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REDACTED FOR PUBLIC INSPECTION
REQUEST FOR CONFIDENTIAL TREATMENT
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459

July 27, 2018

Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Sprint Petition for Reconsideration –
Request for Confidential Treatment
CG Docket Nos. 13-24 & 03-123

Dear Ms. Dortch:

Sprint Corporation ("Sprint") hereby submits the attached confidential version of its Petition for Reconsideration ("Petition"), the redacted version of which has been filed today in the above-referenced dockets. Pursuant to Exemption 4 of the Freedom of Information Act ("FOIA") and the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Sprint requests confidential treatment for the information that has been marked confidential in the attached Petition and redacted in the public version of the Petition ("Sprint Information"), which contains commercially sensitive information. The Sprint

[1] 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure "to any extent not authorized by law" of "information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association").

Information relates to Sprint's provision of Telecommunications Relay Services ("TRS") and includes company-specific, confidential commercial information, including information that is protected from disclosure by FOIA Exemption 4[2] and the Commission's rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.[3]

1. *Identification of the specific information for which confidential treatment is sought.* Sprint requests that the Sprint Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect confidential commercial and other information not routinely available for public inspection. The Sprint Information concerns the company's provision of IP-based Captioned Telephone Service ("IP CTS"), a form of TRS, and includes information about Sprint's operations and the costs of providing the service. This is company-specific, competitively-sensitive, business confidential and/or proprietary commercial and financial information concerning Sprint's operations that would not routinely be made available to the public.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* Sprint is submitting its Petition for inclusion in the record of the Commission's docketed proceeding regarding Telecommunications Relay Services, CG Docket Nos. 13-24 and 03-123.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Sprint Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial and financial information.[4] This information can be used to determine information about Sprint's operations and finances that is sensitive for competitive and other reasons. This information would not customarily be made available to the public and would be guarded from all others.

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[2] 5 U.S.C. § 552(b)(4).

[3] 47 C.F.R. §§ 0.457(d) and 0.459.

[4] The Commission has broadly defined commercial information, stating that "'[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (*citing Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of IP CTS, which is subject to vigorous competition from other TRS providers. If the information is not protected, Sprint's competitors and potential competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The confidential information in the Sprint Information is not available to the public, and has not otherwise been disclosed previously to the public. Sprint takes precautions to ensure that this type of information is not released to the general public or obtained by its competitors and potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sprint requests that the Sprint Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* Under applicable Commission and federal court precedent, the information provided by Sprint on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The commercial and financial information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information.[5] Failure to accord confidential treatment to this information is likely to

[5] *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason,

dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to applications and policy issues under its jurisdiction.

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sprint to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Respectfully submitted,

/s/ Scott R. Freiermuth
Scott R. Freiermuth
Counsel, Government Affairs,
Federal Regulatory

'would customarily not be released to the public by the person from whom it was obtained'") (citation omitted).

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

In the Matter of	)	
	)	
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
	)	

PETITION FOR RECONSIDERATION

Scott R. Freiermuth
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913-315-8521

July 27, 2018

REDACTED FOR PUBLIC INSPECTION
SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT

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PETITION FOR RECONSIDERATION

Pursuant to the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Sprint Corporation ("Sprint") hereby seeks reconsideration of the interim rate the Commission recently adopted for Internet Protocol Captioned Telephone Service ("IP CTS").[2]

I. INTRODUCTION AND SUMMARY

According to the Commission, its decision to establish lower interim compensation rates for IP CTS is designed to ensure that IP CTS "remains sustainable for those individuals who need it" while "avoiding rate shock for IP CTS providers and potentially disrupting the provision and quality of service for consumers."[3] The Commission's choice to dramatically cut IP CTS rates before a number of important

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1 47 C.F.R. § 1.429.

2 *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 18-79 (rel. June 8, 2018) ("*Order*," "*Declaratory Ruling*," "*Further Notice*," or "*Notice of Inquiry*," as appropriate).

