

**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)	

**Reply Comments (Further Notice of Proposed Rulemaking) of
Hearing Loss Association of America (HLAA)
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
American Association of the Deaf-Blind (AADB)
Deaf Seniors of America (DSA)
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Deaf/Hard of Hearing Technology Rehabilitation
Engineering Research Center (DHH-RERC)
Rehabilitation Engineering Research Center on Inclusive ICT (IT-RERC)**

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Samuelson-Glushko Technology Law & Policy
Clinic (TLPC) • Colorado Law

Counsel to TDI

Blake E. Reid

Director

Elliott Browning
Colleen McCroskey

Corian Zacher

Student Attorneys

tlpc@colorado.edu • 303.492.0548

Hearing Loss Association of America (HLAA)

Barbara Kelley, Executive Director • bkelly@hearingloss.org
Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org
PO Box 8009, Silver Spring, MD 20907
www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Association of Late-Deafened Adults (ALDA)

Sharaine Rawlinson Roberts, President • ALDAPresident@alda.org
8038 MacIntosh Lane, Suite 2, Rockford, IL 61107
815.332.1515
www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Mark Hill, President • president@cpado.org
12025 SE Pine Street #302, Portland, Oregon 97216
503.512.5066
www.cpado.org

American Association of the Deaf-Blind (AADB)

“The Unstoppable” René G Pellerin, President • info@renetheunstoppable.com
65 Lakeview Terrace, Waterbury Center, VT 05677
802.321.4864
<http://www.aadb.org/>

Deaf Seniors of America (DSA)

Nancy B. Rarus, President • nbrarus@gmail.com
Alfred Sonnenstrahl, Vice President • alsonny@icloud.com
5619 Ainsley Court, Boynton Beach, FL 33437

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Sheri Farinha, Vice Chairperson • sfarinha@norcalcenter.org
4708 Roseville Road, Suite 111, North Highlands, CA 95660

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Zainab Alkebsi, Chair • zainab.alkebsi@nad.org

8630 Fenton Street, Suite 820, Silver Spring, MD 20910-3803

Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC)

Christian Vogler, PhD • christian.vogler@gallaudet.edu

800 Florida Avenue NE, TAP – SLCC 1116, Washington, DC 20002

Rehabilitation Engineering Research Center on Inclusive ICT (IT-RERC)

Gregg Vanderheiden, PhD, Director • greggv@umd.edu

Trace Research & Development Center • University of Maryland

4130 Campus Drive, College Park, MD 20742

Summary

Thousands of Americans use IP CTS every day to stay connected to the world. Without the service, many people who are hard of hearing, deaf, or DeafBlind, including those who have other disabilities, are excluded from using the telephone, one of the most fundamental technological advances of the twentieth century.

The record on the Commission's *FNPRM* broadly reflects that the Commission's concerns about waste, fraud, and abuse in the IP CTS program are unsupported by meaningful evidence. We join many commenters in urging the Commission to comply with the D.C. Circuit's conclusion that the Commission must identify specific instances of or practices leading to waste, fraud, and abuse before enacting sweeping reforms that put the civil rights of millions of Americans at risk.

Moreover, there is significant support in the record for our position that the current system of assessing user eligibility through self-certification remains the most flexible and least burdensome option for consumers to exercise their rights to equal access. The record also makes clear that should the Commission nevertheless impose new eligibility requirements, third-party professional certifications are preferable to delegation to the states. Additionally, many commenters share our view that the Commission's proposed list of authorized third-party professionals is too narrow and must be broadened to minimize the potential burden on the consumer.

Although the Commission has proposed delegating control over IP CTS to the states, commenters make clear that states do not have the requisite data to effectively analyze whether they can assume administration. Furthermore, commenters raise several concerns around states lacking the financial resources, administrative capacity, and legal authority to administer IP CTS. The federal government is better suited than states to oversee the program and ensure that IP CTS users have access to a functionally equivalent service in every state.

