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May 31, 2018

Accepted / Filed

MAY 31 2018

**VIA HAND DELIVERY AND ECFS**

Federal Communications Commission  
Office of the Secretary

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

**Re: REQUEST FOR HIGHLY CONFIDENTIAL TREATMENT  
ClearCaptions, LLC  
CG Docket Nos. 03-123 and 13-24**

Dear Ms. Dortch:

ClearCaptions, LLC ("ClearCaptions"), pursuant to the *Second Protective Order*, DA 12-858, released May 31, 2012 in CG Docket Nos. 03-123 and 10-51,<sup>1</sup> hereby requests Highly Confidential treatment of certain information contained in the enclosed Notice of Ex Parte (including attachments). ClearCaptions is also submitting a redacted version of this letter pursuant to the *Second Protective Order*.<sup>2</sup>

<sup>1</sup> See *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 03-123 and 10-51, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) ("*Second Protective Order*"); see also 47 C.F.R. §§ 0.457, 0.459. Because there is no protective order in effect for CG Docket No. 13-24 at this time, the Consumer and Governmental Affairs Bureau staff has instructed ClearCaptions that it should file this request and the accompanying Notice of Ex Parte only in CG Docket No. 03-123 pending release of a protective order for CG Docket No. 13-24.

<sup>2</sup> *Second Protective Order* ¶ 12.

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ClearCaptions hereby requests that all information contained after the headings **\*\*\*BEGIN HIGHLY CONFIDENTIAL INFORMATION\*\*\*** and before the headings **\*\*\*END HIGHLY CONFIDENTIAL INFORMATION\*\*\*** be treated as Highly Confidential Information under the *Second Protective Order*.<sup>3</sup> As described below, the information contained in those headings is properly designated as Highly Confidential Information under paragraph 3 of the *Second Protective Order*, and is proprietary and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act ("FOIA").<sup>4</sup> Pursuant to paragraph 3 of the *Second Protective Order*, ClearCaptions has obtained Commission staff's written preliminary approval to designate the subject information as Highly Confidential.<sup>5</sup>

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, ClearCaptions requests that, in the event that the Commission denies ClearCaptions' request for confidentiality, the Commission return the materials without consideration of the contents therein.<sup>6</sup>

*(1) Identification of the specific information for which confidential treatment is sought.*

ClearCaptions hereby seeks Highly Confidential treatment for all of the information in the enclosed Notice of Ex Parte (including attachments) that is contained after the headings **\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*** and before the headings **\*\*\*END HIGHLY CONFIDENTIAL\*\*\***, which is properly designated as Highly Confidential Information under paragraphs 2 and 3 of Appendix A of the *Second Protective Order*.<sup>7</sup>

*(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.*

The attachments to the Notice of Ex Parte were provided to the identified FCC staff during the meetings reported in the Notice of Ex Parte.

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<sup>3</sup> *Second Protective Order* ¶ 2.

<sup>4</sup> *Second Protective Order* Appendix A; 5 U.S.C. § 552(b)(4).

<sup>5</sup> *Second Protective Order* ¶ 3.

<sup>6</sup> 47 C.F.R. § 0.459(e).

<sup>7</sup> *Second Protective Order* Appendix A.

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*(3) Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.*

The subject information includes operating cost, revenue, profitability and audited financial statement information that would cause harm to ClearCaptions if disclosed. Indeed, revealing this information may allow competitors to calculate Highly Confidential Information for ClearCaptions. This information is properly designated Highly Confidential Information of under paragraph 2 of Appendix A of the *Second Protective Order* as “[i]nformation that provides granular information about [ClearCaptions’] past, current, or future costs, revenues, marginal revenues, or market share, and future dividends.”<sup>8</sup> Further, this information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.<sup>9</sup> Accordingly, ClearCaptions hereby requests that such information be treated as Highly Confidential Information under the *Second Protective Order* and not be made routinely available for public inspection.

*(4) Explanation of the degree to which the information contains a service that is subject to competition.*

The Highly Confidential Information pertains to ClearCaptions’ provision of Internet Protocol Captioned Telephone Service (“IP CTS”), a nationwide competitive service.

*(5) Explanation of how disclosure could result in substantial competitive harm.*

The presence of competitors in the IP CTS market and the likelihood of competitive injury to ClearCaptions threatened by release of this information should compel the Commission to withhold the information designated as Highly Confidential Information from public disclosure. The Commission has provided assurances that it is “sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”<sup>10</sup>

*(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.*

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<sup>8</sup> *Second Protective Order* Appendix A.

