

Next in the FCC's Sights for Alleged Waste, Fraud, and Abuse: IP CTS Program

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In June, the FCC approved a package of regulatory measures – [Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking \("FNPRM"\)](#), and [Notice of Inquiry \("NOI"\)](#) – directed at reforming the IP Captioned Telephone Service ("IP CTS") program to address concerns about its sustainability. IP CTS is a form of telecommunications relay service ("TRS") that enables people with hearing loss to communicate by speaking while listening with any remaining hearing ability and reading real-time captions. IP CTS is paid for by the FCC through its TRS Fund and has experienced significant usage growth, now representing almost 80 percent of the costs covered by the Fund. The FNPRM and NOI, which propose fundamental reforms to the IP CTS program, were published in the Federal Register on July 17, 2018, which set the upcoming comment deadlines. Comments on the FNPRM are due by September 17, 2018 and replies by October 16, 2018. Comments on the NOI are due by October 16, 2018 and replies by November 15, 2018. The growth in IP CTS use is presenting challenges for the viability of the TRS Fund which, like the universal service fund ("USF"), is experiencing a shrinking contribution base. There are key similarities between the FCC's approach in this proceeding and the approach the FCC took to reforming the Lifeline program in 2012 when program costs had increased to well over \$2 billion, however, there are also key differences between the programs. In this IP CTS proceeding the FCC embarks on a familiar path of proposing changes to the IP CTS program to minimize alleged waste, fraud, and abuse as well as to reduce costs to strengthen the future sustainability of the program. The FCC has found that the difference between the amount of compensation paid out to IP CTS providers and the average reasonable cost of providing service has ballooned with the growth in demand for the service. The Commission also claims that the current compensation rate resulted in industry profits of 50 percent over provider expenses. In the Report and Order, the FCC eliminates the current contribution calculation method and adopts specific interim compensation rates for IP CTS service through 2020 that bring the compensation level closer to what the FCC says are actual average provider costs. The FCC simultaneously directs the TRS Fund Administrator to collect details from IP CTS providers about costs incurred to provide more transparency on the nature and validity of costs claimed by providers. By contrast, the Lifeline program has never been a cost-based reimbursement program and the FCC does not collect information regarding service provider costs. Rather, reimbursements are based on historic averages for supported services. The Report and Order also adopts new measures to limit incidents of unnecessary IP CTS use that drain TRS funds. Specifically, the FCC

- prohibits IP CTS providers from limiting users' ability to use volume control to when the captions are turned on;
- requires IP CTS providers to include specific factual information about how IP CTS works and the cost on all advertising or informational materials; and
- prohibits IP CTS providers from practices that the provider knows or has reason to know will cause unauthorized use of TRS, false claims, or use by consumers that do not need the service.

The FCC clarifies in the Declaratory Order that the use of automatic speech recognition ("ASR") to provide IP CTS is a valid form of relay service that is eligible for compensation. One major IP CTS provider, Sprint, petitioned for

clarification or, in the alternative, reconsideration of the Declaratory Order. Sprint's petition concerns the conditions on which providers using ASR will be certified and the equivalence of ASR-based service to traditional IP CTS. Through the FNPRM, the FCC seeks input on fundamental reforms to the program, including the most effective way to determine contribution amounts after the interim period ends in 2020. It also seeks comments about whether it should adopt tiered rates, price cap adjustments and/or a special "emergent provider" rate for new service provider entrants to encourage growth. The FCC also proposes to expand the contribution base by including some intrastate revenues from telecommunications and VoIP providers. In addition, the FNPRM proposes advertising requirements similar to the advertising reforms imposed in the Lifeline program. However, the FCC proposes to prohibit advertising of a free phone from providers, which is a step the Commission has not taken in the Lifeline program. The NOI is targeted at identifying objective, quantifiable performance metrics to assess the efficacy of the IP CTS program around things like functional equivalence to services used by the general public; use of technological advances; and provision of service in an efficient manner. The FCC hopes to provide statistics to inform consumer IP CTS provider choice and ensure the program is taking advantage of advancements in communications technology.