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November 15, 2019

VIA ELECTRONIC FILING (ECFS)

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

RE: **EX PARTE PRESENTATION**
*Misuse of Internet Protocol (IP) Captioned Telephone Service;
Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities
CG Docket Nos. 13-24, 03-123*

Dear Ms. Dortch:

On November 13, 2019, representatives of Hamilton Relay, Inc. (“Hamilton”) met with Commission staff from the Consumer & Governmental Affairs Bureau (“CGB”), Office of Economics and Analytics (“OEA”), and the Office of the Managing Director (“OMD”). Participating on behalf of Hamilton were Dixie Ziegler and Beth Slough; Coleman Bazelon, Brent Lutes, and Ben Thesing of The Brattle Group (consultants to Hamilton); and Rachel Wolkowitz (outside counsel) and the undersigned counsel. Commission staff present at the meeting were Diane Burstein, Robert Aldrich, Eliot Greenwald, and Michael Scott of CGB; Virginia Metallo (by telephone), Martha Stancill, Eliot Maenner, and Susan Lee (by telephone) of OEA; and David Schmidt (by telephone) of OMD.

Hamilton reiterated that although Hamilton has been a long-time advocate of the Multistate Average Rate Structure (“MARS”) methodology for determining Internet Protocol Captioned Telephone Service (“IP CTS”) rates, Hamilton understands that the Commission has indicated that it wishes to adopt an alternative permanent rate methodology. Hamilton has also previously suggested that a price cap proposal may be a reasonable alternative to MARS. Hamilton remains interested in engaging with the Commission and other stakeholders to ensure that whatever IP CTS rate methodology is adopted, it ensures a secure, sustainable, and competitive IP CTS program for consumers.

Federal Communications Commission
November 15, 2019
Page 2

Meeting participants discussed the points in the attached slide deck.¹ In the first instance, the Commission should base any permanent rate methodology on a holistic view of the IP CTS marketplace, rather than the costs of a single provider. To that end, to the extent that the Commission favors a tiered price cap similar to the proposal submitted by ClearCaptions,² the attached deck proposes tiered rates that are more reflective of broader IP CTS industry costs, rather than the costs of a single provider. Hamilton also noted that any permanent rate methodology for IP CTS must ensure that providers are compensated for their reasonable costs of providing the service.³ Further, Hamilton discussed potential sources of cost difference among IP CTS providers.

Finally, the parties discussed the potential for a reverse auction for IP CTS. As further explained in the attached deck, Hamilton noted that although auctions are often an economically desirable approach, the particular circumstances of IP CTS are not well-suited to auction-based rates, due to the potential for the reduction or even elimination of competition in the IP CTS marketplace.

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

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O'Connor

Counsel for Hamilton Relay, Inc.

Enclosure

¹ The attached deck is the redacted version of the slide deck, which was also shared with Ms. Ziegler, Ms. Slough, Ms. Wolkowitz, and the undersigned, all of whom have not signed the Acknowledgement pursuant to the Third Protective Order in this proceeding. The Brattle Group, which has filed the Acknowledgement, provided the meeting participants with a confidential, unredacted version of the deck during the meeting. A confidential, unredacted copy of the deck is being filed with the Secretary by The Brattle Group. Ms. Ziegler, Ms. Slough, Ms. Wolkowitz, and the undersigned did not participate in any discussion of highly confidential information under the Third Protective Order.

² See ClearCaptions, IP CTS Rate Discussion November 5th and 6th, 2018 at 8, *attached to Ex Parte Notice*, Paul C. Besozzi, Counsel for ClearCaptions, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 (dated Nov. 7, 2018).

³ 47 C.F.R. § 64.604(c)(5)(iii)(E) (rates for TRS, including IP CTS, "shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS," and "should appropriately compensate interstate providers for the provision of TRS, whether intrastate or interstate").