Our significant concerns about these changes notwithstanding, we agree with the many commenters who support sensible regulation of provider practices that do not prevent or hinder access to IP CTS. We nevertheless emphasize the need to ensure consumer access while also providing complete and accurate information.

We also agree with other commenters who have urged the Commission to include intrastate revenues when calculating carrier contributions because both intra- and interstate minutes are compensated from the TRS Fund. Finally, the record reflects the need for the Commission to collect and make available national data on IP CTS when issuing notices for rulemaking. The Commission should stop the unjustifiable shielding of detailed provider cost data from public scrutiny when setting policy for rate methodology. Determining the best rate methodology requires detailed cost data, and protecting that information prevents consumer groups, states, and other stakeholders from meaningfully commenting on the Commission's rate proposals. Similarly, more data is necessary for stakeholders to comment on allowable costs, especially as providers begin ASR deployment.

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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 Inclusive ICT (IT-RERC) respectfully reply to comments submitted in response to the Commission’s Further Notice of Proposed Rulemaking (“2018 FNPRM”) in the above-referenced docket.¹

The Commission seeks comment on how to regulate IP CTS in a way that ensures the longevity of the program for the many Americans who rely on it. While we agree that instances of waste, fraud, and abuse should be investigated, the Commission should not infer that there is misuse based on the growth of the program alone. The Commission proposes altering the current eligibility requirements for consumers, but it does little to link the current eligibility regime to any misuse of IP CTS. Furthermore, to the extent that the Commission imposes new eligibility requirements, it must do so in a way that minimizes the additional administrative burden on consumers.

States do not have the legal authority, capacity, or data necessary to take over IP CTS administration. At the same time, the Commission is in a better position than states to set uniform policies and collect data that ensure IP CTS remains sustainable across the country. Additionally, the Commission should ensure that providers include accurate and complete information in their

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 (June 8, 2018) (“2018 FNPRM”).

marketing materials, and that any new requirements do not incidentally create unnecessary hurdles to access for consumers.

Finally, the Commission should end its interim practice of funding IP CTS with exclusively interstate revenues and should include intrastate revenues when calculating carrier contributions to the TRS Fund. The Commission should provide more detailed cost data when considering rules that alter the compensation rate and allowable costs to ensure all stakeholders can engage in the commenting process on issues that impact them.

I. Commenters agree that recent growth in IP CTS use is not a result of waste, fraud, and abuse.

The Commission’s proposed overhaul of IP CTS relies almost entirely on the assumption that the program is beset with waste, fraud, and abuse.² The Commission speculates that the increase in IP CTS minutes, the ease of using the service, and questionable provider incentives are sufficient evidence of misuse.³

However, the Commission fails to meaningfully connect these phenomena with actual instances of waste, fraud, or abuse.⁴ In fact, the Commission only references a single commenter’s anecdote that some individuals who requested a captioned telephone through state equipment distribution facilities—a small fraction of all existing and potential IP CTS users—instead find an amplified telephone to be sufficient.⁵

The record provides no further support for the Commission’s speculation; rather, commenters largely agree that this bare anecdote is not sufficient evidence of waste, fraud, and abuse to justify the proposed regulatory reforms.⁶ The record supports the far more likely explanation that recent

² *Id.* at ¶ 67.

³ *Id.* at ¶¶ 7-11.

⁴ *See id.* at ¶ 118.

