

March 15, 2019

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Notice of *Ex Parte*: *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

Dear Ms. Dortch:

On March 13, 2019, Claudia Gordon and Scott Freiermuth (via phone) of Sprint Corporation and Emily Daniels, outside counsel for Sprint; Cindy Williams and Bruce Peterson (via phone) of CaptionCall, LLC and Rebekah Goodheart, outside counsel for CaptionCall; Dixie Ziegler of Hamilton Relay, Inc. and David O'Connor (via phone) and Rachel Wolkowitz, outside counsel for Hamilton; and Cristina Duarte, MezmoCorp (dba InnoCaption) (collectively the "Joint Providers") met with Michael Carowitz, Special Counsel for Chairman Pai; Arielle Roth, Legal Advisor for Commissioner O'Rielly; and Evan Swarztrauber, Policy Advisor for Commissioner Carr. On March 14, 2019, the Joint Providers met with Travis Litman, Chief of Staff and Legal Advisor for Commissioner Rosenworcel; Randy Clarke, Acting Legal Advisor for Commissioner Starks; Patrick Webre, Robert Aldrich, Eliot Greenwald, and Michael Scott of the Consumer and Governmental Affairs Bureau; and Andrew Mulitz of the Office of the Managing Director.

During the meetings, the Joint Providers urged the Commission to act on their recent filing urging the Commission to retain the interim \$1.75 per minute IP CTS rate for at least the 2019-2020 Fund Year rather than reducing the rate to \$1.58 on July 1, 2019.¹ In particular, the Joint Providers explained the legal and policy reasons for freezing the rate that were outlined in the Joint Provider filing.² In addition, the Joint Providers emphasized that both the record and regulatory landscape have changed significantly since the Commission adopted the interim \$1.58 rate in June 2018.

¹ Letter from Dixie Ziegler, Hamilton Relay, Inc.; Scott Freiermuth, Sprint Corporation; Bruce Peterson, CaptionCall, LLC; and Cristina Duarte, MezmoCorp (dba InnoCaption), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24 (Feb. 28, 2019) ("Joint Provider Filing").

² *Id.*

Most notably, the TRS Fund Administrator's Interstate Telecommunications Relay Services Fund Advisory Council ("TRS Advisory Council") conducted an unprecedented review of each IP CTS provider's costs – first obtaining detailed cost data from each provider pursuant to provider-specific non-disclosure agreements, carefully reviewing such data, and then meeting with each provider and questioning its costs.³ After undertaking this extensive review, the TRS Advisory Council found on December 4, 2018 that the "\$1.58 price cap is below each Providers Cost Analysis '2019 Projected,'" even *before* considering a number of "non-allowable" costs that providers currently incur.⁴

The TRS Advisory Council concluded that the "scheduled reduction [to \$1.58] is unrealistic" and could lead to reductions in service quality and/or market exit.⁵ The Joint Providers confirmed and expanded upon this finding and provided concrete details regarding how service quality, innovation, and competition would be harmed should the interim \$1.58 rate go into effect.⁶ The Joint Providers also discussed the Commission's recent decision to impose new costs on providers by integrating IP CTS into the URD without adjusting the interim \$1.58 rate to account for the costs associated with this decision.⁷

In light of the new data in the record from the TRS Advisory Council and the new costs the Commission has imposed on IP CTS providers (as well as the proposals to impose further costs in the pending Further Notice of Proposed Rulemaking and Notice of Inquiry), the Joint Providers urged the Commission to act as soon as possible to extend the current interim rate of \$1.75 and avoid market disruption. The Joint Providers specifically discussed the numerous procedural avenues the Commission has for providing this relief before the interim \$1.58 is scheduled to go in effect on July 1.⁸ The Joint Providers also noted that the \$1.75 rate represents a sharp \$0.25 per minute reduction from the MARS

³ Letter from David W. Rolka, Administrator, TRS Fund, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24, at 4 (Dec. 4, 2018). Note that none of the Joint Providers serve as members of, or are otherwise affiliated with, the Advisory Council's Cost Analysis subcommittee, which conducted the analysis.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *See* Joint Provider Filing at 4-6.

⁷ As the Joint Providers have explained, the mechanism the Commission adopted to permit providers to recover URD integration costs as exogenous costs is flawed and inadequate. Among other deficiencies, the standard for exogenous cost recovery is so high that a provider would have to make cuts that harm service quality or halt investment before even qualifying for cost recovery. *See id.* at 3-4.

⁸ *See id.* at 6-8.

rate and that the Commission thus has already achieved significant savings to the TRS Fund. During the 2018-2019 funding year, using the Commission's most recently published demand estimates, the Commission saved the TRS Fund approximately \$132 million in moving to \$1.75, and it would save approximately \$163 million more by extending the \$1.75 rate for the 2019-20 Fund Year.⁹

Finally, the Joint Providers urged the Commission to ensure that an *interim* rate cut does not harm consumers. The Commission must be particularly mindful of its statutory imperative to ensure that accessibility services are available to individuals with communications disabilities in "a manner that is functionally equivalent" to communications services used by individuals without such disabilities.¹⁰ As numerous consumer groups have indicated in the record, "IP CTS takes a critical step towards functional equivalency," both because it gives users "more flexibility, direct access to others without the additional cost of a two-line system, and the ability to connect to a digital phone line" and because "people with low vision who are also hard of hearing or deaf can use IP CTS."¹¹

This filing is made in accordance with Section 1.1206(b)(2) of the Commission's rules.¹² In the event that there are any questions concerning this matter, please contact the undersigned.

⁹ The MARS-based rate methodology for IP CTS would have been \$2.0007 for the 2018-19 Fund Year. Accordingly, the amount saved in 2018-19 will be approximately $(\$2.0007 - \$1.75) \times 526$ million minutes or \$131,868,200. Conservatively assuming that the MARS-based rate does not increase and that IP CTS demand increases by the same amount in 2020 as it did in 2019, the amount saved in the 2019-20 Fund Year would be $(\$2.0007 - \$1.75) \times 651$ million or \$163,205,700.

¹⁰ 47 U.S.C. § 225(a)(3).

¹¹ Comments of Hearing Loss Association of America; Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Association of Late-Deafened Adults; Cerebral Palsy and Deaf Organization; American Association of the Deaf-Blind; Deaf Seniors of America; California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.; Deaf and Hard of Hearing Consumer Advocacy Network; Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center; and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, CG Docket Nos. 13-24 & 03-123, at 9 (Sept. 17, 2018).

¹² 47 C.F.R. § 1.1206(b)(2).

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Respectfully submitted,

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