Federal Communications Commission
November 15, 2019
Page 3

cc (via email):	Diane Burstein	Michael Scott	Eliot Maenner
	Robert Aldrich	Virginia Metallo	Susan Lee
	Eliot Greenwald	Martha Stancill	David Schmidt

REDACTED

Adjusting ClearCaptions' Proposal to Reflect the Broader Market

PRESENTED TO

Federal Communications
Commission

PRESENTED BY

Coleman Bazelon & Brent Lutes
The Brattle Group

November 13, 2019

THE **Brattle** GROUP

Disclaimer

This presentation reflects the perspectives and opinions of the presenters and does not necessarily reflect those of The Brattle Group's clients or other consultants. However, we are grateful for the valuable contributions of many consultants of The Brattle Group. Where permission has been granted to publish excerpts of this presentation for any reason, the publication of the excerpted material must include a citation to the complete presentation, including page references.

Agenda

- 1) ClearCaptions' tiered rate approach is based on costs that do not reflect the broader market
- 2) IP CTS providers are offering products that are differentiated with respect to quality
- 3) Product differentiation is necessary for consumer choice and a common feature of differentiated products is differentiated costs
- 4) Proposed rate structure using cost curve based on broader market data
- 5) An auction is not appropriate for IP CTS

Section I: ClearCaptions' Tiered Rate Approach is Based on Costs that Do Not Reflect the Broader Market

ClearCaptions’ Proposed Tier Rate

- ClearCaptions constructed their rates using an estimation of their pro-forma opex curve
- Four Tier Model proposes an incremental rate that depends on the volume of minutes a provider provides

ClearCaptions 4 Tier Model

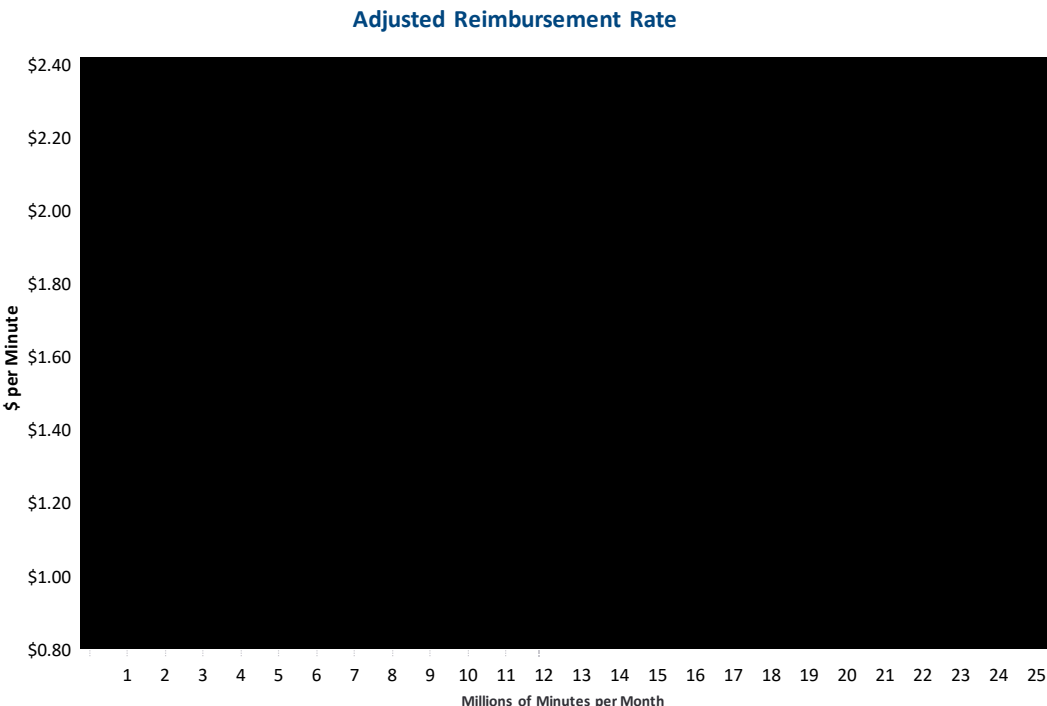
	Minute Threshold	Tier Min Value	Proposed Rate
Tier 1	to 3,500,000	3,500,000	\$1.9467
Tier 2	3,500,000 to 7,000,000	3,500,000	\$1.4289
Tier 3	7,000,000 to 10,000,000	3,000,000	\$1.2475
Max Tier	10,000,000 >		\$1.0403

Sources and Notes: ClearCaptions November 7, 2018 Ex Parte Filing, p. 8.

