

**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)	
Speech-to-Speech Services for Individuals)	CG Docket No. 03-123
with Hearing and Speech Disabilities)	

COMMENTS OF SPRINT CORPORATION

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) hereby submits comments on the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

Sprint fully agrees that the Commission must ensure that Internet Protocol Captioned Telephone Service (“IP CTS”) “remains sustainable for those individuals who need it.”² In doing so, however, the Commission must not lose sight of its statutory obligations pursuant to the Americans with Disabilities Act, particularly given the vulnerable nature of the IP CTS user population. As the Commission well knows, it must “ensure” that deaf, hard-of-hearing, and

¹ *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, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 307 (June 8, 2018) (“*Order*,” “*Declaratory Ruling*,” “*FNPRM*,” “*Further Notice*,” or “*Notice of Inquiry*,” as appropriate).

² *Id.* ¶ 1.

deaf-blind individuals have the ability to utilize telecommunications services “in a manner that is functionally equivalent to the ability of a hearing individual” to use such services.³ The Commission also must ensure that relay services “are available, to the extent possible . . . to hearing-impaired . . . individuals in the United States.”⁴

Several of the Commission’s proposals in the current phase of this proceeding, however, would contravene these statutory requirements. With respect to rates, the Commission proposes a cost-based rate methodology that would undercut functional equivalence, service availability, competition, and innovation based on a flawed assumption that the Multistate Average Rate Structure (“MARS”) proxy rate “has been shown to produce an IP CTS compensation rate far in excess of actual IP CTS provider costs.”⁵ As set forth herein, use of the MARS methodology has produced rates that accurately reflect the actual costs that Sprint and others incur to provide IP CTS. Accordingly, the Commission should not reject the MARS methodology. At a minimum, the Commission should establish a dual rate-setting methodology that permits IP CTS providers that compete to provide intrastate IP CTS to continue to utilize the MARS methodology.

To the extent the Commission moves forward with its planned “cost-based” rate methodology in spite of the harms that are likely to result, it should use a tiered rate structure and ensure that IP CTS providers are compensated for all reasonable costs of providing service, including research and development, intellectual property, equipment and installation, outreach, and marketing. As the Commission continues its work in this proceeding to ensure that IP CTS

³ 47 U.S.C. § 225(a)(3) (emphasis supplied).

⁴ § 225(b)(1).

⁵ *Order* ¶ 22.

providers are adequately compensated, it should freeze the interim IP CTS rate at \$1.9468 and then adopt an extended glide path for implementing any further rate reductions.

The Commission's remaining proposals appear to be designed to safeguard the Telecommunications Relay Service ("TRS") Fund based on a mistaken belief that IP CTS use has increased due to fraud and misuse. While Sprint fully supports reforms designed to ensure the legitimate use of this important service, many of the Commission's proposals are unnecessary and would undermine functional equivalence. For example, the proposed changes to the IP CTS rules regarding assessments imposed by state-run facilities or third parties would increase the time, distance, and cost to the rural and elderly consumers who need to gain access to IP CTS to communicate effectively. In addition, altering the rules regarding permissible marketing materials and requiring IP CTS registration renewal every two years would confuse and burden users, particularly technology-averse senior citizens. The Commission would more effectively safeguard the TRS Fund against waste, fraud, and abuse by rigorously enforcing its current rules governing unauthorized IP CTS usage, improper incentives and referrals, and required user certifications.

II. THE COMMISSION'S PROPOSALS ARE BASED ON A FLAWED PREMISE AND DO NOT ACCOUNT FOR THE IP CTS USER POPULATION

In the *Further Notice*, the Commission focuses on the increasing demand for IP CTS, expressing concern that "a large portion of the recent growth in IP CTS may be attributable to perverse incentives for providers to market this service to individuals who do not need it."⁶ In

⁶ *Id.* ¶ 10.

reality, however, the increasing demand for IP CTS stems primarily from the fact that more and more Americans are experiencing hearing loss.⁷

Today, because hard-of-hearing individuals substantially outnumber deaf individuals, it is completely predictable that the demand for IP CTS exceeds the demand for other forms of TRS that are designed to serve the deaf community.⁸ As the Commission notes in the *Order*, reports indicate that “approximately 40-48 million individuals, or as much as 15 percent of the U.S. population, have hearing loss.”⁹ Going forward, the number of individuals with hearing loss will only increase as the U.S. population as a whole ages.¹⁰ Consequently, the legitimate demand for IP CTS similarly will continue to grow over time, and users will increasingly be elderly individuals who are unfamiliar with accessibility technologies. In addition, given that IP CTS “can uniquely accommodate deaf and hard of hearing people who also have low vision,” the “size of the eligible user base and the significant advances in IP CTS technology makes the recent growth in minutes unsurprising.”¹¹

⁷ See Adele M. Goman, Nicholas S. Reed & Frank R. Lin, *Addressing Estimated Hearing Loss in Adults in 2060*, JAMA OTOLARYNGOL HEAD & NECK SURG., July 2017, at 733-734 (“During the next 43 years, the number of people with hearing loss in the United States is projected to almost double and will outpace the overall population growth rate, given the distribution shift toward older adults.”).

⁸ See, e.g., Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 and 03-123, at 5 (Feb. 26, 2013) (“CaptionCall 2013 Comments”).

⁹ *Order* ¶ 12.

