

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with)	
Hearing and Speech Disabilities)	
)	
Comment Sought on Application of VTCSecure,)	
LLC, for Certification to Provide Internet Protocol)	
Captioned Telephone Service)	
)	
Comment Sought on Application of MachineGenius,)	
Inc., for Certification to Provide Internet Protocol)	
Captioned Telephone Service)	
)	
Comment Sought on Application of Clarity Products,)	
LLC, for Certification to Provide Internet Protocol)	
Captioned Telephone Service)	

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its counsel, submits these comments in response to the three *Public Notices* (“*Notices*”) issued by the Commission’s Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned matters.¹ In the *Notices*, the Bureau seeks comment on the applications (collectively, the “Applications”) for certifications and waivers of three entities seeking to provide Internet Protocol Captioned Telephone Service (“IP CTS”) using fully automated speech recognition (“ASR”) to generate captions.

As discussed below, while Hamilton opposes grant of the Applications until certain conditions precedent take place, Hamilton is generally supportive of the Commission’s

¹ *Comment Sought on Application of VTCSecure, LLC, for Certification to Provide Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket No. 03-123, DA 19-818 (rel. Aug. 26, 2019); *Comment Sought on Application of MachineGenius, Inc., for Certification to Provide Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket No. 03-123, DA 19-819 (rel. Aug. 26, 2019); *Comment Sought on Application of Clarity Products, LLC, for Certification to Provide Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket No. 03-123, DA 19-820 (rel. Aug. 26, 2019).

certification process for telecommunications relay services (“TRS”) as a method of ensuring that entities authorized to provide any form of TRS do so in a functionally equivalent manner as required. Further, Hamilton already uses voice recognition software in conjunction with Communications Assistants (“CA”) to deliver its IP CTS service, and has been working with its subcontractor to explore how ASR-only IP CTS services can be incorporated into its service offerings. To ensure that users are provided with functionally equivalent service and that TRS funding is used responsibly, the Commission must establish an appropriate regulatory framework with a reasonable ASR-only rate methodology and quality metrics. At this time, however, the Commission has not created that regulatory framework, or taken necessary steps to ensure functional equivalence and reasonable compensation for ASR-only IP CTS service.

Accordingly, the Bureau should hold the Applications in abeyance until the Commission has adopted an appropriate regulatory framework for ASR-only IP CTS.

I. The Commission Must Address the Pending Petition for Reconsideration Before the Bureau Can Certify ASR-only IP CTS Providers

The first step towards creating appropriate rules and rates for ASR-only IP CTS is for the Commission to address the long-pending Petition for Clarification, or in the Alternative, Reconsideration (“Petition”) of the Commission’s June 2018 *Declaratory Ruling* authorizing ASR-only IP CTS and CTS.² As articulated in the Petition, and in supporting comments by Hamilton and others, the Commission improperly adopted the *Declaratory Ruling* without appropriate notice and comment, and the decision left important questions unanswered regarding

² Sprint Corporation, Petition for Clarification or, in the Alternative, Reconsideration, Inc., CG Docket Nos. 13-24 & 03-123 (July 9, 2018) (seeking reconsideration of *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 5800 (2018) (“*Declaratory Ruling*”).

the quality of captions that may be generated through ASR-only captioning, as well as the capabilities of ASR-only providers to handle emergency communications and other mandatory minimum standards.³

The Commission in essence has created a paradox. On the one hand, it directed the Bureau to approve providers of ASR-only IP CTS if they meet the mandatory minimum standards under the Commission's rules (standards which, as discussed below, require human intervention through a CA).⁴ On the other hand, the *Declaratory Ruling* failed to articulate any standards by which the Bureau can conclude that fully-automated ASR can satisfy the Commission's requirements, and it failed to adopt a rate methodology for any such service.⁵

The Applications themselves demonstrate the discrepancy between the Commission's current rules – rules that were not changed or waived by the *Declaratory Ruling* and which may only be changed through a notice and comment proceeding – and the proposed operations of these ASR-only IP CTS services.⁶ Indeed, each ASR-only applicant seeks waivers of numerous important mandatory minimum standards.⁷

³ Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24 & 03-123 (Sept. 7, 2019).

⁴ *Id.* at 11.

⁵ See *Ex Parte* Letter from Blake E. Reid, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, CG Docket Nos. 03-123, 13-24, at 2 (July 26, 2018) (noting that the *Declaratory Ruling* “leaves unclear how the Commission will *apply* the changed rule in evaluating ASR applicants, deferring the development of performance goals and measures – which should be critical components of evaluating all types of IP CTS providers – not even to the *FNPRM*, but to an *NOI* whose resolution may be years away”).