ClearCaptions' Proposed Tier Rate

- ClearCaptions has projected their cost curve and designed a tiered rate that would produce a reimbursement rate with an average return of 8%-12% along most of the curve

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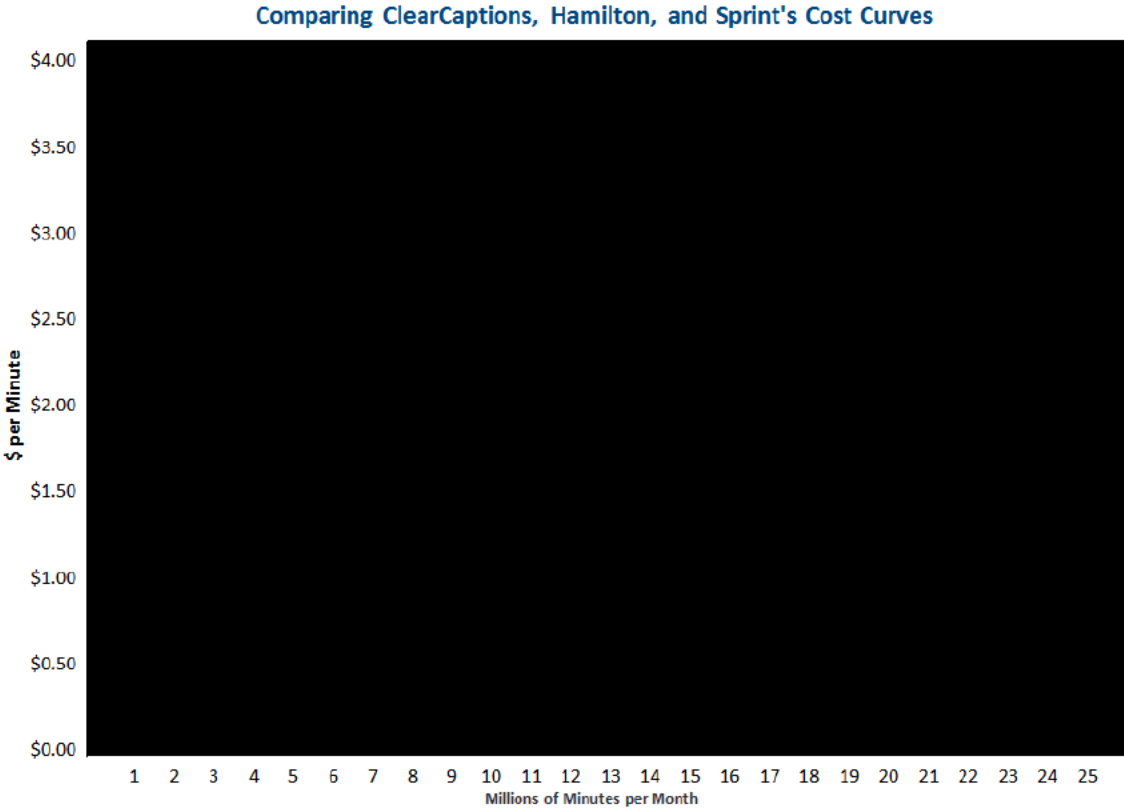


Source: ClearCaptions' June 12/13 Confidential Meeting Handout, p. 3.

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Comparison of ClearCaptions, Hamilton, and Sprint's Cost Curves

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Sources and Notes: Hamilton's per minute cost data provided by Hamilton. Sprint's projected cost calculated from Rolka Loube Exhibit 1-3.1, 2019, 2018, and 2017. ClearCaptions' per minute cost derived from ClearCaptions' June 12/13 Confidential Meeting Handout, p. 3. All data are in constant dollars for the 2019-2020 rate year. Cost between providers are compared at specific volume levels. Sprint and Hamilton cost curves are adjusted by the average percent difference measured at those points.