3 *Id.* ¶¶ 1 (regarding the sustainability of IP CTS), 24 (regarding the avoidance of rate shock).

foundational issues have been resolved,[4] however, will actually undercut these Commission goals. The Commission's failure to rely on an updated record and fully assess the reasonable costs of providing IP CTS service resulted in the adoption of unreasonably low interim rates. In turn, these interim rates will "disrupt[] the provision and quality of service for consumers,"[5] undermining both competition and providers' ability to invest in service improvements. As the D.C. Circuit recently recognized with regard to the Commission's approach to Telecommunications Relay Services ("TRS") in a different proceeding, "[m]aximizing cost savings today could diminish the market's efficiency – cost relative to service quality – tomorrow."[6]

The requirements for grant of a petition for reconsideration plainly have been fulfilled in these circumstances. The Commission "failed to fully consider important arguments" regarding both the harms that could result from a cost-based methodology and the true costs of providing IP CTS service.[7] The Commission also "lacked a

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4 *See, e.g.*, *Further Notice* ¶¶ 71 (acknowledging that "there are a number of cost issues that need to be addressed more specifically in the IP CTS context"), 96 (asking whether the Commission should "set separate rates for ASR-only IP CTS and CA-assisted IP CTS, or a single rate applicable to both"); *Notice of Inquiry* ¶¶ 156 (seeking comment on "appropriate performance goals for the IP CTS program" so as to "achiev[e] the Congressional objectives set forth in section 225 of the Act"), 164 (inquiring about specific metrics to "measure IP CTS service quality" and "ensure the functional equivalency" of IP CTS).

5 *Order* ¶ 24.

6 *Sorenson Communications, LLC v. FCC*, No. 17-1198, slip op. at 22, 2018 U.S. App. LEXIS 20476 at *27 (D.C. Cir. July 24, 2018).

7 The Commission can grant petitions for reconsideration that fail to rely on new arguments when it "failed to fully consider important arguments and lacked a reasoned basis for its conclusion." *Amendment of Section 73.3555(e) of the Commission's Rules*, Order on Reconsideration, 32 FCC Rcd 3390, ¶ 17 (2017); *id.* ¶ 16 ("Neither the

reasoned basis for its conclusion" given the stale, incomplete record on which it relied.[8] Finally, the Commission is required to reconsider its premature decision to adopt an interim IP CTS rate because it will disserve the public interest, particularly the interest of IP CTS users in continuing to receive functionally equivalent service.[9] Accordingly, Sprint respectfully urges the Commission to "freeze" the IP CTS compensation rate at the 2017-2018 level until it resolves the important matters raised in the ongoing proceeding.[10]

II. THE COMMISSION SHOULD FREEZE THE IP CTS RATE AT THE 2017-2018 LEVEL PENDING A FINAL DECISION ON THE CRITICAL POLICY ISSUES RAISED IN THE ONGOING PROCEEDING

Rather than adopting interim rates, the Commission should freeze the IP CTS rate at its 2017-2018 level of $1.9467 per minute[11] while it completes the ongoing comprehensive rulemaking proceeding, which aims to examine IP CTS in a holistic fashion. The Commission then should establish a methodology that can be used going forward to establish reasonable compensatory rates for IP CTS service.

By avoiding interim rates that could be highly disruptive to both providers and

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Communications Act nor Commission rules preclude the Commission from granting petitions for reconsideration that fail to rely on new arguments.").

8 *Id.*

9 A petition for reconsideration may be supported by facts or arguments not previously presented when the Commission "determines that consideration of the facts or arguments relied on is required in the public interest." 47 C.F.R. § 1.429(b)(3).

10 *See* Letter from Sprint Corporation to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 1 (June 1, 2018) (supporting a "freeze" in the current IP CTS rate while "the Commission examines a host of issues including, importantly, an alternative rate making methodology and quality of service issues").

11 *Order* ¶ 16.

users of IP CTS, the Commission can more accurately assess the impact that a new rate-setting methodology may have on other aspects of IP CTS and ensure that the IP CTS marketplace is operating efficiently and effectively. In particular, reconsidering its decision to set artificially low interim rates will enable the Commission to both: (1) correct its failure to rely on an up-to-date record; and (2) set a rate for IP CTS after it gives appropriate consideration to the true costs of providing the service.

