

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

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| In the Matter of |) | |
| |) | |
| Misuse of Internet Protocol (IP) Captioned |) | CG Docket No. 13-24 |
| Telephone Service |) | |
| |) | |
| Structure and Practice of the Video Relay |) | CG Docket No. 10-51 |
| Service Program |) | |
| |) | |
| 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 (“CaptionCall”) submits these comments in response to the *Public Notice*, seeking comment on the Interstate Telecommunications Relay Services (“TRS”) Fund administrator’s (the “Administrator’s”) proposed provider compensation rates for the year from July 1, 2018 through June 30, 2019.¹ The *Public Notice* recognizes that the Commission has an open rulemaking seeking comment on revising the compensation methodology and program rules for Internet Protocol (“IP”) Captioned Telephone Service (“CTS”). CaptionCall thus agrees that it is “premature” to address the Administrator’s recommendations regarding IP CTS beyond its proposed rate under the Multistate Average Rate Structure (“MARS”) plan methodology.²

CaptionCall supports the Commission’s efforts to ensure that IP CTS is available to consumers who need it, including by protecting the integrity of the TRS Fund. Nevertheless, CaptionCall

¹ See *Rolka Loubé Associates Submits Payment Formulas and Funding Requirements for the Interstate Telecommunications Relay Services Fund for the 2018-2019 Fund Year*, Public Notice, CG Docket Nos. 03-123 and 10-51, DA 18-494 (CGB May 14, 2018) (“*Rolka Loubé PN*”); see also *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (Apr. 30, 2018) (“*TRS Fund Administrator’s 2018 Report*”).

² *Rolka Loubé PN* at 2.

submits these comments to clarify two issues that are raised implicitly by the *Public Notice* that risk introducing confusion into the early stages of this process.

I. The Fact That the Administrator Has Correctly Averaged Selected IP CTS Provider-Submitted Costs Does Not Mean That the Underlying Data or the Resulting Averages Are Suitable for Setting a Cost-Based Rate.

The *Public Notice* seeks comment on a straightforward question: Has the Administrator applied the MARS methodology correctly? As in previous years, the answer appears to be yes.³ Also as in previous years, the Administrator's Report for the 2018-2019 Fund Year goes beyond applying the MARS rate for IP CTS: It also analyzes annual and projected cost data supplied by IP CTS providers, and submits to the Commission calculations of average provider costs based on those data. Here too, CaptionCall does not dispute that the Administrator has correctly calculated weighted averages from raw inputs.⁴ But that does not mean that CaptionCall agrees that the underlying cost data are appropriate for setting a rate or that the stated averages are a true reflection of industry average costs.⁵

CaptionCall, like other IP CTS providers, has consistently disputed whether the cost data that providers are permitted to submit, or that the Administrator chooses to include in its calculations, are suitable for establishing a rate.⁶ Indeed, CaptionCall has repeatedly emphasized

³ See, e.g., Sorenson Communications, LLC Comments on Rolka Loubé Payment Formulas and Funding Requirements, CG Docket Nos. 10-51, 03-123 at 1 (May 24, 2017) ("CaptionCall does not dispute Rolka's calculation of the [MARS] rates for the 2017-18 Fund year."); Sorenson Communications, Inc. Comments on Rolka Loubé Payment Formulas and Funding Requirements, CG Docket Nos. 10-51, 03-123 at 1 (May 24, 2016) ("*CaptionCall 2016 Rolka Loubé Comments*") ("CaptionCall does not dispute the mathematical results of Rolka's application of the various TRS payment formulas.").

⁴ As noted below, these costs categories are under-inclusive by excluding certain costs, and thus the weighted averages reflect only a portion of IP CTS providers' actual costs.

⁵ 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, CG Docket Nos. 13-24, 03-123, FCC-CIRC1806-10, at 11-12 ¶ 21 (May 17, 2018) ("*Draft IP CTS Order*").