⁵ *Id.*

⁶ Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123 at 15 (Sept. 17, 2018) (“CaptionCall Comments”); Comments of American Speech-Language-Hearing Association, CG Docket Nos. 13-24, 03-123 at 2 (Sept. 14, 2018) (“ASHA Comments”); Comments of Sprint

growth in the IP CTS program is attributable to an increasing number of Americans who are hard of hearing, deaf, or DeafBlind who are successfully informed of their right to this service.⁷

As CaptionCall notes, the Commission “leaps from the premise that demand in IP CTS is growing to the erroneous conclusion that a primary driver of growth must be waste, fraud, or abuse” without adequately considering likelier alternate explanations.⁸ The record instead suggests that the recent growth in IP CTS use is attributable to the increasing number of Americans with hearing loss who are successfully informed of their civil right to access this service.⁹ For example, Sprint agrees that “the increasing demand for IP CTS stems primarily from the fact that more and more Americans are experiencing hearing loss” and suggests that “because hard-of-hearing individuals substantially outnumber deaf individuals, it is completely predictable that the demand for IP CTS exceeds the demand for other forms of TRS that are designed to serve the deaf community.”¹⁰

Moreover, the American Speech-Language-Hearing Association not only agrees that growth in IP CTS is linked to the “increased incidence and prevalence of hearing loss and impairment,” but also continues by highlighting “the effects of fair and valid dissemination of information to individuals with a need for IP CTS.”¹¹ Sprint similarly points out that the success of marketing efforts does not mean that new users do not need the service.¹² Rather, the newfound growth in IP

Corporation, CG Docket Nos. 13-24, 03-123 at 6 (Sept. 17, 2018) (“Sprint Comments”); *see also* Ex Parte of Telecommunication RERC, *Initial IP-CTS Survey Analysis by the Rehabilitation Engineering Research Center on Telecommunications Access*, CG Docket Nos. 13-24, 03-123 (April 11, 2013) (demonstrating that the results of a survey of IP CTS users does not support the proposition that the growth in IP CTS minutes is a result of misuse), <https://www.fcc.gov/ecfs/filing/6017303736>.

⁷ *Id.*

⁸ CaptionCall Comments at 15.

⁹ ASHA Comments at 2; Sprint Comments at 6.

¹⁰ Sprint Comments at 6.

¹¹ ASHA Comments at 2.

¹² Sprint Comments at 7.

CTS can be attributed to the increased provision of service to the underserved community of people who are hard of hearing, deaf, or DeafBlind.¹³

Bolstering the concern of commenters in this proceeding, the D.C. Circuit already concluded that the Commission has identified little evidence of waste, fraud, and abuse in the IP CTS program.¹⁴ In fact, when the Commission previously sought to alter IP CTS eligibility rules in 2013, the D.C. Circuit went so far as to admonish the Commission for attempting “to defeat a bogeyman whose existence was never verified, *i.e.*, the fraudulent use of IP CTS technology.”¹⁵

Despite this admonition, the Commission has again proceeded down the path of attacking this same “bogeyman” without meaningful verification that it exists. The record reflects no specific evidence of waste, fraud, or abuse, and endeavoring to address a problem that may not exist both risks violating the civil rights of Americans to communicate on equal terms and places those changes in legal peril.

Against this backdrop, we urge the Commission to acknowledge that in the last five years, no body of facts has become available to support the notion that growth in IP CTS use is attributable to waste, fraud, or abuse. Success in educating consumers about the existence of this service should not be met with heightened regulatory scrutiny; it should be celebrated as advancing the civil rights of Americans who are hard of hearing, deaf, and DeafBlind. We implore the Commission to not penalize the users and potential users of IP CTS for the program’s success.

II. The record reflects opposition to imposing new eligibility requirements for IP CTS.

Throughout this proceeding, we have repeatedly stressed that any proposed change to the structure of the IP CTS program must not deter or prevent legitimate users from accessing the

¹³ *Id.*

¹⁴ *See Sorenson Communications Inc. v. FCC*, 755 F.3d 702, 709-10 (D.C. Cir. 2014).

