

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Misuse of Internet Protocol (IP) Captioned	)	CG Docket No. 13-24
Telephone Service	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals	)	
with Hearing and Speech Disabilities	)	

**REPLY COMMENTS OF HAMILTON RELAY, INC.**  
**CONCERNING NOTICE OF INQUIRY**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these reply comments in response to the *Notice of Inquiry* in the above-captioned proceeding regarding Internet Protocol Captioned Telephone Services (“IP CTS”).<sup>1</sup> As the initial comments show, a majority of commenters have joined Hamilton in urging the Commission to take swift action to adopt performance goals and metrics in order to support the primary statutory goal of providing functionally equivalent phone service to IP CTS users.

**I. The Commission May Not Compromise Functional Equivalence to Reduce Costs**

IP CTS, like CTS before and alongside it, has been a game-changer for “individual[s] who can speak but who ha[ve] difficulty hearing over the telephone” to participate in telephone conversations.<sup>2</sup> Hamilton agrees with consumer groups that Commission action in this

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<sup>1</sup> *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, FCC 18-79 (rel. June 8, 2018) (“*Report and Order*,” “*Declaratory Ruling*,” “*Further Notice*,” or “*Notice of Inquiry*” as appropriate).

<sup>2</sup> 47 C.F.R. § 64.601(a)(17); *see also* Comments of International Hearing Society, CG Docket Nos. 13-24 & 03-123, at 1 (Sept. 17, 2018) (“more people in need are learning about and utilizing this life-changing service”).

proceeding should not jeopardize IP CTS program service quality; rather, “[f]unctional equivalency must be the first priority for IP CTS performance goals.”<sup>3</sup> In its effort to maintain and promote efficient service, the Commission should not be distracted by promises to lower costs at the risk of severely lowering service quality to non-functionally equivalent levels.

A. The Primary Goal of the IP CTS Program Must Be to Provide a Functionally Equivalent Service

The vast majority of commenters have clearly and unequivocally explained that functional equivalence must be the primary goal of the IP CTS program, and that other goals put forth in the *Notice of Inquiry* should be secondary.<sup>4</sup> For example, the Consumer Groups articulated a balanced approach to evaluating technological advances as a secondary goal of the IP CTS program:

We support the Commission recognizing technological advances as a secondary goal for IP CTS. However, the Commission must ensure that technological advances are deployed widely only when they have been proven to provide functionally equivalent service. Implementing technology for IP CTS use without metrics to evaluate its functional equivalency will undoubtedly work against the primary goal of functional equivalence.<sup>5</sup>

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<sup>3</sup> Comments of Hearing Loss Association of America et al., CG Docket Nos. 13-24 & 03-123, at 3 (Oct. 16, 2018) (“Consumer Group Comments”).

<sup>4</sup> See Consumer Group Comments at 6; Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24 & 03-123, at 8 (Oct. 16, 2018) (“Hamilton Comments”) (strongly supporting “making ‘Goal #1’ – functional equivalence – the principal performance goal” of the IP CTS program); Comments of Ultratec, Inc., CG Docket Nos. 13-24 & 03-123, at 2 (Oct. 16, 2018) (“Ultratec Comments”) (“Ultratec agrees with the Commission’s tentative determination that the primary goal of the IP CTS program should be ‘to make communications services available to individuals with communications disabilities that are functionally equivalent to communications services used by individuals without such disabilities.’”) (citation omitted); Comments of CaptionCall, LLC, CG Docket Nos. 13-24 & 03-123, at 24 (Oct. 16, 2018) (“CaptionCall Comments”) (observing that “the Commission’s principal performance goal must be ensuring ‘the provision of a functionally equivalent conversational experience through IP CTS’”) (citation omitted).

<sup>5</sup> Consumer Group Comments at 6.

Similarly, Hamilton urges the Commission to heed Ultratec’s warning that “technology mandates aimed at promoting efficiency may undermine the functional equivalence objectives of IP CTS if the required technologies are not best suited to achieve these objectives for all users under real-world, non-ideal conditions and in a transparent manner.”<sup>6</sup> In other words, the Commission may not allow its desire to support and implement new technologies to compromise the level of service quality that IP CTS providers have achieved using current technologies.

