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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: WRITTEN EX PARTE COMMUNICATION
CG Docket No. 13-24 - Misuse of Internet Protocol (IP) Captioned Telephone Service;
CG Docket No. 03-123 - Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

Dear Secretary Dortch:

ClearCaptions, LLC ("ClearCaptions"), through its undersigned counsel, files this letter and **Attachment A** to show why a reverse auction would not be an appropriate mechanism for setting Internet Protocol Captioned Telephone Service ("IP CTS") rates.

ClearCaptions supports a four-tier model for the IP CTS rate structure.[1] A four-tier IP CTS rate structure would achieve many of the Commission's desired goals:

- Ensure providers are not earning unreasonable operating margin;
- Promote competition;
- Ensure that providers are forced to achieve economies of scale as providers grow; and
- Protect the TRS Fund.

Adopting tiered rates also would be consistent with the Commission's Video Relay Service ("VRS") precedent and would (1) assist the smallest IP CTS providers from being eliminated due to advantages from economies of scale and (2) force providers to adjust their cost structure to be more efficient.

1 *See* Initial Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 11-23 (filed Sept. 17, 2018); Reply Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 5-6 (filed Oct. 16, 2018); *see also* ClearCaptions, LLC Ex Parte, CG Docket Nos. 13-24 and 03-123, Exhibit 1 at slides 8-9 (filed Nov. 7, 2018).

ClearCaptions looks forward to working with the Commission on a long-term rate structure for IP CTS and stands ready to continue those productive discussions.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/Russel M. Blau

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ATTACHMENT A

ClearCaptions Reverse Auction Talking Points

ClearCaptions
Reverse Auction Talking Points

1. Reverse auctions are not feasible for IP-CTS, as explained in the Rebuttal Report of David J. Salant dated Oct. 31, 2018 (attached to ClearCaptions *ex parte* letters of November 8, 2018).

    a. There is no natural geographic market smaller than the entire United States

        i. IP-CTS is a cloud-based service; costs are neither distance-sensitive nor density-sensitive

        ii. Existing providers can and do serve customers anywhere in the country

        iii. Any allocation of markets based on geographic areas would therefore be purely arbitrary

    b. A nationwide reverse auction would be an untenable model

        i. CaptionCall's reverse auction proposal appears designed to limit the market to two winners (possibly three, but this result is unlikely)

        ii. Losing providers could continue to serve existing customers, but could not sign up new customers and would be unable to achieve economies of scale; therefore, they likely would be forced out of business.

            1. Proposal does not explain why "losing" providers should be barred from serving new customers if they are willing to do so at the price determined by the auction.

        iii. As a result, the market would be artificially constrained to a duopoly, heightening the risk of collusion in future auctions and virtually eliminating pressure on the winners to reduce their costs or improve their service quality going forward due to near-impossibility of future competitive entry.

    c. Reverse auctions in smaller geographic areas would result in some arbitrary reallocation of customers. Since each provider's customer base is potentially nationwide, every provider would be forced to abandon some customers and every winning bidder would have to take over other providers' customers within its allocated territory. This would be highly disruptive to customers and providers, without any significant offsetting benefit.

        i. Winners of reverse auctions in smaller geographies would have little incentive to maintain or improve service quality, since consumers could not change providers except by moving out of the auction area, and investments in service quality would not improve the provider's chances of winning the next auction.

    d. Existing providers' systems and CPE are proprietary and mutually incompatible. Accordingly, if a reverse auction resulted in some existing customers being

reallocated from their current provider to a different one, it would result in increased overall costs --

   i. The current provider would have to incur costs either to retrieve its CPE from the customers or abandon it (which, if it were not reimbursed by the fund, would potentially give rise to regulatory takings claims); and

   ii. The new provider would have to incur costs to deploy its CPE to the reallocated customers

e. Apart from these cost problems, an auction mechanism would limit consumer choice. It would therefore minimize competition based on features, service quality, and convenience, and eliminate providers' incentive to invest in these attributes.

f. *See* Hamilton Relay, Inc. *Ex Parte*, CG Docket Nos. 13-24 and 03-123, Attachment, Slide 15 (filed May 2, 2019).

2. The IP-CTS market is not comparable to situations in which the FCC has previously employed reverse auctions.

   a. Broadcast Incentive Auction

      i. Participation was entirely voluntary

      ii. Well-established geographic market areas existed – here, there is no rational way to establish any market area smaller than the entire U.S.

      iii. Spectrum was sold "bare" – no customers were involuntarily transferred

      iv. Reverse auction was intrinsically tied to the forward auction of spectrum rights, and each component depended on the price signals generated by the other (https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/how-it-works) – here, reverse auction would be held in a vacuum

   b. CAF II and other rural broadband reverse auctions

      i. These subsidies were targeted exclusively to areas where no existing broadband service was available, and no incumbent willing to build out the areas, so there was no issue of stranding or replacing an existing provider's facilities

      ii. Similarly, there was no mandatory reallocation of existing customer bases

      iii. Broadband providers have the opportunity to continue serving customers after the term of the subsidy program ends, giving them an incentive to maintain and improve service quality