⁶ See, e.g., *CaptionCall 2016 Rolka Loubé Comments* at 2 (describing Commission's request for comment on using Administrator's cost data for ratemaking purposes as "highly alarming"); Sorenson Communications, Inc. and CaptionCall, LLC Comments on Rolka Loubé Payment Formulas and Funding Requirements, CG Docket Nos. 13-24, 10-51, 03-123 at 2 (June 4, 2015) ("*CaptionCall 2015 Rolka Loubé Comments*") ("CaptionCall cannot support

that using IP CTS provider cost averages to set rates would be problematic for several reasons. First, this approach would require overlooking differences among IP CTS providers that render their cost data non-uniform.⁷ Second, the weighted averages fail to compensate IP CTS providers for making economically rational decisions that firms in a competitive, non-subsidized market should make.⁸ And third, this approach risks creating perverse incentives for IP CTS providers not to achieve efficiencies and service quality improvements.⁹ Additionally, the Administrator's Report for the 2018-19 Fund Year offers conclusions and recommendations on issues that the Consumer and Governmental Affairs Bureau has wisely deferred to the Commission's larger rulemaking proceeding.¹⁰ The Commission should not, for example, attempt to categorize IP CTS providers' costs as variable or fixed, without the benefit of a complete record.¹¹ Nor should the Commission assume that a formula that relies on disaggregating fixed costs for the existing labor-intensive IP CTS service from historical provider cost data (even if those data were apples-to-

any rate that is based on a rate-of-return methodology, even if such a rate looks similar to the rate that CaptionCall has proposed to initialize an IP CTS price cap.”); *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).

⁷ 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).

⁸ See, e.g., *CaptionCall 2016 Rolka Loube Comments* at 6-7.

⁹ See, e.g., *CaptionCall 2015 Rolka Loube Comments* at 6-8.

¹⁰ For similar reasons, CaptionCall urges the Administrator and the Commission not to speculate about the cause of IP CTS demand growth until it has a complete, refreshed record in the rulemaking proceeding.

¹¹ See *TRS Fund Administrator's 2018 Report* at 23 & n.39, Ex. 1-3 (treating all facilities, indirect, depreciation, marketing, outreach, and return on investment costs as “fixed” on the theory that, even when such costs vary with output, “that variance is not directly proportional to [minutes]”). Indeed, it appears that some of the cost categorizations are not accurate, and the Commission would benefit from a robust discussion in the record.

apples across providers, which they are not), is a reasonable basis for setting the initial rate for automated speech recognition (“ASR”) IP CTS.¹²

II. The Recovery of Costs for the Imputed Value of Affiliate-Owned Intellectual Property Presents Unique Issues for IP CTS That Should Be Appropriately Addressed in the Rulemaking.

For its 2017 annual cost filing to the Administrator, CaptionCall supplemented its initial submission to include an imputed intellectual property–licensing fee paid to Sorenson IP, an affiliate, using a transfer price that was based on the results of studies completed by Deloitte for tax purposes.¹³ CaptionCall appreciates the Administrator’s decision to present CaptionCall’s cost data to the Commission “both with and without intellectual property cost claims,” but was disappointed by the Administrator’s decision to recommend “exclud[ing] those costs from its recommendations for IP CTS.”¹⁴ The Administrator’s recommendation on how to treat such costs is premature and is ultimately a policy decision for the Commission. Indeed, the Commission is seeking comment on this issue in the draft IP CTS *Further Notice of Proposed Rulemaking*.¹⁵

¹² See *TRS Fund Administrator’s 2018 Report* at 23-25.

¹³ See *CaptionCall 9-7-17 Ex Parte* at 3.

¹⁴ *TRS Fund Administrator’s 2018 Report* at 21.

¹⁵ *Draft IP CTS Order* at 36 ¶ 74. CaptionCall acknowledges that the Commission rejected a similar requested imputation in the context of setting VRS rates. See *In re Structure and Practice of the Video Relay Service Program*, Report and Order and Order, 32 FCC Rcd 5891, 5902 ¶ 21 (2017). Even so, however, CaptionCall believes that the Commission’s reasoning in the VRS context is not applicable here, and intends to develop the record on this point before the Commission.

Respectfully submitted,

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