⁶ In contrast, the original 2005 petition to approve IP CTS as a compensable form of TRS was placed on public notice, and the Commission subsequently issued a *Declaratory Ruling* authorizing compensation from the TRS fund for IP CTS and waiving non-relevant aspects of its TRS rules. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007).

⁷ VTCSecure, LLC, Request for Waiver, CG Docket No. 03-123 (Sept. 13, 2019) (seeking a waiver of various aspects of 47 C.F.R. §§ 64.604(a)(1), 64.604(a)(2), 64.604(a)(3)(i)-(ii), (continued)...

For example, the applicants seek waivers of the Commission’s confidentiality requirements in Section 64.604(a)(2), but do not provide adequate assurances that conversations captioned through ASR-only engines will remain confidential.⁸ This issue was anticipated given that the *Declaratory Ruling* did not resolve how an ASR-only provider could collect, store, and use the content of a user’s speech to improve the technology⁹ and still comply with the strict confidentiality and privacy provisions applicable to such content under the Commission’s mandatory minimum standards.¹⁰

Further, it is unclear whether the applicants are also seeking a waiver of the requirement that calls be transcribed verbatim, unless the user requests summarization.¹¹ For example, Clarity only addresses the confidentiality aspect of the rule in its application.¹² VTCSecure only addresses accuracy with respect to its ASR under “ideal conditions.”¹³ It is also unclear from either VTCSecure’s application or its request for waiver whether users pressing a button to bring

64.604(a)(3)(vii), 64.605(a)(2)(iv), 64.605(a)(2)(v), 64.611(j)(1)(v), and 64.604(c)(5)(iii)(D)(2)(ii)); MachineGenius, Inc., Request for Waiver, CG Docket No. 03-123 (Oct. 13, 2017) (seeking a waiver of aspects of 47 C.F.R. §§ 64.604(a)(1)(i)-(vi), 64.604(a)(2)(i)-(ii), 64.604(a)(3)(i)-(ii), 64.604(a)(3)(vii)-(viii), 64.605(a)(2)(iv)-(v), 64.604(c)(5)(iii)(D)(2)(ii)); Clarity Products, LLC, Internet-based TRS Certification Application, CG Docket No. 03-123 (Apr. 24, 2019) (seeking a waiver of aspects of 47 C.F.R. §§ 64.604(a)(3)(vii)-(viii), 64.604(c)(5)(iii)(D)(2)(ii), 64.604(c)(5)(iii)(D)(2)(ix), 64.604(c)(5)(iii)(D)(2)(x), 64.605(a)(2)(ii)-(iii), 64.611(j)(1)(v)) (“Clarity Application”).

⁸ See, e.g., MachineGenius, Inc., Internet-based TRS Certification Application, CG Docket No. 03-123, at 9 (Oct. 13, 2017) (noting that audio and transcripts of calls are not stored remotely by MachineGenius while failing to address whether the Company’s ASR vendor can make the same commitment, as compared to a “privacy policy,” which may or may not actually protect users’ privacy).

⁹ *Declaratory Ruling*, ¶ 63.

¹⁰ 47 C.F.R. § 64.604(a)(2); see also 47 U.S.C. § 225(d)(1)(F) (requiring TRS call confidentiality).

¹¹ 47 C.F.R. § 64.604(a)(2)(ii).

¹² Clarity Application at C-2.

¹³ VTCSecure, LLC, Internet-Based TRS Certification Application, CG Docket No. 03-123, at 3 (May 26, 2017).

on a CA will receive CA-assisted captions within the Commission's speed-of-answer standards.¹⁴

In light of the number of waivers sought by ASR-only applicants, and the vagueness of the justifications for such waivers, the Bureau should hold the Applications in abeyance until the Commission has adopted a regulatory framework for the service that ensures functional equivalence for consumers and an appropriate rate for the service.¹⁵

II. The Commission Should Seek Comment on Whether ASR-only IP CTS Is a New Form of Relay Subject to Its Own Set of Rules

Given the uncertain regulatory framework for ASR-only service, and the significant number of waivers requested by the applicants in connection with the Commission's TRS mandatory minimum standards, the Commission should consider adopting rules that are specific to an ASR-only IP CTS service, including rules related to consumer protection and an appropriate rate methodology.¹⁵ At a minimum, the Commission should grant the pending Petition and issue a Notice of Proposed Rulemaking seeking comment on whether ASR-only is a new form of relay, or whether existing rules should be revised to accommodate ASR-only service.

A. Functionally Equivalent ASR-Only IP CTS Service Requires New, Robust Consumer Protections

The Commission should consider adopting ASR-only IP CTS rules that will ensure consumers are protected in a functionally equivalent manner to users who do not use relay. The Commission's current consumer protections and mandatory minimum standards were not designed for ASR-only captioning. For example, current IP CTS emergency call handling rules

¹⁴ 47 C.F.R. § 64.604(b)(2) (setting forth speed of answer requirements for TRS providers).