¹⁵ *Id.* at 710.

service.¹⁶ The record underscores our concern that the Commission's proposal to impose additional eligibility requirements will create an unreasonable barrier for consumers to access IP CTS. We join commenters in urging the Commission to maintain the existing regime of self-certification, which both allows flexibility for consumers and has not been meaningfully connected to waste, fraud, and abuse.¹⁷

Additionally, the record makes clear that the Commission has produced scant evidence linking the current eligibility framework to misuse of the TRS Fund.¹⁸ Hamilton Relay correctly notes that the Commission's assertion that there is waste, fraud, and abuse in the program is based largely on the anecdotal evidence of a single commenter.¹⁹ Furthermore, that commenter represents state equipment distributors with a financial incentive to limit the number of IP CTS phones that are distributed in favor of providing other forms of assistive technologies for which they receive compensation. As such, this evidence should be viewed skeptically, because there is a clear ancillary justification to suggest there is waste, fraud, and abuse in the program. We agree with Hamilton Relay that “[i]f regulatory changes are going to be proposed based on claims of misuse of the service, the misuse should be substantiated by empirical evidence rather than anecdotal references to certain instances of misuse.”²⁰

¹⁶ See Comments of Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al., CG Docket Nos. 13-24, 03-123 (Sept. 17, 2018) (“Consumer Groups Comments”).

¹⁷ E.g., Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24, 03-123 at 20-21 (Sept. 17, 2018) (“Hamilton Relay Comments”); Consumer Groups Comments at 11.

¹⁸ See Comments of American Academy of Audiology, CG Docket Nos. 13-24, 03-123 at 3-4 (Sept. 7, 2018) (“AAA Comments”); Hamilton Relay Comments at 17; CaptionCall Comments at 19; Sprint Comments at 7; ASHA Comments at 2.

¹⁹ Hamilton Relay Comments at 16.

²⁰ *Id.* at 17.

III. If the Commission imposes new eligibility requirements, the record favors third-party assessments that mitigate the additional administrative burden on consumers.

Should the Commission choose to impose new eligibility requirements, we agree with the array of commenters who believe that third-party professional assessments are preferable to delegating this responsibility to the states.²¹ We further agree with commenters that the Commission's proposed list of third-party professionals is too narrow and must be expanded to reflect the wide variety of health providers that Americans who are hard of hearing, deaf, and DeafBlind consult on a regular basis.²²

Additionally, the record reflects widespread opposition to delegating authority over IP CTS eligibility to the states.²³ Not only would doing so create a patchwork of different requirements difficult for consumers to navigate, but also states lack the expertise and administrative capacity to handle this additional responsibility.²⁴

Finally, the Commission should not incorporate decibel level threshold testing or require retroactive eligibility certifications for existing users should a new framework be implemented.

A. The record supports expanding the Commission's suggested list of third-party professionals authorized to certify IP CTS eligibility.

Should the Commission impose a new eligibility requirement for consumers, commenters favor third-party professional certification as opposed to shifting eligibility authority to the states.²⁵ However, multiple commenters make clear that the Commission's proposed list of third-party health professionals is woefully under-inclusive.²⁶

²¹ Sprint Comments at 23-24; CaptionCall Comments at 23-27; Hamilton Relay Comments at 19-21; ASHA Comments at 3-4.

²² CaptionCall Comments at 25.

²³ Comments of ClearCaptions, LLC, CG Docket Nos. 13-24, 03-123 at 23 (Sept. 17, 2018) ("ClearCaptions Comments").

²⁴ *Id.* at 24-25.

²⁵ ClearCaptions Comments at 37; CaptionCall Comments at 23.

²⁶ Hamilton Relay Comments at 20.

As CaptionCall notes, the Commission itself articulated an appropriately broad list of health providers when it adopted interim rules around IP CTS in 2013.²⁷ The 2013 interim rules authorized third-party certifications by the following professionals: “community-based service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses and other medical or health professionals.”²⁸ We agree with CaptionCall that “[t]he Commission should not exclude these providers without a basis for doing so.”²⁹ Having a sufficiently broad range of third-party professionals authorized to certify IP CTS user eligibility will help minimize the administrative burden of imposing a new requirement on consumers.

