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*Established by state statute to increase access to assistive technology for Missourians with disabilities.*

## Memorandum

**To:** Dan Joyce and Walt Cecil

**FROM:** Diane Golden

**DATE:** April 29, 2005

The following provides a discussion of the issues Missouri Assistive Technology would confront in attempting to place a cap on distribution of captioned telephone voice carry over (VCO) equipment.

Equipment distribution programs (EDP's), unlike third party relay services (TRS), are not directly governed by federal laws or regulations. Instead, they are authorized and governed by state laws and regulations. As a result, it is very difficult to compare state EDP's to one another. What states can and cannot do is very specific to state laws, regulations and policies that govern the program.

In Missouri's case, RSMo 209.253.3 (3) specifically requires Missouri Assistive Technology to "Provide a full range of adaptive telecommunication equipment to meet the needs of individuals with ALL types of disabilities." In addition, 8 CSR 70-1.010(9)(A)1 indicates that we will provide adaptive equipment in sufficient scope to meet the needs of individuals with all types of disabilities. The limitations that are authorized by laws are found in RSMo 209.253.9, which specifically allows the Council to establish eligibility criteria for equipment based on (1) financial means, (2) existing access to adaptive equipment, (3) prior usage of the EDP, and (4) "other factors deemed appropriate".

Under current rules, the Council does limit eligibility based on the three factors specifically authorized in subsection 9. The only option we would have for arbitrarily "capping" eligibility for captioned telephone VCO equipment would be to utilize the "other factors deemed appropriate" clause. However, providing objective rationale for such determination would be challenging. In addition, such limitation would open the door for a possible claim of discrimination on the basis of disability.

Clearly the fiscal concerns about captioned telephone VCO relate solely to minutes of use rather than equipment costs. Unfortunately, current available data indicate that usage minutes per unit/person are NOT in a normal distribution. Even if you eliminate the very high end users and those not using the equipment at all, you do not have a normal distribution. (See attached data tables and graphs that illustrate the skewed distribution of users, minutes

Exhibit 5

of usage and associated costs.) Absent a normal distribution, the mean or average number of usage minutes per unit is not a useful in projecting future usage. As a result, "capping" end unit distribution, as a mechanism for controlling usage minute costs, is not supported with valid statistical theory and would be difficult for us to justify an arbitrary cap as an appropriate factor to use in limiting eligibility.

Of even more concern is limiting eligibility for captioned telephone VCO when we have no comparable eligibility restriction for equipment needed by any other disability group. This action would certainly increase our exposure for consumer appeals and possible litigation with a claim of disability-based discrimination as prohibited by federal and state law. A number of state EDP's have faced potential disability based discrimination litigation in the last few years (related to other limits on equipment distribution.) Currently the North Dakota EDP is being sued for alleged discrimination against an individual with a speech disability by refusing to provide an augmentative communication device (a system that produces computer generated speech for an individual who cannot speak). We have been watching this case very closely as Missouri does not provide these kinds of devices and has attempted to assure the non-discriminatory nature of that decision through regulation 8 CSR 70-1.010(9)4 that indicates we will not provide any equipment "needed for one-to-one personal communication such as hearing aids, artificial larynx, or other augmentative communication devices."

Given both these concerns, if indeed the Commission wants to influence captioned telephone usage minutes through end unit distribution, we would suggest a one year moratorium on any distribution of units through our program. This would allow time for the Commission to gather a longer period of usage data and would allow us to do follow-up training with all those currently in possession of end units. (Someone would need to decide how to address private purchases of end units by Missourians.) If this seems like an option that warrants exploration, we would be happy to discuss further.

Hopefully this information is helpful in the Commission's discussions regarding the surcharge rate. Please let me know if there is any further information we can provide that would assist in this process.

Number of Users	Average Minutes Used	Standard Deviation	Number of Users Above and Below Average by Standard Deviations (in cases where the Standard Deviation was usable.) -												
			-1	+1	+2	+3	+4	+5	+7	+8	+9	+10	+11	+21	+22
240	135	322													
239	120	222													
236	102	159	177	28	14	10	5	2	0	1	1	0	1	0	1
184	176	357													
183	157	242													
180	134	170	184	25	14	8	5	0	1	1	0	1	0	1	

240 = all units distributed by Missouri Assistive Technology

239 = 240 total minus the one very high end user

\*236 = 240 total minus the four highest end users.

(While not a normal distribution, does result in a distribution that produces a usable standard deviation.)

184 = 240 total minus 56 users with zero minutes.

183 = 240 total minus the one very high end user and 56 users with zero minutes.

\*180 = 240 total minus the four highest end users and 56 users with zero minutes.

(While not a normal distribution, does result in a distribution that produces a usable standard deviation.)

Frequency Distribution of Users --- in 100 minute interval cohorts with associated costs (Header minutes are equal to or less than that number)														
Minutes	100	200	300	400	500	600	700	800	900-1300	1400	1500	16-1700	1800	3700+
Users	177	23	8	9	10	3	3	3	0	1	1	0	1	1
Percent	74%	10%	3%	4%	4%	1%	1%	1%	0	.5%	.5%	0	.5%	.5%
Minutes and Cost by Cohort														
Minutes Used	5163	3533	2012	3143	4575	1680	1950	2220	0	1310	1440	0	1715	3734
Cost in Dollars	7486	5123	2917	4557	6634	2436	2827	3219	0	1900	2088	0	2487	5414
Percent	16%	11%	6%	10%	14%	5%	6%	7%	0	4%	4%		5%	12%

See bar graph for visual display of the frequency distribution of percent of users compared to percent of usage cost.