¹⁵ *Declaratory Ruling*, Statement of Commissioner Rosenworcel (“[I]nexplicably, the FCC authorizes automatic speech recognition today but puts off for the future figuring out at what rate providers will be compensated and what service quality standards hard-of-hearing users can expect. Can we acknowledge that if functional equivalency is our mandate, we should be doing these things right here and now at the same time that we authorize the service?”).

related to callback, CA's callback number, call setup, and delivery of the CA's identification number require the presence of a human CA, a concept which is not contemplated in ASR-only IP CTS.¹⁶ Indeed, at least one applicant does not permit emergency calls with its current beta service and warns its users the service cannot be used to make 911 calls.¹⁷ At a minimum, ASR-only IP CTS providers must be required to prominently disclose the limitations of their service to ensure public safety.

The Commission should adopt mandatory minimum standards that are appropriate for a service without a CA *prior to* the certification of ASR-only IP CTS providers. As demonstrated by the applicants' waiver requests, ASR-only IP CTS simply cannot meet the present mandatory minimum standards, which the Commission determined were necessary to achieve functional equivalence. Rather the applicants' waiver requests are indicative of a new form of relay, and the FCC should develop appropriate mandatory minimum standards that can assure functional equivalence with ASR-only technology.

For example, under Commission rules ASR-only IP CTS engines may not "*intentionally* alter[] a relay conversation,"¹⁸ but if an ASR engine incorrectly captions a call, the conversation is nonetheless altered by a machine and results in a relay conversation that does not meet verbatim requirements. Accurate captions are crucial to an IP CTS user's ability to meaningfully participate in and understand a telephone conversation, particularly with a doctor, pharmacist or other professional.¹⁹ ASR-only IP CTS providers should be required to "relay all conversations

¹⁶ 47 C.F.R. § 64.605(a)(2)(iv), 64.605(a)(2)(v).

¹⁷ CaptionMate, Get the App, <https://cookiedevapp.appspot.com> ("EMERGENCY CALLING IS NOT AVAILABLE during this beta test period. DO NOT use this application for dialing 911.") (last visited Sept. 17, 2019).

¹⁸ 47 C.F.R. § 64.605(a)(2)(ii) (emphasis added).

¹⁹ *Ex parte Notice*, Hamilton Relay, Inc., GC Docket Nos. 13-24 & 03-123 (Dec. 19, 2018).

verbatim, unless the relay user specifically requests summarization,”²⁰ and the only way to ensure compliance is to have specific ASR-only rules to objectively measure that requirement.

Other mandatory minimum standards applicable to IP CTS require the specific presence of a CA on the call, and the *Declaratory Ruling* fails to address how ASR-only IP CTS services can comply with those requirements. For example, a CA must be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.²¹ It is not clear how a waiver of this rule would be justified or how an ASR-only service would be able to comply. In addition, CAs must have familiarity with hearing and speech disability cultures, languages and etiquette.²² Neither the *Declaratory Ruling* nor the Applications demonstrate how computer-generated captions without the assistance of a CA could comply with this requirement. Providers also must be able to handle types of calls that require multiple CAs.²³ It is unclear how ASR-only services will be able to interact with CAs for other services, and the *Declaratory Ruling* does not address the issue. All of these issues demand a fulsome record to determine whether ASR-only service is a stand-alone form of IP CTS with its own set of rules, or whether the existing rules should be modified to accommodate ASR-only service. The *Declaratory Ruling*, which seemingly avoided such issues for expediency, is simply insufficient from a procedural and substantive perspective.

B. The Commission Must Determine an Appropriate Rate for ASR-only Services Before Approving the Applications

The *Declaratory Ruling* left undecided the appropriate compensation rate for ASR-only service, and it remains unclear what rate would apply if these Applications are granted. The

²⁰ 47 C.F.R. § 64.605(a)(2)(ii).

²¹ *Id.* § 64.604(a)(1)(i).

²² *Id.* § 64.604(a)(1)(ii).

²³ *Id.* § 64.604(c)(14).

Commission’s rules require the Administrator to “compensate TRS providers for reasonable costs of providing interstate TRS.”²⁴ To avoid potentially overcompensating entities for ASR-only services, the Bureau should hold the Applications in abeyance until the Commission acts on the pending ASR-only rate proposals in the *Further Notice of Proposed Rulemaking*, or seeks additional comment on what the rate methodology should be. Indeed, the Commission has not determined allowable costs for CA-based IP CTS, let alone ASR-only IP CTS.²⁵ Prior to certifying any ASR-only applicant, the Commission must determine allowable, and thus “reasonable,” costs for both CA-based and ASR-only services. Finally, consistent with its duty to manage the overall size of the TRS Fund, the Commission should analyze the impact on the TRS Fund size before authorizing three new IP CTS providers.