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Section II: IP CTS Providers are Offering Products that are Differentiated with Respect to Quality

Quality Differences Exist in IP CTS

- Real consumer choice requires differentiated products
- A primary dimension of differentiation for IP CTS providers is quality
- This includes both total quality and specific quality tradeoffs (e.g., the tradeoff between error rate and the speed of captioning)
- Variations in quality may necessitate variations in costs
- Measures of quality appear to correlate with costs
 - Controlling for volume, ClearCaptions' costs are [[BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL]]
 - On a per minute basis, ClearCaptions registers between 16 and 22 times the number of comparable complaints registered by Hamilton and 18 to 25 times the number of complaints registered by Sprint (after controlling for ClearCaptions' differences in complaint reporting)

IP CTS Industry Performance Report

- Cositics provides an annual Captioning Telephone Service Performance Index in which auditors measure quality performance on numerous test calls for each CTS provider, including:
 - Whether vital details were missing;
 - Whether whole sentences were missing;
 - The number of total spelling errors;
 - The number of total words changed or missing; and
 - The number of total errors.
- The Index is an independent comparative study of all major CTS providers in the US, ranking providers based on their score in each performance category.

IP CTS Industry Performance Report

- Hamilton continues to showcase best in category performance in numerous key performance indicators:
 - Overall accuracy
 - Average errors per call
 - Total missing sentences
 - Average words missing
 - Average missed correction opportunities
 - Average vital details missing
 - Average vital details changed
 - Average vital details not corrected
 - Average non-vital details corrected (within the margin of error)
 - Average non-vital details missing
 - Average non-vital details not corrected
 - Average incorrect additions

Section III. Product Differentiation is Necessary for Consumer Choice and a Common Feature of Differentiated Products is Differentiated Costs

Well Established Economic Theory and Research Supports This

- Academic research demonstrates a relationship between product differentiation and varying costs
- Lovell (1970): “price reduction is achieved at the expense of a reduction in product diversity; hence, welfare is not necessarily increased”
- Spence (1976): “Product differentiation involves a set of real economic choices because there are increasing returns or declining average costs in the development, production, marketing, and distribution activities of firms...differentiation is also an important component of imperfectly competitive strategic interaction...some would argue it is, in many industries, the most important part of the dynamics of competition”
- Lovell (1970): “The greater the variety of products offered, the more likely it is that a consumer will find available a commodity with attributes he finds particularly desirable. But product differentiation generally has certain costs”

Lower Rates May Lead to Less Consumer Choice

- [(BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL)]
- It is reasonable to assume differences in quality may necessitate differences in cost
- Setting rates at or below cost is not sustainable for any providers
- Cutting costs may lead to a homogenous product either through the exit of providers or a reduction in the quality of the product provided by a provider
- The rates proposed in ClearCaptions' model, without adjustment to reflect the broader market, would prevent effective consumer choice as products eventually lose differentiation
- To maintain consumer choice, the rate must be set appropriately

Section IV: Proposed Cost Curve Using Broader Market Data

Brattle's Methodology

- We compared ClearCaptions' cost to other providers' cost controlling for scale and timing
 - Inflation adjusted costs for similar volume levels are compared between ClearCaptions, Hamilton, and Sprint
 - For example, ClearCaptions, Hamilton, and Sprint all have reported costs for volume levels close to [[BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL]] We compare their respective costs at that volume level adjusting for inflation and minor differences in volume.
 - Costs at the appropriate scale for CaptionCall and InnoCaptions were not available
- Comparing observed costs at all comparable volume levels implies that Sprint and Hamilton's cost curves (as a function of volume) are, respectively, about [[BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL]] ClearCaptions cost curve
- Averaging the cost curves of ClearCaptions, Sprint, and Hamilton implies a [[BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL]] the cost curve on which ClearCaptions' proposal is based

Proposed 4 Tier Structure Improves Provider Incentives

- Adjusting the cost curve on which ClearCaptions’ proposed rate structure is based results in the following rate structure

