

May 29, 2018

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VIA ECFS

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

Re: *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24;
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with
Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

Sam Feder and the undersigned, on behalf of CaptionCall, LLC, met with Jamie Susskind of Commissioner Carr's Office on May 24th, and with Travis Litman of Commissioner Rosenworcel's Office on May 25th, to discuss the Commission's draft *IP CTS Order*.¹ During the meetings, we explained that CaptionCall supports the Commission's goals of ensuring that IP CTS is available to individuals who need it while protecting the integrity of the TRS Fund, and we made the points discussed below.

I. *Report and Order*

A. Interim Rates

Although CaptionCall understands the Commission's desire to move away from the Multistate Average Rate Structure ("MARS") rate, we have concerns about several aspects of the draft *Order*'s interim rate approach.

First, while the Commission purports to be establishing the proposed interim rates based on provider costs, the Commission does not have the data necessary to assess and compare IP CTS providers' historical costs and thus to determine interim rates based on such costs. The data the draft *Order* relies upon are submitted by IP CTS providers for the purpose of enabling the

¹ See *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order and Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, FCC-CIRC1806-10 (May 17, 2018) ("*Draft IP CTS Order*" or "*draft Order*").

TRS Fund Administrator to make reasoned decisions about the amount of revenue the Fund requires.² They are not submitted for purposes of rate-setting. Indeed, CaptionCall has consistently challenged the use of these data for rate-setting purposes, as have other IP CTS providers.³ Thus, the draft *Order*'s finding that "no party disputed the accuracy of the averages calculated from the 2016-2017 data" is a red herring.⁴ While it may be true that no party has challenged the averages' accuracy, parties have challenged the use of the underlying data to calculate those averages.

The record simply does not support the proposition that the Commission has "reasonably reliable cost data that can be used to guide rate-setting."⁵ The further notice acknowledges as much. As it notes, existing submissions do not provide visibility into which costs providers submit in the "Other" category or "subcontractor" subcategory—nor do the Commission's rules provide standard definitions or guidelines.⁶ The further notice likewise acknowledges that providers' costs may differ materially, for example, depending on whether providers license intellectual property from a third-party or from an affiliate.⁷ These gaps make it impossible for the Commission to determine whether reported costs fit into existing allowable categories, or whether providers have reported costs uniformly, in parallel categories.⁸ Additionally, as CaptionCall has explained, the data are incomplete because the Commission excludes certain categories of costs that are indisputably part of a provider's actual costs of providing IP CTS services. These nondiscretionary costs arise from economically rational decisions that IP CTS providers would make even if they operated in a traditional service market, without

² See 47 C.F.R. § 64.604(c)(5)(iii)(D) (mandating that providers submit data to the Administrator in order "to determine the TRS Fund revenue requirements and payments").

³ Sorenson Communications, Inc. Comments on Rolka Loube Payment Formulas and Funding Requirements, CG Docket Nos. 10-51, 03-123 at 2 (May 24, 2016) ("*CaptionCall 2016 Rolka Loube Comments*") (describing Commission's request for comment on using Administrator's cost data for ratemaking purposes as "highly alarming"); *accord* Comments of Sprint Corporation, CG Docket Nos. 03-123, 10-51 at 5 (May 24, 2017); Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51 at 15 (May 24, 2017).

⁴ *Draft IP CTS Order* at 12 ¶ 21.

⁵ *Draft IP CTS Order* at 17 ¶ 28 n.97.

⁶ *Draft IP CTS Order* at 20 ¶ 34 (noting that "expenses classified in this manner comprise an unusually large portion of total reported IP CTS costs"), *id.* at 20 ¶ 34 & n.120 ("the 'Other' category averaged \$0.5730 per minute, out of total IP CTS expenses of \$1.2326 per minute").

⁷ *Draft IP CTS Order* at 36 ¶ 74.