Moreover, Hamilton Relay proposed a similar expansion to the list of third-party professionals, suggesting the Commission include general practitioners, registered nurses, veteran service officers, and physician assistants.³⁰ We agree with Hamilton Relay’s concern that requiring consumers to seek certification from a hearing loss specialist might preclude those consumers whose insurance does not cover such specialized professionals.³¹

If the Commission adopts a regime which requires a third-party certification, the list of authorized health providers must be sufficiently expanded to mitigate the additional administrative burden on consumers. We again urge the Commission to broaden its conception of which professionals are authorized to evaluate IP CTS eligibility.

²⁷ CaptionCall Comments at 25.

²⁸ *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Order and Notice of Proposed Rulemaking, CG Docket Nos. 13-24, 03-123, 28 FCC Rcd. 703, 719, ¶ 24 (Jan. 25, 2013) (“*2013 Interim Rules*”), <https://www.fcc.gov/document/fcc-takes-steps-protect-ip-based-captioned-telephone-service>.

²⁹ CaptionCall Comments at 25.

³⁰ Hamilton Relay Comments at 20.

³¹ *Id.*

B. The record highlights a multitude of problems in delegating authority over IP CTS user eligibility to the states.

Our concern over shifting authority to assess IP CTS eligibility to the states has significant support in the record. In fact, even the few commenters that support such a shift to the states concede that they will require significant additional time, guidance, funding, and potentially even legal authority to successfully assume control over IP CTS.

The primary concern raised in the record is that that states simply lack the administrative capacity to oversee IP CTS; commenters fear that states do not have the “resources, personnel, or infrastructure” to handle the increased demand.³² Specifically, CaptionCall points to a lack of expertise in hearing loss by states and inconsistency in the existence or functions of state equipment distributors as evidence of states’ inability to administer IP CTS.³³

Furthermore, the creation of a patchwork of different eligibility requirements would lead to an undue burden for consumers who move across state lines.³⁴ For instance, if people were required to re-certify eligibility in a new state upon moving, such a requirement would risk or even necessitate an unacceptable, however temporary, denial of their civil rights.

Finally, the record highlights that the convenience of certification from hearing health professionals within one’s community is not matched by the limited locations of state facilities.³⁵ As such, requiring states to administer eligibility certifications would be far more burdensome than allowing third-party professional assessments. CaptionCall points out that even those states which dedicate substantial resources to “establish multiple locations and hire qualified personnel” will not match the convenience of third-party certification.³⁶ Furthermore, CaptionCall notes—as we did in our initial comments—that many who rely on IP CTS also suffer from mobility disabilities, making

³² CaptionCall Comments at 44.

³³ *Id.* at 44-45.

³⁴ Consumer Groups Comments at 22-23.

³⁵ CaptionCall Comments at 45.

³⁶ *Id.*

this proposal particularly burdensome for the community of individuals who benefit from this service.³⁷

C. Commenters oppose including threshold hearing testing as a determinative factor in assessing IP CTS eligibility.

As we noted in our original comment, the Commission must not include threshold hearing testing as a determinative factor in assessing IP CTS eligibility.³⁸ While the record remains largely silent on this technical issue, experts in this field—namely, the American Speech-Language-Hearing Association (ASHA) and the American Academy of Audiology (AAA)—demonstrate clear support for our position.³⁹ For example, “ASHA opposes the sole use of an audiometric assessment as the basis for an eligibility determination.”⁴⁰ We urge the Commission to respect the expertise of those trained in hearing loss assessments and refrain from implementing any decibel level threshold requirement for IP CTS eligibility.⁴¹

D. The record supports that any new eligibility requirements should apply only to new users.

If the Commission opts to establish new eligibility requirements, commenters agree that they should only apply to new users.⁴² As Hamilton Relay explains, “to avoid burdening consumers, individuals who have already obtained such certification should be grandfathered, and not required to obtain a new certification under any revised certification rules adopted by the Commission in this proceeding.”⁴³ We agree that retroactively applying new eligibility rules to existing users of IP CTS would impose an unreasonable burden.

