Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	

COMMENTS OF CLEARCAPTIONS, LLC
ON ROLKA LOUBE ASSOCIATES
PAYMENT FORMULA AND FUND SIZE ESTIMATE

By Public Notice, dated May 14, 2018, the Commission sought comment on the payment formula and fund size estimate for Interstate Telecommunications Relay Services (TRS) for July 2018 through June 2019, as submitted by the TRS Fund Administrator.[1]

ClearCaptions, LLC's ("ClearCaptions" or "Company") comments herein focus on Rolka Loube's recommendation that the Commission consider establishing an interim "cost-based" rate of $1.75 per-minute for Internet Protocol Captioned Telephone Service ("IP CTS"); in lieu of approximately $2.00 per-minute calculated using the Multi-state Average Rate Structure ("MARS") methodology.[2]

---

[1] *Rolka Loube Associates Submits Payment Formulas And Funding Requirement For The Interstate Telecommunications Relay Services Fund For The 2017-18 Fund Year*, CG Docket Nos. 03-123 & 10-51, Public Notice, DA 18-494 (May 14, 2018) ("TRS Fund Administrator Estimate PN"); *see also* Rolka Loube Associates LLC ("Rolka Loube"), *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 & 10-51 (dated April 30, 2018, filed May 4, 2018) ("TRS Fund Administrator Estimate").

[2] TRS Fund Administrator Estimate at 23. Rolka Loube recommends that this rate remain in place pending the Commission's completion of its rulemaking to address a permanent revised rate structure for IP CTS. *Id.* The Commission will consider moving forward with a Further Notice

For the reasons set forth below, ClearCaptions believes that the recommendation is based on the flawed foundation of "weighted average industry costs" and could stifle the growth of competition for the three large providers of IP CTS, while they continue to earn profits in excess of the 7-12% "zone of reasonableness."[3] The Rolka Loube recommendation should be rejected. If there is to be a reduction from the MARS-based rate as part of a shift to a cost-based model, the reduced per-minute rate should be to no less than $1.85 for Fund year 2018-2019 and $1.75 for Fund year 2019-2020.[4]

I. The Rolka Loube Recommendation And Rationale

Rolka Loube's recommendation of a 10% reduction from the 2017-2018 MARS rate of $1.9647[5] is again founded on the conclusion that continuing to employ the MARS methodology will provide excessive industry profits, based on a weighted average provider cost of only $1.3214 per minute for 2018-2019.[6] As a result, according to Rolka Loube, all IP CTS providers, including even smaller emergent providers such as ClearCaptions, are already earning "excessive profits" (i.e., beyond the 7-12% range). Therefore, the abandonment of the MARS methodology and the 10% reduction as of July 1, 2018 will have no adverse impact on any of the current providers.

---

of Proposed Rulemaking on the compensation issue at its June 7 meeting. *See In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications and Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Declaratory Ruling, Further Notice Of Proposed Rulemaking, and Notice Of Inquiry, CG Docket Nos. 13-24 and 03-123, FCC-CIRC1806-10 (rel. May 17, 2018) ("Draft IP CTS Proposal")

[3] TRS Fund Administrator Estimate at 20

[4] ClearCaptions is also making this recommendation directly to each Commissioner in connection with the Draft IP CTS Proposal. *See* ClearCaptions, LLC, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, May 25, 2018, Attachment 1 at 3-4 ("ClearCaptions May 25 Ex Parte").

[5] Rolka Loube's recommended MARS rate for 2018-2019 is $2.0007. The $1.75 rate is a 12.5% reduction from that figure.

[6] TRS Fund Administrator Estimate at 22.

II. Continued Use Of MARS For IP CTS

ClearCaptions previously has observed that the MARS methodology may no longer be the most appropriate methodology for setting IP CTS rates.[7] However, any shift to a cost-based rate methodology must consider the structural realities of the marketplace. The IP CTS market is dominated by three providers that have the lion's share of the market, two of which are effectively resellers. Any cost-based rate methodology adopted should not hamper the emergence of competitive providers. As ClearCaptions has previously noted, a single-tier rate system based on weighted average industry cost can adversely affect entities such as ClearCaptions seeking to attain the scale that will allow it to be profitable at the level of such costs.[8] More specifically, such a system cannot achieve the objectives of ensuring market competition, driving efficiencies, limiting excessive margins and driving innovation.[9] That is why the Company has advocated for some time that the Commission consider and adopt a tiered rate structure, as it has adopted for Video Relay Services ("VRS").[10]

III. A Cost-Based Rate Set Using Weighted-Average Industry Costs Continues To Be A Flawed Methodology.

It is well documented that the cost-based rate structures the FCC has utilized in TRS have failed.[11] Additionally, the FCC's cost-based rate methodologies have forced service providers out

---

[7] *See* Comments Of ClearCaptions, LLC On Rolka Loube Payment Formula And Fund Size Estimate For 2017-2018, CG Docket Nos. 03-123 and 10-51, May 24, 2017 at 5 ("ClearCaptions 2017 Comments").