¹⁰ See, e.g., *Older People Projected to Outnumber Children for the First Time in U.S. History*, U.S. CENSUS BUREAU (Mar. 13, 2018), <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (“By 2035, there will be 78.0 million people 65 years and older compared to 76.7 million (previously 76.4 million) under the age of 18.”); Comments of the Hearing Loss Association of America, CG Docket Nos. 13-24 and 03-123, at 4-5 (Feb. 26, 2013) (“HLAA Comments”).

¹¹ Comments of Purple Communications, Inc., CG Docket Nos. 13-24 and 03-123, at 2-3 (Feb. 26, 2013). See also *Order* ¶ 9 (noting that the “ease and convenience of using IP CTS” are another reason for greater usage of IP CTS over other forms of TRS); Reply Comments of

To be sure, some of the recent growth in IP CTS demand is the result of marketing efforts by providers of that service. The fact that this marketing has proven effective, however, does not mean that the new IP CTS users do not need the service. Instead, the Commission should recognize that TRS marketing efforts traditionally have focused on the deaf community, leaving the hard-of-hearing community underserved and often unaware of IP CTS technologies. As providers have launched outreach campaigns to inform potential customers about IP CTS and its benefits, the number of legitimate IP CTS users has increased.¹² In other words, “[w]hat’s new” in the IP CTS marketplace is that “[f]inally people with hearing loss are getting access to the phones they need.”¹³

Against this backdrop, the Commission’s goal in this proceeding should not be to curb the growth of IP CTS. Rather, the Commission should undertake a holistic review of the service that focuses on ensuring that IP CTS continues to be functionally equivalent to communications services provided to the hearing community. In particular, the Commission should begin by determining the core attributes of IP CTS and developing a common set of quality of service

Hearing Loss Association of America, CG Docket Nos. 13-24 and 03-123, at 3-4 (Mar. 12, 2013) (“HLAA Reply Comments”) (“Given how it has been the most functionally equivalent phone for people with hearing loss, we are seeing more people who are comfortable using IP CTS phones for the first time.”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Internet-based Captioned Telephone Service*, Declaratory Ruling, 22 FCC Rcd 379, ¶ 23 (2007) (“Because this service offers consumers additional features – e.g., portability, lower cost and easier availability, greater accessibility for persons with multiple disabilities – it represents an important step towards functional equivalency.”).

¹² See, e.g., CaptionCall 2013 Comments at 5 (“As word about IP CTS service has spread among consumers and specialists, the number of subscriptions among those who need assistance to use the phone fully has increased.”).

¹³ HLAA Comments at 2; see also HLAA Reply Comments at 3 (“HLAA remains unconvinced that the increase in IP CTS minutes used is the result of fraud. It appears to be a technology that has simply become known to more eligible users than ever before.”).

metrics that can be objectively measured and applied equally to all iterations of IP CTS. Only then can the Commission appropriately and fully consider the ratemaking and other matters raised in the *Further Notice* in a more comprehensive context.¹⁴

III. MARS REMAINS THE MOST APPROPRIATE RATE-SETTING METHODOLOGY FOR COMPETITIVE CARRIERS

Contrary to the Commission’s recent findings, MARS does, in fact, “correlate to actual reasonable costs” of providing IP CTS service.¹⁵ Indeed, the MARS methodology is the *only* ratemaking mechanism that relies on the competitive marketplace to set rates. By relying on the rates set through competitive bidding, MARS results in the “lowest price consistent with recouping providers’ costs for provisioning the service,” because “there is no incentive for providers to overestimate costs.”¹⁶

¹⁴ For example, as Sprint indicated in its recent petition, the Commission inappropriately concluded that Automatic Speech Recognition (“ASR”) providers may receive compensation from the TRS Fund before assessing whether ASR is functionally equivalent to IP CTS or determining which quality standards should apply to ASR. *See generally* Petition for Clarification or, In the Alternative, Reconsideration of Sprint Corporation, CG Docket Nos. 13-24 and 03-123 (July 9, 2018).

¹⁵ *Order* ¶ 16. While the Commission is correct that “per-minute costs reported for IP CTS have diverged substantially from the MARS rate in the last few years,” this is because the information reported to Rolka Loube does not reflect the true costs of providing IP CTS. *Id.* ¶ 18.

¹⁶ Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24 and 03-123, at 4 (June 4, 2015); *see also* Letter from John T. Nakahata, Counsel for CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, at 1 (Jan. 27, 2016) (“Market-based rates ensure that providers, who must constantly adapt to competitive pressures, operate their services in the most efficient manner possible, without eliminating costs necessary for providers to offer essential elements of TRS.”); Reply Comments of Ultratec, Inc., CG Docket Nos. 13-24 and 03-123, at 3 (June 11, 2015) (“Ultratec Reply Comments”) (“MARS accurately reflects the actual cost of provisioning IP CTS under competitive market conditions because MARS relies on the competitive bids of providers rather than projected costs, which may be subject to manipulation and gaming.”); Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24 and 03-123, at 1-2 (Nov. 4, 2013) (“Hamilton 2013 Comments”) (“The MARS methodology is superior to its alternatives chiefly because it relies on the competitive market, rather than prescriptive regulation and proxies, to set rates.”).

