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May 15, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **REQUEST FOR HIGHLY CONFIDENTIAL TREATMENT**
ClearCaptions, LLC
CG Docket Nos. 03-123 and 13-24[1]

Dear Ms. Dortch,

ClearCaptions, LLC (ClearCaptions), pursuant to the *Second Protective Order*, DA 12-858, released May 31, 2012 in the above captioned dockets, hereby requests highly confidential treatment of certain information contained in the enclosed ex parte notice.[2] ClearCaptions is also submitting a redacted version of this letter pursuant to the *Second Protective Order*.[3]

ClearCaptions hereby requests that all information contained after the headings *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** and before the headings *****END HIGHLY CONFIDENTIAL INFORMATION***** be treated as

[1] Because there is no protective order in effect for CG Docket No. 13-24 at this time, the Consumer and Governmental Affairs Bureau has granted to ClearCaptions an extension of time to file this ex parte notice in CG Docket No. 13-24 until after a protective order, that is in process, is released.

[2] *See Structure and Practices of Video Relay Service Program, et al.*, CG Docket Nos. 03-123 and 10-51, Second Protective Order, DA 12-858 (May 31, 2012)("*Second Protective Order*"); *see also* 47 C.F.R. §§ 0.457, 0.459.

[3] *Second Protective Order*, ¶ 12.

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Highly Confidential Information under the *Second Protective Order*.[4] As described below, the information contained in those headings is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*, and is proprietary and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act ("FOIA").[5] Pursuant to paragraph 3 of the *Second Protective Order*, ClearCaptions has obtained Commission staff's written preliminary approval to designate the subject information as Highly Confidential.[6]

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, ClearCaptions requests that, in the event that the Commission denies ClearCaptions's request for confidentiality, the Commission return the materials without consideration of the contents therein.[7]

(1) Identification of the specific information for which confidential treatment is sought.

ClearCaptions hereby seeks Highly Confidential treatment for all of the information in the enclosed ex parte notice that is contained after the headings *****BEGIN HIGHLY CONFIDENTIAL***** and before the headings *****END HIGHLY CONFIDENTIAL*****, which is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*.[8]

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The attachment to this ex parte notice was distributed to FCC staff in meetings held on May 11, 2017, which are discussed in the ex parte notice.

(3) Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.

The subject information contains highly sensitive ClearCaptions IP CTS operating cost information that would cause harm to ClearCaptions if disclosed. Indeed, revealing this

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[4] *Second Protective Order*, ¶ 2.

[5] *Second Protective Order* Appendix A; 5 U.S.C. § 552(b)(4).

[6] *Second Protective Order* ¶ 3.

[7] 47 C.F.R. § 0.459(e).

[8] *Second Protective Order* Appendix A.

information may allow competitors to calculate HCI for ClearCaptions. This information is properly designated Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order* as "[i]nformation that provides granular information about [ClearCaptions's] past, current, or future costs, revenues, marginal revenues, or market share, and future dividends."[9] Further, this information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.[10] Accordingly, ClearCaptions hereby requests that such information be treated as Highly Confidential Information under the *Second Protective Order* and not be made routinely available for public inspection.

(4) Explanation of the degree to which the information contains a service that is subject to competition.

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff's written preliminary approval to designate the subject information as Highly Confidential Information pursuant to paragraph 3 of the *Second Protective Order.* ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

(5) Explanation of how disclosure could result in substantial competitive harm.

The presence of competitors in the IP CTS market and the likelihood of competitive injury to ClearCaptions threatened by release of this information should compel the Commission to withhold the information designated as Highly Confidential Information from public disclosure. The Commission has provided assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."[11]

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff's written preliminary approval to designate the subject information as Highly Confidential Information

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[9] *Second Protective Order* Appendix A.

[10] 5 U.S.C. § 552(b)(4).

[11] *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission,* Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

pursuant to paragraph 3 of the *Second Protective Order*.[12] ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

(7) Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.

The subject information is not ordinarily available to the public or to any third parties.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

As described above, the subject information contains highly sensitive ClearCaptions cost and other information covered by paragraph 3 of the *Second Protective Order* that could cause significant competitive injury to ClearCaptions if disclosed.[13] For this reason, ClearCaptions respectfully requests that the Commission protect this information from public disclosure indefinitely.

(9) Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.

As the subject information is being submitted voluntarily, ClearCaptions requests that, in the event that the Commission denies ClearCaptions's request for confidentiality, the Commission return the materials without consideration of the contents therein.

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[12] *Second Protective Order* ¶ 3.

[13] 5 U.S.C. § 552(b)(4).