[8] *See generally* ClearCaptions, LLC, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, August 25, 2017 at 2.

[9] *See* ClearCaptions, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, October 2, 2017, Attachment at 2.

[10] *See, e.g.*, ClearCaptions, LLC, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, September 29, 2017, Attachment 1 at 5.

[11] *See* ClearCaptions 2017 Comments at 6.

of the market and thus limited consumer choice, while reducing quality and functionality.[12] More fundamentally, the use of weighted-average costs for determining a single reimbursement rate in any unbalanced market structure virtually assures vastly inequitable margins among providers and inhibits marketplace competition;[13] one of the flaws solved with the implementation of a tiered rate structure.

The Administrator's own data supports the conclusion that compensation based on "weighted average" does not work in any market where the market is not evenly distributed. It was a recognition of this factor in the current VRS marketplace under the current rate structures, wherein the cost for the single dominant provider is dramatically lower than the average costs of the other competitive providers, that dictated the current tiered VRS rate structure.[14]

The fact is that smaller providers such as ClearCaptions do not have the scale in terms of minutes handled that would support a $1.75 per-minute rate. Imposition of such a rate could detrimentally affect the Company's ability to obtain financing and continue to grow as a potential competitor in what is an oligopolistic market. The Administrator recognizes what scale has done for the IP CTS industry overall and must recognize the impact where there are differences in scale in the current IP CTS market.[15]

---

[12] *Id.*

[13] *Id.*

[14] *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, Report and Order and Order, 32 FCC Rcd 5891 (2017).

[15] TRS Fund Administrator Estimate at 22 ("A major factor causing the difference in rates between the [IP CTS and CTS] services is the very fast growth in demand for IP CTS which generates economies of scale for providers….").

Any rate methodology should support – and certainly should not undermine – the competition and consumer choice goals of the Commission.[16] The Commission must implement a rate structure that results in fair returns to providers in light of their respective economies of scale and operational risks, while at the same time attracts investment into the industry, supports innovation, and results in a high-quality service that meets the needs of the consumers served.

IV. The Rolka Lube Cost-Based Methodology Is Based On Outdated Allowable Cost Rules

It is not news that the "allowable" cost-based reporting rules, on which the Rolka Loube recommendation is based, do not fully reflect the costs associated with providing IP CTS.[17] ClearCaptions has previously reported on its efforts to develop and deploy Automated Speech Recognition ("ASR") technology.[18] Yet its substantial research and development costs to deploy this Commission-desired technology are not allowable.

For the Commission to impose an "allowable" cost-based approach to rate setting while at the same time effectively pushing providers to invest in ASR technology, it is only logical that a rate structure would be developed that would include the costs providers have to incur to invest in this potential technology. To push for ASR development in this field while at the same time ignoring providers' costs associated with this development is inconsistent. Coupling a reduced per-minute rate with non-allowability of such costs will clearly affect smaller IP-CTS providers' ability to continue ASR efforts at their current pace or at all.

---

[16] See ClearCaptions 2017 Comments at 7.

[17] *Id.* at 8-9; *see also* Hamilton Relay Services, Inc., Ex Parte Presentation, CG Docket Nos. 03-123 and 13-24, May 24, 2018 at 3-4.

[18] *See e.g.*, ClearCaptions, LLC, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, July 3, 2017 at 2-3 ("ClearCaptions July 3, 2017 Ex Parte").

Additionally, as ClearCaptions noted previously, the current "allowable" cost approach is established only to capture a portion of a business's cost to provide IP CTS.[19] It could easily be implied that a portion of the current rules around "allowable" costs are anti small-business and are inherently structured in way to ensure that small, stand-alone entities can never operate at the same "cost" structure as larger entities where IP CTS is merely a subsidiary or division of that company. For small businesses that are 100% committed to the provision of a single relay service, there are no "unreasonable" indirect overhead costs or executive compensation. In other words, the small business reports its entire cost of providing the service in accordance with the Americans With Disabilities Act (ADA). However, for these larger businesses (i.e., Sprint), the costs reported to the Administrator only reflect a partial picture of what it costs for a business to provide a particular relay service. To then compare a "partial" cost structure of a larger, multi-divisional business, to that of a holistic cost structure of a small business, while setting rates based, from a weighted average perspective, on the partial structure, would appear facially to discriminate against an emergent or small provider seeking to enter or already operating in this federally mandated service.

