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REDACTED - FOR PUBLIC INSPECTION

November 25, 2019

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

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

Dear Ms. Dortch:

On behalf of ClearCaptions, LLC enclosed for filing is the redacted version of the Notice of Ex Parte Communication for filing in the above referenced proceedings. The version of the filing has been marked "REDACTED – FOR PUBLIC INSPECTION", in accordance with the Protective Orders issued in the proceedings.

Any questions relating to this submission should be directed to the undersigned.

Respectfully Submitted,

/s/ Tamar E. Finn

Tamar Finn

Counsel for ClearCaptions, LLC

Morgan Lewis

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November 25, 2019

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: NOTICE OF EX PARTE COMMUNICATION
CG Docket No. 13-24; CG Docket No. 03-123

Dear Ms. Dortch:

ClearCaptions, LLC ("ClearCaptions" or the "Company"), through its undersigned counsel, files this Notice of *Ex Parte* meeting. On November 21, 2019, Robert Rae, President and CEO, Michael Strecker, Vice President of Regulatory and Strategic Policy and the undersigned met with Diane Burstein, Deputy Bureau Chief of the Consumer and Governmental Affairs Bureau ("Bureau"); Eliot Greenwald, Deputy Chief of Disabilities Rights Division ("DRO"); Michael Scott, DRO Attorney; Robert Aldrich, Legal Advisor to the Bureau Chief; and Martha Stancill and Virginia Metallo of the Office of Economics and Analytics.

IP CTS Rates

ClearCaptions urged the Commission to adopt its proposed four-tier model for the IP CTS rate structure.[1] ClearCaptions explained that it needs rate certainty for the next five years to

[1] *See* Initial Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 11-23 (filed Sept. 17, 2018); Reply Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123, at 5-6 (filed Oct. 16, 2018); *see also* ClearCaptions, LLC Ex Parte, CG Docket Nos. 13-24 and 03-123, Exhibit 1 at slides 8-9 (filed Nov. 7, 2018).

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attract new capital investment necessary to continue improving its IP CTS service offerings. ClearCaptions' service offerings make communications services accessible to hard-of-hearing consumers that need IP CTS to live independently and remain connected to family, friends, and the businesses that serve America's aging population. The discussions were consistent with the attached handout provided to the meeting participants.

ClearCaptions looks forward to working with the Commission on a long-term rate solution for IP CTS and stands ready to continue those productive discussions.

Automatic Speech Recognition

ClearCaptions also discussed the ASR platform it is testing. The discussions were consistent with ClearCaptions' August 1, 2019 letter requesting confirmation that the Company does not need to receive certification or waiver to test ASR.[2]

TRS Numbering Database

The participants discussed the fact that the Commission does not expect IP CTS providers to register IP CTS telephone numbers in the TRS Numbering Directory and whether a technical correction could be made to the definition of "Registered internet-based TRS User" to make clear that the definition was only expanded to include IP CTS providers for purposes of the User Registration Database ("URD"). The discussions were consistent with ClearCaptions' June 14, 2019 ex parte letter on this issue.[3]

TRS URD

ClearCaptions explained that it expects to incur costs to comply with TRS-URD registration requirements and that providers should be able to recover incremental costs associated with work necessary to register their users. The discussions were consistent with ClearCaptions' comments on the Petition for Reconsideration filed by Hamilton Relay.[4]

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[2] ClearCaptions Written Ex Parte Communication, CG Docket Nos. 13-24 and 03-123, at 2-3 (filed Aug. 1, 2019); https://ecfsapi.fcc.gov/file/10801232907716/REDACTED%20Public%20Version_ClearCaptions%20Written%20Ex%20Parte%20Communication.pdf.

[3] ClearCaptions Notice of Ex Parte Communications, CG Docket Nos. 13-24 and 03-123, at 2 (filed June 14, 2019); https://ecfsapi.fcc.gov/file/10614074025199/REDACTED_Ex%20Parte%20Notice%20of%20Meetings%20with%20Staff.pdf.