³⁷ CaptionCall Comments at 45-46; Consumer Groups Comments at 12.

³⁸ Consumer Groups Comments at 16.

³⁹ See ASHA Comments at 3; AAA Comments at 4.

⁴⁰ ASHA Comments at 3.

⁴¹ See Comments of the Rehabilitation Engineering Research Center on Telecommunications Access, CG Docket No. 03-123, 10-13 (Feb. 25, 2013), <https://www.fcc.gov/ecfs/filing/6017165533>.

⁴² Hamilton Relay Comments at 19; Consumer Groups Comments at 16.

⁴³ Hamilton Relay Comments at 19.

IV. The record opposes delegation of authority over IP CTS to the states.

As reflected in our prior comments, a decision to delegate administration of IP CTS to the states would risk consumers losing meaningful access to the telephone system.⁴⁴ Commenters—except for one—unanimously agree that states do not possess the legal authority, infrastructure, or information to administer IP CTS.⁴⁵

Commenters also suggest that states will not be able to move forward with administration of IP CTS without sufficient data from the Commission.⁴⁶ NASRA explains that “[s]tates currently lack specific data on providers’ costs, minute-usage, and user enrollment in their respective area.”⁴⁷ Furthermore, as the Nebraska Public Service Commission notes, without data about IP CTS usage, growth, and cost projection, “Nebraska and other states will not be in a position to comment on many of the changes proposed to the IP CTS model.”⁴⁸ The Commission has not afforded state commenters a meaningful opportunity to comment because this data was not made available to them. To press ahead with a state administration scheme would thereby violate the spirit, if not the letter, of the notice and comment process.

Moreover, as the Kansas Corporation Commission explains, states should not administer IP CTS because each state would have their own procedure, which would lead to confusion for

⁴⁴ Consumer Groups Comments at 17.

⁴⁵ *Compare* CaptionCall Comments at 38-44; New Mexico Commission for the Deaf and Hard of Hearing, CG Docket Nos. 13-24, 03-123 at 4-5 (Sept. 17, 2018); Illinois Telecommunications Corp., CG Docket Nos. 13-24, 03-123 at 2; National Association for State Relay Administration, CG Docket Nos. 13-24, 03-123 at 3 (Sept. 14, 2018); Comments of Nebraska Public Service Commission, CG Docket Nos. 13-24, 03-123 at 2-5 (Sept. 13, 2018) (“NPSC Comments”); Arizona Commission for Deaf and Hard of Hearing Persons, CG Docket Nos. 13-24, 03-123 at 3-2 (Sept. 13, 2018); KCC Comments at 2, 7-8 *with* Comments of Florida Deaf Service Center Association, CG Docket Nos. 13-24, 03-123 (Sept. 12, 2018) (“Florida DSCA Comments”) (showing that most commenters agree that states cannot administer IP CTS at this time).

⁴⁶ Comments of National Association for Relay Administration, CG Docket Nos. 13-24, 03-123 at 3 (Sept. 13, 2018) (“NASRA Comments”); NPSC Comments at 4.

⁴⁷ NASRA Comments at 3.

⁴⁸ NPSC Comments at 4.

providers, consumers, states, and the federal government.⁴⁹ Additionally, Kansas is limited by statute to contracting with one provider, which would limit consumer choice and innovation and create a government-sanctioned monopoly in a market where competition is feasible.⁵⁰

The Commission should not pass administration over to the states because doing so risks devastating the provision of IP CTS. Centralized regulation has allowed for competition in a market that has high barriers to entry, which empowers consumers with the ability to decide which provider they prefer and encourages providers to offer innovative new technologies. For this trend to continue, the Commission should continue administering IP CTS on a federal level.

