

May 31, 2018

Rebekah P. Goodheart  
Tel +1 202 639 5355  
RGoodheart@jenner.com

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:

On May 29, 2018, Sam Feder, Jessie Amunson, and the undersigned of Jenner & Block LLP, counsel to CaptionCall, LLC, met with Nirali Patel and Justin McCuen of Chairman Pai's office. On May 31, 2018, Sam Feder and the undersigned met with Amy Bender of Commissioner O'Rielly's office.

During the meetings, we reiterated concerns from our May 29, 2018 filing regarding the draft *Order's* interim rates.<sup>1</sup> We also explained that CaptionCall supports the Commission's goal of protecting the TRS Fund from fraud or abuse, but highlighted that the draft *Order's* implementation of that goal suffers from significant legal flaws, including the apparent imposition of strict liability on providers for the acts of third parties that are beyond their control,<sup>2</sup> and a lack of clarity that implicates due process.<sup>3</sup> We also discussed proposed changes to the rule and *Order* to address these legal concerns.<sup>4</sup>

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<sup>1</sup> 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); see also Letter from Rebekah Goodheart, Counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123, at 1-5 (May 29, 2018) ("*CaptionCall May 29 Ex Parte*").

<sup>2</sup> *CaptionCall May 29 Ex Parte* at 5-6.

<sup>3</sup> *Id.* at 6-7.

<sup>4</sup> *Id.* at Attachment A (and attached hereto).

We further explained that CaptionCall agrees that ASR holds tremendous promise, but elaborated that the Commission needs to seek comment on a robust certification process before certifying ASR providers.<sup>5</sup> In particular, we encouraged the Commission to move Section IV.D from the Declaratory Ruling to the Further Notice of Proposed Rulemaking.

Respectfully submitted,

/s/ Rebekah P. Goodheart

Rebekah P. Goodheart  
JENNER & BLOCK LLP  
1099 New York Avenue, NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
*Counsel for CaptionCall, LLC*

Attachment

cc: Nirali Patel  
Justin McCuen  
Amy Bender

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<sup>5</sup> *Id.* at 8-9.

## 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.