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,

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May 15, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Notice of Ex Parte – 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:

On May 11, 2017, Michael Strecker, Vice President of Regulatory Affairs, ClearCaptions LLC ("ClearCaptions") and Paul Besozzi, Squire Patton Boggs (US) LLP, counsel to ClearCaptions, met with Karen Peltz Strauss, Deputy Bureau Chief of the Consumer and Governmental Affairs Bureau ("CGB"); Robert Aldrich, Front Office Legal Advisor, CGB; Susan Bahr, Attorney Advisor, CGB; Elliott Greenwald, Deputy Chief, Disability Rights Office ("DRO"), CGB; Michael Scott, Attorney Advisor, DRO, CGB; and Andy Mulitz, Compliance and Oversight Group Chief, Office of the Managing Director ("OMD") regarding Internet Protocol Captioned Telephone Service ("IP CTS") matters in the above referenced proceedings. Mr. Strecker and Mr. Besozzi met on the same subject matter with Zenji Nakazawa, Acting Public Safety and Consumer Protection Advisor to Chairman Ajit Pai.

After a brief introduction regarding the status of the Company, discussions in both of these meetings focused on the following issues: (1) annual re-registration for IP CTS users; (2) third party certifications; (3) use of Automatic Speech Recognition ("ASR") with IP CTS; and (4) IP CTS rate structure.

1. Annual Re-registration Of IP CTS Users – ClearCaptions fully supported Commission efforts to ensure that eligibility requirements for IP CTS users are enforced and maintained, particularly through monitoring and enforcing existing rules, including those on upfront registration of IP CTS users. However, the Company respectfully opposed the recommendation by one IP CTS provider that the Commission explore a new requirement

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that each and every IP CTS user be re-registered every year.[1] In its view, such a mandate would cause expenditure of additional costs, which would grow in what is concededly an expanding market. The mandate to provide "functionally equivalent" service does not require such an annual re-registration requirement; it would place an undue burden on consumers to essentially re-certify that they still have a hearing loss necessitating the need to use IP CTS. The resources expended could be better put to efforts to improve IP CTS service through new technologies such as ASR.

2. Third Party Certification Requirements – ClearCaptions expressed support for the use of third party certifications to ensure that only eligible consumers are making use of IP CTS services. However, the Commission must enforce the existing rules regarding impermissible relationships between, for example, audiologists and IP CTS service providers. Clear Captions reiterated that on a number of occasions audiologist offices declined to work with the Company on certifications because the office reported that it had a relationship with a single IP CTS provider. The Commission's existing rules proscribe joint marketing arrangements between hearing health professionals and IP CTS providers.[2] ClearCaptions believes that such exclusive arrangements are inconsistent with that prohibition and create a potential barrier for ClearCaptions and its customers. The Company noted that should mandatory third party certifications be reinstated, existing certifications obtained – even though not required – should be grandfathered. In connection with any such reinstatement, ClearCaptions urged the Commission to issue a public notice further clarifying permissible relationships between audiologists and IP CTS providers, and should work with consumer groups and IP CTS providers to clarify the qualifications of individuals authorized to make such certifications.

3. ASR – ClearCaptions expressed its belief that it is essential that, when ASR technology is ready for deployment, any transition be seamless to the consumer, while not producing any degradation of service. The Company stressed that in examining any potential readjustment in the IP CTS per-minute rates mechanism, the Commission must consider the inevitable impact on continued investment in ASR development. ClearCaptions conceded that research and development expenditures are not *per se* included under current categories of IP CTS costs. However, the reality is that capital is necessary to make progress toward an ASR solution and near-term rate reductions would challenge ClearCaptions's ability to continue its efforts at a critical time. ClearCaptions did support the concept of a separate ASR rate that would incent providers to move minutes to ASR should such movement be the

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[1] *Ex Parte* Notice from Scott R. Freiermuth, Counsel, Government Affairs, Regulatory, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 03-123 and 13-24, dated May 1, 2017, p. 1 ("*Sprint Ex Parte*").

[2] 47 C.F.R. § 64.604(c)(8)(iii); *see In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*; CG Docket No. 13-24, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13428-13435 ¶¶ 16-29 (2013) ("*2013 IP CTS Order*").

Commission's goal.[3] The Company believed such a financial incentive would motivate providers to invest in ASR technology and create a reward mechanism for doing so.

4. **IP CTS Rates** – ClearCaptions also expressed its ongoing support for the current Multi-State Average Rate Structure System ("MARS") for establishing annual IP CTS rates, noting that the projected increase in the per-minute rate this year is less than 2%. The Company agreed that such a market-based rate system remains the optimal method for meeting the statutory mandates for IP CTS, including a rate that "does not discourage or impair the development of improved technology" (e.g., development of ASR).[4]

ClearCaptions added that the record in the *2013 IP CTS Order* is several years old and the marketplace has changed dramatically since that record closed, including the entry of ClearCaptions as a separate, independent provider of IP CTS service. At a minimum, that record must be refreshed before there is any dismantling of the MARS mechanism. Indeed, the favored proposal raised in the most recent filing by the TRS Administrator – for a tiered rate – is wholly new to the current open proceeding and therefore a new FNPRM should be commenced.[5] ClearCaptions would expect to actively participate in such a proceeding.