The MARS methodology offers additional benefits. For example, the Commission has observed that “the MARS plan eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”¹⁷ MARS is self-adjusting – “[a]s the cost of providing IP CTS changes due to changes in technology, regulatory requirements or labor costs, these changes automatically are reflected in the MARS rate.”¹⁸ The MARS methodology thereby obviates the need for the Commission to make *ad hoc* exogenous cost adjustments or otherwise address the “complexities inherent in rate-of-return or price-cap ratemaking.”¹⁹

Importantly, the Commission’s reliance on the MARS methodology has led to the adoption of rates that do not fluctuate wildly from year to year. These “predictable, fair, and reasonable rates” have created a measure of certainty for IP CTS providers.²⁰ In turn, this certainty has promoted ongoing investment and innovation in the IP CTS marketplace, ensuring that IP CTS users continue to have access to a communications option that is “functionally equivalent” to the continually updated communications options available to other users. Maintaining this relative certainty regarding rates will prove particularly important in the near term as IP CTS costs are expected to rise based on changing regulatory requirements.²¹

¹⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 18 (2007) (“2007 Order”).

¹⁸ Ultratec Reply Comments at 3.

¹⁹ Hamilton 2013 Comments at 2.

²⁰ 2007 Order ¶ 16; *see also* Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 and 10-51, at 11 (May 24, 2016) (“MARS has been so successful as a rate methodology in part because of the regulatory certainty it has provided over time.”).

²¹ *See, e.g., Notice of Inquiry* ¶ 155 (seeking comment on “establishing objective, quantifiable, and measurable performance goals and service quality metrics”).

Given the many benefits of a MARS-based rate methodology, the Commission should maintain the use of MARS for setting IP CTS rates. To the extent the Commission wishes to move away from the MARS rate-setting methodology at all, it should do so only for providers that do not compete in the states. There is no reasoned basis for abandoning the use of MARS for providers that are actively competing in the states.²² As the Commission has noted, “rate regulation can only be, at best, an imperfect substitute for market forces” and “cannot replicate the complex and dynamic ways in which competition will affect [providers’] prices, service offerings, and investment decisions.”²³ Continued use of the MARS methodology to set compensation in states where marketplace forces determine the IP CTS rates would avoid reliance on “an imperfect substitute.”

²² The Commission’s arguments that CTS-based MARS rates are not effective proxies for IP CTS costs are unavailing. *Order* ¶ 17. The record long has established that the “per-minute cost of IP CTS and PSTN-based CTS are, and will continue to be, virtually identical regardless of any growth in IP CTS demand.” Reply Comments of Ultratec, Inc., CG Docket Nos. 13-24 and 03-123, at 5 (Dec. 4, 2013) (“Ultratec 2013 Reply”). CTS and IP CTS are provided using the same communications assistants, equipment, and call centers. Any difference in costs stemming from the different underlying technology is “nominal relative to the primary cost of providing the services – CA wages and benefits.” *Id.*

Moreover, increased demand for IP CTS does not undermine use of the MARS methodology. Because the majority of IP CTS costs are attributable to labor, not capital, increased demand does not result in decreased per-unit costs. As Hamilton has indicated, “whereas the ‘per minute’ cost of a capital-intensive service such as basic telephony might be cut in half when usage doubles, the cost of providing 100,000 minutes of IP CTS is likely to be substantially more than the cost of providing 50,000 minutes due to additional labor costs to handle the increase in minutes, such that the ‘per minute’ cost will not drop nearly as much (or at all).” Hamilton 2013 Comments at 5. Accordingly, “per-minute PSTN-based CTS costs are likely to reflect per-minute IP CTS costs, even if the number of minutes of use used to make the underlying calculations differ substantially. *Id.* at 5-6; *see also* Ultratec 2013 Reply at 5-6.

²³ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, Order, 12 FCC Rcd 15982, ¶ 289 (1997).

IV. THE COST-BASED RATE-SETTING MECHANISMS THE COMMISSION PROPOSES WOULD HARM IP CTS USERS

As shown above, the MARS-based mechanism is the only methodology that is based on market prices for IP CTS, and experience over many years demonstrates that MARS results in stable, predictable rates that reasonably compensate providers for the costs they incur in furnishing IP CTS. Conversely, the “cost-based” alternatives that the Commission proposes are flawed and ultimately would harm IP CTS users.

As CaptionCall has noted, the Commission “does not need to look far afield to see the detrimental effect of cost-of-service regulation on labor-intensive products and services” such as IP CTS.²⁴ The Commission’s use of non-market-based methodologies to determine compensation rates for other TRS offerings has adversely affected both providers and the consumers that rely on their services.

In 2013, the Commission reset the IP Relay base rate based on an “allowable cost” calculation.²⁵ Since this rate methodology was adopted, every company other than Sprint stopped providing IP Relay, at least in part because they found that it was not financially viable to continue to offer that TRS service. For example, when Sorenson announced its plan to exit the IP Relay business, it expressly stated that its decision was based on the fact that the rates the FCC adopted “are simply too low to sustain a high quality service” and “will not yield functionally-equivalent telecommunications relay service.”²⁶ Notably, Sprint’s decision to

²⁴ Reply Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 and 03-123, at 4 (Dec. 4, 2013) (“CaptionCall Reply Comments”).

²⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, Order, 28 FCC Rcd 9219, ¶¶ 10-20 (2013).

²⁶ Letter from John T. Nakahata, Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary (July 8, 2013). *See also* Comments in Support of Sprint’s Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, National Association

continue providing IP Relay was based on its commitment to the user community, particularly the deaf-blind users for which IP Relay remains of key importance, and was in no way based on the purported sufficiency of the “cost-based” rates. Similarly, since Video Relay Service (“VRS”) moved to a cost-based methodology, the VRS marketplace has been subject to increasing consolidation. Today, only two providers hold virtually the entire market share.

