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May 21, 2018

VIA HAND DELIVERY AND ECFS

Ms. Marlene H. 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**

Dear Ms. Dortch:

ClearCaptions, LLC (“ClearCaptions”), pursuant to the *Second Protective Order*, DA 12-858, released May 31, 2012 in CG Docket Nos. 03-123 and 10-51,¹ hereby requests Highly Confidential treatment of certain information contained in the enclosed Notice of Ex Parte (including attachments). ClearCaptions is also submitting a redacted version of this letter pursuant to the *Second Protective Order*.²

¹ See *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 03-123 and 10-51, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”); see also 47 C.F.R. §§ 0.457, 0.459. Because there is no protective order in effect for CG Docket No. 13-24 at this time, the Consumer and Governmental Affairs Bureau staff has instructed ClearCaptions that it should file this request and the accompanying Notice of Ex Parte only in CG Docket No. 03-123 pending release of a protective order for CG Docket No. 13-24.

² *Second Protective Order* ¶ 12.

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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 Highly Confidential Information under the *Second Protective Order*.³ As described below, the information contained in those headings is properly designated as Highly Confidential Information under paragraph 3 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”).⁴ 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.⁵

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’ request for confidentiality, the Commission return the materials without consideration of the contents therein.⁶

(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 Notice of Ex Parte (including attachments) 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 paragraphs 2 and 3 of Appendix A of the *Second Protective Order*.⁷

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

The attachments to the Notice of Ex Parte were provided to the identified FCC staff during the meetings reported in the Notice of Ex Parte.

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

The subject information includes highly sensitive ClearCaptions IP CTS product strategies, business plans, and technology implementation and deployment plans and

³ *Second Protective Order* ¶ 2.

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

⁵ *Second Protective Order* ¶ 3.

⁶ 47 C.F.R. § 0.459(e).

⁷ *Second Protective Order* Appendix A.

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strategies, as well as operating cost and other information that would cause harm to ClearCaptions if disclosed. Indeed, revealing this information may allow competitors to calculate Highly Confidential Information for ClearCaptions. This information is properly designated Highly Confidential Information under paragraphs 2 and 3 of Appendix A of the *Second Protective Order* as (i) “product strategies,” “business plans,” and “technology implementation and deployment plans and strategies” and (ii) “[i]nformation that provides granular information about [ClearCaptions’] past, current, or future costs, revenues, marginal revenues, or market share, and future dividends.”⁸ Further, this information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.⁹ 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 designated 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.”¹⁰

(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

⁸ *Second Protective Order* Appendix A.

⁹ 5 U.S.C. § 552(b)(4).

¹⁰ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

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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*.¹¹ 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 paragraphs 2 and 3 of Appendix A to the *Second Protective Order* that could cause significant competitive injury to ClearCaptions if disclosed.¹² 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' request for confidentiality, the Commission return the materials without consideration of the contents therein.

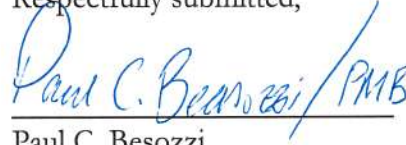
¹¹ *Second Protective Order* ¶ 3.

¹² *Second Protective Order*, Appendix A ¶¶ 2, 3; 5 U.S.C. § 552(b)(4).

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Paul C. Besozzi / PMB", is written over a horizontal line.

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cc: Travis Litman
Jamie Susskind



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May 21, 2018

VIA HAND DELIVERY AND ECFS

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

Re: Notice of Ex Parte – Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Captioned Telephone Service – CG Docket Nos. 03-123 and 13-24¹

Dear Ms. Dortch:

On May 17, 2018, Robert Rae, President and Chief Executive Officer, ClearCaptions, LLC (“ClearCaptions” or “Company”), Michael Strecker, Vice President of Regulatory and Strategic Policy for ClearCaptions, and Paul C. Besozzi, counsel for ClearCaptions, met with Travis Litman, Chief of Staff and Senior Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel, and Jamie Susskind, Chief of Staff to Commissioner Brendan Carr, to review issues concerning potential Internet Protocol Captioned Telephone Service (“IP CTS”) automatic voice recognition (“ASR”) developments and potential future IP CTS rates.

¹ Based on discussions with the Consumer and Government Affairs Bureau staff, ClearCaptions, LLC is filing this Notice of Ex Parte in CG Docket No. 03-123 subject to the Second Protective Order therein. *See Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 03-123 and 10-51, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”). The staff has permitted this approach because there is currently no similar protective order applicable to CG Docket No. 13-24.

