

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with)	
Hearing and Speech Disabilities)	
)	
Structure and Practice of the Video Relay Service)	CG Docket No. 10-51
Program)	
)	
Interstate Telecommunications Relay Services Fund)	
Payment Formula and Fund Size Estimate for the)	
July 2018 Through June 2019 Fund Year)	

To: Secretary, FCC
For: Chief, Consumer and Governmental Affairs Bureau

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its counsel, submits these comments in response to the *Public Notice* (“*Notice*”) issued by the Commission’s Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceedings.¹ In the *Notice*, the Bureau seeks comment on the compensation rates for various forms of interstate Telecommunications Relay Services (“TRS”) for the period beginning July 1, 2018 through June 30, 2019. The proposed TRS compensation rates were submitted by the interstate TRS Fund Administrator (“Administrator”) in its May 4, 2018 filing (“*2018 TRS Rate Filing*”).²

¹ *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2018-19 Fund Year*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 18-494 (rel. May 14, 2018) (“*Notice*”).

² *See Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123, 10-51 (filed May 4, 2018) (“*2018 TRS Rate Filing*”).

As discussed below, Hamilton supports the Administrator’s proposed rates for traditional TRS and Speech-to-Speech (“STS”) services, including the proposed additional per-minute amount for STS outreach. In addition, Hamilton supports the proposed rate for interstate Captioned Telephone Service (“CTS”). To the extent that the Commission does not alter the Internet Protocol Captioned Telephone Service (“IP CTS”) rate at its June 7, 2018 open meeting, Hamilton supports the Administrator’s calculated rate for IP CTS.³ Hamilton also supports the Administrator’s proposal to incorporate demand for the final two months of the 2017-2018 funding year, which will be paid for during the 2018-2019 funding year, and the proposal for the payment reserve to remain at two average months.⁴

The Bureau must also continue to ensure that all information entrusted to the Administrator is adequately protected in accordance with both state and federal law, and that the Administrator is providing the Commission with accurate data that correctly reflects providers’ legitimate costs of providing IP CTS and other services.

I. Hamilton Supports the Proposed MARS Rates for Traditional TRS, STS, CTS and IP CTS

Since 2007, the Commission has used a weighted average of state TRS rates to calculate the MARS compensation rates for interstate traditional TRS and STS as well as a weighted average of state CTS rates to calculate the MARS compensation rates for interstate CTS and

³ Hamilton has filed separate comments in response to the draft IP CTS item expressing concern about proposed IP CTS rate cuts and potential consumer harm. *See Ex Parte* Letter from David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123 (May 24, 2018) (“May 24, 2018 *Ex Parte*”); *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Draft Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry ¶ 185, CG Docket Nos. 13-24 and 03-123, FCC CIRC1806-10 (rel. May 17, 2018) (“Draft Item”).

⁴ *2018 TRS Rate Filing*, at 40-41.

IP CTS.⁵ As the GAO noted in its independent report on TRS: “MARS uses an average of competitively bid state rates for intrastate TRS to determine predictable, fair, and reasonable costs of interstate TRS.”⁶ The Administrator appears to have correctly calculated the MARS rates. Hamilton agrees and supports the continued use of MARS for these services, including IP CTS to the extent that the Commission has not addressed the IP CTS rate separately.

Hamilton supports the adoption of the Administrator’s proposed MARS-based rate of \$3.2592 per conversation minute for interstate traditional TRS and \$4.3902 for interstate STS.⁷ Similarly, Hamilton supports the Administrator’s proposed rate of \$2.0007 per conversation minute for interstate CTS and IP CTS.⁸ Based on the information available to Hamilton, it appears that the Administrator correctly calculated the rates for these services using the Commission-approved MARS methodology.

⁵ See *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007).

⁶ GAO Report to the Honorable Jeff Sessions, U.S. Senate, on Telecommunications Relay Service, at 8 (Apr. 2015), <http://www.gao.gov/products/GAO-15-409> (“GAO Report”).

⁷ Notice at 1.

⁸ *Id.* at 1. Hamilton intends to comment on potential methodologies as well as proposed rates for IP CTS generated using Automated Speech Recognition (“ASR IP CTS”) in response to any adoption of the Draft Item. As the Commission has not sought comment on the appropriate rates for ASR IP CTS to date and “[n]either [ASR IP CTS] applicant has offered ASR cost of service or ASR demand projections,” *2018 TRS Rate Filing* at 24, it is premature to comment on the Administrator-proposed rates for ASR IP CTS. The Administrator correctly observed 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,” *id.* at 24, leaving critical holes in any estimate of an appropriate rate for this potential form of IP CTS.