<sup>9</sup> 5 U.S.C. § 552(b)(4).

<sup>10</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

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In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff's written preliminary approval to designate the subject information as Highly Confidential Information pursuant to paragraph 3 of the *Second Protective Order*.<sup>11</sup> ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

*(7) Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.*

The subject information is not ordinarily available to the public or to any third parties.

*(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.*

As described above, the subject information contains highly sensitive ClearCaptions cost and other information covered by paragraphs 2 and 3 of Appendix A to the *Second Protective Order* that could cause significant competitive injury to ClearCaptions if disclosed.<sup>12</sup> For this reason, ClearCaptions respectfully requests that the Commission protect this information from public disclosure indefinitely.

*(9) Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.*

As the subject information is being submitted voluntarily, ClearCaptions requests that, in the event that the Commission denies ClearCaptions' request for confidentiality, the Commission return the materials without consideration of the contents therein.

Should you have any questions concerning the foregoing request, please contact the undersigned.

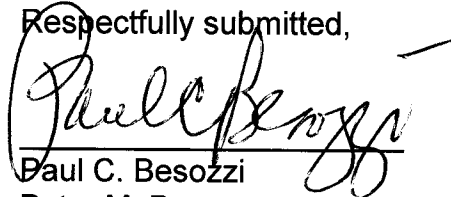
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<sup>11</sup> *Second Protective Order* ¶ 3.

<sup>12</sup> *Second Protective Order*, Appendix A ¶¶ 2, 3; 5 U.S.C. § 552(b)(4).

Ms. Marlene H. Dortch  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul C. Besozzi", is written over a horizontal line.

Paul C. Besozzi

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Federal Communications Commission  
Office of the Secretary

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

**Re: Notice of Ex Parte – Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Captioned Telephone Service – CG Docket Nos. 03-123 and 13-24<sup>1</sup>**

Dear Ms. Dortch:

On May 29, 2018, Robert Rae, President and Chief Executive Officer, ClearCaptions, LLC ("ClearCaptions" or "Company"), Michael Strecker, Vice President of Regulatory and Strategic Policy for ClearCaptions, and Paul C. Besozzi, counsel for ClearCaptions, met separately with Nirali Patel, Special Counsel to Chairman Ajit Pai and Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel to review issues concerning the draft Report and Order component of the proposed Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking and Notice of Inquiry regarding reforming Internet Protocol Captioned Telephone

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<sup>1</sup> Based on discussions with the Consumer and Government Affairs Bureau staff, ClearCaptions, LLC is filing this Notice of Ex Parte in CG Docket No. 03-123 subject to the Second Protective Order therein. *See Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 03-123 and 10-51, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) ("*Second Protective Order*"). The staff has permitted this approach because there is currently no similar protective order applicable to CG Docket No. 13-24.

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Service (“IP CTS”), currently expected to be considered at the Commission’s June 7, 2018 Open Meeting.<sup>2</sup>

In reviewing the attached Response to the IP CTS Proposal, ClearCaptions noted that it supported all components of the Proposal except the proposed rate reductions to \$1.75 per minute for Fund year 2018-2019 and \$1.58 per minute for Fund year 2019-2020. The Company questioned Rolka Loube’s assumption that all IP CTS providers are earning excessive profits. The Company emphasized the role that economies of scale play in the IP CTS marketplace, a fact that the TRS Administrator conceded in its most recent report to the Commission.<sup>3</sup> ClearCaptions outlined, at its current scale, the potential impact of the rate reductions on ClearCaptions, including its efforts in developing Automatic Speech Recognition technology, and the overall makeup of the IP CTS provider marketplace.

ClearCaptions urged that the Commission change the proposed rate reductions to \$1.85 for Fund year 2018-2019 and \$1.75 for Fund year 2019-2020. In the alternative, the Company suggested that an emerging provider rate be set at these figures for the next two years. ClearCaptions estimated that these changes would preserve the opportunity for competitive alternatives and still result in hundreds of millions in savings to the Fund.

Finally, ClearCaptions discussed briefly the ASR aspects of the IP CTS Proposal.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission’s rules.<sup>4</sup>

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<sup>2</sup> See *In the Matter 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, FCC-CIRC1806-10 (rel. May 17, 2018) (“IP CTS Proposal”).

<sup>3</sup> 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), p. 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....”)