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ClearCaptions also discussed the status of the Company's pending March 2, 2018 request for partial waiver of Sections 64.605(a)(2)(iv) and 64.605(a)(2)(v) of the Commission's Rules.²

1. ASR

The Company reported on two types of ASR of varying quality that it has seen emerging for IP CTS. ClearCaptions believes that the use, or integration, of ASR into IP CTS must never result in reduced quality of IP CTS or reduced accuracy for the consumer. ASR solutions should balance the use of Communications Assistants, ASR and key performance indicators to correctly blend ASR into IP CTS.

The Company urged that as part of any ASR trial that the Commission might sanction the agency to take into consideration key potential implications such as call confidentiality, encryption requirements, and notifications to callers where cloud-based technologies are involved.

Finally, the Company provided a brief update on its ASR efforts as previously discussed with the Commission in 2017.

2. IP CTS Rates

ClearCaptions discussed what it believes are the two main drivers of IP CTS providers' ability to reduce costs: volume of minutes and blending ASR minutes into IP CTS. The Company urged against a weighted industry average cost approach for IP CTS. In that regard, ClearCaptions gave its opinion that a 10% reduction from the current Multistate Average Rate Structure ("MARS") rate to the Rolka Loube proposed rate of \$1.75³ would negatively impact competition and impact the ability for smaller IP CTS providers to invest in new technology that could be beneficial to consumers and the TRS Fund. Additionally, the Commission should understand that providing IP CTS is more than just putting captions on a screen. A large portion of IP CTS customers fall into the Senior category. For a majority of these Senior customers adopting to new technology can be intimidating. In order for providers to ensure that these customers get the most out of the service, they require thorough training and even potentially retraining on the equipment and the service. ClearCaptions is concerned that adopting any type of rate methodology that ignores that human portion of the service and only focuses on cost cutting threatens the viability of the service as well as the ability of the service to truly meet the Americans with Disabilities Act and functional equivalency mandate.

² Letter, dated March 2, 2018, from Michael Strecker, Vice President of Regulatory Affairs & Strategic Policy, Clear Captions, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, RE: Request for Partial Waiver of Sections 64.605(a)(2)(iv) and 64.605(a)(2)(v) of the Commission's Rules in Connection with ClearCaptions, LLC Web and Wireless Forms of Internet Protocol Captioned Telephone Service ("IP CTS"), CG Docket Nos. 03-123 and 13-24 ("Waiver Request").

³ FCC Public Notice, "Rolka Loube Associates Submits Payment Formulas And Funding Requirement For The Interstate Telecommunications Relay Services Fund For The 2018-2019 Fund Year," DA 18-494, released May 14, 2018 ("Public Notice").

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The Company also commented on the inadequacy of a proposed \$0.49 ASR rate.⁴ ClearCaptions reiterated its support for a tiered rates structure analogous to that which the Company had proposed in 2017.

In addition, in its meeting with Ms. Susskind, ClearCaptions reviewed the issues and attached materials that had previously been presented to other members of the Commission's staff and were included in ex parte notices on September 5, 2017, October 2, 2017, and December 20, 2017.⁵ These materials, which contain Highly Confidential Information subject to the *Second Protective Order*, are attached hereto as Attachments 1 and 2, respectively.

3. Waiver Request

ClearCaptions urged the Commission to approve its pending Waiver request.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules.⁶

Respectfully submitted,



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Counsel to ClearCaptions, LLC

cc: Travis Litman
Jamie Susskind

⁴ Rolka Loube Associates, LLC, Interstate Telecommunications Services Relay Services Fund Payment Formula And Fund Size Estimate, April 30, 2018, CG Docket 03-123, at p. 24.

⁵ See *ClearCaptions, LLC*, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24 (filed Sept. 5, 2017), *amended by* Substitute Version filed Sept. 19, 2017; *ClearCaptions, LLC*, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24 (filed Oct. 2, 2017); *ClearCaptions, LLC*, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24 (filed Dec. 20, 2017).

⁶ 47 C.F.R. § 1.1206(b)(1).

Attachment 1

4 Tier IP CTS Rate Model



At Home



At Work



On The Go

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HIGHLY CONFIDENTIAL

Current Estimated Market Share

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*** END HIGHLY CONFIDENTIAL INFORMATION ***

ClearCaptions Cost of Goods Sold

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

- There is a clear differentiation in COGS between providers who provide their own technological solution vs those that outsource

ClearCaptions Pro-Forma Opex at Volume

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

ClearCaptions 4 Tier Model

4 Tier Model					
	Minute Threshold			Tier Min value	Proposed Rate
Tier 1	-	to	3,500,000	3,500,000	1.9467
Tier 2	3,500,000	to	7,000,000	3,500,000	1.4289
Tier 3	7,000,000	to	10,000,000	3,000,000	1.2475
Max Tier	10,000,000	>			1.0403

- Due to the overall scale of IP CTS, the tiers needs to accommodate the realities of the market and industry.
- *** BEGIN HIGHLY CONFIDENTIAL INFORMATION*** *** END HIGHLY CONFIDENTIAL INFORMATION
- An ASR rate would be a flat rate reduction to the tiers that enabled slight margin improvements to encourage our conversion to ASR.
 - ASR would not impact the current tier breaks, but instead would be a lower rate at each break for traffic processed with a new ASR process. While we are deep in our creation of ASR technologies for IP-CTS, we are not far enough along to predict the reduction from the above proposed rates.