A. Resetting the IP CTS Rate After the Ongoing Proceeding Is Resolved Will Ensure that the Commission Relies on a Complete, Up-to-Date Record

The Commission never sought comment on setting interim rates for IP CTS compensation, much less the specific interim rates that were adopted.[12] To the contrary, the Commission simply adopted Rolka Loube's proposed rate reductions without attempting to relate the reduced rates to "*anything* in the record specific to IP CTS."[13]

This is hardly surprising. It would have been unreasonable for the Commission to rely on the record developed in response to its 2013 Further Notice of Proposed Rulemaking seeking comment on potential IP CTS rate methodologies,[14] because that five-year-old record is now stale. As Hamilton Relay correctly notes, "[n]umerous proposals have been submitted [since 2013], including eight different proposals last year

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12 *See, e.g.*, Letter from Hamilton Relay, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 4-5 (Nov. 14, 2017) ("2017 Hamilton Relay *Ex Parte*").

13 Letter from CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 3 (May 29, 2018) ("CaptionCall *Ex Parte*").

14 *Misuse of Internet Protocol (IP) Captioned Telephone Service, 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 13420 (2013).

by the TRS Fund Administrator, replaced this year with an arbitrary (and unjustified) ten percent rate cut proposal, and various proposals from providers such as price caps or a tiered rate approach."[15] Parties should have been afforded a full opportunity to comment on these proposals before the Commission fundamentally altered IP CTS compensation, even on an interim basis.

Accordingly, to the extent the Commission wants to move the IP CTS methodology to a "cost-based" rate methodology, the Commission first should consider a comprehensive, updated record that addresses all of the potential risks of such a dramatic change. As such, the Commission should wait to establish any cost-based rates, including interim rates, until it receives comments in response to the recent *Further Notice*.[16] Among other benefits, this approach would enable current providers to supply the Commission with concrete information regarding whether they would have to decrease service quality or, worse yet, exit the market if the proposed "cost-based" methodology were adopted.

The Commission asserts that it should not "defer terminating reliance on the [Multistate Average Rate Structure or 'MARS'] rate methodology and delay adopting a new rate until [it] refresh[es] the record or take[s] other steps in this proceeding."[17]

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15 Letter from Hamilton Relay, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 2 (May 15, 2018).

16 *See, e.g.*, CaptionCall *Ex Parte* at 4 ("CaptionCall urges the Commission not to set interim rates at all, but to examine these issues on the basis of a more complete record.").

17 *Order* ¶ 19.

Further, it rejects arguments based on "alleged lack of notice."[18] The facts, however, remain the same. The Commission failed to meet the high burden it must satisfy to justify its decision to abandon the MARS-based rate-setting methodology because its decision was based on a stale record that did not even allude to the possibility of establishing interim rates in lieu of adopting a more permanent rate methodology. To correct this deficiency, the Commission should reconsider its actions, freeze IP CTS rates at the 2017-2018 level, and await comment on the *Further Notice* before modifying the MARS-based rate methodology for IP CTS.

B. Setting the IP CTS Rate Following Resolution of the Ongoing Proceeding Will Permit the Commission to Ensure that Providers Are Compensated for All Reasonable Costs of Service

The Commission justifies its interim rates by alleging that these rates "avoid placing undue immediate cost pressure on [IP CTS] providers, allowing recovery of average expenses plus operating margins that are well above the high end of the zone of reasonableness."[19] In reality, however, the interim rates already are placing tremendous pressure on IP CTS providers. As Hamilton Relay notes, "[a]n arbitrary 10% cut is very difficult for any industry to manage, especially in this situation given the very short nature in which this particular change" has taken place.[20]

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18 *Id.* ¶ 21.

19 *Id.* n.83; *see also id*. ¶ 22 (indicating that the interim rates "allow providers a substantial cushion above average costs, in order to move the compensation rate even closer to average costs in a gradual manner").

20 Letter from Hamilton Relay, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 3-4 (May 24, 2018) ("2018 Hamilton Relay *Ex Parte*").

Indeed, the interim IP CTS rates the Commission adopted **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** This concern is particularly acute with respect to the $1.58 rate adopted for the 2019-2020 funding year, **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**

The significant negative impact that the interim rates will have on IP CTS providers stems in large part from the fact that the cost data submitted to Rolka Loube do not accurately reflect the "reasonable costs" of providing IP CTS.[21] Indeed, providers consistently have challenged the use of cost data that they submit to Rolka Loube for rate-setting purposes,[22] and *each and every* IP CTS provider has explained the shortcomings of that cost information. For example, CaptionCall states that the data "exclude[] certain categories of costs that are indisputably part of a provider's actual costs of providing IP CTS services."[23] Similarly, InnoCaption finds that the "data relied

[21] 47 C.F.R. § 64.604(c)(5)(iii)(E)(1) (indicating that TRS payment formulas "shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS").