[4] Comments of ClearCaptions LLC, CG Docket Nos. 13-24 and 03-123, at 2-3 (filed July 3, 2019); https://ecfsapi.fcc.gov/file/107030126631030/ClearCaptions%20Comments%20on%20Hamilton%20Relay%20Petition.pdf

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Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Tamar Finn

Tamar E. Finn

Counsel to ClearCaptions, LLC

Enclosure

cc: Diane Burstein
Robert Aldrich
Eliot Greenwald
Michael Scott
Martha Stancill
Virginia Metallo

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Optimizing Competition and Minimizing Growth of the Fund Through a Tiered IP CTS Model

November 21, 2019

ClearCaptions

The Basic Financials of an IP CTS Business

- **Initial capital investment is substantial**
  - Each provider has built their own infrastructure, technology and customer premise equipment (collectively "Technology")
- Each provider's IP CTS technology is based on their own **proprietary architecture**
  - There are no standards or interconnections across providers as there are in other telecommunications industries.
- Each year, a provider grows by **retaining an embedded base of certified users** while engaging in **ongoing outreach** to replace retention losses and working to add new users
- **Growth is limited by high customer acquisition costs**
  - The acquisition costs are tied to outreach, qualification of a customer, installation, training, and CPE for a landline customer
  - Depending on outreach method and usage of a customer, the payback period of customer acquisition is at least 6 months or more of usage
- Based on the current rates and ClearCaptions models, providers work to build a base of customers and operate without profitability until they reach ***BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL***
  - **Once this scale is achieved, a provider overcomes fixed costs and begins to operate at a level of profitability that improves with additional scale**

Other Industry Key Points

- Industry **average weighted cost** is effectively CaptionCall's cost, as it is estimated they own greater than ***BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*** market share and massive economies of scale
  - By targeting 8% to 12% operating margins from average weighted costs, a race to scale has formed in the industry – CaptionCall to maintain this cost leadership; others to gain scale to survive reducing rates
- In IP CTS, **massive scale equals extreme profitability and resources**
  - CaptionCall has the most resources to invest in growth and therefore is driving IP CTS's rapid growth
- **Reverse auctions and flat rates only reinforce this imbalance** and will most likely drive all providers, other than the dominant provider, into weaker cost structures driven by scale disadvantages
- A **multi-tiered structure**, however, removes excess growth resources from the dominant provider, **provides a sensible profit margin to all players**, and facilitates ongoing investment in quality, technology, and fosters competition

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Market Share Trends and Scale Dominance

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- **ClearCaptions continues *****BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*****
- **CaptionCall continues to drive *****BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*****
  - At more than ***BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*** market share and significant scale, they continue to dominate the calculation of average weighted cost for the industry and earn significant scale driven profits in a fixed rate model

IP CTS Cost Curve

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- As can be seen in the above chart, IPCTS has significant fixed costs that must be overcome with volume; as providers gain sufficient volume, these fixed costs become a much smaller % of their overall operating expense
- In an industry where a single provider owns close to ***BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*** market share, the other providers, and more significantly the smaller emerging providers, do not have enough market weight to move the industry weighted average

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Single Tiered Rate at Industry Weighted Average Results in Loss of Competition

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- **Setting the rate at $1.45, which is the 2016 industry weighted average + 12%, results in at least one provider earning margins exceeding 26%, and at the same time, at least one provider being eliminated from the market – Competition Loses**

Interim Flat Rates Constrict or Eliminate Profitability for the Smaller Providers, While Continuing to Overcompensate the Dominant Provider

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- Current interim rates keep small providers operating near or below breakeven, while at the same time, they **overcompensate** the largest provider resulting in excessive margins and allow high investment in growth

ClearCaptions and Industry Cost Trends Relative to Rate Declines

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- Industry W. Average costs have been relatively flat since 2016
- Rate adjustments were needed and reduced IP CTS rates closer to providers costs
- In the case of ClearCaptions, ***BEGIN HIGHLY CONFIDENTIAL*** ***END HIGHLY CONFIDENTIAL*** in the face of rate changes

A Long-Term Rate Model is Necessary in Order to Stabilize the Fund and Provide Predictability

- **Interim rate moves have driven financial investors and lenders away from the IP CTS providers by creating uncertainty in future rates**
- **Freezing today's fixed rates and announcing that freeze will help in the near term, but will ultimately realize the effect of "kicking the can down the road" and will create uncertainty again within a few years**
- **Business uncertainty is impacting the following real business decisions:**
  - Level of technology investment
  - Outreach investment
  - Quality of employees hired into the industry
- **The best solution is to move to a tiered model that will allow the unit cost of the service to decrease as growth continues**
  - This enables new entrants to cover more of their start up costs while allowing the fund to gain the benefit of stability and growth of mature providers

Tiered Rate Proposal

- **In order to solve the economical challenges associated with having ***BEGIN HIGHLY CONFIDENTIAL*****
- *****END HIGHLY CONFIDENTIAL***, ClearCaptions presented a 4-tier model that would:**
  - Ensure competition exists within the market
  - Doesn't overcompensate the largest provider
  - Doesn't force providers, operating efficiently within their scale structure, to leave the market
- **The following represents this 4-tier model:**

