

September 7, 2017

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

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

In accordance with the *Second Protective Order* for CG Docket No. 03-123, Sorenson Communications, LLC and its wholly owned subsidiary, CaptionCall, LLC (together “CaptionCall”), herein submits a redacted version of the attached ex parte letter in the above-referenced proceedings.

CaptionCall has designated for highly confidential treatment the marked portions of the attached documents pursuant to the *Second Protective Order* in CG Docket No. 03-123.¹ CaptionCall’s ex parte letter includes granular data with respect to its costs. As such these materials fall under the following enumerated item in Appendix A of the *Second Protective Order*:

2. Information that provides granular information about a Submitting Party’s past, current or future costs, revenues, marginal revenues, or market share, and future dividends.

Pursuant to the protective order and additional instructions from Commission staff, CaptionCall is filing a redacted version of the document electronically via ECFS in CG Docket Nos. 03-123 and 13-24, filing one copy of the Highly Confidential version with the Secretary (in CG Docket No. 03-123 only), filing two copies of the redacted version with the Secretary, and sending copies of the highly confidential version to Eliot Greenwald and Robert Aldrich of the Consumer and Governmental Affairs Bureau and the TRS Reports mailbox.

¹ *Structure & Practices of the Video Relay Serv. Program; Telecomms. Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, Second Protective Order, DA 12-858, 27 FCC Rcd. 5914 (Cons. & Gov’t Affs. Bur. 2012).

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Please contact me if you have any questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'John T. Nakahata', with a stylized flourish at the end.

John T. Nakahata

Counsel to CaptionCall

cc: Eliot Greenwald
Robert Aldrich
Zenji Nakazawa
TRSReports@fcc.gov

Attachment

September 7, 2017

Ex Parte

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

REDACTED – FOR PUBLIC INSPECTION

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

Dear Ms. Dortch:

On September 5, 2017, Scott Wood, General Counsel, Sorenson Communications, LLC, and Bruce Peterson, Vice President, Marketing, CaptionCall, LLC (together “CaptionCall”), Rebekah Goodheart of Jenner & Block, outside counsel to CaptionCall, and I, outside counsel to CaptionCall, met with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to the Chairman, regarding the above-captioned proceedings related to Internet Protocol Captioned Telephone Service (“IP CTS”).

Automated Speech Recognition

CaptionCall discussed its efforts to evaluate the status of all major ASR models, looking for improvements in accuracy, speed, comprehension, and cost. CaptionCall is fully committed to developing an ASR solution that is capable of captioning IP CTS calls in a manner that is usable and comprehensible to hard-of-hearing consumers.¹ CaptionCall explained that, for the past two years, it has been using third-party experts and examining various technology implementations to help understand and test the latest ASR developments toward use with free-flowing conversations on voice calls with voices for which the ASR system has not specifically been “trained.”

While testing conducted and planned to date by MITRE has been a good initial step, testing to simulate real-world situations such as variations in call length, content, accents, and connection quality, rather than a highly controlled lab setting, will produce a more accurate picture of the current capabilities and limitations of ASR. In order to ensure that consumers can continue to receive functionally equivalent service, it is important to understand the factors that make captions usable and comprehensible—factors that likely extend beyond word error rate and latency to include punctuation, disfluencies, accents, and presentation—particularly with respect

¹ See Letter from Rebekah P. Goodheart, counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123; 13-24 (Aug. 25, 2017).

to the demographics of typical IP CTS users. CaptionCall understands that MITRE cannot test everything at once, but raises these issues so that planning of future evaluations of both human-assisted IP CTS and full ASR IP CTS can take these into account.

While advancements in ASR have been made, CaptionCall explained that the technology is not yet capable of delivering functionally equivalent service or scaling to handle the volume and duration of IP CTS calls. CaptionCall encouraged the Federal Communications Commission (“Commission”) to consider ways to encourage IP CTS providers to make the necessary investments to improve ASR so it is capable of enabling users to have functionally equivalent conversations. During this process, it will be critical to maintain a positive and stable environment for investing in ASR for IP CTS, including a stable rate, recognition of all the research and development costs of pursuing and implementing ASR, and margins that provide an incentive for implementing fully automated ASR for those calls for which it would be appropriate..

IP CTS Rates

CaptionCall understands that the Commission may be considering circulating an order that would adopt a transitional IP CTS rate while permanent IP CTS reforms are considered. As previously indicated, CaptionCall does not oppose the Commission’s efforts to reform the current IP CTS rate-setting methodology. We believe the best approach would be for the Commission to consider all rate issues in a Further Notice of Proposed Rulemaking (“FNPRM”), rather than proceeding immediately to establish an interim rate. However, if the Commission does move forward with a transitional rate, it should proceed incrementally and in a manner that does not effectively prejudge issues that will need to be considered in the FNPRM.

CaptionCall agrees with Sprint that service quality standards must be a part of any consideration of long-term rate levels. As Sprint observes, “rates, costs and service quality are intertwined.”² Because IP CTS is a labor-intensive service, changes in service quality can directly affect staffing levels, and thus dramatically alter underlying costs.

