

# Morgan Lewis

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April 25, 2019

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: NOTICE OF EX PARTE COMMUNICATION  
CG Docket No. 13-24 - In the Matter of the Misuse of Internet Protocol (IP)  
Captioned Telephone Service; CG Docket No. 03-123 - Telecommunications  
Relay Services and Speech-to-Speech Services for Individuals with Hearing  
and Speech Disabilities**

Dear Ms. Dortch:

ClearCaptions, LLC ("ClearCaptions" or the "Company"), through its undersigned counsel, files this Notice of an *Ex Parte* meeting held on April 23, 2019 in which Robert Rae, President and CEO, Michael Strecker, Vice President of Regulatory and Strategic Policy and the undersigned met with Consumer and Governmental Affairs Bureau staff Eliot Greenwald, Deputy Chief of Disabilities Rights Division ("DRO"); Michael Scott, DRO Attorney and Robert Aldrich, Legal Advisor to the Bureau Chief.

ClearCaptions explained that it does not support freezing the rate at \$1.75 for all providers.<sup>1</sup> ClearCaptions planned for the upcoming rate cut by renegotiating contracts with its vendors and growing its business to begin realizing the economies of scale necessary to survive the planned July 1, 2019 rate reduction to \$1.58 per minute of use. ClearCaptions needs rate certainty for the next five years to attract new capital investment necessary to continue improving its IP CTS service offerings. ClearCaptions' service offerings make communications services accessible to hard-of-hearing consumers that need IP CTS to live independently and remain connected to family, friends, and the businesses that serve America's aging

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<sup>1</sup> ClearCaptions agrees that competition is good for the IP CTS industry and therefore a limited IP CTS rate freeze for the smallest provider would be reasonable, supported by precedent and well founded.

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population. Thanks in part to the Commission's recent 911 waiver, ClearCaptions now offers a new mobile application that is the first to use geolocation data from its customers' cell phones to route E911 calls to the appropriate Public Safety Answering Point ("PSAP").

ClearCaptions urged the Commission to adopt its proposed four-tier model for the IP CTS rate structure.<sup>2</sup> ClearCaptions believes a four-tier structure would achieve many of the Commission's desired goals:

- Ensure providers are not earning unreasonable operating margin;
- Promote competition;
- Ensure that as providers grow they are forced to achieve economies of scale; and
- Protect the TRS Fund.

Adopting tiered rates would be consistent with the Commission's VRS precedent and (1) assist the smallest providers from being eliminated due to scale disadvantages and (2) force providers to adjust their cost structure to be more efficient.

ClearCaptions explained that it disagrees with several assumptions in the Brattle Group Report.<sup>3</sup> First, the Report's assertion that the current rate must be sufficient to entice new entrants because two providers are currently seeking certification ignores the fact that both of those new entrants would rely on Automatic Speech Recognition ("ASR") with a much lower cost structure. Second, the assertion that recent IP CTS entrants (presumably ClearCaptions and Innocaption) are evidence that rate tiers are unnecessary ignores the fact that both providers entered under the MARS \$1.94 rate, which is consistent with ClearCaptions' proposed tier model. Third, it appears that their analysis ignores current market share distribution and how that distribution, tied to a tiered rate model, impacts the overall TRS Fund. Finally, the Brattle Group Report does not appear to analyze whether or not existing IP CTS providers' cost models (i.e. reseller models) realize economies of scale others in the industry are experiencing, in part because the Commission's rulemaking will determine whether and how to collect more granular cost data to determine the costs underlying the IP CTS service provided through the reseller model.

ClearCaptions suggested that the Commission's new Office of Economics and Analytics evaluate the cost proposals and data to assist the Commission determine the appropriate rate structure for IP CTS. ClearCaptions noted that in other contexts, the Commission has engaged an economist to evaluate data and issue a report that it then made available for comment.<sup>4</sup>

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<sup>2</sup> See Initial Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 11-23 (filed Sept. 17, 2018); Reply Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 5-6 (filed Oct. 16, 2018); see also ClearCaptions, LLC Ex Parte, CG Docket Nos. 13-24 and 03-123, Exhibit 1 at slides 8-9 (filed Nov. 7, 2018).

<sup>3</sup> See Letter from Brent Lutes, PhD, Associate, The Brattle Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, attaching report entitled "Economic Considerations of IP CTS Rate Structure and Methodology", CG Docket Nos. 13-24 and 03-123, at 11-23 (filed March 27, 2019).

<sup>4</sup> See, e.g., *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos.

Because such analyses can take some time, ClearCaptions urged the Commission to begin any such economic analysis as soon as possible.

ClearCaptions also demonstrated the ASR platform it is testing on its new mobile IP CTS application. ClearCaptions projects that ASR will be suitable for only a small percentage of IP CTS traffic in 2019, likely only in the single digits. ClearCaptions expects the costs of offering ASR to be higher initially, but is optimistic that over time ASR accuracy will improve, the percentage of conversation minutes that can be captioned using ASR will increase, and the cost of an ASR-captioned minute will go down. ClearCaptions recommended that the Commission set the four-year rate cycle in time to implement new IP CTS rates by July 1, 2020, but continue to collect cost data related to the introduction of ASR technology. Although it is difficult to predict when ASR will be used to caption a larger percentage of IP CTS minutes of use, the Commission could reserve the right to adopt an ASR-specific rate at some point during the four-year rate cycle. ClearCaptions advocated that any ASR-specific rate be set to incent providers to move to ASR, such as by permitting a higher operating margin for ASR minutes of use than for traditional agent-captioned minutes of use.

Finally, ClearCaptions recommended that the proposed rule 64.605(a)(3) regarding IP CTS provider provision of 911 service be revised to recognize certain exceptions. There may be instances where it would be better for the IP CTS provider to route a call to a National Emergency Call Center rather than the PSAP, designated statewide default answering point, or local emergency authority. For example, if a customer is using ClearCaptions' IP CTS mobile app, and has disabled the geographic location services on the phone, it would be more appropriate to route the call to some type of national administrative 911 facility who can work with the customer to validate their physical location. Because a customer using a mobile app may change their physical location multiple times per day, sending the call to the PSAP associated with the registered 911 address (which the customer may not be able to update in the event of an emergency) may result in the call being routed to the wrong PSAP.

ClearCaptions looks forward to working with the Commission on a long-term rate solution for IP CTS and stands ready to continue those productive discussions.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Tamar Finn

Tamar E. Finn

*Counsel to ClearCaptions, LLC*

cc: Eliot Greenwald  
Michael Scott  
Robert Aldrich