

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 19, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-C-0524 – In the Matter Concerning Captioned Telephone Service

ORDER DIRECTING THAT CAPTIONED TELEPHONE
SERVICE BE MADE AVAILABLE IN NEW YORK

(Issued and Effective July 25, 2006)

INTRODUCTION

In this order, the Commission takes steps to ensure that captioned telephone service be made available in New York. Specifically, the Commission directs the Targeted Accessibility Fund of New York, Inc. (TAF) to negotiate with Sprint Communications, L.P. (Sprint), the state's Telecommunications Relay Service (TRS) provider, an arrangement by which Sprint would make captioned telephone service available in New York as of January 1, 2007, and that Sprint modify its tariff with the Commission necessary to reflect the terms of such arrangement. Additionally, the Commission directs TAF in its negotiations with Sprint to take steps to ensure that the introduction of captioned telephone equipment initially be limited to no more than 300 telephones per month and that the cost of the service be no more than the national average cost of the service in states where such service already is available.

BACKGROUND

New York's Telecommunications Relay Service

New York's Public Service Law (PSL) §92-a requires the Commission to take certain steps to foster the ability of the state's hearing-impaired and speech-impaired residents to communicate across the Public Switched Telephone Network.¹ That section also authorizes the establishment of the New York telecommunications relay service center. From 1989 to 1997, AT&T Communications, Inc. (AT&T) provided New York's TRS for the hearing-impaired pursuant to a contract between AT&T and the New York State Telecommunications Association (NYSTA). NYSTA executed a contract with Sprint Communications Company, L.P. (Sprint) to provide TRS service on the expiration of AT&T's contract. Sprint began providing TRS in New York on August 1, 1997.

In Opinion No. 98-10, the Commission ordered the establishment of the Targeted Accessibility Fund of New York, Inc. (TAF) to fund certain public interest telecommunications programs including the state's TRS program.² On April 19, 2002, the Commission approved a second extension³ of the Sprint contract and authorized transferring oversight authority of the state's TRS program from NYSTA to TAF.⁴ Sprint is the current TRS provider in New York under agreement with TAF. Pursuant to such

¹ PSL §92-a requires "any regulated landline telephone corporation providing local exchange service" to provide whatever equipment may be necessary to allow the hearing-impaired to "access and utilize the local exchange network."

² Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Transition to Competition in the Local Exchange Market, Opinion No. 98-10, Order Establishing Access Charges for New York telephone Company and Instituting a Targeted Accessibility Fund (issued June 2, 1998) (Opinion No. 98-10).

³ The original Sprint contract was for three years but was extended by NYSTA for an additional year pursuant to an agreement filed with the Commission in May 2000.

⁴ Case 01-C-1897 *et al.*, Petition of the Targeted Accessibility Fund for Transfer of Operational Responsibility and Oversight Authority of the New York State Telephone Relay Service, Untitled Order (issued April 19, 2002).

agreement, Sprint has a tariff on file with the Commission concerning its provision of TRS.⁵

Under its tariff, Sprint provides access to the hearing- and/or speech-impaired to a telephone relay center. Sprint's current service permits telephone communications via a Telecommunications Device for the Deaf (TDD) or a Teletypewriter (TTY). Sprint's current tariff makes no provision for the use of "captioned telephone service" in New York.

Captioned Telephone Service

Captioned telephone service allows users to receive word-for-word captions of their telephone conversations on a special phone's built-in screen so that the person may read the words spoken by the other party virtually in real-time. It is different than TDD or TTY in that the user of captioned telephone may listen to the conversation while using the device, and thus the service is marketed more to those retaining some hearing but who may find relying solely on the voice of the other party to be difficult.

Over the past year, we received numerous inquiries regarding the possibility of making captioned telephone available in New York. Following up on these inquiries, Staff sent a letter to TAF in December 2005 requesting an evaluation of the costs and benefits of amending the current TRS contract with Sprint to provide for captioned telephone service. By letter dated February 24, 2006, TAF noted that currently captioned telephone service is available by only one company, Ultratec, Inc., via its service named CapTel. TAF estimated a higher Conversation Minute of Use charge for CapTel service versus the traditional TRS rate. TAF also estimated that the cost of a new CapTel phone would be between \$100 to \$300 more than a traditional TTY.⁶

⁵ Sprint Communications Company, L.P., New York P.S.C. Tariff No. 6.