⁸ See, e.g., Letter from John T. Nakahata, Counsel to CaptionCall, LLC to Marlene Dortch, Secretary, Federal Communications Commission 3, CG Docket Nos. 03-123, 13-24 (Sept. 7, 2017) ("*CaptionCall 9-7-17 Ex Parte*") (explaining that if the Commission moves to a cost-based methodology it must ensure that costs are well defined and noting that neither the Commission nor the Administrator has at its disposal a fulsome, apples-to-apples comparison of the costs amongst IP CTS providers).

compensation from the TRS Fund.⁹ These exclusions encompass costs that are necessary for providers to deliver IP CTS and for consumers to access and utilize the service, and thus render the Administrator's costs averages artificially low, and projected "industry profits" artificially high.¹⁰ In short, the data on which the Commission is proposing to base its interim rates are non-uniform, opaque, and incomplete.¹¹

Second, the proposed second-year interim IP CTS rate of \$1.58 lacks any reasoned basis. The draft *Order* derives this rate by taking the first-year interim rate of \$1.75, which itself is based on flawed and incomplete cost data as explained above, and then reducing it by 10%.¹² This reduction is not based on *anything* in the record specific to IP CTS.¹³ The draft *Order* relies on the fact that the Commission adopted a similar rate reduction in the VRS context, but it does not identify *any* features shared by the two services that would justify importing that approach here.¹⁴ The same problem applies to the draft *Order*'s adoption of a "zone of reasonableness" for operating margins whole cloth from the VRS context.¹⁵ While CaptionCall agrees with the Commission that a traditional rate-of-return approach would be even more problematic,¹⁶ that does not justify the Commission's assumption, without any support in the record, that VRS operating margins are appropriate for IP CTS.

Third, the draft *Order* does not include any consideration of how the interim rates will affect providers' incentives to develop new or improved technology, including continued

⁹ See, e.g., *CaptionCall 2016 Rolka Loube Comments* at 6-7.

¹⁰ *Draft IP CTS Order* at 10 ¶ 18.

¹¹ See, e.g., *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data" (quotation marks omitted)); *United Airlines, Inc. v. FERC*, 827 F.3d 122, 130 (D.C. Cir. 2016) (concluding that FERC's reliance on particular data to estimate pipeline's costs for purposes of setting rate was arbitrary and capricious because "[w]hile there may be evidence to support the conclusion that the *nominal* return on equity [from that data] was in line with historical trends, this evidence does not show that the *real* return on equity [from that data] was representative of [the pipeline's] costs").

¹² *Draft IP CTS Order* at 14 ¶ 23.

¹³ The basis for the reduction appears to be the Administrator's assertion that average industry costs will continue to decline. But that assertion is based on the same problematic data discussed above—and also is an issue that the Commission intends to explore in the rulemaking, rendering the rate reduction for the 2019-2020 Fund year premature at best.

¹⁴ See *Draft IP CTS Order* at 39-40 ¶¶ 84-85, n.246.

¹⁵ See *Draft IP CTS Order* at 12-13 ¶ 22.

¹⁶ See *Draft IP CTS Order* at 13 ¶ 22 n.78.

adaption of IP CTS to mobile services.¹⁷ Section 225 specifically directs the Commission's TRS rules "not [to] discourage or impair the development of improved technology."¹⁸ Moreover, even beyond mobile services, the draft *Order*'s proposed rate structure could discourage or impair the Commission's objective of encouraging the industry to move towards greater reliance on Automated Speech Recognition ("ASR"). Because the Commission has not yet developed a full record on this issue, and because the use of ASR is nascent, it is too early to tell how the adoption of ASR will affect providers' cost structures. Thus, even setting aside the significant questions about the reliability and suitability of the inputs on which the Commission is proposing to rely, the proposed interim rates could set the wrong incentives to achieve the Commission's goals of fostering investment and innovation in ASR.

