

WILKINSON) BARKER) KNAUER) LLP

1800 M STREET, NW
SUITE 800N
WASHINGTON, DC 20036
TEL 202.783.4141
FAX 202.783.5851
WWW.WBKLaw.COM
DAVID A. O'CONNOR
202.383.3429
DOCONNOR@WBKLAW.COM

April 1, 2019

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: **EX PARTE PRESENTATION**
Misuse of Internet Protocol (IP) Captioned Telephone Service;
Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities
CG Docket Nos. 13-24, 03-123

Dear Ms. Dortch:

Hamilton Relay, Inc. ("Hamilton") files this written ex parte submission to reiterate its support for freezing the IP CTS compensation rate at \$1.75 until the Commission adopts a permanent rate methodology for the service. In addition, Hamilton agrees with the comprehensive report submitted recently by the Brattle Group,¹ which demonstrates that the most economically sensible and sustainable approach to a permanent rate methodology for IP CTS (other than a return to the multistate average rate structure) is the adoption of a price cap methodology.

The Commission Should Freeze the Interim Rate at \$1.75

In June 2018, the Commission established interim compensation rates for two years (\$1.75 for 2018-2019 and \$1.58 for 2019-2020), while it considers a new permanent rate methodology for IP CTS.² Since then, in addition to a pending petition for reconsideration of

¹ The Brattle Group, "Economic Considerations of IP CTS Rate Structure and Methodology," CG Docket Nos. 13-24, 03-123 (filed Mar. 27, 2019) ("Brattle White Paper").

² *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*,

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that decision, a majority of providers, as well as a coalition of consumer groups and a subcommittee of the TRS Advisory Council, have all joined in requesting a rate freeze at the \$1.75 level in order to avoid serious harm to the IP CTS industry and its user base. Given the weight of evidence in the record, the Commission should freeze the compensation rate at \$1.75 until it adopts a permanent rate methodology.³

As the joint IP CTS providers explained, “service quality, innovation, and competition would be harmed should the interim \$1.58 rate go into effect.”⁴ After the Commission adopted the interim \$1.58 rate, the TRS Advisory Council’s Cost Analysis subcommittee found that the “\$1.58 price cap is below each Providers Cost Analysis ‘2019 Projected,’” even though the 2019 projected costs do not include several actual, but not “allowable” costs.⁵ Exacerbating the harm the subcommittee warned against, the Commission recently required IP CTS providers to collect and submit detailed personal user information to the TRS User Registration Database (“TRS-URD”).⁶ Based on the recent experience of Video Relay Service providers with the TRS-URD,⁷

Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800 (2018), *petition for recon. pending*.

³ See Letter from Dixie Ziegler, Hamilton Relay, Inc.; Scott Freiermuth, Sprint Corporation; Bruce Peterson, CaptionCall, LLC; and Cristina Duarte, MezmoCorp (dba InnoCaption), to Marleen H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24 (Feb. 28, 2019); Letter from Dixie Ziegler, Hamilton Relay, Inc. (“Joint Provider Rate Filing”); Scott Freiermuth, Sprint Corporation; Bruce Peterson, CaptionCall, LLC; and Cristina Duarte, MezmoCorp (dba InnoCaption), to Marleen H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24 (Mar. 15, 2019) (“Joint Provider Ex Parte Notice”).

⁴ Joint Provider Ex Parte Notice at 2.

⁵ *Ex parte* Letter from David W. Rolka, Administrator, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123, at 4 (filed Dec. 4, 2018) (“iTRS Advisory Council Comments”).

⁶ *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Further Notice of Proposed Rulemaking, and Order, CG Docket Nos. 13-24, 03-123, FCC 19-11 (rel. Feb. 15, 2019).

⁷ See, e.g., Convo Communications, LLC Petition for Expedited Retroactive Waiver, CG Docket Nos. 10-51, 03-123, at 2 (filed Mar. 27, 2019) (noting that TRS-URD implementation “has been a learning curve for all parties involved” and that even the filing instructions have been changed at least six times since May 2018, which suggests a significant amount of required internal compliance costs and external legal costs); Ex Parte Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123, at 6 (filed Feb. 7, 2019) (suggesting that VRS providers incurred significant costs associated with TRS-URD compliance).

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IP CTS providers are likely to incur substantial costs associated with implementing and then complying with the new TRS-URD rules, none of which are captured by prior “actual” costs reports. In short, compliance with TRS-URD requirements is an unfunded mandate. Given these mandatory cost *increases*, a further arbitrary *decrease* in the compensation rate to \$1.58 is even more inappropriate than it was in June 2018.⁸

The new evidence in the record demonstrates that allowing the \$1.58 rate to go into effect would harm consumers – an action that would frustrate the IP CTS program’s primary purpose of ensuring functionally equivalent service under the Americans with Disabilities Act of 1990.⁹ Accordingly, the Commission should act to prevent such harm.

The Brattle White Paper Confirms that a Price Cap Methodology Is the Best Permanent Rate Methodology for IP CTS

On March 27, 2019, the Brattle Group submitted a new white paper concerning IP CTS cost rate methodologies.¹⁰ The Brattle White Paper discusses the shortcomings of a cost-based rate methodology, criticizes other proposed methodologies such as tiered rates, and proposes a price cap rate methodology as the most economically efficient and sustainable option for a permanent rate methodology. The Brattle White Paper is an important contribution to the record that should be given serious consideration by the Commission.

In addition, Hamilton agrees that the Commission should permit the iTRS Advisory Council subcommittee to “look into the various rate methodologies and expeditiously provide a recommendation.”¹¹ As part of its examination, Hamilton encourages the subcommittee to review in detail the data included in the Brattle White Paper. The subcommittee received the clearest independent understanding of actual provider costs, based on unprecedented access and dialogue with the all five current IP CTS providers.¹² This insight is extremely valuable to the Commission’s decisionmaking process because “each Provider handles and reports their IPCTS

⁸ As noted in the Joint Provider Rate Filing, the treatment of the URD integration costs as recoverable exogenous costs in only certain instances does not adequately address the issue. Joint Provider Rate Filing at n.12.

⁹ See 47 U.S.C. § 225; see also *National Lifeline Association, et al. v. FCC*, slip op. at (D.C. Cir., No. 18-1026, Feb. 1, 2019) (faulting the Commission for “fail[ing] to consider the impact of the [FCC’s policy] change on the Lifeline subsidy’s ‘primary purpose’ or otherwise explain how it is compatible with that purpose”).

¹⁰ See *supra* note 1.

¹¹ See iTRS Advisory Council Comments at 2.

¹² *Id.*

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call processing costs in a different manner,”¹³ and thus a comprehensive view of provider costs is necessary in order to avoid excluding legitimate provider cost categories.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(1). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,
WILKINSON BARKER KNAUER, LLP

/s/ David A. O’Connor
Counsel for Hamilton Relay, Inc.

¹³ *Id.*; see also Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51 at 15 (filed May 24, 2017) (noting that because the Commission has never determined what costs are reasonable or allowable in connection with IP CTS, there are almost certainly wide disparities in the various approaches that IP CTS providers take in submitting their costs, among other flaws with current cost collection methods).