



Public Utility and Telecommunications Consulting

David W. Rolka  
President  
Voice: 717-585-6605  
Ex 602  
drolka@rolkaloube.com  
www.rolkaloube.com

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

**VIA ECFS**

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Dear: Ms. Dortch:

Rolka Loube Associates, the Interstate Telecommunications Relay Service Fund Administrator, on behalf of a majority of the members of the non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), Interstate service providers, state representatives, and TRS providers charged to monitor TRS cost recovery matters<sup>1</sup>, submits the following Ex Parte Comments of the advisory committee in response to the Commission **Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry**, released June 8, 2018 (FCC 18-79).

Given the Council's role in advising the Fund Administrator in carrying out its responsibilities in accordance with TRS rules and requirements on cost recovery matters we urge the Commission to consider these Ex Parte comments in response to the above referenced Commission proceeding.

Respectfully,

David W. Rolka, Administrator

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<sup>1</sup> 47 C.F.R. 64.604(c)(5)(iii)(H).

With this filing, the iTRS Advisory Council submits its comments on issues raised in the 2018 IPCTS FNPRM. In its role of advisor to the iTRS Fund Administrator (Rolka Loube), the iTRS Advisory Council appointed a 'Cost Analysis' subcommittee. The seven members of this subcommittee signed Provider-specific Non-Disclosure Agreements in order to gain access to the annual cost data of each of the five IPCTS service providers (Providers). The seven members of this subcommittee were granted unprecedented access to the confidential cost data.<sup>(1)</sup>

It should be noted that the subcommittee was granted access to the unredacted "4 Tier IP CTS Rate Model" document filed by ClearCaptions dated December 20, 2017. The subcommittee was also granted an unredacted copy of The Brattle Group's November 10, 2017 report prepared for Hamilton Relay: "Economic Analysis of Subcontractor Fees Paid by Hamilton Relay". In addition, the subcommittee was granted an unredacted copy of CaptionCalls filed September 17, 2017 Comments. All three of these publicly redacted documents are pertinent to an accurate assessment of Provider costs.

Closed meetings were then held between the subcommittee and the Providers consistent with the NDA agreements. The cost data was reviewed and questions presented to the Providers were answered. In advance of each meeting, Rolka Loube presented what we call the 'cost analysis chart'. This chart was prepared in the same manner as 'Table 2 (footnote #229)' as noted in the June 7, 2018 FNPRM and consisted of the 2016 and 2017 actuals as well as the 2018 and 2019 projected per minute costs. These cost analysis charts were each based on the filing information presented to Rolka Loube which are subsequently 'rolled up' to the Commission for review.

The full subcommittee then met in Harrisburg, Pennsylvania on November 8<sup>th</sup>, and each Provider was given the opportunity to present in person to the subcommittee within closed meetings. The subcommittee then reviewed the five cost analysis charts, ensued a discussion and now respectfully makes the following recommendations and proposal to the Commission:

<sup>1</sup> The seven members of this subcommittee were granted unprecedented access to the confidential cost data. Two Providers provided all cost information to all seven subcommittee members. Three of the Providers granted full access to three of the subcommittee members and subsequently provided an abbreviated set of data to the remaining four subcommittee members. At all times the subcommittee abided by the terms of the non-disclosure agreements and viewed only the data they were eligible to view.

**Proposal: The Commission should charge Rolka Loube and the iTRS Advisory Council with the task to look into the various rate methodologies and expeditiously provide a recommendation to the Commission.**

Each Provider has made publicly filed comments and noted preferences on the various rate methodologies including the MARS Rate, Price Cap Rate, Cost-Based Rate, Tiered Rates, and the Reverse Auction Rate Proposal. Further research and clarification needs to be made on each methodology. For instance, which Provider costs should be included in a 'Cost-Based' approach? What is a realistic breakpoint for a Tiered structure? At what level would the Price Cap methodology would be set?