For all of these reasons, CaptionCall urges the Commission not to set interim rates at all, but to examine these issues on the basis of a more complete record.¹⁹ If the Commission nonetheless adopts an interim rate, we encourage the Commission to adopt an interim rate of \$1.75 per minute for two years, with the possibility of adopting an alternative, record-based rate methodology through the further notice. An interim rate of \$1.75 at least has some support in the record.²⁰

Finally, the Commission should not prejudice whether CaptionCall should be permitted to submit, as an allowable cost, the imputed value of the intellectual property it licenses from an affiliate.²¹ The draft *Order*'s claim that there "does not appear to be any legitimate reason why this license fee . . . should be treated as an allowable expense"²² is unnecessary and risks making

¹⁷ See, e.g., Sorenson Communications, Inc. and CaptionCall, LLC Comments on Rolka Loube Payment Formulas and Funding Requirements, CG Docket No. 13-24 at 6-8 (June 4, 2015).

¹⁸ 47 U.S.C. § 225(d)(2).

¹⁹ CaptionCall appreciates the Commission's concern regarding the purportedly growing gap between the MARS rate and Rolka Loube's reported averages of IP CTS providers' costs. However, rates in other competitive markets for services similar to IP CTS suggest that the MARS rate may well be in line with competitive rates. For instance, the Commission has recognized that closed captioning of live television programming is compensated at a rate of approximately \$125/hour or \$2.08/minute, based on a competitive service market. See *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2265 ¶ 70 (2014) ("*Closed Captioning Quality Order*").

²⁰ See *CaptionCall 9-7-17 Ex Parte* at 4 (advocating interim rate of \$1.77 based on MARS data from 2011-2013); *CaptionCall 2016 Rolka Loube Comments* at 8 (proposing rate of \$1.76 per minute based on highest-reported provider costs methodology); accord Letter from David A. O'Connor, Counsel for Hamilton Relay, Inc. to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 at 4 (May 24, 2018) ("*Hamilton 5-24-18 Ex Parte*").

²¹ See *Draft IP CTS Order* at 19-20 ¶ 33 (excluding such costs from interim rates).

²² *Draft IP CTS Order* at 19-20 ¶ 33.

a decision without the benefit of a full record.²³ We believe that, with the benefit of complete information, the Commission will agree that there actually is no basis for excluding CaptionCall's intellectual property costs while allowing similarly situated providers to claim the value of their intellectual property costs, and that doing so would discourage further investment in innovation.²⁴

B. Measures to Limit Unnecessary IP CTS Use and Waste of the TRS Fund

While CaptionCall supports the Commission's goal of protecting the TRS Fund from fraud or abuse,²⁵ the draft *Order*'s implementation of that goal suffers from significant legal flaws.

Most problematically, the draft *Order* appears to impose strict liability on providers for the acts of third parties beyond their control. Specifically, new Section 64.604(c)(13)(i) prohibits IP CTS providers from engaging in any practice that "causes or encourages," among other things, the "[u]nauthorized use of . . . IP CTS;" the "making of . . . IP CTS calls that would not otherwise be made;" or the "use of . . . IP CTS by persons who do not need the service in order to communicate [by telephone] in a functionally equivalent manner."²⁶ This rule appears to impose liability on IP CTS providers for "caus[ing] or encourag[ing]" these consequences even if the provider did not intend and could not have known those consequences would occur.²⁷ For example, a provider could be found liable for the unauthorized use of IP CTS by an authorized user's relative even when the provider does not know about, does not have reason to know about, and has done nothing to encourage such unauthorized use, beyond merely providing the IP CTS equipment to the authorized user.

²³ See *Draft IP CTS Order* at 36 ¶ 74 (requesting comment on same).

²⁴ CaptionCall supplemented its initial 2017-2018 TRS cost filing to include the licensing fee it pays to its intellectual property affiliate. We have explained the accounting rationale for including this cost—and why its allowability is necessary to ensure nondiscriminatory and fair rates for similarly situated providers. See *CaptionCall 9-7-17 Ex Parte* at 3. We look forward to sharing further details of the study that will substantiate why this cost is consistent with the Commission's rules in response to the further notice. As noted, excluding these costs in a manner that discourages innovation would be inconsistent with Section 225.