B. The Commission May Not Interpret “Efficient” to Mean Merely “Cheaper” or “Good Enough”

Current IP CTS providers deliver a high-quality solution to ensure that individuals with hearing loss can communicate with a functionally equivalent service via the telephone. To reduce the quality of IP CTS would reduce functional equivalence,<sup>7</sup> contrary to the statutory directives of Congress. Further, the Commission should not use the specter of waste, fraud, and abuse (without support in the record for such allegations) as an opportunity to reduce funding for IP CTS, which will necessarily affect quality of service.

When assessing its mandate from Congress, the Commission has noted that “efficient service is not just about cost but also quality.”<sup>8</sup> Hamilton agrees. There is no need to abandon the Commission’s rational interpretation of its statutory obligations, given that the IP CTS program has successfully delivered functionally equivalent communications to individuals who are hard of hearing. Accordingly, the Commission should reject the adoption of “cost per

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<sup>6</sup> Ultratec Comments at 4.

<sup>7</sup> See Comments of MachineGenius, Inc., CG Docket Nos. 13-24 & 03-123, at 6 (Oct. 17, 2018) (“MachineGenius Comments”) (“There may be a tradeoff between efficiency and level of functionally equivalent performance, because it may be that it costs more per minute to deliver better performance.”).

<sup>8</sup> *Sorenson Commc’ns, LLC v. FCC*, 897 F.3d 214, 228 (D.C. Cir. 2018) (citation omitted) (describing the Commission’s reasoning in its recent Video Relay Services decision).

reimbursement minute” as a “key measure of efficiency”<sup>9</sup> because doing so would reduce the primary goal of functional equivalence to a secondary consideration. Moreover, IP CTS is labor-intensive and operates in a relatively mature market, meaning most efficiencies have already been attained.<sup>10</sup> Likewise, the modest increases in IP CTS rates per minute over the past decade have kept pace – not outpaced – inflation.<sup>11</sup> The benefits to the IP CTS program of a narrow measure of efficiency that is defined exclusively by cost is at best unclear and, more realistically, is potentially detrimental. A better approach would be for the Commission to tie its efficiency measure to achieving the quality standards that both the Government Accountability Office and Consumer Groups have explained will benefit the IP CTS program.<sup>12</sup>

Hamilton respects the Commission’s role as steward of the TRS Fund and its goal of minimizing any identified waste, fraud, and abuse.<sup>13</sup> But an expanding program is not necessarily indicative of waste. Importantly, this proceeding has not produced any evidence of general waste, fraud, or abuse in the industry.<sup>14</sup> For example, the Commission’s Office of

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<sup>9</sup> MachineGenius Comments at 6.

<sup>10</sup> See Coleman Bazelon, Patrick Holder, & Brent Lutes, *Economic Analysis of IP CTS Provision Costs and Rate Setting*, at 7, The Brattle Group (Nov. 8, 2017) (describing how labor is a primary input into IP CTS and that providers are likely already operating at or near the limit of CA productivity “as doing so minimizes their costs”), *attached to* Letter from David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123 (Nov. 9, 2017).

<sup>11</sup> See, e.g., Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 & 10-51, at 6 Table 1 (May 24, 2017) (comparing the CTS/IP CTS MARS rates to both the Consumer Price Index and the Employment Cost Index over time).

<sup>12</sup> Hamilton Comments at 2-3.

<sup>13</sup> *Notice of Inquiry* ¶ 160 (seeking comment on “whether the third program goal should be to improve the efficiency of the IP CTS program and to reduce this program’s incidence of waste, fraud, and abuse.”).

<sup>14</sup> Reply Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 & 10-51, at 1-4 (Oct. 16, 2018) (“Hamilton FNPRM Reply Comments”); see also Ultratec Comments at 6 n.9 (attributing growth in the use of IP CTS by the deaf and hard-of-hearing community “to the needs of an increasing aging population, rather than to waste, fraud, or abuse”) (citation omitted).