Furthermore, ClearCaptions recommends the Commission revisit its decision not to include CPE costs as "allowable" in IP CTS. As previously noted, costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing, are currently not compensable from the TRS Fund. Yet, the Commission must ensure that IP CTS users "pay rates no greater than the rates paid for functionally equivalent voice communication services," and the IP CTS rate does not "discourage or impair the development of improved technology."[20] The reality is that all but a handful of ClearCaptions customers use

---

[19] *See* Clear Captions 2017 Comments at 8-9; *see also* Clear Captions July 3, 2017 Ex Parte at 2.
[20] 47 U.S.C. §§ 225(d)(1)(D), (d)(2).

landline service; there is no other feasible way to provide a landline-based IP CTS service than to include equipment since at this time, the standard equipment used by landline customers is not compatible with IP CTS without additional hardware. In other words, IP CTS provided CPE is not "optional."[21]

The logical question that follows is if costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing, are not compensable from the TRS Fund, and the users of IP CTS are already paying for functionally equivalent service, where exactly are IP CTS providers expected to recover the costs associated with the hardware, testing, installation, and maintenance? Based on these facts, ClearCaptions respectfully recommends that the Commission revisit its position on the allowability of costs associated with relay hardware in IP CTS. They should be considered "allowable," and thus reported as a cost of service factored into the respective reimbursement rate.[22]

V. <u>There Is No Basis For A Separate ASR Rate At This Juncture</u>

Rolka Loube recommends an interim cost-based rate for IP CTS providers using ASR of \$0.49 per minute.[23] At the same time, it concedes that there are no certified IP CTS providers currently using ASR and no projected demand data available on which to estimate potential usage of ASR.[24] As ClearCaptions recently noted, at this point in time, contrary to the claims of MITRE

---

[21] Further, roughly one-third of ClearCaptions customers are in care facilities using the internet in the facility for IP CTS. These individuals typically do not have a computer or mobile phone. But for IP CTS service they would not use the internet.

[22] If the Commission refuses to include the costs in setting the rate, it should consider creating a stipend for consumers to apply towards the purchase of this equipment. Since the costs of these phones and supporting them is significantly more expensive than functionally equivalent hardware.

[23] TRS Fund Administrator Estimate at 23-24.

[24] *Id.* at 24.

and those trying to enter the market, ASR is untested in IP CTS.[25] As such, there is no real basis for estimating with any confidence a cost-based ASR rate. ASR rates proposed by anyone at this point should have no credence.

VI. The Commission Should Reject The Rolka Loube Recommendation

ClearCaptions respectfully recommends that the Commission reject the Rolka Loube recommendation for a single $1.75 per-minute interim rate. Imposition of such a rate will further drive the IP CTS market towards a duopoly/oligopoly. Large-scale providers will continue to earn excess profits (i.e., above a 7-12% "zone of reasonableness" rate). Emerging competitors like ClearCaptions will be forced to slow efforts on new technology like ASR and their ability to scale and grow will be threatened.

The answer, as it was in the case of VRS, is for the Commission to adopt a tiered rate structure, such as ClearCaptions has previously recommended to the Commission.[26] In the interim, ClearCaptions has recommended a lesser reduction to the MARS-determined rate for Fund year 2017-2018 to $1.85 per-minute. This 5% reduction would still save the Fund substantial sums, while trying to strike the balance necessary with shift in methodology in a market configured like IP-CTS.[27]

VII. Conclusion

The Rolka Loube recommendation is based on a cost methodology – weighted average industry cost – which does not "fit" the market structure of the IP CTS industry. Its assumptions about excess profits as applied to smaller providers such as ClearCaptions are wrong because these

---

[25] ClearCaptions May 25 Ex Parte, Attachment 1 at 3.

[26] *See, e.g.*, ClearCaptions, LLC, Notice of Ex Parte, CG Docket Nos. 03-123 and 13-24, September 29, 2017, Attachment 1 at 5.

[27] *See* ClearCaptions May 25 Ex Parte, Attachment 1 at 3-4.

entities have not yet achieved the scale that the three large competitors have achieved. The proposed 10% reduction would negatively affect those smaller providers attempting to grow to that scale. The Commission needs expeditiously to proceed to assessing and implementing a tiered rate structure for IP CTS. In the interim, if there is to be a reduction from the MARS-determined rate, it should be to no less than \$1.85 per minute for Fund year 2018-2019 and no less than \$1.75 per minute for Fund year 2019-2020.

Respectfully submitted,

ClearCaptions, LLC

Paul C. Besozzi
Peter M. Bean
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
202-457-6000 (tel)
202-457-6315 (fax)
paul.besozzi@squirepb.com
peter.bean@squirepb.com

Counsel to ClearCaptions, LLC

Michael Strecker
Vice President of Regulatory and Strategic Policy
ClearCaptions, LLC
3001 Lava Ridge Court, #100
Roseville, CA 95661
916-274-8429 (tel)
mike.strecker@clearcaptions.com

May 29, 2018