II. The Bureau Must Ensure that the Administrator’s Data is Accurate, Appropriately Reflects Providers’ Legitimate Costs, and Is Protected from Inappropriate Disclosure

To date, the Commission has never determined what costs are reasonable or allowable in connection with IP CTS, principally because the rates have been set using MARS since 2007.⁹

Without this guidance from the Commission, the Administrator has been collecting IP CTS data without including all legitimate costs of providing the service,¹⁰ and issuing conclusory statements about purported provider profits without analyzing the true costs of providing the service.¹¹ To the extent that the Commission proposes to clarify the allowable cost categories for IP CTS, Hamilton looks forward to engaging on those important issues.¹²

Hamilton also remains troubled by the Administrator’s arbitrary analysis of market share. For example, the Administrator suggests, without analysis, that because an IP CTS provider either employs or subcontracts Communication Assistants, somehow market share is influenced..¹³ This random selection of findings has no basis in the record. Any number of factors can explain shifts in market share, including legitimate outreach and marketing efforts, as

⁹ See Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 15 (filed May 24, 2017) (“Hamilton 2017 Rate Comments”); May 24, 2018 *Ex Parte*.

¹⁰ See, e.g., *Ex Parte* Letter from Helgi C. Walker and David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123, at 4 (Nov. 14, 2017).

¹¹ 2018 *TRS Rate Filing* at 20. As CaptionCall notes, “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 [cost] averages artificially low, and projected ‘industry profits’ artificially high.” *Ex Parte* Letter from Rebekah P. Goodheart, Counsel for CaptionCall, LLC, to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123, at 3 (May 29, 2018).

¹² Draft Item Part V.A.1.

¹³ *TRS Rate Filing* at 23.

well as the use of questionable marketing practices as suggested in the Draft Item.¹⁴ Hamilton submits that such analysis by the Administrator without any supporting evidence should be omitted from future rate filings, because it calls into question the accuracy and integrity of the underlying data being submitted by the Administrator to the Commission.¹⁵

The Bureau should likewise reject the Administrator's request "to identify the rates and demand by state" or, in the alternative, "file a confidential version with the Commission which identifies the respective state rates and demand."¹⁶ Hamilton submits that state rate and demand information are justifiably nonpublic and should remain so. The principal reason is that various state laws protect commercially-sensitive data, such as the specific rate and performance data requested here, from public disclosure under state open records laws.¹⁷ The Administrator has provided no rational justification for deviating from those state law requirements.

¹⁴ See Draft Item ¶ 10 (attributing IP CTS waste to certain marketing practices).

¹⁵ See, e.g., May 24, 2018 *Ex Parte* at 3 (urging the Commission to consider service quality standards as part of a Further Notice of Proposed Rulemaking rather than a Notice of Inquiry); Hamilton 2017 Rate Comments.

¹⁶ 2018 TRS Rate Filing at 17.

¹⁷ See, e.g., 65 Penn. Stat. Ann. § 67.708(b)(11),(26) (exempting the "financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability" and "trade secret[s] or confidential proprietary information" from Pennsylvania's Right to Know Law, §§ 101 to 3104); N.Y. Pub. Off. Law § 87(2)(c)-(d) (permitting an agency to withhold documents from public disclosure and publication under New York's Freedom of Information Law, if such disclosure "would impair present or imminent contract awards or collective bargaining negotiations" or if the documents "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."); accord. New York State, Department of Public Service, "Targeted Accessibility Fund of New York, Inc. Request for Proposal to Provide Telecommunications Relay Service and Captioned Telephone Service in the State of New York" at 5 (July 26, 2012), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B9CB74E0B-1DF4-43DA-997A-6F7FF8D53AE9%7D> ("The actual rates charged by the provider for Conversation Minutes of Use (CMOU) are not contained in the publicly accessible portions of the tariff, but (continued)...

Respectfully submitted,

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instead are filed with the NYPSC and treated as confidential.”); R.I. Gen. Laws § 38-2-2(4)(B) (exempting “[t]rade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature” from Rhode Island’s Access to Public Records Act, R.I. Gen. Laws §§ 38-2-1 to 38-2-15).