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

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  *****END HIGHLY CONFIDENTIAL*****
- **ClearCaptions encourages the FCC to perform their own analysis of provider costs at various scales to appropriately adjust tiers and rates with a larger sample**

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Multi-Tiered Rates Allow for Competition and Ensures Reasonable Operating Margins

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- **A multi-tiered rate methodology drives efficiencies and ensures providers only earn reasonable margins, thus preventing providers from overinvesting in growth and allowing for market competition; it also allows providers to invest and reduce costs further over time**

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Proving the Cost Curve & The 4 Tier Model

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- In Mid 2017, ClearCaptions presented to the Commission a projected cost curve that a stand-alone IP CTS provider should realize as they gained scale; we created this cost curve using our experience and similar cost analysis of other industry players at different points in their growth
- YoY ClearCaptions continues to track very close to this curve, supporting our projected cost curve and the tiered model
- The green line represents the realized rate of our tiered model at an 8% to 12% profit margin

4 Tier Model is More Efficient than Interim Rates

		Fund Year 2018/2019	Industry Realized Rate
Minutes		499,177,652	
Interim Rates	$	873,560,892	$1.75
4 Tier Model	$	718,632,267	$1.44
Savings to the Fund	**$**	**154,928,625**	

- **The proposed 4 Tier Model results in an additional $154M in savings to the fund above and beyond the 2018/2019 Interim Rates**
- **The proposed 4 Tier Model results in a $1.44 Industry realized rate, which is $.14 per minute, or approximately 9% less than the year 2 interim rate of $1.58**
- **The proposed 4 Tier Model automatically drives year over year reductions as providers grow scale, enabling this advantage to be passed back to the fund; the only way a provider can exceed 8% to 12% margins is to find ways to drive additional efficiency other than scale**
- **With each provider having equal profit potential, all providers can invest adequately in constrained growth, service quality, and new technology**

Proposed Reverse Auction Model Will Eliminate Competitors from IP CTS

- **Instead of providing the smaller or emerging providers an opportunity to achieve the necessary economies of scale, a reverse auction will drive them out of the industry and will lead to either a duopoly or monopoly**
- **Since scale advantage cannot be overcome with technology, remaining providers will have less incentive to invest in R&D and quality**
- **With only 2 or 3 providers surviving the first auction, there will be less incentive for those providers to lower their costs in subsequent auctions**
- **As competition declines over time, rates will ultimately increase**
- **Since the IP CTS market lacks maturity and there remains substantial economies of scale opportunities, a reverse auction is not optimal for the industry or the fund**

Reverse Auction Faces Geographic and Migration Challenges

- **There is no natural geographic market smaller than the entire United States**
  - IP CTS is a cloud-based service; costs are neither distance-sensitive nor density-sensitive
  - Existing providers can and do serve customers anywhere in the country
  - Any allocation of markets based on geographic areas would therefore be purely arbitrary
- **Reverse auctions in smaller geographic areas would result in some arbitrary reallocation of customers**
  - Since each provider's customer base is potentially nationwide, every provider would be forced to abandon some customers and every winning bidder would have to take over other providers' customers within its allocated territory
  - This would be highly disruptive to customers and providers, without any significant offsetting benefit
- **Existing providers' systems and CPE are proprietary and mutually incompatible; accordingly, if a reverse auction resulted in some existing customers being reallocated from their current provider to a different one, it would result in increased overall costs**
  - The current provider would have to incur costs either to retrieve its CPE from the customers or abandon it (which, if it were not reimbursed by the fund, would potentially give rise to regulatory takings claims); and
  - The new provider would have to incur costs to deploy its CPE to the reallocated customers

The IP CTS Market is Not Comparable to Situations in Which the FCC Has Previously Employed Reverse Auctions

- **Broadcast Incentive Auction**
  - Participation was entirely voluntary
  - Well-established geographic market areas existed; here, there is no rational way to establish any market area smaller than the entire U.S.
  - Spectrum was sold "bare" – no customers were involuntarily transferred
  - Reverse auction was intrinsically tied to the forward auction of spectrum rights, and each component depended on the price signals generated by the other (https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/how-it-works); here, reverse auction would be held in a vacuum

- **CAF II and other rural broadband reverse auctions**
  - These subsidies were targeted exclusively to areas where no existing broadband service was available and no incumbent willing to build out the areas, so there was no issue of stranding or replacing an existing provider's facilities
  - Similarly, there was no mandatory reallocation of existing customer bases
  - Broadband providers have the opportunity to continue serving customers after the term of the subsidy program ends, giving them an incentive to maintain and improve service quality