<sup>4</sup> 47 C.F.R. § 1.1206(b)(1).

Ms. Marlene H. Dortch  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul C. Besozzi", written over a horizontal line.

Paul C. Besozzi

Peter M. Bean

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*Counsel to ClearCaptions, LLC*

cc: Nirali Patel  
Travis Litman



## **Attachment 1**

**ClearCaptions, LLC Response to the Commission's  
Draft Report and Order (Part of FCC CIRC1806-10)**

*5/24/2018*

## **Executive Summary**

Over the history of IP CTS, there has been discussion of excess profits and concern about rapid growth. The reality is that IP CTS is structured in a way that a provider cannot make a profit until it reaches a certain scale, and once that scale is achieved, further growth creates the opportunity for excess profits. By reducing the current MARS rate of \$1.9467 per minute with no regard to the scale of the provider, the impact is SIGNIFICANTLY different for all providers. ClearCaptions, LLC (“ClearCaptions”) has been rapidly gaining scale and is finally approaching the point of profitability based on the current MARS rate. The largest providers have been earning excessive operating margins for years and will continue to do so even at reduced rates of \$1.75 per minute for Fund year 2018/2019 and \$1.58 for Fund year 2019/2020, respectively (“Proposed Rates”). The Proposed Rates that are being considered will be very damaging to the smallest providers, including ClearCaptions, but will have little impact on the growth rate of the largest providers and/or motivate them to adopt Automatic Speech Recognition (“ASR”). ClearCaptions is open to immediate rate reductions in the form of alternatives to the Proposed Rates structure.

## **Critical Points**

1. ClearCaptions supports all components of the draft Report and Order part of FCC CIRC1806-10 (“R&O”), **except** the decision to set IP CTS compensation rates for the next 2 years at the Proposed Rates
2. In previous filings with the Commission, ClearCaptions has provided information demonstrating that the IP CTS industry has significant fixed costs to overcome and, based on the Proposed Rates, a provider would need to reach approximately \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\* \*\*END HIGHLY CONFIDENTIAL \*\*\* minutes per month under the 2018/2019 rates and approximately \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\* \*\*END HIGHLY CONFIDENTIAL \*\*\* minutes per month under the 2019/2020 rates in order to be capable of earning positive operating margins.
3. ClearCaptions has invested in growth over the past 4 years in order to ultimately reach a scale that enabled profitability similar to our competitors; under the current MARS rate of \$1.9467 we were projecting to achieve marginal profitability at end of \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\* \*\*END HIGHLY CONFIDENTIAL \*\*\*; however, with the Proposed Rates, this is no longer achievable.
  - a. At the Proposed Rates, the largest IP CTS providers will not be as negatively impacted as the small providers and will be able to utilize their significantly higher margins, as they have in the past, to invest in growth. Historically our much larger competitors drive approximately 85% of the industry growth.
4. The Proposed Rates will result in ClearCaptions experiencing a \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\* \*\*END HIGHLY CONFIDENTIAL \*\*\* operating margins. This result is contrary to the contentions of the Rolka Loube annual

report filed with the Commission on May 4, 2018,<sup>1</sup> which failed to consider significant operating costs and investments in areas such as ASR.

5. If the Proposed Rates take effect, ClearCaptions is faced with \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\*; further, we may lose financial support and be forced to stagnate growth and ASR investment.
6. The reality is that this R&O will set in motion the inevitable formation of either a duopoly or an oligopoly structure in IP CTS.
7. IP CTS now faces the same decision point as VRS at the time of the Commission's 2013 "glide path" decision,<sup>2</sup> which cemented Sorenson as the dominant 80% market share provider. The R&O will only foster similar conditions in IP CTS by allowing the dominant providers to achieve both excessive market share and excessive operating margins.
8. ClearCaptions still supports the tiered IP CTS rate model it presented to the Commission in 2017.
  - a. This model correctly sets tiers to enable providers to invest and grow while maintaining equal, adequate profit levels independent of scale.
  - b. This model does not incent growth to increase profitability, but instead compensates each minute added at the same reasonable level of operating margin in the range of 8-12%.
9. ClearCaptions supports the implementation of ASR in IP CTS and believes that, over time ASR will eventually be able to completely serve this market. At this point in time, contrary to the claims of MITRE and those trying to enter this market, ASR is untested in IP CTS. ClearCaptions has been engaged in the development of ASR for IP CTS for some time and we are aware of the complexities integrators face for ASR to be successful at scale. ClearCaptions expects to see some success in ASR in 2018 but does not expect that success to justify the Proposed Rates.
10. ClearCaptions asks the Commission to consider the following alternatives to the Proposed Rates: (Alternative 1) adjust the Proposed Rates for the entire industry for years 1 and 2, or (Alternative 2) adopt a separate rate model for Emerging Providers. Both of these options enable ClearCaptions to continue to invest in ASR and experience the reasonable growth needed to achieve the necessary economies of scale future rate plans may require:
  - a. Alternate 1 – Industry Rates
    - i. For fund period of July 1, 2018 – June 30, 2019, adopt a per-minute rate of \$1.85, which is a 5% reduction from the current MARS rate of \$1.9467.