²⁵ For example, CaptionCall's devices already comply with the proposed requirement to delink volume control from captions on IP CTS devices. See *Draft IP CTS Order* at 21-22 ¶¶ 37-38.

²⁶ *Draft IP CTS Order* at 77, App'x B, § 64.604(c)(13)(i).

²⁷ Given that this rule also prohibits any practice "that the provider knows or has reason to know will cause or encourage" the above-described prohibited practices and that another rule adopted by the draft *Order* prohibits a provider from seeking payment for minutes of service only if it "knows or has reason to know" that those minutes result from a prohibited practice, the Commission may not have intended to incorporate a strict liability standard. See *Draft IP CTS Order* at 77, App'x B, § 64.604(c)(13)(i) & (ii).

If the Commission were to impose strict liability, it would be unlawful. The statutory authority the Commission relies upon to adopt Section 64.604(c)(13)(i) does not authorize the Commission to impose strict liability. Indeed, that provision—47 U.S.C. § 225—itself prohibits only intentional misconduct.²⁸ Moreover, the Commission would “push[] the limits of the Fifth Amendment” if it imposed liability on providers for “the misconduct of” potential unauthorized users, “mere strangers, over whom [the regulated party] could have no control.”²⁹

Wholly apart from the lack of a scienter requirement, Section 64.604(c)(13)(i) is too vague to satisfy due process. “[W]here [an agency] regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil . . . liability.”³⁰ Here, any practice that results in an additional user signing up for IP CTS service theoretically “cause[s] or encourage[s]” the “making of [IP CTS] calls that would not otherwise be made,” even if that user indisputably needs to and should use IP CTS.³¹ It is not clear what marketing practices, sales practices, and IP CTS equipment will be deemed to run afoul of these prohibitions. Indeed, this language could be read to ban any and all marketing of IP CTS to new users. Such a ban would additionally violate the First Amendment.³²

The draft *Order*’s use of such sweeping language may be due to the Commission’s perception that the demand growth for IP CTS is attributable in part to “wasteful use of IP CTS by individuals who could derive equal or greater benefit from less costly alternatives, such as high-amplification phones.”³³ But there is no evidence in the record that there has been “unnecessary usage of this service and waste to the TRS Fund.”³⁴ Instead, the record shows that there is a large and growing population in need of IP CTS services. The Commission itself recognizes that there are “approximately 40-48 million individuals, or as much as 15 percent of

²⁸ See 47 U.S.C. § 225(d)(1)(E)-(G).

²⁹ *Union Pac. R.R. Co. v. U.S. Dep’t of Homeland Sec.*, 738 F.3d 885, 893 (8th Cir. 2013) (quoting *Peisch v. Ware*, 8 U.S. (4 Cranch) 347, 365 (1808)).

³⁰ *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (quoting *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995)).

³¹ *Draft IP CTS Order* at 24 ¶ 43.

³² See *Sorenson Commc’ns, Inc. v. FCC*, 567 F.3d 1215, 1225 (10th Cir. 2009) (striking down Commission’s ban on use of TRS customer data as inconsistent with the First Amendment); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 566 (1980) (restriction on commercial speech cannot be “more extensive than is necessary” to serve a “substantial” government interest).

³³ *Draft IP CTS Order* at 5-6 ¶ 10.

³⁴ *Draft IP CTS Order* at 6 ¶ 11; cf. *Sorenson Commc’ns Inc. v. FCC*, 755 F.3d 702, 707-08 (D.C. Cir. 2014) (asking “where is the evidence that IP CTS technology is being fraudulently used?” and vacating a rule that the Commission claimed would deter fraudulent use of IP CTS equipment because “the agency offer[ed] no evidence suggesting there is fraud to deter”).

the U.S. population” with hearing loss, and likewise recognizes that “this number undoubtedly will increase significantly as our population ages.”³⁵ In fact, research shows that the number of Americans with hearing loss doubled between 2000 and 2015³⁶ and that “[t]he number of adults in the United States . . . with hearing loss (pure tone average, >25 dB) is expected to gradually increase from 44.11 million in 2020 (15.0% of adults ≥20 years) to 73.50 million by 2060 (22.6% of adults ≥20 years).”³⁷

