida would have only one

contracted provider pursuant to its current statute. In Order FCC 00-56, the FCC affirmed its belief that competition among TRS providers is preferred, stating:

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

In the 2007 Internet Protocol Captioned Telephone Service Declaratory Ruling,³ the FCC concluded, on an interim basis, that all Internet Protocol Captioned Telephone Service calls would be compensated from the interstate TRS Fund. The FCC explained that this approach was consistent with the treatment of VRS and IP Relay calls, and would provide an incentive for competition among multiple providers to offer this service on a nationwide basis in a manner that would “enhance consumer choice, service quality and available features.”

TRS in Florida can have only one provider under state law. Inclusion of Internet Protocol Captioned Telephone Service in Florida’s TRS contract would provide a funding mechanism for the intrastate portion of the service for no other provider except the one under contract with the FPSC. To this end, the FPSC urges the FCC not to include Internet Protocol Captioned Telephone Service as a mandatory service of TRS. Alternatively, should the FCC include Internet Protocol Captioned Telephone Service as a mandatory service of TRS or order that state relay programs shall fund the intrastate portion of Internet Protocol Captioned Telephone Service, the FPSC requests that the FCC provide a waiver provision in the rule for states that

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

have statutory conflicts with the proposed rule, or provide a means for states to default the Internet Protocol Captioned Telephone Service to the FCC similar to universal service low-income default states.⁴

CONCLUSION

According to the Florida Coordinating Council for the Deaf and Hard of Hearing, nearly three million deaf, hard-of-hearing, deaf-blind, and speech-impaired citizens live in Florida.⁵ Florida is the fourth largest state in the U.S. and has the second highest percentage of population who are deaf, hard of hearing, or deaf-blind.⁶ The FPSC will continue to be responsive to the needs of the deaf, hard-of-hearing, deaf-blind, and speech-impaired community in Florida. The FPSC encourages the FCC to consider the proposed recommendations noted in these comments.

Respectfully submitted,

/ s /

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⁴ States that have no state-based low-income universal service programs are designated "Federal default states." In Federal default states, the FCC assumes jurisdiction over the Lifeline program.

⁵ 2009 Florida Coordinating Council for the Deaf and Hard of Hearing Report to the Governor and Legislature of the State of Florida.

⁶ 2007 Florida Coordinating Council for the Deaf and Hard of Hearing Report to the Governor and Legislature of the State of Florida.