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<sup>1</sup> *Rolka Loube Associates, LLC, Interstate Telecommunications Services Relay Services Fund Payment Formula and Fund Size Estimate*, April 30, 2018, CG Docket 03-123, at p. 24 ("Rolka Report").

<sup>2</sup> *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 Further Notice of Proposed Rulemaking, 28 FCC Rcd 8616, 8647-56, paras. 209 – 216, CG Docket 10-51 and 03-123, (2013) ("2013 VRS Reform Order").

**REDACTED – FOR PUBLIC INSPECTION**

- ii. For Fund period of July 1, 2019 – June 30, 2020, adopt a per-minute rate of \$1.75, which is a 5.4% reduction from the \$1.85 rate.
  - iii. These rates will enable ClearCaptions to continue to position itself as an alternative to the other providers, while at the same time saving the fund over \$200M vs the current MARS methodology.
- b. Alternative 2 – Emerging Provider Rates
- i. For providers handling less than 5.5M minutes a month, apply the Alternate 1 rates as shown above, for all others, apply the rates as proposed within the Report and Order (\$1.75 for 2018/2019 and \$1.58 for 2019/2020).
  - ii. This option would achieve two key objectives: (1) enable smaller providers to have the necessary capital to invest in ASR and ensure their survivability within the industry and (2) still save the fund over \$300M over the next two years vs the current MARS methodology.

## **Critical Point #2 - Supporting Data**

**Proposed Rates would penalize the small providers while allowing the largest providers to continue to invest and grow.**

- Under the Proposed Rates, emerging providers are expected to incur operating losses until reaching approximately \*\*\*BEGIN HIGHLY CONFIDENTIAL \*\*\* \*\*END HIGHLY CONFIDENTIAL\*\*\* minutes per month based on the proposed \$1.75 rate for 2018/2019, while the dominant provider continues to earn excessive margins.

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- Based on the proposed \$1.58 rate for 2019/2020, emerging providers would need to reach approximately \*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\* \*\*END HIGHLY CONFIDENTIAL\*\*\* minutes per month in order to achieve break-even which will not be possible as they slow growth in 2018 due to the reduced 2018-2019 rate. CaptionCall, Hamilton, and Sprint will be able to continue to invest in growth and have already achieved this level of profitability or will be able to grow to this level of profitability in time to absorb this reduced rate. At least one of these providers is already at a scale to be significantly profitable well below \$1.58 per minute.

**REDACTED – FOR PUBLIC INSPECTION**

**\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\***

**\*\*\*END HIGHLY CONFIDENTIAL\*\*\***

## **Critical Point #4 - Supporting Data**

### **ClearCaptions is not earning excessive profits and/or margins**

- Rolka Loube reports that all providers earned excessive profits; factually, that is an incorrect statement.<sup>3</sup>
- With a cumulative operating \*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\* \*\*\*END HIGHLY CONFIDENTIAL\*\*\* operating margins, let alone excessive ones.
- With a \*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\* \*\*\*END HIGHLY CONFIDENTIAL\*\*\* in 2017 (*as shown below in ClearCaptions audited financials*), ClearCaptions was projecting \*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\* \*\*\*END HIGHLY CONFIDENTIAL\*\*\*; that is, prior to the Commission proposing a 2018/2019 IP CTS rate of \$1.75.

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<sup>3</sup> Rolka Report, at p.20



**REDACTED – FOR PUBLIC INSPECTION**

- Dropping from a MARS rate of \$1.9467 to \$1.75 on July 1, 2018 would result in ClearCaptions having to survive its \*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\* \*\*\*END HIGHLY CONFIDENTIAL\*\*\*

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