4 Tier Rate Model vs ClearCaptions Pro-Forma Opex

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*** END HIGHLY CONFIDENTIAL INFORMATION ***

Benefits of a 4 Tier Model

	<u>CY 2017</u>	<u>Avg. Realized Rate</u>
Minutes	377,985,187	
MARS Payments	\$ 735,823,763	\$1.95
4 Tier Payments	\$ 590,267,774	\$1.56
Savings to the Fund	\$ 145,555,989	

** Based on ClearCaptions estimated Industry minutes for CY 2017*

Benefits of ClearCaptions 4 Tier Model

- For CY 2017, saves the fund approximately \$146M
- Enables efficient, competitive providers to remain financially viable
- Better aligns rates with actual provider costs while achieving a reasonable operating margin
- Establishes a consistent and reliable glide path while adjusting to market realities: share distribution, scale economies and provider costs
- Ensures providers continue to seek efficiencies as they gain scale

Attachment 2

REDACTED – FOR PUBLIC INSPECTION

Single Tier vs Multi-Tier and ASR

September 27 & 28, 2017



At Home



At Work



On The Go

CONFIDENTIAL INTERNAL DOCUMENTS

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

HIGHLY CONFIDENTIAL

Overview

- The current MARS rate is resulting in dominant providers earning excessive margins, thereby allowing those providers to overinvest in growth and expansion, which places additional demand on the Fund
- A successful rate structure ensures market competition, drives efficiencies, limits excessive margins, and drives innovation
 - A Single Tier Rate cannot, by its very nature, achieve all of these objectives
 - Multi-Tiered Rates allow for greater margin control, while at the same time enabling competition and innovation
- The rate structure needs to allow for investment in ASR ***BEGIN HIGHLY CONFIDENTIAL INFORMATION*** ***END HIGHLY CONFIDENTIAL INFORMATION***

Industry Cost Curve

BEGIN HIGHLY CONFIDENTIAL INFORMATION

END HIGHLY CONFIDENTIAL INFORMATION

- As can be seen in the above chart, IPCTS has significant fixed costs that must be overcome with volume; as providers gain sufficient volume, these fixed costs become a much smaller % of their overall operating expense
- In an industry where a single provider owns close to 50% market share, the other providers, and more significantly the smaller emerging providers, do not have enough market weight to move the industry weighted average

Single Tier Rate At MARS Results in Excessive Margins

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- While the MARS rate does provide a near break-even point for emerging providers, it also creates an environment where the dominant providers earn margins in excess of 50% –
Competition Loses

REDACTED – FOR PUBLIC INSPECTION

Single Tiered Rate at Industry Weighted Average Results in Loss of Competition

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END HIGHLY CONFIDENTIAL INFORMATION

- Setting the rate at \$1.45, which is the industry weighted average + 12%, results in at least one provider earning margins exceeding 26%, and at the same time, at least one provider being eliminated from the market – Competition Loses

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Multi-Tiered Rates Allow for Competition and Ensure Reasonable Operating Margins

BEGIN HIGHLY CONFIDENTIAL INFORMATION

END HIGHLY CONFIDENTIAL INFORMATION

A multi-tiered rate methodology drives efficiencies and ensures providers only earn reasonable margins, thus preventing providers from overinvesting in growth and allowing for market competition. It also allows providers to invest and innovate.

Benefits of a 4 Tier Model

	<u>CY 2017</u>	<u>Avg. Realized Rate</u>
Minutes	377,985,187	
MARS Payments	\$ 735,823,763	\$1.95
4 Tier Payments	\$ 590,267,774	\$1.56
Savings to the Fund	\$ 145,555,989	

**Based on ClearCaptions estimated Industry minutes for CY 2017*

Benefits of ClearCaptions 4 Tier Model:

- For CY 2017, would have saved the fund approximately \$146M
- Enables efficient, competitive providers to remain financially viable
- Better aligns rates with actual provider costs, while achieving a reasonable operating margin for the industry
- Establishes a consistent and reliable glide path, while adjusting to market realities – share distribution, scale economies and provider costs
- Ensures providers continue to seek efficiencies as they gain scale
- Allows providers to invest in innovation and quality

Automatic Speech Recognition

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ASR

BEGIN HIGHLY CONFIDENTIAL INFORMATION

END HIGHLY CONFIDENTIAL INFORMATION

REDACTED – FOR PUBLIC INSPECTION

ASR

BEGIN HIGHLY CONFIDENTIAL INFORMATION

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