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Improving the Efficiency of IP Captioned Telephone Service

by

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I. Introduction

As our country's population continues to age, the Internet Protocol Captioned Telephone Service (IP CTS), one of the Telecommunications Relay Services run by the Federal Communications Commission, performs an even more important societal function. As I described in a September 2019 *Perspectives from FSF Scholars*,¹ IP CTS allows individuals with a hearing impairment to experience "functionally equivalent" calls through the use of both their residual hearing capability and displayed captions. The FCC has a responsibility to maintain the economic efficiency and viability of IP CTS. On September 30, 2020, the Commission will consider an agenda item regarding the compensation rate to be paid to IP CTS providers, and, in light of the importance of the sustainability of the service to those hearing-impaired persons who depend upon it, I want to comment briefly on a couple of points relevant to the agency's consideration.

¹ See Randolph J. May, "Reforming the FCC's Internet Protocol Captioned Telephone Service Program," *Perspectives from FSF Scholars*, Vol. 14, No. 20 (September 3, 2019), available at: <https://freestatefoundation.org/wp-content/uploads/2019/09/Reforming-the-FCCs-Internet-Protocol-Captioned-Telephone-Service-Program-090319.pdf>. See also Randolph J. May, "Reforming the FCC's Captioned Telephone Service Program," *The Regulatory Review* (September 24, 2019), available at: <https://www.theregreview.org/2019/09/24/may-reforming-fccs-captioned-telephone-service-program/>.

Pursuant to Section 225 of the Communications Act, the Commission must ensure that telecommunications relay services, including IP CTS, are made available "in the most efficient manner."² Prior to 2018, the so-called Multistate Average Rate Structure (MARS) methodology that was employed to derive compensation rates deviated from that goal. In response, two years ago the FCC initiated a multistep process to better align, over time, IP CTS provider compensation rates with the actual costs of providing service (plus a reasonable operating margin).³

The draft *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (Draft R&O)*, which the Commission will consider on September 30, would set the target cost-based compensation rate at \$1.30 per minute for Fund Year 2021-22, beginning July 1, 2021.⁴ This is a reduction from the current rate of \$1.58 per minute. Consistent with the notion of a "glide path" down to the \$1.30 rate, the rate will transition to \$1.42 per minute effective December 1, 2020.

With this background in mind, I offer these brief comments.

II. A Single Uniform Compensation Rate

Throughout the June 2018 *Further Notice of Proposed Rulemaking*, the Commission emphasized its goal of providing "incentives for providers to increase their efficiency through innovation and cost reduction."⁵ Nevertheless, some providers continue to urge the Commission to adopt a tiered rate structure. In my September 2019 *Perspectives from FSF Scholars*, I explained that "deviation from a single uniform rate discourages those above-cost providers from adopting measures to become more efficient and to reduce their costs."⁶

The Commission's draft order for the September 30 meeting affirms its commitment to a single rate for all IP CTS providers, regardless of their size, time in operation, or number of service minutes provided. As the *Draft R&O* points out, "a single, generally applicable compensation rate based on average provider costs ... greatly simplifies the rate-setting process and creates an incentive for providers to increase their efficiency."⁷ A single rate also acknowledges that the intended beneficiaries of the TRS fund disbursements are the users, not any particular IP CTS providers. Those providers that, for whatever reason, incur higher (above-average) costs should be incentivized to reduce expenses, not be compensated at a higher rate.⁸

² 47 U.S.C. § 225(b)(1).

³ See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5813-16 (2018) (*2018 R&O*).

⁴ *Draft R&O* at para. 11.

⁵ *2018 R&O*, at para. 70.

⁶ *September 2019 Perspectives* at 4.

⁷ *Draft R&O* at para. 42.

⁸ *Draft R&O* at para. 50 ("[T]he Commission is charged with ensuring the availability of a high-quality captioning service, not ensuring that all existing providers remain in the market.").

III. Reverse Auctions or Other Market-Based Rate Setting Methods

In my September 2019 *Perspectives*, I urged the Commission, consistent with the Communications Act's efficiency mandate, to "adopt approaches that result in compensation rates that replicate, as much as possible, actual rates that would prevail in a competitive free market."⁹ In that regard, I urged consideration of the use of reverse auctions and other market-based mechanisms, such as a price cap regime.

In a reverse auction, a bidder (or bidders) will "win" by committing to provide IP CTS service at the lowest rate (or rates). This would help assure that the TRS funds are used in the most efficient manner. To its credit, the *Draft R&O* recognizes "that a properly structured reverse auction could be an effective mechanism to ensure that compensation reflects market forces."¹⁰ Nevertheless, the draft order declines to embrace such an approach at this time, concluding that the record to date "does not enable us to determine whether an auction mechanism can effectively support the provision of IP CTS by a number of competitors."¹¹ The draft adds that "there is a need for further development of data on costs and performance of fully automatic IP CTS, before the Commission can make an informed determination whether, how, and when to adopt a reverse auction methodology."¹²

While the inclination to defer consideration of reverse auctions or other market-based mechanisms at this time may be reasonable, the Commission should be committed to considering adoption of market-based compensation rates for IP CTS and other TRS services in a timely fashion. This is consistent with Congress's direction in Section 225 of the Communication Act that these services be made available "in the most efficient manner." Implementation of such market-based rate regimes will help ensure that the availability of TRS services is sustainable on a long-term basis.

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⁹ *September 2019 Perspectives* at 6.

¹⁰ *Draft R&O* at para. 47.

¹¹ *Id.*

¹² Similarly, the Commission deferred consideration of adoption of a price cap approach until it could better assess the impact on the cost of providing IP CTS by the introduction of more efficient Automatic Speech Recognition technology. *Id.*, at para. 37.