There can be little doubt that moving to rates based on providers’ “costs” will produce similar results in the IP CTS context.²⁷ As competitors exit the IP CTS marketplace, consumers will be deprived of the benefits of competition, including the efforts of different providers to offer higher-quality service.²⁸ The FCC’s own Disability Advisory Committee has stated that

of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, CG Docket Nos. 10-51 and 03-123, at 4 (Dec. 5, 2013) (“There is strong evidence that the Commission’s decision to reduce immediately IP Relay rates by nearly 20%, and to mandate further annual six percent reductions for the next two years, has had a dramatic and negative impact on the ability of deaf and hard of hearing consumers to have a choice of multiple providers from which they can obtain high-quality IP Relay services.”); *id.* at 5 (“There is enough evidence in the record for the Commission to conclude that the drastic reduction in IP Relay service providers is the direct result of an unrealistically low reimbursement rate.”); Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 and 03-123, at 6 (Nov. 4, 2013) (“Rate setting methodologies based on ‘allowable’ cost, rate-of-return calculations will destroy IP CTS with unsustainably low rates, just as with IP Relay and VRS.”); Hamilton 2013 Comments at 19-20 (The FCC’s “abrupt rate reduction, if not the sole cause, most certainly was a factor in Hamilton, AT&T, and Sorenson exiting the IP Relay market, thus reducing the services available to deaf and hard-of-hearing consumers. MARS, in contrast, has escaped these problems, providing predictable, market-based recovery to providers.”).

²⁷ See Petition for Reconsideration of Sprint Corporation, CG Docket Nos. 13-24 and 03-123 (Jul. 27, 2018) (“Sprint Petition”).

²⁸ See, e.g., Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 03-123 and 10-51, at 2 (May 24, 2016) (“CaptionCall 2016 Comments”) (“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.”).

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.”²⁹

Even assuming *arguendo* that carriers will continue to offer IP CTS, the increased marketplace uncertainty will dampen incentives to invest to maintain high-quality service, much less to explore innovative improvements. As a result, service quality and the intensity of competition inevitably will decline – ultimately harming the hard-of-hearing and other consumers that depend on this important service.³⁰ As the Consumer Groups have indicated, providers “must have the incentive to upgrade their offerings over time, not just to manage within constrained reimbursement limits.”³¹

²⁹ Recommendation of the FCC DAC, IP CTS Quality Standards, CG Docket Nos. 03-123 and 13-24 at 1 (Sept. 23, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341497A1.pdf.

³⁰ CaptionCall 2016 Comments at 8 (“Should the Commission adopt such an ‘allowable cost’ approach, it would result in setting rates below viable levels, leading to the inevitable outcome: providers exiting the service, which will reduce competition and diminish customer choice.”); Letter from Danielle Burt, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, FCC Secretary, at 1 (May 18, 2015) (expressing “concerns about the quality of VRS if rate cuts continue and stress[ing] that consumers and interpreters should not have to bear the burden of a rate cut that directly impacts quality.”); CaptionCall Reply Comments at 4 (“Cost-of-service regulation based on the Commission’s limited set of ‘allowable costs’ provides for no margin on expenses in a labor-intensive business and would undermine the ability of IP CTS providers to offer ‘*high quality*’ captioned telephone service at a reasonable profit that supports continued innovation.”).

³¹ 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. 13-24 and 03-123, at 7 (Nov. 4, 2013); *id.* at 6 (“[T]he Commission should select a rate methodology that will compensate providers adequately for the costs of providing IP-CTS while enabling them to provide *high quality* captioned telephone service at a reasonable rate that supports continued innovation.”).

In fact, cost-based rates may discourage 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 new technologies such as ASR.³² Had “cost-based” rates been in effect in recent years, however, providers would not have made the investments necessary to develop ASR at all, and such rates provide no incentive for providers to undertake the research and development needed to create other innovative new services going forward.

These results would plainly contravene the Commission’s statutory obligations. As discussed above, the adoption of non-compensatory rates would make it virtually impossible for IP CTS providers to make “functionally equivalent” services available if they continue providing service at all.³³ Furthermore, this ill-considered change will also “discourage or impair the development of improved technology.”³⁴

Notably, these harmful results would not be offset by the benefits the Commission contemplates. The Commission specifically touts the potential savings to the TRS Fund that could result from a cost-based rate.³⁵ In calculating these savings, however, the Commission ignores the concomitant costs associated with setting a rate that effectively forces providers out of the marketplace. For example, a provider’s IP CTS device may not be interoperable with

³² See, e.g., *Declaratory Ruling* ¶ 48 (asserting that “recent improvements in ASR as a stand-alone technology merit its authorization as a compensable form of TRS”).

³³ See 47 U.S.C. § 225(a)(3) (requiring 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”).

³⁴ § 225(d)(2) (requiring the Commission to “ensure that regulations prescribed to implement this section . . . do not discourage or impair the development of improved technology”). 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).

³⁵ *Order* ¶ 26.

another provider's IP CTS service. As a result, users of an IP CTS provider that stops offering service may be forced to obtain a new device in order to continue using IP CTS, potentially losing service for a period of time during the transition process. In addition, IP CTS providers would be forced to build new call centers and add new employees at an accelerated, and thus less than optimally efficient, pace in order to handle increased demand. Moreover, as the D.C. Circuit recently recognized with regard to the Commission's approach to TRS in a different proceeding, "[m]aximizing cost savings today could diminish the market's efficiency – cost relative to service quality – tomorrow."³⁶ In short, the benefits the Commission anticipates its new ratemaking methodology would produce are illusory.

