

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
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)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	
)	

COMMENTS OF CAPTIONCALL, LLC

CaptionCall, LLC and Sorenson Communications, Inc. (collectively, “CaptionCall”) submit these comments in response to the recent *Public Notice* seeking comment on the Interstate Telecommunications Relay Services (“TRS”) Fund Administrator’s (the “Administrator’s”) Report (the “*TRS Fund Administrator’s 2019 Report*” or “*2019 Report*”) for the year from July 1, 2019 through June 30, 2020 (the “2019-2020 Fund Year”).¹ Although the *Public Notice* does not request comment on the IP CTS compensation rates for the 2019-2020 Fund Year,² CaptionCall respectfully urges the Commission to revisit the rate, because it suffers from vulnerabilities and deficiencies that have been explained in the record and are highlighted below, yet which the *2019 Report* fails to address.

¹ See *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2019-2020 Fund Year*, Public Notice, CG Docket Nos. 10-51 and 03-123, DA 19-407 (CGB May 13, 2019) (“*Rolka Loube PN*”); see also Rolka Loube Associates LLC, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 10-51 and 03-123 (filed May 1, 2019) (“*TRS Fund Administrator’s 2019 Report*” or “*2019 Report*”).

² *Rolka Loube PN* at 2, 3.

The IP CTS compensation rate for the 2019-2020 Fund Year was established by the Commission's *2018 Rates Order*.³ But several petitions and requests regarding this rate remain pending, and there have been several other substantive filings that further call into question the arbitrary nature of this rate.⁴ CaptionCall urges the Commission to consider addressing the procedural and legal concerns created by the \$1.58 interim rate that have been extensively outlined in the record.⁵

Moreover, the *TRS Fund Administrator's 2019 Report* makes certain claims about the costs of providing IP CTS and VRS, respectively, that are misleading or inaccurate. The cumulative result of these errors is that the *2019 Report* continues to understate providers' costs of providing services and substantially overstates their margins. Examples of these errors include the following:

- The *2019 Report* continues to describe IP CTS providers' costs by certain "categories"—and to exclude costs that do not fall within Rolka Loube's approved categories. It does not mention that the Commission has never adopted allowable cost categories for IP CTS, so all exclusions are arbitrary or at best prejudice pending FCC proceedings.⁶
- The *2019 Report* continues to exclude IP-licensing costs that providers pay to affiliates, even though those costs were reported to Rolka Loube and the issue as to whether they are

³ See *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800 (2018) ("*2018 Rates Order*").

⁴ See Petition for Reconsideration, CG Docket Nos. 13-24, 03-123 (Apr. 8, 2019) ("*Hamilton PFR*"); Letter from Joint Providers to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24, at 3 (Feb. 28, 2019) ("*Joint Provider Request*"); 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) ("*iTRS Ex Parte*"); Sprint Corporation, Petition for Reconsideration, CG Docket Nos. 13-24, 03-123, at 6-11 (July 27, 2018) ("*Sprint PFR*").

⁵ See *Joint Provider Request* (summarizing procedural and substantive shortcomings of 2019-2020 Fund Year interim rate); see also, e.g., *Hamilton PFR* at 7-8 (describing that test for recovery of URD-related exogenous costs compounds the harms in the 2019-2020 Fund Year interim rate); *Sprint PFR* (documenting that 2019-2020 Fund Year interim rate was not based on adequate record and will not support the delivery of high-quality service or investment in innovation).

⁶ See *2018 Rate Order*, 33 FCC Rcd at 5807-09 ¶¶ 15-16 (describing historical use of MARS methodology, which does not involve providers' costs or cost categories); *id.* at 5815-16 ¶ 25 (describing that adoption of interim rates reflected recognition that "there are a number of issues concerning compensation rates for IP CTS [that] must yet be resolved, as addressed in the *Further Notice*" including "the appropriateness of some categories of allowable cost for this service"); *id.* at 5819 ¶ 33 (describing that TRS Fund Administrator bases its cost category requests for IP CTS providers on the categories of costs "that generally have been deemed allowable in calculating rates for *other forms of TRS*" (emphasis added)).

“allowable” for IP CTS is pending before the Commission—with substantial record support for permitting recovery (in a cost-based rate-setting methodology).⁷

- The *2019 Report* does not acknowledge or include providers’ actual taxes paid.⁸

The *TRS Administrator’s 2019 Report* should be more balanced to permit comment by interested stakeholders and to facilitate reasoned decision making by the Commission.

For these reasons, CaptionCall encourages the Commission to consider evidence in the record showing that the 2019-2020 Fund Year interim rate for IP CTS is “unrealistic” and could “[r]educ[e] the quality of service” below “functional equivalence,” which is required by the Americans with Disabilities Act.⁹

Respectfully submitted,

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May 28, 2019

⁷ See *2018 Rate Order*, 33 FCC Rcd at 5839-40 ¶ 76 (requesting comment on allowing affiliate-owned IP-licensing costs and declining to prejudge the issue); see also *iTRS Ex Parte* at 3 (“[CaptionCall’s] Intellectual Property (IP) costs should be treated in the same way that other Providers pay a ‘license’ fee to process their call or pay a third party a significantly higher per minute cost to process their calls.”); Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123, App. C, Michelle Connolly, *An Economic Analysis of Internet Protocol Captioned Telephone Service Policy Reform* ¶ 54 (Sept. 17, 2018); Coleman Bazelon & Brent Lutes, *Economic Considerations of IP CTS Rate Structure and Methodology* at 35 (Mar. 27, 2019), attached to Letter from The Brattle Group, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 13-24 (Mar. 27, 2019) (agreeing with Professor Connolly that excluding internal IP costs would distort the market, disincentivize investment in R&D, and decrease innovation). The Commission should not view the *TRS Fund Administrator’s 2019 Report* as somehow supporting the reasonableness either of the 2019-2020 Fund Year interim rate or of any future decision to exclude CaptionCall’s IP-licensing fees as an allowable cost if the Commission moves to a submitted-cost rate-setting methodology (which it should not). The *2019 Report* does not address either question on the merits.

⁸ CaptionCall notes that the *2019 Report* also fails to fully account for costs to provide VRS and thus to ensure that the ADA’s mandate is achieved.

⁹ *iTRS Ex Parte* at 4.