[22] *See, e.g.*, CaptionCall *Ex Parte* at 1-2.

[23] CaptionCall *Ex Parte* at 2-3 ("These nondiscretionary costs arise from economically rational decisions that IP CTS providers would make even if they operated in a traditional service market, without compensation from the TRS Fund."); *see also, e.g.*, Letter from CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket No. 13-24, at 2 (Apr. 24, 2017) ("[A]n 'allowable cost' mechanism . . . arbitrarily

upon for the Rolka Loube recommendation does not fully reflect the reasonable costs associated with providing IP-CTS services, and therefore cannot accurately reflect average provider cost and profit."[24] Hamilton Relay indicates that "each of the cost categories excluded by Rolka Loube's forms includes costs that Hamilton Relay must incur in order to run its operations and deliver IP CTS to users."[25] Finally, ClearCaptions succinctly summarizes that "[i]t is not news that the 'allowable' cost-based reporting rules, on which the Rolka Loube recommendation is based, do not fully reflect the costs associated with providing IP CTS."[26]

The Commission appears to recognize this concern, at least in part, by seeking comment in the *Further Notice* on whether "reported costs, in the aggregate, accurately reflect the actual average costs of providing this service."[27] Until the Commission develops a record based on the responses to that query and makes an *informed* determination regarding the completeness of the data submitted to Rolka Loube, the Commission can have no reasoned basis on which to reach its conclusion that the "most

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excludes many of the actual costs of providing IP CTS and depends on error-prone determinations by regulators.").

[24] Reply Comments of MezmoCorp d/b/a InnoCaption, CG Docket Nos. 03-123 and 10-51, at 1 (June 8, 2018).

[25] 2017 Hamilton Relay *Ex Parte* at 4; *see also, e.g.*, Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 and 10-51, at 4 (May 29, 2018) ("To date, the Commission has never determined what costs are reasonable or allowable in connection with IP CTS . . . . Without this guidance from the Commission, the Administrator has been collecting IP CTS data without including all legitimate costs of providing the service, and issuing conclusory statements about purported provider profits without analyzing the true costs of providing the service.").

[26] Comments of ClearCaptions, LLC, CG Docket Nos. 03-123 and 10-51, at 5-7 (May 29, 2018) ("ClearCaptions Comments").

[27] *Further Notice* ¶ 72.

recently filed cost and demand data is sufficiently reliable to serve as a basis for setting interim IP CTS rates."[28] Accordingly, the Commission should reconsider its premature and unreasonable decision to adopt interim rates based on an inadequate record and instead should defer any departure from the MARS-based rate methodology until a more fulsome record is developed.

Importantly, this approach would enable the Commission to assess whether there are costs that should be deemed compensable for IP CTS, even if these costs have been excluded from other TRS rates. For example, while the interim rate does not include costs associated with equipment installation,[29] senior citizens nevertheless may require installation, training, and even retraining in order to successfully use IP CTS.[30] As ClearCaptions concludes, "adopting any type of rate methodology that ignores that human portion of the service and only focuses on cost cutting threatens the viability of the service as well as the ability of the service to truly meet the Americans with Disabilities Act and functional equivalency mandate."[31] Furthermore, IP CTS providers incur significant costs in providing equipment to users at no charge, a practice that is

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28 *Order* ¶ 21; *see also, e.g.*, CaptionCall *Ex Parte* at 3, n.13 (While the "basis for the [2019-2020 rate] reduction appears to be the Administrator's assertion that average industry costs will continue to decline," this "is an issue that the Commission intends to explore in the rulemaking, rendering the rate reduction for the 2019-2020 Fund year premature at best.").

29 *See* Interstate TRS Fund, 2017 Annual TRS Provider Data Request Filing Instructions at 2-3 (Jan. 2018) ("Costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the Fund.").

30 Letter from ClearCaptions, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 2 (May 18, 2018) ("ClearCaptions *Ex Parte*").