V. SHOULD THE COMMISSION MOVE FORWARD WITH A COST-BASED RATE METHODOLOGY, IT MUST IMPLEMENT MINIMUM MEASURES DESIGNED TO MITIGATE THE HARMS OF THIS METHODOLOGY

Should the Commission move forward with a cost-based rate methodology in spite of the deleterious results that are likely to occur, it must implement certain minimum measures that likely would at least reduce the harm to IP CTS users. In particular and for the reasons set forth below, the Commission should: (1) adopt a tiered rate structure rather than a unitary rate based on the lowest-cost or second-lowest-cost provider or a rate based on weighted average costs; (2) ensure that IP CTS providers are compensated for all reasonable costs of providing service; (3) freeze the interim IP CTS rate at \$1.9468 and then implement any further reductions gradually; (4) reject any affirmative caps on cost categories; and (5) allow for exogenous cost adjustments.

³⁶ *Sorenson Communications, LLC v. FCC*, 297 F.3d 214 (D.C. Cir. 2018).

A. A Tiered Rate Would Be More Equitable Than the Other Cost-Based Proposals

To the extent that the Commission does not continue to rely on the proven MARS methodology and instead moves forward with what it views to be a “cost-based methodology,” it should consider a tiered rate structure approach.³⁷

A tiered rate structure undoubtedly would yield better results than setting a unitary compensation rate equal to the costs of the lowest-cost or second-lowest-cost provider, which would only amplify the disruptive impacts of a cost-based methodology.³⁸ The Commission itself appears to recognize that setting costs in this manner could result in providers exiting the marketplace, noting that the “presence of multiple competitors can be highly beneficial in ensuring the provision of functionally equivalent service” and seeking comment on the “optimal number of competitors.”³⁹ Providers with higher costs, and likely higher quality IP CTS offerings, would be driven out of business in short order. The impact on consumers would be negative and swift.⁴⁰

A tiered rate structure also would be preferable to use of a weighted average based on purported “costs.”⁴¹ As CaptionCall has noted, weighted averages “fail to compensate IP CTS

³⁷ See, e.g., *FNPRM* ¶ 83 (“We seek comment on whether we should continue to use a weighted average of historical and projected costs in setting compensation rates for IP CTS.”); *id.* ¶ 88 (“In order to encourage smaller competitors to remain in the market, while still narrowing the gap between total compensation and total IP CTS costs, would it be appropriate to adopt a tiered rate structure for IP CTS?”).

³⁸ *Id.* ¶ 94.

³⁹ *Id.*

⁴⁰ The Commission has not demonstrated that higher-cost providers have any ability to lower their costs. Absent such a finding, setting the rate equal to the costs of the lowest-cost or second-lowest-cost provider would amount to an arbitrary decision to transition the IP CTS market to the lower-cost provider(s), eliminating providers that offer a valuable service to users.

⁴¹ The MARS methodology also relies on a weighted average approach to determine compensation rates. In that case, however, the rates being averaged are those determined by

providers for making economically rational decisions that firms in a competitive, non-subsidized market should make” and create “perverse incentives for IP CTS providers not to achieve efficiencies and service quality improvements.”⁴² In addition, smaller competitors would be forced out of the marketplace pursuant to a weighted average cost structure.⁴³ Mathematically, providers that are able to leverage economies of scale will have costs that are below the weighted average, whereas smaller providers will have costs that exceed the weighted average. Put simply, Purple is correct that the “application of a weighted average cost methodology that does not take into account market imbalance, the disproportional cost of labor or software maintenance expense, or how the service actually works, is not effective and would not further the Commission’s goal of ensuring sustainability, quality, competition, and innovation in the IP CTS market.”⁴⁴

competitive bidding and, thus, the risk of setting a non-compensatory rate is substantially lower than one based on a simple weighted average based on “costs” determined by regulators.

⁴² Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 10-51, and 03-123, at 3 (May 29, 2018).

⁴³ Letter from Cristina O. Duarte, MezmoCorp d/b/a InnoCaption, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 13-24 and 03-123, at 1 (May 31, 2018) (using “weighted average provider costs to establish interim rates may eliminate small and emergent providers from the IP-CTS market”). Notably, an “emergent provider” rate likely will not suffice to protect competition. *FNPRM* ¶ 90. In the VRS context, the use of an emergent provider rate did not result in additional providers entering the marketplace. Instead, the restraints placed on a potential provider’s operating margin eliminated the incentive to begin offering service. There is no reason to believe that there will be a different result in the IP CTS marketplace. Instead, competition will only be maximized if market-based methodologies such as MARS are used, as they allow providers to recover the costs of innovation and earn a reasonable rate of return on operating costs.

⁴⁴ Comments of Purple Communications, Inc., CG Docket Nos. 13-24 and 03-123, at 2 (Nov. 4, 2013).

B. IP CTS Providers Must Be Compensated for All Reasonable Costs

The Commission seeks comment on whether the “costs currently reported by IP CTS providers . . . accurately reflect the actual average costs of providing this service.”⁴⁵ The answer to this question is “no.” The cost categories for which Rolka Loube has collected data are based on the costs incurred by providers of other TRS offerings, such as VRS. As a result, these cost categories do not actually represent all of the costs that providers incur in providing IP CTS.⁴⁶ Indeed, providers consistently have challenged the use of cost data that they submit to Rolka Loube for rate-setting purposes, and *each and every* IP CTS provider has explained the shortcomings of that cost information.⁴⁷

It would be unreasonable for the Commission to set a “cost-based” compensation rate for IP CTS that does not account for the true costs of providing “functionally equivalent” service. To avoid this result, any cost-based methodology must ensure that IP CTS providers are compensated for:

- Expenses related to employee training, quality assurance, and customer service;
- Reasonable research and development and intellectual property-related costs, including license fees and technology platform updates;
- The significant costs of providing equipment to users at no charge, a practice that is necessary to ensure that IP CTS users “pay rates no greater than the rates paid for functionally equivalent voice communication services;”⁴⁸ and

⁴⁵ *FNPRM* ¶ 72.