This subcommittee believes that Rolka Loube, working with its full advisory Council would be the appropriate parties to evaluate the various Rate Methodologies and make a recommendation to the Commission. Because the issue is now an open rulemaking procedure, we encourage the Commission to assign this task without further delay so that the recommendation can be expeditiously returned to the Commission.

**The Subcommittee believes that CaptionCalls Comments in which their Intellectual Property should be included in cost-based analysis has merit.**

In reviewing the business models of each Provider, the subcommittee was made aware that each Provider handles and reports their IPCTS call processing costs in a different manner. One Provider processes all of their calls in-house utilizing their own technology and platform. One Provider subcontracts out all of their call processing to a third party who utilizes the Providers technology and platform. One Provider subcontracts all of its call processing to qualified CAs, each of whom act as independent contractors. Two Providers process their calls in one of two ways in which they either subcontract the entire call to a third party, or they pay a 'license' fee to that third party and then operate their own call center. These various business methods are reflected differently on the cost analysis charts as the Provider costs are reported either as 'CA Related', "other", or a combination of both.

We agree with CaptionCalls Comments that their Intellectual Property (IP) costs should be treated in the same way that other Providers pay a 'license' fee to process their call or pay a third party a significantly higher per minute cost to process their calls. CaptionCall did reveal to the full subcommittee the value a prepared study by Deloitte developed for this IP equivalent. Having access to the Brattle Report and the Provider Cost Data Filings, we note that this value is in line with other like Provider 'licensing' costs.

Table 2, Paragraph 72 *2018 IP CTS NPRM* presents the industry 2017 average actual IPCTS costs at \$1.2326 and the 2018 projected at \$1.3172 (without any profit margin added). This Table, gives the impression that the current reimbursement rates of \$1.75 followed by \$1.58 are sufficiently above the industry average. However, once CaptionCalls imputed IP value is added as an allowable cost, these two table values are no longer accurate.

It should be noted, based on viewing each Providers cost analysis chart as prepared by Rolka Loube, that with the addition of this IP value, the Providers comparable costs range from 6.8%-13.6% within the average for 2017 actuals, and 7.3%-12% within the average for 2018 Projected. Therefore, we recommend that CaptionCall and all other similarly situated Providers be allowed to recover their IP costs. At this time, we are making no assessment about the reasonableness of CaptionCall's IP cost estimates, nor are we assessing the 'licensing' fee, or third-party call processing costs that are currently declared by other Providers as an allowable cost.

**The Commission should retain the IP CTS Reimbursement at a Price Cap of no less than \$1.75 until a permanent Rate Methodology has been established.**

As previously noted, the subcommittee reviewed individual Provider Cost Analysis Charts provided by Rolka Loube that were completed with Provider data submitted in their annual cost

filings. As the Commission is aware, a number of costs are not allowable in these cost filings including Consumer Premise Equipment and Installation, Research and Development (R&D) beyond meeting mandatory minimum standards, marketing, and income taxes. As the Commission is also aware, the Price Cap is scheduled to drop ten percent to \$1.58 in mid-2019. The subcommittee notes that this \$1.58 price cap is below each Providers Cost Analysis '2019 Projected' that included a margin of 10% and did not allow any of the above-mentioned costs to be included. For that reason, the scheduled reduction is unrealistic and could cause Providers to 1) Exit the market and 2) Reduce the quality of service to mandatory minimum standards, which is not desirable and would not constitute the quality standards of the functional equivalence of a hearing persons call. We note that several Providers have expressed support, while not their ideal, of the interim \$1.75 Price Cap rate.

Because it will take time to evaluate and implement new permanent rate methodology, the subcommittee supports freezing this Price Cap at no less than \$1.75 with an inflation index as well as an efficiency factor of 1.1 percent until a permanent rate methodology has been established.

In the interim, pending a final rate methodology decision, the Fund Administrator will continue to request and collect cost data filings annually and report back to the Advisory Council their findings prior to forwarding the Cost Data information to the Commission.

Sincerely,  
Ron Bibler, Chair  
iTRS Advisory Council