⁶ A captioned telephone user must purchase a special phone that uses CapTel's proprietary technology to receive captions. TAF estimates the cost to the user for purchasing a CapTel phone as between \$300-\$500 versus the current cost to the purchaser of \$200 for a TTY phone.

Regarding cost projections, TAF estimated an increase in TAF costs of approximately \$1.4 million for the first year of service.⁷

On May 5, 2006, a Notice Soliciting Comments on captioned telephone service was issued. The Notice summarized TAF's findings and asked interested parties to comment generally on making captioned telephone service available in New York. Comments were due June 2, 2006.

Parties' Comments

In response to the Notice, over 100 individuals sent letters expressing their support for the introduction of captioned telephone service to New York. Each of the individuals urged the Commission to take whatever steps may be necessary to bring captioned telephone service to New York. Individuals noted that captioned telephone service increases the quality of life for the hearing-impaired and improves employment opportunities.⁸ Many of the individual respondents also noted that captioned telephone is available in other states. Additionally, several associations, including those representing the hearing-impaired, expressed support for bringing captioned telephone service to the State.

Sprint, New York's current TRS provider, also filed comments in support of captioned telephone service in New York. Sprint noted that it currently provides captioned telephone service in other states and noted that customer input has been extremely positive. Ultratec, Inc., owner of the CapTel brand, reiterated the benefits of

⁷ The cost to TAF of the captioned telephone services relates to the costs of handling relay calls and is tied indirectly to the number of CapTel phones in operation. The CapTel phones are only available from a company called Weitbrecht Communications. Many states have limited the monthly distribution of these phones. For example, a state may allow only 50 phones to be sold to its residents per month. Residents of those states that have "applied" to receive a CapTel phone after the imposed limit has been reached are put on a waiting list.

⁸ Several commentators cited an unemployment rate of over 50% among individuals who are hard of hearing.

captioned telephone and noted that it has received hundreds of inquiries from New York residents seeking CapTel service.

NYSTA, Verizon New York and Time Warner were the only parties that expressed reservations about bringing captioned telephone service to New York. NYSTA and Time Warner expressed opposition to any Commission order that would mandate captioned telephone service. NYSTA asserted that the Commission should defer any decision until the Federal Communications Commission (FCC) issues its own findings in its current proceeding that is addressing whether to mandate captioned telephone relay service nation-wide,⁹ and commented that mandating the use of a proprietary technology would subject New York's telecommunications carriers to monopoly pricing.¹⁰ NYSTA also expressed concern about the lack of redundancy associated with what is currently a single captioned telephone relay service with only one center that is located in Madison, Wisconsin. Finally, NYSTA expressed concern that mandating captioned telephone service may violate current state law.¹¹

Time Warner indicated its support of NYSTA's comments. Time Warner noted that, notwithstanding its position, should the Commission decide to implement captioned telephone service in New York, the funding mechanism for such service must be competitively-neutral.

Verizon New York stated that it "takes no position on the advisability of making captioned telephone service available in New York,"¹² but states that there has

⁹ NYSTA Comments, p.1.

¹⁰ NYSTA Comments, p.4.

¹¹ NY PSL §92-a(2) requires that the New York TRS center be located in Syracuse, New York. Section 92-a (2) (b) requires a minimum of 80% of all calls utilizing telecommunications relay service to be "routed" to and through the New York TRS center. The provisions of PSL §92-a (2) regarding the location of New York's TRS center in Syracuse, as well as the requirement for routing 80% of the state's TRS calls there, will expire as of June 1, 2008. Thereafter, §92-a provides no specific requirements as to the location of any such TRS center, nor as to any routing requirements for the state's TRS calls.

