

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with)	
Hearing and Speech Disabilities)	
)	

COMMENTS OF CLEARCAPTIONS, LLC

ClearCaptions, LLC (“ClearCaptions”) submits these comments¹ on the Petition for Reconsideration filed by Hamilton Relay, Inc. (“Hamilton”) seeking partial reconsideration of the Commission’s Report and Order, Further Notice of Proposed Rulemaking, and Order (the “Order”) on Internet Protocol Captioned Telephone Service (“IP CTS”).² Hamilton requested that the “Commission reconsider and rescind its conclusion that IP CTS providers may only treat costs associated with implementing the Telecommunications Relay Service User Registration Database (“Database”) during the interim IP CTS compensation period as recoverable exogenous costs if such costs “(1) belong to recoverable cost categories, (2) are new costs not factored into the rates

¹ See *Consumer and Governmental Affairs Bureau Seeks Comment on Hamilton Relay, Inc. Petition for Partial Reconsideration of Internet Protocol Captioned Telephone Service Report and Order, Further Notice of Proposed Rulemaking, and Order*, Public Notice, CG Docket Nos. 13-24 and 03-123 (rel. June 5, 2019) (“Public Notice”).

² Petition for Reconsideration of Hamilton Relay, Inc., CG Docket Nos. 13-24 and 03-123 (filed Apr. 8, 2019) (“Hamilton Petition”).

for the 2018-19 and 2019-20 TRS Fund years, and (3) if unrecovered may cause a provider's current allowable-expenses-plus-operating margin to exceed its IP CTS revenues.”³

ClearCaptions agrees with Hamilton that the Commission should revise the conditions for exogenous cost recovery.⁴ As ClearCaptions argued, IP CTS providers should be compensated for additional costs incurred to implement the Database. ClearCaptions proposed that “providers seeking compensation for their actual reasonable costs of complying with the new requirements adopted in this item must submit to the Interstate TRS Fund Administrator a reasonably detailed explanation of those costs incurred.”⁵ ClearCaptions also proposed that:

Submitted costs may include those additional costs incurred by a provider that directly relate to: (1) ensuring that database information is properly and timely transmitted and accepted by the TRS-URD; and (2) other implementation related tasks directly related to facilitating user registration in the TRS-URD.⁶

The Commission should reimburse an IP CTS provider for additional incremental costs that the provider incurs to change its processes and systems to comply with the new Database requirements imposed by the *Order*. There should be no net effect on a company's financials as a result of incurring these incremental costs. In other words, an IP CTS provider should be no better or worse off than it was before the Commission's *Order* required these costs to be incurred. The Commission previously determined that the “zone of reasonableness” for IP CTS providers’

³ Hamilton Petition, at 1 (*citing Misuse of Internet Protocol (IP) Captioned Telephone Service et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order, CG Docket Nos. 13-24, 03-123, FCC 19-11, ¶ 26 (rel. Feb. 15, 2019)).

⁴ Hamilton Petition, at 2 (arguing that making Database costs recoverable “only if they otherwise might cause a provider's current allowable-expenses-plus-operating margin to exceed its IP CTS revenues is inconsistent with the Commission's own stated objectives for IP CTS rates [and] violates the Commission's requirement that TRS rates appropriately compensate providers”).

⁵ Letter from Tamar Finn, Counsel to ClearCaptions, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 13-24 and 03-123 (filed Feb. 8, 2019).

⁶ *Id.*

operating margin is “between 7.6% [and] 12.35%.”² Restricting exogenous cost recovery to only those incremental expenses that cause an IP CTS provider to fall below a 7.6 percent operating margin would result in the new Database requirements imposed by the *Order* having an adverse impact on an IP CTS provider’s financials. Any claim that reimbursing a provider that is earning in excess of 12 percent operating margin will result in the provider earning additional profits would not be accurate if the Commission were to reimburse the provider for *only* incremental costs incurred as a result of the *Order*. In that case, reimbursement would have zero net effect (*i.e.*, positive or negative) on the provider’s operating margin if reimbursement of those expenses is made dollar-for-dollar.

For the foregoing reasons, the Commission should revise its decision to remove the third condition and ensure IP CTS providers are compensated for any incremental costs incurred to implement the Database.

Respectfully submitted,

/s/Tamar E. Finn

Tamar E. Finn
Danielle Burt
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
202.739.3000 (tel)
202.739.3001 (fax)

Counsel for ClearCaptions, LLC

July 3, 2019

² *Misuse of Internet Protocol (IP) Captioned Telephone Service et al.*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5813, ¶ 23 (2018).