31 *Id.*

necessary to ensure that IP CTS users "pay rates no greater than the rates paid for functionally equivalent voice communication services."[32]

Developing a current, credible record before taking action in the ongoing proceeding also would enable the Commission to consider the impact of any new measures it may adopt in connection with the establishment of an appropriate rate-setting methodology and rate for IP CTS. Perhaps most notably, the Commission seeks comment in the *Notice of Inquiry* on "establishing objective, quantifiable, and measurable performance goals and service quality metrics."[33] While requiring providers to meet new service metrics plainly would increase provider costs, the Commission offers no assurance that IP CTS providers will be compensated for the expenditures required to meet such standards.[34] Given the resulting lack of certainty, parties have urged the Commission to establish service standards before adopting a rate that would compensate providers for the costs they inevitably will incur to satisfy those service standards. For example, Hamilton Relay aptly argues that "given th[e] inextricable connection between rates and service quality standards, it would be arbitrary and capricious for the Commission to set a new cost-based rate without finalizing the open proceeding regarding service quality standards."[35] Indeed, "if the Commission is planning on changing these standards, it should take account of any such changes in setting new rates

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32 47 U.S.C. § 225(d)(1)(D); *see also, e.g.*, ClearCaptions Comments at 6-7.

33 *Notice of Inquiry* ¶ 155.

34 To the contrary, the Commission seeks comment on *whether* "IP CTS providers [should] be permitted to seek compensation for well-documented exogenous costs that . . . result from new TRS requirements." *Further Notice* ¶ 93.

35 2017 Hamilton Relay *Ex Parte* at 8-9.

for IP CTS."[36]

By deferring action until the record contains credible information regarding the appropriate service quality metrics and the costs associated therewith, the Commission would have a reasoned basis for evaluating the provider costs that need to be compensated in order to provide functionally equivalent IP CTS. The Commission also would have an adequate, current record for setting a more stable IP CTS rate that accurately reflects the actual costs associated with providing the service quality that the Commission has concluded meets the statutory standard.

III. THE INTERIM RATES DO NOT ADEQUATELY PERMIT AN IP CTS PROVIDER TO PROVIDE A HIGH-QUALITY SERVICE OR INVEST IN INNOVATION

In the initial record developed in 2013, a number of consumer groups encouraged the Commission to adopt the "best possible methodology and rate per minute reimbursement determination" such that IP CTS providers "have the incentive to upgrade their offerings over time, not just to manage within constrained reimbursement limits."[37] The Commission, however, failed to follow this sound advice.[38] The Commission's

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36 *Id*.

37 Comments of Hearing Loss Association of America; Telecommunications for the Deaf and Hard of Hearing; Deaf and Hard of Hearing Consumer Advocacy Network; Cerebral Palsy and Deaf Organization; American Association of the Deaf-Blind; Mill Neck Services, Inc.; National Association of the Deaf; and Association of Late-Deafened Adults, Inc., CG Docket Nos. 03-123 and 13-24, at 6-7 (Nov. 4, 2013).

38 The Commission concluded that its interim rates were set "at levels well above average allowable costs," which "responds to . . . concerns regarding the need for IP CTS providers to continue participating in ASR and other research[.]" *Order* ¶ 24. This conclusion is fundamentally flawed. As set forth above, the interim rates fail to include all reasonable costs of providing IP CTS service. *See* discussion *supra* at Section II. As a result, the interim rates are *not* set "well above" the costs of service.

interim rates do not afford providers sufficient flexibility to improve IP CTS offerings over time. Consequently, the Commission's interim rates contravene the Commission's statutory obligations to both ensure that "functionally equivalent" service is available and avoid "discourag[ing] or impair[ing] the development of improved technology."[39]

Availability of "Functionally Equivalent" Service. Section 225 of the Act requires the Commission to ensure that disabled individuals have access to service "in a manner that is functionally equivalent to the ability of a hearing individual."[40] The arbitrary, non-compensatory interim rates the Commission adopted, however, make it virtually impossible for IP CTS providers to make "functionally equivalent" services available.

As a threshold matter, the interim rates will not compensate providers for the costs they incur to maintain current service quality levels.[41] Further, the interim rates will preclude IP CTS providers from enhancing or expanding their current offerings in a way that ensures those services are equivalent to the ever-evolving services available to the general public. For example, IP CTS providers may find it difficult to obtain the financing necessary to invest in (and thus improve) their services. Absent a stable and sufficient rate, investors simply will have no confidence that they will obtain a sufficient

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[39] 47 U.S.C. §§ 225(a)(3) (regarding functional equivalency), 225(d)(2) (requiring the Commission to "not discourage or impair the development of improved technology").

[40] *See* 47 U.S.C. § 225(a)(3).

[41] *See*, *e.g.*, 2017 Hamilton Relay *Ex Parte* at 8-9 ("[L]ower rates would also make it difficult or impossible for Hamilton Relay to meet the current service quality standards."); 2018 Hamilton Relay *Ex Parte* at 3-4 ("[A]n additional rate cut to $1.58 per minute . . . would create serious market disruption and likely would adversely affect quality and availability of service.").

return on their investment. As ClearCaptions observes, if the interim rates remain in effect, the company "may lose financial support," thus stagnating growth.[42] Similarly, in reviewing the interim rates, **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**

Innovation and Improved Technology. Section 225 of the Act also requires the Commission to "ensure that regulations prescribed to implement this section . . . do not discourage or impair the development of improved technology."[43] This forward-looking requirement goes hand in hand with the Commission's "functional equivalence" obligation. Despite these statutory mandates, however, the Commission's ill-considered reduction of IP CTS rates plainly will discourage innovation by undermining providers' incentives and abilities to reinvest in IP CTS services or successor technologies.

For example, the interim rates may halt further investment in the very technologies that the Commission wants to encourage. As suggested in the *Declaratory Ruling*, the Commission wants to advance the use of Automatic Speech Recognition

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42 Letter from ClearCaptions, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, Attachment 1, at 3 (May 25, 2018).

43 47 U.S.C. § 225(d)(2). Furthermore, Section 225(d)(2) cites Section 157(a), which states that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. § 157(a).

("ASR") technology in providing IP CTS.[44] The interim rates, however, will discourage IP CTS providers from continuing to make the investments necessary to ensure that ASR can provide functionally equivalent service in compliance with the Commission's mandatory minimum standards.[45] Moreover, had the interim rates been in effect in recent years, providers would not have made the investments necessary to develop ASR at all, and the interim rates provide no incentive for providers to undertake the research and development needed to create other innovative new services going forward. As ClearCaptions indicates, this chilling effect will be especially acute for smaller IP CTS providers since a "10% reduction from the current . . . rate . . . would negatively . . . impact the ability of smaller IP CTS providers to invest in new technology that could be beneficial to consumers and the TRS Fund."[46]

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Sprint agrees with Chairman Pai that stakeholders "are aiming for an IP CTS framework that stretches scarce federal dollars as far as possible to meet the needs of

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44 *See Declaratory Ruling* ¶ 48 (asserting that "recent improvements in ASR as a stand-alone technology merit its authorization as a compensable form of TRS").

45 While Sprint fully supports the development of ASR-based IP CTS, Sprint recently filed a Petition for Clarification or, in the Alternative, Reconsideration that seeks assurances that ASR will be compensated from the TRS Fund only after necessary safeguards are in place to ensure that ASR-based offerings are functionally equivalent to other forms of IP CTS. *See* Sprint Corporation, Petition for Clarification or, in the Alternative, Reconsideration, CG Docket Nos. 03-123 and 13-24 (July 9, 2018). At this time, the record does not demonstrate that ASR is a viable alternative to existing IP CTS offerings. *Id*. at 3.

46 *See* ClearCaptions *Ex Parte* at 2.

Americans with hearing loss."[47] The interim rates adopted, however, are shortsighted. To avoid the perverse and undesirable results described above, the Commission should reconsider its decision to adopt interim rates that undermine service quality, network investment, and the development of innovative service quality improvements. Instead, the Commission should freeze the IP CTS rate at the 2017-2018 level while it works to develop a durable rate-making methodology in the ongoing proceeding that better balances its present-day priorities (*e.g.*, minimizing costs to the TRS Fund) with its forward-looking priorities. That is the only approach that can ensure that IP CTS providers will deliver "functionally equivalent" services and that the rates for IP CTS will give service providers an incentive to invest in developing technologies that could reduce costs in the future.

IV. THE INTERIM RATES THREATEN TO UNDERMINE THE BENEFITS OF COMPETITION

The likely result of setting an inadequate interim rate for IP CTS service will be that fewer IP CTS providers will continue to offer service. As a result, consumers will be deprived of the benefits of competition, including the efforts of different providers to offer higher-quality service.[48] Notably, the deaf and hard-of-hearing community cautions

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[47] *Declaratory Ruling* at Statement of Chairman Ajit Pai; *see also Declaratory Ruling* ¶ 1 (acknowledging that "IP CTS usage continues to grow" and that steps must be taken "to ensure the continued viability of IP CTS for people with hearing loss who need it").

[48] *See, e.g.*, Comments of Sorenson Communications, Inc., CG Docket Nos. 03-123 and 10-51, at 2 (May 24, 2016) ("As the Commission should realize from its experience with IP Relay, sudden and dramatic rate reductions based on 'average' costs will ensure that the highest-cost providers will immediately be unable to continue providing IP CTS, and, because of the inherent flaws in cost-based rates in a labor-intensive industry, even the more efficient providers will struggle to maintain their quality of service.").

that the Commission "should take into consideration the need to ensure competition and allow providers to enter and stay in the business of providing IP CTS, which is to say, the rates should not be so low that providers are no longer able to stay in the marketplace."[49] Moreover, the FCC's own Disability Advisory Committee has stated that the Commission "must strive to maintain a healthy marketplace that allows for multiple IP CTS competitors," finding that "marketplace pressures . . . will continue to incent providers to deliver high quality services."[50]

In setting artificially low interim rates, the Commission has created conditions that are likely to cause providers to exit the IP CTS service marketplace. Indeed, the Commission need only look to its actions five years ago in the IP Relay context to see how competition can be harmed by setting rates so low that providers are not adequately compensated. The Commission specifically claims that arguments that the "2013-14 reduction in IP Relay rates drove several IP Relay providers to leave that market" are unfounded on the grounds that the "IP Relay rate reduction was adopted *after* a number of providers announced their exits."[51] The Commission's objection, however, mischaracterizes the proceeding's history.

As an initial matter, certain IP Relay providers clearly left the market after the Commission's formal adoption of the rate reduction. For example, Sorenson indicated

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[49] Letter from Hearing Loss Association of America; Telecommunications for the Deaf and Hard of Hearing, Inc.; and Deaf/Hard of Hearing Technology RERC, Gallaudet University, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24, at 1 (Nov. 14, 2017).

[50] FCC Disability Advisory Committee, Recommendation of the FCC Disability Advisory Committee – IP CTS Quality Standards at 1 (Sept. 22, 2016).

[51] *Order* ¶ 30.

that the "IP Relay rates set by the Commission . . . le[ft] Sorenson with no alternative" but to stop providing IP Relay, as the "rates [we]re simply too low to sustain a high quality service[.]"[52] In addition, while the Commission is correct that the rate reduction was *formally* adopted after certain providers announced their plans to exit, the Commission's intention to drive down the IP Relay rate was apparent to these providers and, thus, raised serious doubts that the Commission would adopt a reasonably compensatory rate for IP Relay services going forward.

Put plainly, despite the Commission's attempt to rewrite the past, the IP Relay marketplace collapsed when the Commission took actions similar to those adopted here.[53] The Commission should heed this lesson before radically altering the IP CTS marketplace.

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[52] Letter from Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123, at 1 (July 8, 2013).

[53] *See, e.g.*, *Economic Analysis of IP CTS Provision Costs and Rate Setting*, The Brattle Group, at 1, n.2 (Nov. 8, 2017), attached to Letter from Hamilton Relay, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 13-24 (Nov. 9, 2017) ("After an ill-conceived rate mechanism suddenly caused rates to decrease to a point at which no provider was willing to operate, the IP Relay market virtually collapsed."); Comments of ClearCaptions, LLC, CG Docket Nos. 03-123 and 10-51, at 6 (May 24, 2017) ("[T]he FCC's cost-based rate methodologies have forced service providers out of the market and thus limited consumer choice, while reducing quality and functionality."); Comments of Sorenson Communications, Inc., CG Docket Nos. 03-123 and 10-51, at 2 (May 24, 2016) ("The 'allowable cost' approach has had detrimental effects on IP Relay and VRS, and it would serve only to dampen competition, diminish consumer choice, work irreparable harm to the IP CTS industry, and undermine pursuit of the functional equivalence mandate.").

V. CONCLUSION

For the foregoing reasons, the Commission should reconsider the interim IP CTS rates adopted in the *Order* and instead freeze the IP CTS rate at $1.9467 until the Commission can establish a more permanent rate methodology that properly takes into account the service quality, cost, and other issues raised in its broader ongoing proceeding.

Respectfully submitted,

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