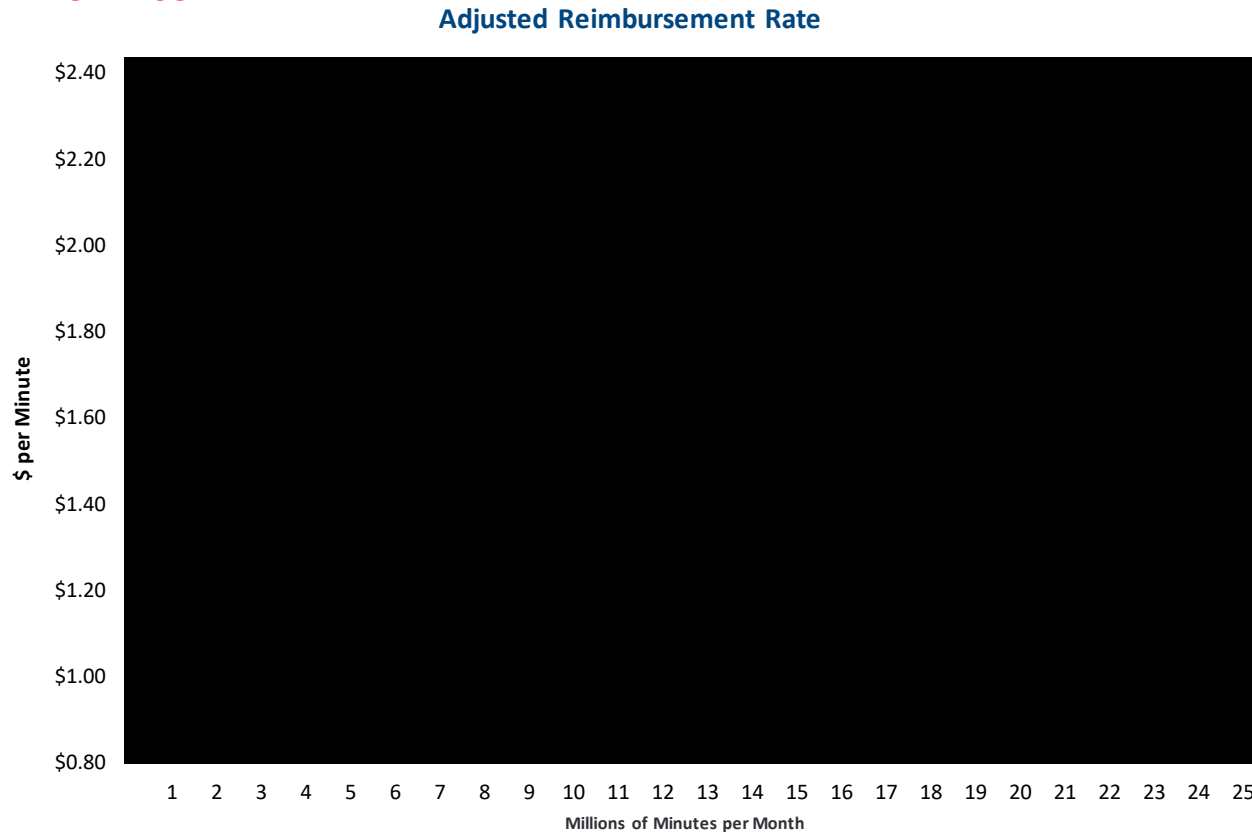
Adjusted ClearCaptions' Proposed Tiered Structure

	Minute Threshold			Tier Min Value	Proposed Rate
Tier 1	0	to	3,500,000	3,500,000	\$2.1869
Tier 2	3,500,000	to	7,000,000	3,500,000	\$1.6052
Tier 3	7,000,000	to	10,000,000	3,000,000	\$1.4014
Max Tier	10,000,000	>			\$1.1686

Note: The tiers are the same as ClearCaptions’ proposal. Data for CaptionCall and InnoCaptions at relevant values do not exist.

Proposed Cost Curve Using Broader Market Costs

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Note: Cost curve is reflecting the adjustment to ClearCaptions' cost curve and the adjusted reimbursement rate is calculated as per ClearCaptions with more representative costs.

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Section V: An Auction is not Appropriate for IP CTS

A Reverse Auction would be Difficult for IP CTS

- Although auctions are often an economically desirable approach, the particular circumstances of IP CTS are not well-suited to auction-based rates
- If the auction assigned the right to serve specific users, competition and consumer choice would be eliminated
- CaptionCall's auction proposal may reduce the number of competitors in the market and incentivize lower quality service
- While a reverse auction may be thought of as a market simulating mechanism, it is typically appropriate when other competitive forces are not present
 - When geographic monopoly, as in CAF II, the customer and the price bid is connected
 - With IP CTS, all providers compete for all customers – an effective auction mechanism would have to eliminate that market place competition for customers
- An auction approach may be problematic in the face of potentially disruptive ASR technology

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