In any case, regardless of the reasons for Section 64.604(c)(13)(i)’s language, it remains highly problematic. We thus ask the Commission to clarify that only those practices that the IP CTS provider “knows or has reason to know will encourage” the enumerated consequences are prohibited. In addition, we think that the Commission’s rule will effectively deter fraud, waste, and abuse without the overbroad and vague prohibition on practices that cause “the “making of . . . IP CTS calls that would not otherwise be made.”³⁸ We therefore ask the Commission to eliminate that prong of its rule, or alternatively to more specifically enumerate what specific practices are encompassed within it. Attachment A proposes edits to the draft *Order* aimed at addressing these points. In addition, Attachment B proposes minor edits to the draft *Order*’s ordering paragraphs, which appear to be incomplete.

II. *ASR Certification*

CaptionCall has made substantial investments in ASR because we believe an ASR service holds tremendous promise for consumers, the Commission, and IP CTS providers.³⁹ The company’s goal is to deliver a functionally equivalent, scalable, and cost-effective product that can provide industry-leading service for the growing population of people with hearing impairments.

³⁵ *Draft IP CTS Order* at 6-7 ¶ 12.

³⁶ Hearing Health Foundation, *Hearing Loss & Tinnitus Statistics*, <https://hearinghealthfoundation.org/hearing-loss-tinnitus-statistics/> (last visited May 23, 2018); *see also, e.g.*, Charlotte A. Schoenborn & Kathleen Heyman, *Health Disparities Among Adults with Hearing Loss: United States, 2000-2006*, Centers for Disease Control and Prevention: National Center for Health Statistics, <https://www.cdc.gov/nchs/data/hestat/hearing00-06/hearing00-06.pdf>.

³⁷ Adele M. Goman, Nicholas S. Reed, & Frank R. Lin, *Addressing estimated hearing loss in adults in 2060*, 143 *JAMA Otolaryngology - Head and Neck Surgery* 733, 733 (2017); *see also* Sorenson Communications, LLC Comments on Rolka Loube Payment Formulas and Funding Requirements, CG Docket Nos. 10-51, 03-123 at 2 (May 24, 2017) (“[T]he reason IP CTS is expanding is that there are many currently unserved Americans who could benefit from the service. That is, there remain millions of Americans with hearing loss who have difficulty communicating effectively on the phone and could reap significant benefits from this life-changing technology.”).

³⁸ *Draft IP CTS Order* at 77, App’x B, § 64.604(c)(13)(i).

³⁹ *See, e.g., CaptionCall 9-7-17 Ex Parte* at 1 (“CaptionCall is fully committed to developing an ASR solution that is capable of captioning IP CTS calls in a manner that is usable and comprehensible to hard-of-hearing customers.”).

Before certifying ASR providers, however, the Commission needs to ensure that an ASR service is ready. While recent advances have certainly improved prospects for delivering an ASR service with greater accuracy and less latency, there remain some areas in which the technology does not perform as needed, as the draft *Order* recognizes.⁴⁰ Further study may help to identify whether and when a particular ASR service performs adequately across all important measures of user comprehension. As CaptionCall has previously indicated, the existing research on this topic suffers from serious limitations. It will be difficult to draw generalizable conclusions from the data generated by MITRE, unless MITRE's study is expanded to test live calls, and to include more measures of user understanding. It will likewise be difficult to assess the veracity of usability findings, unless the study is run on a larger and more representative sample of users and subjected to peer review.⁴¹ Moreover, as CaptionCall has explained, it is important that the Commission calibrate incentives to promote continued investment in ASR technology that delivers functional equivalence.⁴²