III. The Commission Should Resolve Quality of Service Issues Expeditiously, Prior to Certifying any ASR-Only Applicants

The Commission initiated a *Notice of Inquiry* over a year ago regarding possible quality of service metrics for all forms of IP CTS service. Hamilton urges the Commission to move forward with proposals to adopt objective quality metrics as mandatory minimum standards that all IP CTS providers, including ASR-only providers, must meet.²⁶ The Commission should heed the calls of consumer groups and others to promptly issue a Notice of Proposed Rulemaking to

²⁴ 47 C.F.R. § 64.604(c)(5)(iii)(E)(1) (directing TRS Fund payments to TRS providers based on formulas “designed to compensate TRS providers for reasonable costs of providing interstate TRS” that “appropriately compensate interstate providers for the provision of TRS, whether intrastate or interstate”).

²⁵ See, e.g., Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 3-5 (May 28, 2019); Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 15 (May 24, 2017); *Ex Parte* Letter from David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123 (May 24, 2018).

²⁶ *Declaratory Ruling*, ¶¶ 155-181.

adopt objective, verifiable performance metrics.²⁷ As part of that effort, IP CTS providers have been working jointly and with other stakeholders to develop consensus-based, objective performance metrics, building on the diligent work that helped develop the Joint Provider Recommendations in 2018,²⁸ as recently updated by the Joint Providers.²⁹

Unlike the long track record of CA-based IP CTS quality metrics, ASR-only IP CTS is unproven in real-world situations. For example, it remains unclear whether ASR-only can comply with verbatim requirements outside of testing beds. The lack of measurable quality standards to analyze this new service underscores the need for objective performance metrics so that both the Commission and consumers can be assured that ASR-only IP CTS service is delivering a functionally equivalent service, as required by the Americans with Disabilities Act of 1990.³⁰ Moreover, the promise of “improving the quality of communications services available to those with disabilities” was emphasized as a Strategic Goal of the Commission in its most recent Strategic Plan.³¹ The Commission should adopt quality metrics prior to any Bureau

²⁷ Comments of Hearing Loss Association of America et al., CG Docket Nos. 13-24 & 03-123, at 5-6 (Oct. 16, 2018); Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24 & 03-123, at 2-4 (Oct. 16, 2018) (explaining industry, consumer, and governmental efforts and reporting urging the Commission to adopt service quality metrics); Comments of CaptionCall, LLC, CG Docket Nos. 13-24 & 03-123, at 21 (Oct. 16, 2018) (“[T]he Commission should aim to move to an NPRM and adopt rules in an expedited manner.”).

²⁸ Letter from Dixie Ziegler, Hamilton Relay, Inc.; Bruce Peterson, CaptionCall, LLC; Cristina Duarte, InnoCaption; Michael Strecker, ClearCaptions, LLC; and Scott R. Freiermuth, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123 (Aug. 21, 2018) (together the “Joint Providers” and “Joint Provider Recommendations”).

²⁹ Letter from Dixie Ziegler, Hamilton Relay, Inc.; Bruce Peterson, CaptionCall, LLC; Cristina Duarte, InnoCaption; Michael Strecker, ClearCaptions, LLC; Scott R. Freiermuth, Sprint Corporation; and Kevin Colwell, Ultratec, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123 (Sept. 23, 2019).

³⁰ 47 U.S.C. § 225.

³¹ Federal Communications Commission Strategic Plan 2018-2022, available at <https://www.fcc.gov/document/strategic-plan-2018-2022> (OMD rel. Feb. 18, 2018) (Goal No. 3, at i, 10).

decision to grant any of the Applications, in order to ensure that ASR-only services do in fact provide functionally equivalent service.

IV. Conclusion

For the reasons set forth above, the Commission must establish an appropriate regulatory framework for ASR-only IP CTS prior to any Bureau decision to grant the Applications. That framework requires an examination of whether stand-alone ASR-only IP CTS rules should be adopted, or whether the existing rules should be modified to accommodate ASR-only service. That examination must also issue guidance to consumers and providers about the minimum mandatory standards that will apply to such service, the quality metrics that will be used to assess that service, and the compensation rate that will apply to such service. At this time, however, the Commission has not created that regulatory framework, or taken necessary steps to ensure functional equivalence and reasonable compensation for ASR-only IP CTS service. Accordingly, the Bureau should hold the Applications in abeyance until the Commission has adopted an appropriate regulatory framework for ASR-only IP CTS.

Respectfully submitted,

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September 25, 2019