States do not have legislative power to administer IP CTS in a way that improves the competitive landscape as required under Section 225.⁵¹ Many states are unable to contract with multiple providers, and other state regulations may limit competition and innovation.⁵² These states will contract with the lowest-cost provider, which does not ensure technological innovation or quality improvements. The Nebraska Public Service Commission offers specific examples of why state administration would limit the provision and innovation of IP CTS.

Nebraska law prohibits the state Public Service Commission from administering IP CTS altogether.⁵³ Nebraska's law limits state TRS providers to "conventional telephone systems."⁵⁴ If the Commission were to pass IP CTS administration over to the states without waiting until every state can administer IP CTS, people who rely on the service in states that are legally prevented from administering the service would be denied access in violation of Section 225.

⁴⁹ Comments of Kansas Corporation Commission, CG Docket Nos. 13-24, 03-123 at 8 (Sept. 11, 2018) ("KCC Comments").

⁵⁰ *Id.* at 8.

⁵¹ 47 U.S.C. §225(f)(2).

⁵² KCC Comments at 2.

⁵³ NPSC Comments at 2.

⁵⁴ *Id.*

Finally, as the New Mexico Commission for Deaf and Hard of Hearing Persons explains, IP CTS requires high-quality broadband access, which is not available in every part of the country.⁵⁵ Because the federal government currently oversees broadband development, it is best situated to monitor its availability.⁵⁶

V. Commenters agree that provider practices should educate IP CTS users and potential users with complete information, without incidentally preventing legitimate use.

While our concerns about the Commission's limited evidence of waste, fraud, and abuse remain, we nonetheless join other commenters in supporting sensible regulation of provider practices so long as they do not prevent or hinder access to IP CTS. While the record reflects a wide range of views on regulation of provider practices, there is a consistent theme of ensuring consumer access while providing complete and accurate information so that consumers can make informed choices.

Communications and Messaging. We agree with many commenters in supporting the Commission's commonsense proposal "to require that all provider-distributed online, print, and orally delivered materials used to market IP CTS be complete and accurate."⁵⁷ We further agree with ClearCaptions in that "the cumulative effect of any required warnings and/or prohibitions should not outweigh the purpose of the marketing material, which is to advise and educate potential consumers."⁵⁸

Registration Renewal. The proposal to require users to biennially recertify their need for IP CTS is an unnecessary burden for consumers. As Kansas Corporation Commission notes, most IP CTS users will not regain their hearing over time, so requiring them to continually attest to their need for

⁵⁵ Comments of New Mexico Commission for the Deaf and Hard of Hearing, CG Docket Nos. 13-24, 03-123 at 4 (Sept. 17, 2018).

⁵⁶ *Id.*

⁵⁷ 2018 FNPRM at ¶ 140; Comments of International Hearing Society, CG Docket Nos. 13-24, 03-123 at 4 (Sept. 17, 2018); ClearCaptions Comments at 31-32; Florida DSCA Comments at 3.

⁵⁸ ClearCaptions Comments at 37.

this service would be unnecessary.⁵⁹ We agree that a two-year recertification requirement would put these users “at an unfair disadvantage and [would] unfairly penalize” people with disabilities.⁶⁰

On/Off Requirement. As we addressed in our initial comments, we support the Commission’s proposal to require an easy way to turn captions on or off, insofar as the requirement does not prevent users from “turning or leaving captions on when needed.”⁶¹

VI. The Commission should expand the IP CTS Fund base by including intrastate revenues when calculating carrier contributions.