CaptionCall agrees that a robust certification process, which requires ASR-IP CTS providers to satisfy the Commission's mandatory minimum TRS standards, should provide some protection to consumers and guard against waste of the TRS fund.⁴³ But the Commission should not begin such certifications without a more complete record, and instead should use the further notice to develop certification procedures and requirements that are appropriate for ASR-IP CTS

⁴⁰ See *Draft IP CTS Order* at 27 ¶ 50 ("ASR-provided IP CTS will remain a nascent form of the service," and "there are various factors that may influence its effectiveness for different calls"); *id.* at 27 ¶ 50 n.165 (citing evidence that factors such as accents, background noise, call context, age of the speaker, and available bandwidth can affect the accuracy of ASR); see also *CaptionCall 9-7-17 Ex Parte* at 1-2 ("In order to ensure that consumers can continue to receive functionally equivalent service, it is important to understand the factors that make captions usable and comprehensible—factors that likely extend beyond word error rate and latency to include punctuation, disfluencies, accents, and presentation—particularly with respect to the demographics of typical IP CTS users.")

⁴¹ See, e.g., Letter from John T. Nakahata, counsel to CaptionCall, LLC, to David Schmidt, TRS Fund Program Coordinator, Office of Managing Director, FCC, CG Docket Nos. 03-123, 13-24 Attach. 1 (Dec. 21, 2017); see also *Hamilton 5-24-18 Ex Parte* at 2 & n.6 (noting limitations of MITRE study and importance of developing record with proprietary studies that may not be consistent with MITRE report). We note that peer review is required before federal agencies may disseminate scientific information. See Office of Management and Budget, M-05-03, *Final Information Quality Bulletin for Peer Review* (Dec. 16, 2004), http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

⁴² See Letter from Rebekah P. Goodheart, counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 13-24 (Aug. 25, 2017) (identifying incentives that would encourage providers to continue investing in the development of ASR).

⁴³ CaptionCall respectfully submits that the Commission's proposal, to direct the Bureau, on a case-by-case basis, to condition certification "on the submission of periodic data to help confirm whether ASR-driven IP CTS is providing functionally equivalent service," *Draft IP CTS Order* at 32 ¶ 62, does not go far enough. The Commission instead should consider in the rulemaking proceeding whether to *require* the submission of "trials and quantitative test results demonstrating that the applicant's service will afford a [sufficient] level of . . . with respect to captioning transcription delays, accuracy, speed, and readability." *Id.* at 31 ¶ 61.

providers.⁴⁴ Doing so is critical to prevent providers with low barriers to entry from introducing, and securing compensation for, low-quality services—an outcome that could have potentially disastrous consequences for people with hearing loss as well as unnecessarily increase the growth of the Fund. Among other things, there has been no testing whatsoever of ASR’s performance with respect to 911 and other emergency calls.⁴⁵ The Commission should learn from the experience in Lifeline where, without sufficient checks on mobile virtual network operators (“MVNOs”), the program was subject to abuse. We therefore encourage the Commission to adopt an ASR certification process that is robust to ensure checks on providers in advance of market entry.⁴⁶

The Commission’s experience with television closed captioning illustrates why adopting safeguards for quality assurance at the certification stage is important. In that context, the Commission initially concluded that it should rely on market forces alone to police quality.⁴⁷ After consumer groups reported “widespread problems with the quality of closed captions,” which were “often severe enough to affect the comprehensibility of a program,” the Commission granted a petition to consider whether to establish rules concerning caption quality.⁴⁸ The resulting record confirmed that “the Commission’s original assumptions regarding the marketplace incentives for [quality] captioning [had] not been borne out.”⁴⁹ As a result, the Commission had to take further action to protect consumers, adopting quality assurance standards designed to ensure video programming was accessible.⁵⁰

⁴⁴ See *Hamilton 5-24-18 Ex Parte* at 3 n.9 (“[T]he adoption of service quality and performance requirements . . . are prerequisites to authorizing the general use of ASR for IP CTS.”).