¹² Verizon New York Comments, p.1.

not been a showing that substantial need for captioned telephone service exists or that existing internet or relay service is insufficient to meet the needs of New York's hearing-impaired individuals.¹³

DISCUSSION

The Hearing Loss Association of New York estimates that there are 2 million New York residents suffering from some hearing loss. For many of these residents, while they may still have some hearing, they find it difficult to communicate by telephone through voice alone, but resist using the current state TRS service because they feel that the obstacles provided by traditional TDD and TTY equipment are too great for them to want to use it and that such equipment does not provide for functional equivalency to telephonic communication. Captioned telephone offers these individuals the opportunity to communicate by voice and supplement any hearing difficulties through the reading of near real-time captions. Based on the foregoing, and the numerous comments we have received in support from hearing-impaired individuals, as well as associations committed to the hearing-impaired, we find that the need for captioned telephone service has been adequately demonstrated. We also decline to await an FCC decision as this matter is clearly one of state-interest as its effect will be limited only to the New York TRS program as administered by TAF.

We also find that PSL §92-a does not prohibit the action we take today. There has been no showing that the use of captioned telephone service will violate any of requirements of §92-a. First, Sprint continues to operate the call center in Syracuse for the state's TRS program. Second, even if the calls allotted to captioned telephone service are considered TRS calls for the purposes of §92-a's routing requirement, there has been no demonstration by any party that introducing captioned telephone in New York will create a situation whereby less than 80% of state TRS calls are routed through the Syracuse TRS center. Third, as discussed below, we are establishing a limitation on the number of phones introduced per month, as has been done in other states adopting

¹³ Verizon New York Comments, fn.1.

captioned telephone service. This limitation will help achieve the intent of any routing requirements of §92-a.

The introduction of captioned telephones to states is often limited on a per month basis. Such limitation achieves multiple purposes such as allowing the manufacturer to keep supply in accord with demand, allowing the CapTel relay center to provide adequate operator resources for typing captions and allowing the state TRS provider to adequately account for costs. Of states that limit CapTel phones, we understand that California currently provides the previous highest limit of 200 phones per month. Accordingly, we direct TAF that in negotiating to provide captioned telephone equipment to New York residents, such phones should initially be limited in distribution to no more than 300 phones per month. To the extent that such a limit proves unnecessary, or that such limit may be raised, we would expect the state's TRS provider or TAF to report back to us so that we may revisit this issue in the future.

As to the potential for monopoly pricing, we are aware that there is only one provider of captioned telephone service currently operating. In ordering TAF to negotiate with Sprint to provide CapTel to New York residents, we direct TAF to ensure that New York residents do not pay for such service more than the national average of the amount paid by residents of the other states wherein CapTel is already available. Moreover, we are only ordering TAF to negotiate with Sprint to make captioned telephone service available in New York, not specifically CapTel. To the extent that CapTel may, in the future, be subject to competition, TAF and the state's TRS provider are free to explore any options those potential competitors may present for future arrangements.

Finally, we find that any concerns regarding redundancy do not outweigh the public interest in making captioned telephone available to the residents of New York.

CONCLUSION

Based on the foregoing, the Commission finds that making captioned telephone available in New York is in the public interest and that the need for such service has been adequately demonstrated by the record. We direct TAF to negotiate

with Sprint an agreement to make captioned telephone available to New York residents as of January 1, 2007. We also direct TAF that it should limit the initial distribution of captioned telephones to New York residents to no more than 300 per month, and to ensure that the cost of the service to New York residents will be no higher than the national average charged for the same service in other states wherein it is available. We also direct TAF to report its progress to the Department of Public Service Staff no later than December 1, 2006. Finally we direct Sprint to amend its tariff for New York Relay Services to reflect the availability of captioned telephone service.

It is ordered:

1. The Targeted Accessibility Fund of New York, Inc. is directed to negotiate with New York's current Telecommunications Relay Service provider, Sprint Communications, L.P., to make provision for captioned telephone service in New York consistent with this order.
2. This proceeding is continued in accordance with the foregoing.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary