

WILKINSON) BARKER) KNAUER) LLP

1800 M STREET, NW
SUITE 800N
WASHINGTON, DC 20036
TEL 202.783.4141
FAX 202.783.5851
WWW.WBKLAU.COM
DAVID A. O'CONNOR
202.383.3429
DOCONNOR@WBKLAU.COM

September 5, 2017

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: **EX PARTE PRESENTATION**
*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, 03-123

Dear Ms. Dortch:

On August 31, 2017, John Nelson, President of Hamilton Relay, Inc. ("Hamilton"), Dixie Ziegler, Vice President of Hamilton, and the undersigned counsel on behalf of Hamilton, met separately with Claude Aiken, Wireline Legal Advisor to Commissioner Clyburn, Nathan Eagan, Acting Wireline Legal Advisor to Commissioner Carr, and Travis Litman, Wireline Legal Advisor to Commissioner Rosenworcel. On the same date, we also met with Karen Peltz Strauss (by phone), Bob Aldrich, Eliot Greenwald, Michael Scott, and Susan Bahr of the Consumer and Governmental Affairs Bureau, and David Schmidt (by phone) and Andrew Mulitz of the Office of the Managing Director.

The purpose of the meeting was to provide Commission staff with copies of the attached white paper prepared by the Brattle Group ("White Paper") concerning the interstate Telecommunications Relay Services Fund ("TRS Fund"). Among the White Paper's findings are the following:

- The percentage of total TRS minutes funded by the interstate TRS Fund in 1999 was an estimated 21%, with state TRS funds covering the remainder. The interstate TRS Fund's percentage increased to an estimated 94% by 2016, representing a significant shift in jurisdictional funding commitments;

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- The interstate TRS Fund’s nominal annual growth rate of 5.2% is reduced to a 1.1% annual growth rate after adjusting for inflation and controlling for shifts between state and federal jurisdictions;
- Consequently, 80% of the perceived growth in the interstate TRS Fund is due to inflation and shifts in jurisdictional funding obligations;
- Inflation-adjusted IP CTS and VRS rates have not been trending upwards; thus any real increase in the interstate TRS Fund cannot be a result of compensation rates;
- The interstate TRS Fund’s modest growth is likely demand-driven, and increased demand is likely the result of shifts in market demographics and is consistent with broader market trends outlined in the White Paper; and
- Changes in the interstate TRS Fund contribution factor are mostly driven by changes in the contribution base rather than the interstate TRS Fund size.

In addition to summarizing these conclusions, Hamilton urged Commission staff to seek comment on these findings in a *Second Further Notice of Proposed Rulemaking* in this proceeding, along with various IP CTS rate methodologies that have been proposed in this proceeding, including the eight different approaches put forth by the TRS Fund Administrator¹ and the tiered rate proposal suggested by ClearCaptions.² Hamilton reiterated that, consistent with the white paper’s conclusions,³ MARS is likely the best rate methodology for IP CTS given the structure and purpose of the TRS market.

Finally, Hamilton believes that rather than engaging in an unprecedented departure from a market-based rate methodology such as MARS to an artificial rate methodology established by

¹ Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, at 19 (filed May 2, 2017). The White Paper addresses each of these eight options at pp. 30-34.

² Ex Parte filing of Clear Captions, LLC, CG Docket Nos. 13-24, 03-123 (filed Aug. 25, 2017) (substitute filing submitted Aug. 30, 2017). In connection with the IP CTS rate methodology, the Consumer & Governmental Affairs Bureau in May 2017 noted: “Because the Commission presently has an open rulemaking to address the appropriate compensation methodology for IP CTS, it is premature to select one of the [eight] specific recommendations listed above. Instead, as appropriate, *we may seek comment on certain of these recommendations as part of such pending rulemaking...*,” thus suggesting that additional comment on these issues remains necessary. *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2017-2018 Fund Year*, Public Notice, 32 FCC Rcd 3880, 3881 (CGB 2017) (emphasis added, footnote omitted).

³ White Paper at 27-30.

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a governmental agency, the effectiveness of MARS needs to be examined by the new Office of Economics and Data (“OED”). A review of MARS would be an appropriate undertaking for this important new office, and would ensure that any departure from MARS is based on sound and legally defensible economic policy. Such a review would also be consistent with Chairman Pai’s recognition that “regulators will always struggle to set the ‘right’ price,” and that “hopes and good intentions can’t override economic analysis and hard data. Micromanagement can thwart competition. It can stifle investment. It can prevent us from ever achieving long-term results that benefit consumers.”⁴ In that spirit, Hamilton believes that OED should be tasked with examining the current IP CTS rate methodology.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(1). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O’Connor

Counsel for Hamilton Relay, Inc.

Attachment

cc (via e-mail): Participants

⁴ *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Technology Transitions*, GN Docket No. 13-5; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, FCC 17-39 (adopted Apr. 20, 2017) (separate statement of Chairman Pai, at 1).