

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND CONCURRING IN PART**

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

Innovation has transformed all parts of the communications sector, bringing consumers the benefits of new services, more choices, and lower prices. The Telecommunications Relay Service (TRS) program and the consumers that use it have also benefited from these developments, as services have moved to IP and new features have been added. Internet Protocol Captioned Telephone Service (IP CTS) is no different. For example, service providers have begun incorporating Automatic Speech Recognition technology, which holds the promise of faster and more accurate call transcription for a fraction of the cost, allowing us to target valuable TRS funding to those who need it most.

As TRS services change with the times, so too must the Commission's approach to regulating them. The record demonstrates that the Multistate Average Rate Structure (MARS) methodology is not producing reasonable rates, so the Commission appropriately explores alternative approaches. The difficulty with cost-based rates, however, is that they require systems of accounting and review that can be burdensome for providers and overseers alike. It also requires the Commission to determine which costs are allowable. Having spent much time on these same issues in the universal service rate-of-return proceeding, I am well aware of the complexity and have understood the desire by some companies to move away from legacy structures.

Here, I suggested – and I am not the first by any means – that the Commission explore the use of a reverse auction in lieu of rate regulation. There are several ways a reverse auction could be designed, including to allow multiple providers to offer service at competitively set rates. This could avoid the need for more burdensome cost showings and auditing. I thank the Chairman and my colleagues for agreeing to revise the circulated draft to include this concept. We need to seriously consider this approach going forward.

I also want to ensure that TRS users and contributors to the program can benefit from innovation occurring outside its traditional bounds. Growth in IP CTS minutes has substantially increased the size of the TRS Fund, but the item notes that many users – 80 percent according to one filing – could communicate effectively using other technologies, such as amplified telephones, instead of IP CTS. We simply cannot expect consumers to keep funding at the levels needed to cover the growth rate of this program, especially when there are alternative options available that do not require funding from the TRS program, including texting and other messaging apps. I have heard the argument that some elderly users may not be comfortable with such services. However, new users that enter the program as they begin to experience hearing loss may have more experience, and higher comfort level, with messaging services. Therefore, I am pleased the draft item has been revised to include a section seeking comment on the extent to which other technologies that do not require TRS funding could benefit users and reduce the use of IP CTS resources.

The portion of the item that continues to give me enormous angst, however, is the legal authority provided for expanding the base of TRS contributors. Anchored in sound policy and in the law, I have pressed the Commission to declare that broadband, VoIP, and text messaging are interstate, information services. IP CTS, in my view, would fall into this same category. Relying on a strained interpretation of the statutory term “generally” in order to assess intrastate providers is not necessary and others may

attempt to use it to undermine unrelated Commission proceedings. Instead, we can get to the same outcome under my approach and avoid really problematic lines of thinking in the process.

I am also extremely troubled by the options for implementing such an expansion. I recently wrote in a blogpost that the notion of jurisdictional separations is increasingly anachronistic in an IP driven app economy. The universe of providers subject to this type of legacy accounting has been shrinking fast, and with the Commission's full blessing. I am leery of giving it new life in this proceeding. I hope that, as the service continues to evolve, this legacy approach will be overtaken by events and the Commission will reconsider its thinking.

I vote to approve in part and concur in part.