⁴⁶ *See, e.g.*, Letter from John T. Nakahata, Counsel to CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, at 2 (Apr. 24, 2017) (“an ‘allowable cost’ mechanism . . . arbitrarily excludes many of the actual costs of providing IP CTS”); *id.* (“the average ‘allowable costs’ reflected in Rolka Loube’s most recent IP CTS data . . . do not accurately represent industry-wide costs”).

⁴⁷ *See* Sprint Petition at 7-8.

⁴⁸ § 225(d)(1)(D); *see also, e.g.*, Comments of ClearCaptions, LLC, CG Docket Nos. 03-123 and 10-51, at 6-7 (May 29, 2018); Reply Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 and 03-123, at 18-19 (Mar. 12, 2013) (“[N]ew IP CTS

- Equipment installation, particularly given that IP CTS users often require installation, training, and even retraining in order to successfully use IP CTS.⁴⁹

Finally, the Commission should compensate IP CTS providers for the costs of both “outreach”⁵⁰ and “marketing”⁵¹ because of the higher IP CTS messaging costs and the intertwined nature of these expenses. Users of many forms of TRS often have had hearing loss from birth and actively review communications targeted to the deaf community. Potential IP CTS users, however, generally are experiencing hearing loss for the first time due to age and are unaware of available TRS resources. As a result, IP CTS users are most effectively reached through national media and print, which are expensive channels. Importantly, compensating providers only for outreach efforts would not ensure that potential IP CTS users are fully aware of their options. To the contrary, those programs must be supplemented by coordinated marketing campaigns in order to appropriately reach the large number of potential users that lack any familiarity with IP CTS technology. Both outreach and marketing are needed so that potential users are informed about the service *and* made aware of any factors that differentiate one service offering from another. Absent this provider-specific “marketing” that focuses on its particular offerings, a potential user would not be able to determine which provider’s service

customers will likely already have traditional wireline telephone service and equipment installed in their homes – the captioned phone is an extra piece of equipment that they need only because they are hard of hearing. Hearing consumers do not have to incur these extra costs just to use the telephone, and the costs may dissuade usage by eligible users.”)

⁴⁹ Letter from ClearCaptions, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123, 10-51, and 13-24, at 2 (May 18, 2018).

⁵⁰ “Outreach” is an educational tool using non-branded information to assure that potential new-to-category users and the general public are aware of the purposes, benefits, access, and usage of all forms of TRS. *See FNPRM* ¶ 71.

⁵¹ “Marketing” is “branded advertising and other promotional activity aimed at encouraging the use of a particular provider’s service.” *FNPRM* ¶ 80.

would best suit his or her needs.

C. The Commission Should Adjust the Interim Rates and Consider a Reasonable Glide Path

The Commission seeks comment on whether it should adjust the interim rates it has adopted for IP CTS based on the record in this proceeding.⁵² For the reasons Sprint articulated in its recent Petition for Reconsideration, the Commission immediately should reconsider the interim rates. Far from “allow[ing] providers a substantial cushion above average costs” and “avoid[ing] placing undue immediate cost pressures” on IP CTS providers,⁵³ the interim rates already are placing tremendous economic pressure on providers.⁵⁴

To ease a portion of this pressure, the Commission first should freeze the IP CTS rate at \$1.9468 until the Commission establishes a more permanent rate methodology. To the extent the record supports any further reductions from \$1.9468, the Commission then should adopt a “glide path” in order to implement any such reductions gradually over a period of years.⁵⁵ As the Commission recognizes, abrupt reductions to the IP CTS rate “could produce a disruption in the IP CTS market and potentially negative consequences for both providers and consumers.”⁵⁶

D. The Commission Should Not Cap Cost Categories

The Commission should not adopt its proposal to apply caps to any cost categories.⁵⁷ Finding certain otherwise compensable costs to be non-compensable *before* actually assessing a

⁵² FNPRM ¶ 84.

⁵³ *Id.* ¶ 22 and n.83.

⁵⁴ See Sprint Petition at 6, n.19.

⁵⁵ FNPRM ¶ 87 (seeking comment on whether a “glide path” could “limit the short-term potential for undesirable loss of competitive alternatives and disruption of service to consumers”).

⁵⁶ Order ¶ 24.

⁵⁷ FNPRM ¶ 72.

particular cost submission would be unreasonable. In addition, because the cost category descriptions are vague, companies likely report the same types of costs differently. As a result, affirmatively capping cost categories could unfairly penalize providers based solely on how they report costs, rather than on the reasonableness of the actual costs in question.

E. The Commission Should Allow for Exogenous Cost Adjustments

The Commission should adopt its proposal to permit IP CTS providers to “seek compensation for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider’s control, (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider’s current allowable-expenses-plus-operating margin to exceed its IP CTS revenues.”⁵⁸ Absent the possibility of exogenous cost adjustments, it would be even less economically feasible for *any* provider to continue providing IP CTS. For example, labor costs almost certainly will increase as the minimum wage increases nationwide. This increase in costs is plainly beyond the IP CTS provider’s control, and given the labor-intensive nature of IP CTS, even a minor cost increase could render the provision of IP CTS financially infeasible.