⁴⁵ The Commission should ensure that any ASR-certification process validates that an ASR-IP CTS provider’s service can support 911 and emergency calls. See *Closed Captioning Quality Order*, 29 FCC Rcd at 2233 ¶ 16; see also *Hamilton 5-24-18 Ex Parte* at 2 (noting that “911 calls using ASR are an untested and potentially unreliable means of communicating with emergency officials”).

⁴⁶ See *In re Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10,475, 10,499 ¶ 68 (2017) (seeking comment on discontinuing Lifeline support for wireless resellers because “the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers”); U.S. Gov’t Accountability Off., GAO-17-538, Report to Congressional Requesters, *Telecommunications: Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program* 6, 52-53 (May 2017) (documenting that expansion of Lifeline to include non-facilities-based wireless providers in 2008 created fraud risk given lack of oversight, prompting 2012 adoption of requirement that such providers file compliance plans with the Commission and other safeguards).

⁴⁷ See *Closed Captioning Quality Order*, 29 FCC Rcd at 2236 ¶ 19.

⁴⁸ *Closed Captioning Quality Order*, 29 FCC Rcd at 2232-33 ¶¶ 15-16 (internal quotation marks omitted).

⁴⁹ *Closed Captioning Quality Order*, 29 FCC Rcd at 2236-38 ¶¶ 21-22; see also *id.* at 2233 ¶ 16.

⁵⁰ *Closed Captioning Quality Order*, 29 FCC Rcd at 2223-25 ¶ 3; accord 47 C.F.R. § 79.1(j).

III. *Further Notice*

We commend the Commission for seeking to create a robust, new record for IP CTS going forward. However, we urge the Commission to consider modifications to the further notice that would highlight the public interest benefits that could be achieved by adopting a market-based methodology for setting the rate for IP CTS.⁵¹

Respectfully submitted,

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⁵¹ See, e.g., *In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(C) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7647 ¶ 34 (2013) (describing that Commission “moved away from rate-of-return regulation” and adopted “price cap regulation” to “harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communication system that offers innovative, high quality services” (internal quotation marks omitted)), *petition for review denied*, *Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

ATTACHMENT A

Report and Order

Pages 23-24

42. We amend our rules to adopt a general prohibition against knowingly providing IP CTS to consumers who do not genuinely need the service, akin to the Commission's prohibition on VRS providers engaging in fraudulent, abusive, and wasteful practices. We conclude that this prohibition is necessary because the Commission cannot always predict the specific forms that waste, fraud, or abuse may take, and because the Commission has fiduciary and statutory obligations to ensure that IP CTS providers are not handling IP CTS calls by ineligible individuals. ...

43. As with VRS, the rule we now adopt prohibits IP CTS providers from engaging in practices that the provider knows or has reason to know will ~~cause or~~ encourage (1) the unauthorized use of TRS, (2) false or unverified TRS Fund compensation claims, ~~(3) the making of TRS calls that would not otherwise be made,~~ and ~~(4)~~ the use of TRS by consumers who do not need the service in order to communicate by telephone in a functionally equivalent manner.

Appendix B

(13) *Unauthorized and unnecessary use of VRS or IP CTS.*

(i) A VRS or IP CTS provider shall not engage in any practice that ~~causes or encourages, or that~~ the provider knows or has reason to know will ~~cause or~~ encourage:

(A) False or unverified claims for TRS Fund compensation;

(B) Unauthorized use of VRS or IP CTS; or

~~(C) The making of VRS or IP CTS calls that would not otherwise be made; or~~

~~(C)~~ (D) The use of VRS or IP CTS by persons who do not need the service in order to communicate in a functionally equivalent manner.

ATTACHMENT B

Ordering Clauses

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185. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register, except that amendments to 47 CFR §§ 64.604(c)(5)(iii)(D)(1), 64.604(c)(11), and 64.604(c)(13), ~~and 64.615(a)~~, which contain new or modified information collection requirements SHALL BE EFFECTIVE on the date specified in a notice published in the *Federal Register* announcing Office of Management and Budget approval of the information collection requirements of such rules pursuant to the Paperwork Reduction Act.