The Company contended that if such an FNPRM were to look at IP CTS provider costs as a basis for rates, the data cited in the *RL 2017-2018 Estimate* paint an incomplete picture of what it costs to provide IP CTS service due, at least in part, to unrealistic limitations on generally accepted allocations of General and Administrative expenses. In addition, research and development expenses, necessary to the development of ASR, are not considered allowable costs.[6]

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[3] *Ex Parte* Notice from John T. Nakahata, Counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 03-123 and 13-24, dated April 24, 2017, p.6 ("*CaptionCall Ex Parte*").

[4] *See CaptionCall Ex* Parte, p.2 and n.1; *see also Sprint Ex Parte* p. 1(warning against abandoning MARS rate setting methodology); *Ex Parte* Notice from David A. O'Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 03-123 and 13-24, dated April 25, 2017, p.2 ("*Hamilton Ex Parte*").

[5] Interstate Telecommunications Relay Services Fund Payment Formula and Find Size Estimate, Rolka Loube Associates LLC ("*RL*"), CG Docket Nos. 03-123 and 10-51, April 28, 2017, p.22 ("*RL 2017-2018 Estimate*"); *see Ex Parte* Notice from John T. Nakahata, Counsel to Sorenson Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 03-123, 10-51 and 13-24, dated May 4, 2017, p.5 ("*Sorenson Ex Parte*").

[6] *CaptionCall Ex Parte*, p. 2 ("Rolka Loube's…most recent IP-CTA [cost]data …do not accurately represent industry-wide costs."). ClearCaption thus agreed with the observation that an "allowable cost mechanism arbitrarily excludes many of the actual costs of providing IP CTS …." *Id.*

ClearCaptions further pointed out that if the Commission is to assess costs in setting IP CTS rates it must take into consideration the current marketplace landscape. The reality is that the major existing providers have had several years of MARS-based rates to build their traffic and effectively gain the economies of scale as reflected in Exhibit 1-3 ("IP CTS Historical Cost Rate Data Comparison") of *RL's 2017-2018 Estimate*. Operations on such a scale drive down costs so that rates set on the basis thereof would be well below where any emergent competitor like ClearCaptions can realistically function. The Company argued that for start-up, or emergent, providers, the MARS methodology is still the appropriate methodology for determining reasonable reimbursement rates. As such, if the Commission were to move to some form of cost-based rate to preserve the prospect of competition, it would have to set an emergent provider rate, as proposed for the Video Relay Service.[7]

ClearCaptions shared and reviewed the attached data regarding its estimate of current IP CTS market share, industry cost data, and its own cost data, noting that its costs, at the minute volumes at which it is currently operating, are comparable to historical costs for providers at those operating volumes. As such, comment that "the Commission must make a policy choice on whether to continue subsidizing small providers" seems to be applying a selective memory as to the fact that CaptionCall was at one time the small provider in IP CTS receiving said subsidy.[8] Additionally, for RL to flag start-ups or relatively new IP CTS providers as inefficient[9] seems to be applying the same bias towards providers who have gone through the same cost trend as these so-called "inefficient" providers.

Finally, the Company reiterated that any changes to IP CTS rate mechanisms should be carefully considered, and if adjustments are to be made, they must be phased in over a 3-year period so that providers can, if necessary, adjust their operations accordingly.

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[7] *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, FCC 17-26, released March 23, 2017, ¶ 88.

[8] *Sorenson Ex Parte*, p.5.

[9] *See RL's 2017-2018 Estimate*, pp.19, 20.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules.[10]

Respectfully submitted,

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cc:
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Robert Aldrich
Susan Bahr
Elliott Greenwald
Michael Scott
Andy Mulitz

[10] 47 C.F.R. § 1.1206(b)(2).

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FCC Meetings

May 11, 2017

ClearCaptions™

At Home At Work On The Go

CONFIDENTIAL INTERNAL DOCUMENTS

PRIVILEGED MATERIALS – DO NOT FORWARD THIS PRESENTATION OR THE INFORMATION CONTAINED HEREIN

HIGHLY CONFIDENTIAL

Current Estimated Market Share

BEGIN HIGHLY CONFIDENTIAL INFORMATION

[redacted]

END HIGHLY CONFIDENTIAL INFORMATION

ClearCaptions Cost of Goods Sold

BEGIN HIGHLY CONFIDENTIAL INFORMATION

[redacted]

END HIGHLY CONFIDENTIAL INFORMATION

ClearCaptions Cost Data

BEGIN HIGHLY CONFIDENTIAL INFORMATION

[redacted]

END HIGHLY CONFIDENTIAL INFORMATION

Historical Cost Trends vs ClearCaptions Pro Forma

BEGIN HIGHLY CONFIDENTIAL INFORMATION

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