We also agree with Sprint and Hamilton that the MARS methodology has avoided dramatic swings in the IP CTS rate, allowing providers to invest in their services with reasonable certainty that they will recover their investments. As Hamilton has laid out in its white paper, there is substantial economic logic in setting rates based on something other than costs in order to promote competition, economic efficiency, and innovation, including in ASR.³ We also agree

² Letter of Scott R. Freiermuth, Counsel Government Affairs, Sprint to Marlene H. Dortch, CG Dockets No. 03-123 and 13-24, at 2 (filed August 31, 2017) (“Sprint Ex Parte”). *See also Sorenson Communications, Inc. v. FCC*, 765 F.3d 37, 50 (D.C. Cir. 2014) (“By adopting the new speed-of-answer metric without evidence of the cost to comply with it, the Commission acted arbitrarily and capriciously”).

³ Coleman Bazelon & Brent Lutes, Telecommunications Relay Services for Individuals who are Deaf or Hard of Hearing at 25-26, 31-34 (published August 30, 2017) (prepared for Hamilton Relay by the Brattle Group) (“Hamilton White Paper”).

with Hamilton that “the optimal rate methodology is one designed to mimic the forces of a free and competitive market without any market failures. This is because, in a well-working market, suppliers of a product or service are incentivized to offer a low enough price to attract customers away from competitors, but high enough to cover their costs and stay in business.”⁴

A transitional rate could potentially prejudice the outcome of consideration of a longer-term rate methodology, including market-based alternatives such as a reverse auction or variations on the current MARS mechanism. . Hamilton, for example, has submitted a detailed analysis comparing changes in the MARS rate with changes in the Employment Cost Index from 2008 to 2017, also segregating the results of demand shifts from state-funded TRS to TRS funded through the interstate fund.⁵

Depending on how it is structured, a transitional rate could also directly undermine the Commission’s worthy efforts to facilitate ASR development. Development of new technologies requires significant capital investment, which in turn requires a predictable and stable rate environment. A temporary IP CTS rate could create market uncertainty, which could reduce incentives to invest in ASR technologies.

We also agree with Sprint that the Commission should “ensure a level playing field,” and that if the Commission desires to move to a cost-based methodology, “it should ensure that costs are well-defined so that all providers are reporting costs in a similar manner.”⁶ We further agree with Sprint that neither “the Commission nor the TRS Fund Administrator have at their disposal now a fulsome, apples-to-apples comparison of costs amongst the IP CTS providers.”⁷ This should be part of a FNPRM, and the Commission should not prejudice the result in the meantime.

In this regard, we note that CaptionCall recently refiled its 2017 annual TRS cost filing with the Administrator to include intellectual property (IP) fees paid to Sorenson IP, an affiliate, for Calendar Year 2017. As part of an initiative to be better able to safeguard its VRS and IP CTS intellectual property, Sorenson VRS and CaptionCall transferred all their technology-related intellectual property to Sorenson IP. The transfer price was based upon the results of transfer pricing studies completed by Deloitte for tax purposes. With this adjustment, CaptionCall’s projected 2017 costs (without a return component) as reported to the Administrator are *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL*****⁸ Properly

⁴ Hamilton White Paper at 26.

⁵ See Hamilton White Paper at 6-13.

⁶ Sprint Ex Parte at 2.

⁷ *Id* at 2.

⁸ We also noted that *****BEGIN HIGHLY CONFIDENTIAL*****

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accounting for IP fees, whether paid to an affiliate or a third party, will be an important and necessary part of developing an “apples-to-apples” comparison of costs among IP CTS providers.

We also noted that if the Commission nonetheless seeks to reduce the IP CTS rate on an interim basis in an order, CaptionCall has previously suggested a MARS-based calculation of \$1.77 based on MARS data from 2011-2013, which preceded declines in the volume of CTS calls on which the MARS calculations are based.⁹ While not avoiding all pitfalls, this approach would leave open a permanent rate methodology pending a more complete record, including whether MARS data could be used to initialize a price cap mechanism.

Finally, we highlighted reasons why the Commission should not propose a tiered approach to rates in the FNPRM. Though the Commission has maintained a tiered VRS rate structure for years, the IP CTS market is fundamentally different and none of the justifications the Commission has advanced for VRS apply to IP CTS. We agree with Hamilton that “constructing tiers such that providers with variable costs equal to or exceeding the average do not earn profits on their services once the supply of those services exceeds some threshold . . . is particularly ill-conceived.”¹⁰ For example, market shares among the leading IP CTS providers are more equal than they are among leading VRS providers. In addition, IP CTS has exhibited a history of market share change without tiers. Indeed, CaptionCall and Clear Captions both launched their services in 2011, and began drawing from the TRS Fund for IP CTS service within one month of each other. Both have competed in the same marketplace since then, with the same levels of available compensation. Yet CaptionCall has become the largest IP CTS provider and ClearCaptions has not thrived. Moreover, even if “competitive choice” were to be considered a component of functional equivalence (which is not a self-evident interpretation of the plain meaning of the term), with CaptionCall, Hamilton and Sprint all competing, tiers cannot be considered necessary to competitive choice. Simply put, there is no need for the Commission to adopt tiered IP CTS rates in order to maintain competitive choice—and tiered rates would themselves harm competition and innovation.

Accordingly, rather than adopt an “interim” or “transitional” IP CTS rate, which could both chill capital investment at the very time such investment is critical for the advancement of ASR technologies as well prejudice issues, the Commission should instead proceed with an

⁹ See Letter of John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 03-123 and 13-24 (filed April 24, 2017).

¹⁰ Hamilton White Paper at 33.

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FNPRM. If it does move forward with an order, we urge the Commission to be incremental in its approach.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", with a stylized, cursive script.

John T. Nakahata
Counsel to CaptionCall, LLC