Inspector General determined that no improper payments have been made from the TRS Fund, and the numerous audits of Hamilton conducted by the TRS Fund Administrator likewise corroborate a lack of fraud, waste, or abuse in this service.<sup>15</sup> Hamilton strongly opposes the supposition of fraud, waste, and abuse as an excuse to slash compensation rates and impose unnecessary and burdensome rules on the industry.<sup>16</sup> Consumers Groups correctly observed that “the Commission cannot deem a more expensive service wasteful solely because of its cost,” and, therefore, “[t]he Commission must not let the goal of efficiency outweigh the primary goal of functional equivalence or deter legitimate IP-CTS use.”<sup>17</sup>

## **II. The Record Overwhelmingly Supports Expeditious Commission Action to Issue a Notice of Proposed Rulemaking Based on the Joint Provider Recommendations**

As urged by Hamilton and all but one other commenter, the Commission should move forward quickly with a Notice of Proposed Rulemaking that would enable the Commission to address rules stemming from the *Notice of Inquiry* in tandem with those raised in the *Further Notice*.<sup>18</sup> Both consumers and providers agree that rules governing IP CTS quality metrics are long overdue.<sup>19</sup> Further, the record demonstrates that the Commission should adopt the IP CTS

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<sup>15</sup> Hamilton FNPRM Reply Comments at 2.

<sup>16</sup> *Id.* at 3; *see also* Ultratec Comments at 6 (“[I]t would be imprudent and premature to promulgate new regulations aimed at reducing waste, fraud, and abuse absent a clear understanding of exactly what types of material waste, fraud, or abuse the requirements are targeting. Any such regulations ... should not merely be intended to reduce TRS fund expenditures generally.”).

<sup>17</sup> Consumer Group Comments at 7.

<sup>18</sup> *See Notice of Inquiry* ¶ 164.

<sup>19</sup> Hamilton Comments at 2-4 (explaining industry, consumer, and governmental efforts and reporting urging the Commission to adopt service quality metrics); *see also* CaptionCall Comments at 21 (“[T]he Commission should aim to move to an NPRM and adopt rules in an expedited manner.”).

quality metrics proposal set forth in the Joint Provider Recommendations, which will best ensure functional equivalency.<sup>20</sup>

Hamilton agrees with the Consumer Groups that any metrics the Commission ultimately adopts must be:

- Aligned with and relevant to the user experience;
- Understandable to ordinary consumers so they can understand what is being measured and how it relates to their use of IP CTS;
- Standardized so that data is consistently defined and amenable to comparisons;
- Not unduly complicated to track or measure; and
- Resistant to being gamed, circumvented, or otherwise bypassed.<sup>21</sup>

The Joint Provider Recommendations meet the criteria set forth above by the Consumer Groups.

The Joint Providers developed their recommendations based on ongoing dialog with the Consumer Groups as well as years of conversations in the FCC's Disability Advisory Committee. As explained by Ultratec:

Only IP CTS providers, the sole entities with substantial, real-world experience providing IP CTS, have the understanding of the service needed to develop accurate and useful performance measures. As a result, the Commission should rely on the IP CTS providers to develop performance measures, rather than adopting metrics developed by entities that have not themselves experienced the challenges of providing IP CTS to actual users in a real-world setting.<sup>22</sup>

The Joint Provider Recommendations address the quality metrics needed to ensure functionally equivalent service as well as testing and measurement procedures, and the

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<sup>20</sup> 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").

<sup>21</sup> Consumer Group Comments at 5-6.

<sup>22</sup> Ultratec Comments at 7.

recommendations represent the most comprehensive and workable approach to quality metrics for IP CTS to date.<sup>23</sup> The Commission should leverage the Joint Provider Recommendations to adopt swiftly a Notice of Proposed Rulemaking.

### **III. Conclusion**

Hamilton joins the majority of other commenters in urging the Commission to acknowledge functional equivalence as the primary goal of the IP CTS program as it pursues the important, but secondary, goals of technological advancement and program efficiency. In addition, the Commission should quickly adopt a Notice of Proposed Rulemaking proposing rules related to IP CTS service quality based on the Joint Provider Recommendations. The rapid timing of such a rulemaking proceeding is critical to ensuring that quality metrics may be adopted in tandem with other rules resulting from the *Further Notice*.

Respectfully submitted,

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<sup>23</sup> The Joint Provider Recommendations do not include an outage metric. *See generally* Joint Provider Recommendations. This is intentional, as the Commission already collects service outage information that can be leveraged by the Commission. Hamilton Comments at 10. Additional rules related to whether IP CTS services and interruptions exceed that of outages and interruptions occurring on transmission services used by hearing people “would be redundant and impose needless expense on both the Commission and providers.” CaptionCall Comments at 13.