⁵⁸ *Id.* ¶ 93.

VI. THE COMMISSION SHOULD NOT SUBSTANTIALLY ALTER THE EXISTING IP CTS ASSESSMENT PROCESS

Expressing concern that the “exponential growth in IP CTS has been exacerbated by the failure of user assessments to be sufficiently complete and objective,”⁵⁹ the Commission proposes a series of reforms designed to ensure that IP CTS users truly need the service. As discussed above, however, the increase in IP CTS minutes is based primarily on legitimate demand. Accordingly, there is no reason for the Commission to derail the current well-functioning assessment process, particularly given that a number of the Commission’s proposals would impose unwarranted burdens on the vulnerable IP CTS user population.

A. Users Should Not Be Subject to Enhanced Scrutiny Before Receiving Service

The Commission proposes to require each prospective IP CTS user to “undergo an objective assessment by a qualified and independent entity that will determine whether the individual has a ‘hearing loss that necessitates use of captioned telephone service,’” specifically focusing “on the consumer’s ability to hear and understand speech over the telephone and on whether the consumer’s communications needs can be met by other assistive technologies.”⁶⁰ Functional equivalence, however, does not mean that a user can only use IP CTS as a last resort after all other technologies have been exhausted. That approach would require the use of the most limited tool possible instead of the most functionally equivalent. Indeed, the proposed approach is analogous to requiring a person demonstrate that he or she is incapable of using a walker in order to have access to a wheelchair. Moreover, the Commission’s proposal would impose a burden on the hard-of-hearing and deaf community that hearing individuals are not required to bear in order to obtain the equipment or accessories they need to use a telephone.

⁵⁹ *Id.* ¶ 117.

⁶⁰ *FNPRM* ¶¶ 119, 122.

B. States Should Not Be Tasked with Undertaking All User Eligibility Assessments

As one potential approach to achieving its assessment-related objectives, the Commission seeks comment on “having state TRS programs handle IP CTS user eligibility assessments.”⁶¹ While the states and U.S. territories with FCC-certified TRS programs should and currently do play an important role in administering IP CTS, state entities should not be the exclusive IP CTS assessment provider. For example, as the FCC has indicated, a new state assessment program would cost the TRS Fund \$9 million annually.⁶² This expense, however, is unnecessary given that many state programs already distribute IP CTS equipment at no cost to the Fund.

Moreover, relying solely on state programs would burden legitimate users and undermine functional equivalence. State guidelines and policies vary widely and some impose income restrictions and lengthy application processes that plainly do not comport with the federal obligation to ensure that *all* legitimate users have access to functionally equivalent services. There also are a limited number of state-run facilities, and state programs are at times understaffed and underfunded. Taken together, these limitations could make many elderly potential users face long-distance travel and lengthy waiting periods before even being assessed by a state program.

C. The Commission Should Maintain the Current Third-Party Assessment Rules

As an alternative to having state programs conduct IP CTS screenings, the Commission proposes “to require IP CTS providers to obtain from each potential IP CTS user a certification from an independent, third-party hearing health professional affirming the user’s eligibility to

⁶¹ *Id.* ¶ 123.

⁶² *Id.* ¶ 125.

use IP CTS.”⁶³ While Sprint generally supports the Commission’s overarching proposal, a number of the plan’s more detailed limitations are problematic.

For example, the Commission proposes to limit providers to accepting “user assessment certifications signed by physicians specializing in otolaryngology, audiologists, or other state certified or licensed hearing health professionals qualified to evaluate an individual’s hearing loss in accordance with applicable professional standards.”⁶⁴ This narrow definition would omit important individuals that assess potential IP CTS users today, such as Veterans Service Officers. Eliminating such qualified individuals would only serve to make it harder for legitimate users to obtain the necessary assessment.

The Commission also proposes to “prohibit all IP CTS providers from accepting a certification from any professional that has a business, family, or social relationship with the IP CTS provider” or with any affiliate of the IP CTS provider.⁶⁵ Such a rule could produce absurd results. For example, would Sprint be prevented from accepting a certification from a professional who is a subscriber to Sprint’s cellular service? If an IP CTS employee’s friend is the only audiologist in a small town, then does that mean that the IP CTS provider cannot provide service to the town? Furthermore, adoption of the rule as written would require an IP CTS provider to monitor the personal relationships of its employees, which is not only unduly burdensome for a company as large as Sprint, but also is an unacceptable intrusion into employee privacy.

⁶³ *Id.* ¶ 129.

⁶⁴ *Id.* ¶ 130.

⁶⁵ *Id.* ¶ 131.

These sweeping proposed rules simply are not necessary. Hearing health professionals (“HHPs”) are reliable, knowledgeable, ethical, and objective certifiers of potential IP CTS users. In fact, HHPs are guided by a code of ethics as healthcare professionals and have self-regulatory bodies to ensure compliance.⁶⁶

D. The Commission Should Focus on Rigorous Enforcement of the Current Assessment Process

Rather than delegating assessments to limited state programs or unnecessarily restricting indirect relationships between IP CTS providers and the personnel conducting assessments, the Commission would be better served by rigorously enforcing the current rules prohibiting joint marketing efforts and improper incentives.⁶⁷ Under the current rules, IP CTS providers “may not offer direct or indirect financial or other incentives to potential users to register for IP CTS, or to hearing health professionals if the incentives are tied to a consumer’s decision to register for IP CTS.”⁶⁸ In addition, joint marketing arrangements between IP CTS providers and HHPs are prohibited.⁶⁹

Should the Commission wish to further strengthen the existing rules, the Commission should implement measures that would not impose “roadblocks” to the receipt of IP CTS service or otherwise make the assessment process more difficult for the vulnerable IP CTS user population. For example, the Commission could require IP CTS providers to submit annual

⁶⁶ For example, the National Board for Certification in Hearing Instrument Sciences administers a board certification to hearing healthcare professionals. *See generally National Board for Certification in Hearing Instrument Sciences Homepage*, NAT’L INSTITUTES OF HEALTH, www.nbc-his.com/home.