As we explained in our initial comments, the Commission should include intrastate revenues when calculating carrier contributions because both intra- and interstate minutes are compensated from the TRS Fund.⁶² Only one commenter, NASRA, actively disagrees with expanding the Fund base.⁶³ NASRA asks how the Commission can regulate an information service with intrastate funds over which it lacks jurisdiction.⁶⁴

Although IP CTS is an Internet Protocol (IP)-based service, the Commission has clear jurisdiction to administer it as a telecommunications relay service under Section 225.⁶⁵ Furthermore, Section 225 provides that “the Commission shall ensure that *interstate and intrastate* telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”⁶⁶ Because the statute explicitly grants the Commission authority to facilitate intrastate IP CTS service when a state does not provide it, it reasonably follows that the Commission can include intrastate revenues when calculating carrier contributions.

⁵⁹ KCC Comments at 5.

⁶⁰ *Id.*

⁶¹ Consumer Groups Comments at 26.

⁶² NASRA Comment at 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 47 U.S.C. §225(b)(1).

⁶⁶ *Id.* (emphasis added).

The Kansas Corporation Commission also urges the Commission to disclose a proposed impact on states for states to make necessary regulatory changes.⁶⁷ The Commission should be transparent about how these revenues are calculated to afford states notice but should not delay including intrastate revenues if they are needed to compensate for IP CTS.

VII. The record shows that the Commission should make cost data available before seeking comment on rate setting and allowable costs.

States and consumer groups must be included in the dialogue for rate-setting and allowable costs and commenters agree that the *FNPRM* does not provide enough data to adequately comment on these issues.⁶⁸ For the reasons the Commission articulates in the *FNPRM*, each rate compensation methodology impacts provider behavior and consumer choice differently.⁶⁹ Similarly, allowable costs may impact the sustainability of the program, particularly as the Commission begins allowing providers to deploy automatic speech recognition (ASR).⁷⁰

The Commission provides information on average provider expenses, as well as the historic compensation rate, but does not provide a list of line item costs or even average cost per minute per provider.⁷¹ When considering a complex regulatory scheme with many unintended consequences, more specific cost data is crucial to understanding the pros and cons of each proposed methodology.⁷² While the Commission provides the 2017 approximate rate of return under the MARS methodology, it is impossible for commenters to determine what impact the tiered rate structure will have on providers' rate of return without cost data.⁷³

⁶⁷ KCC Comments at 2-3.

⁶⁸ See NMCHH Comments at 4.

⁶⁹ 2018 *FNPRM* at ¶¶ 85-95.

⁷⁰ See *id.* at ¶¶ 71-85.

⁷¹ See *id.* at ¶ 17.

⁷² See *id.* at ¶¶ 85-95.

⁷³ See *id.* at ¶ 68.

One aim of this notice and comment process is to spot unintended consequences of various options for compensating IP CTS providers.⁷⁴ Without a detailed breakdown of each provider's costs, however, commenters are in no position to work with experts to identify how each methodology will impact their role in IP CTS. One example of this information asymmetry is the Commission's ordered "glide path," which it sought comment on.⁷⁵

While consumers are concerned with finding a methodology that incentivizes innovation and ensures that all reimbursed costs are reasonable, the public has no way to comment on whether the proposed rates of return are reasonable. Providers have an incentive to comment on rate methodology that allows for the highest rate of return, as evidenced by provider comments that argue for equivalent compensation for ASR and CA-assisted IP CTS. Without specific data on which costs are attributable to either form of IP CTS and which costs are overhead for each provider, the Commission does not truly open the door to the public to comment on a matter that impacts states and consumers as well as providers. This problem is exacerbated by the fact that providers do not agree on the best methodology. The Commission has essentially no neutral guidance in the record on how rate setting will impact consumers.

Commenters are similarly excluded from commenting on allowable costs because the Commission only provides one list of average allowable costs.⁷⁶ If these line items were publicly available, commenters could help the Commission keep an eye out for goldplating—compensating costs that do not provide additional value to the program. The Commission should only reimburse reasonable costs and the public should be aware of what those costs are.

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶ 86.

⁷⁶ *Id.* at ¶ 72.