⁶⁷ The Commission should similarly clarify that software providers are not allowed to receive improper incentives for referrals and should support multiple IP CTS providers when possible.

⁶⁸ *FNPRM* ¶ 6, n.15, *citing* 47 C.F.R. § 64.604(c)(8).

⁶⁹ *Id.*

reports about the assessments made by all health care providers located at a particular address.⁷⁰

If there were a sharp increase in approvals, the IP CTS provider or the Commission would be able to follow up with the health providers to explore the reason for the increase. The Commission also could encourage the use of electronically submitted third-party certifications, which are more secure and far less prone to errors and fraud.

VII. THE COMMISSION SHOULD NOT ADOPT RULES GOVERNING PROVIDER PRACTICES THAT UNINTENTIONALLY COULD HARM CONSUMERS

The Commission seeks comment on a number of additional “provider practices” designed to reduce misleading information and fraud. Sprint fully supports this goal. Again, however, a number of the specific proposals the Commission advances are likely to have unintended negative impacts on IP CTS users.

A. The Commission Must Carefully Design Limitations on Communications and Messaging

The Commission asks in the *Further Notice* whether it should adopt new requirements to “ensure that marketing materials make clear that IP CTS may not be necessary for everyone and that to qualify for IP CTS use, consumers with hearing loss must be able to certify that captioning is needed to enable them to understand telephone conversations.”⁷¹ Consumers already are made aware of these limitations. As an IP CTS provider, Sprint also presents information about the FCC regulations prohibiting improper incentives, certification requirements, and the cost of service during its training with audiologists and other professionals. Sprint’s approach effectively explains to certifiers the costs associated with IP CTS without

⁷⁰ *Id.* ¶ 130.

⁷¹ *Id.* ¶ 140.

intimidating the potential user or utilizing “scare tactics” to deter a person from obtaining services that would allow them to achieve functional equivalency.

In addition, the Commission proposes to require equipment installers to explain to the consumer before home installation of an IP CTS device: “(1) the manner in which IP CTS works, (2) the per-minute cost of providing captioning on each call (i.e., the applicable rate of provider compensation), and (3) that the cost of captioning is funded through a federal program.”⁷² Sprint supports explaining IP CTS technology to consumers. Again, however, constant and prominent reminders at every stage in the process – from the time the user is assessed to receive service until the equipment is installed – needlessly discourage rather than foster comprehension about the technology. This is especially true in the context of elderly users who are often on fixed incomes and share concerns about fiscal responsibility. In addition, explaining the per-minute cost of providing captioning on each call would cause confusion regarding whether or not the customer would receive a bill for that amount. This notification also is likely to stigmatize the service among qualified users, making the user feel as though he or she is a burden for utilizing technology to alleviate hearing loss instead of relief for achieving functional equivalency.

B. The Commission Should Not Impose Burdensome Registration Renewal Requirements

The Commission seeks comment about rules “needed to prevent the unauthorized use of a registered user’s IP CTS device after the authorized user ceases to use the service,” including a proposal to require users to self-certify their qualification to utilize IP CTS every two years.⁷³ Renewing a self-certification every two years is not functionally equivalent to a hearing user’s ability to use telecommunications services and would prove burdensome for elderly users,

⁷² *Id.* ¶ 142.

⁷³ *Id.* ¶ 146.

especially those who experience memory issues concomitant with their hearing loss and those who would require assistance to prepare and/or submit a certification.

C. The Commission Should Require New Equipment to Have an Easy Way to Turn Captions On and Off

The Commission proposes to require providers of IP CTS equipment to include an “easy way to turn captions *on or off*, either before placing a call or while a call is in progress.”⁷⁴ Sprint fully supports the ability of users to turn captions on and off easily. Sprint already complies with this requirement for all IP CTS devices it distributes because each Sprint IP CTS device includes a physical button labeled “Captions” that lights up when turned on in order to clearly indicate to the user that captions are enabled. In implementing such a requirement, however, the Commission should grandfather customer equipment that is currently in use and circulation due to the considerable cost and time that would be necessary to locate, recall, and replace the IP CTS phones already in use. The Commission also should exempt software- and web-based captioning services such as Sprint’s WebCapTel because captions generated via these services must be affirmatively activated by the user logging into the relevant application or website and easily can be turned off by exiting the web browser or logging off of the computer. As a result, these services do not implicate the Commission’s concerns.

Relatedly, the Commission proposes “to prohibit provider practices designed to induce an individual to turn captions on, or leave them on, when that person otherwise would not do so.”⁷⁵ Sprint does not induce customers to use captioning and fully supports the Commission’s proposal.

⁷⁴ *Id.* ¶ 149 (emphasis in original).

⁷⁵ *Id.* ¶ 150.

VIII. CONCLUSION

For the foregoing reasons, the Commission should undertake a holistic review of IP CTS service that advances both the FCC's desire to protect the integrity of the TRS Fund and the availability of functionally equivalent service to the vulnerable, growing population of legitimate IP CTS users.

Respectfully submitted,

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