

Morgan Lewis

Tamar E. Finn

Danielle Burt

tamar.finn@morganlewis.com

danielle.burt@morganlewis.com

VIA ECFS

December 10, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: NOTICE OF EX PARTE

**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 December 6 and 7, 2018, Robert Rae, President and CEO of ClearCaptions, LLC ("ClearCaptions"); Michael Strecker, Vice President of Regulatory and Strategic Policy for ClearCaptions; and the undersigned participated in separate meetings with:

- Jamie Susskind, Chief of Staff for Commissioner Brendan Carr;
- Michael Carowitz, Special Counsel for Chairman Ajit Pai; and Robert Aldrich, Legal Advisor for Consumer and Governmental Affairs Bureau;
- Commissioner Michael O'Rielly and Arielle Roth, Wireline Legal Advisor for Commissioner O'Rielly;
- Karen Peltz Strauss, Deputy Bureau Chief of Consumer and Governmental Affairs Bureau; Eliot Greenwald, Deputy Chief of Disabilities Rights Division ("DRO"); Michael Scott, DRO attorney; and David Schmidt, TRS Fund Program Administrator, Office of Managing Director (collectively referred to herein as "Staff"); and
- Commissioner Jessica Rosenworcel and Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety for Commissioner Rosenworcel.

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, DC 20004
United States

+1.202.739.3000
+1.202.739.3001

ClearCaptions supports continued self-certification but recognizes the Commission may pursue another method of determining customer eligibility. ClearCaptions discussed its concerns with the three customer eligibility proposals in the Further Notice of Proposed Rulemaking:¹ (1) states, (2) state equipment distribution programs ("EDPs"), and (3) hearing healthcare professionals ("HCPs").

The record shows that states and EDPs do not have the interest or resources to handle certifications. Not every state has EDPs in place and, to the extent a particular state or EDP is interested in handling certifications, it would take time to overcome legal, procedural and funding issues that vary from state to state. ClearCaptions also raised concerns about whether state and EDP locations would be readily accessible to customers, particularly those with mobility issues or financing constraints, and the variability of certification standards and procedures administered by 50 different states and/or EDPs.

Although HCPs would be the best of the alternatives proposed in the Further Notice, because many providers already collect HCP certifications, ClearCaptions questioned whether such certifications would address the Commission's concerns about alleged misuse of the service. Moreover, the Commission would need to address existing relationships between HCPs and some providers that have the effect of an exclusivity arrangement. For example, ClearCaptions suggested the Commission could perform outreach to educate HCPs about the program and how customers have a choice of provider.

ClearCaptions supports a fourth customer eligibility option described in its comments.² It recommends the Commission, in collaboration with the Disability Advisory Committee, Consumer Groups, and HCPs, develop an online or app-based assessment tool to allow a standardized test to be applied consistently to every potential customer of IP CTS. This option could be tied to the TRS User Registration Database to permit the Commission to audit and monitor the process and should include an appeal process for a consumer who wants to challenge an eligibility determination. ClearCaptions believes this would alleviate many of the concerns with the other options as it could be administered in a consumer's home and would prevent HCP shopping.

Recognizing it may take time to implement any of the customer eligibility options, ClearCaptions recommends the Commission update the current self-certification form to make it more user friendly for IP CTS customers, the vast majority of whom are seniors.

In the meeting with Commissioner O'Rielly and Ms. Roth, ClearCaptions provided and reviewed the Highly Confidential slide deck submitted as Exhibit 1 (IP CTS rates slide deck dated November 5-6, 2018) to the Notice of Ex Parte (of a prior meeting with Ms. Roth) filed in the above-referenced proceedings on November 7, 2018. ClearCaptions discussed the cost characteristics of the IP CTS market, why a reverse auction is not optimal for the industry or the Fund, and potential future costs savings from Automatic Speech Recognition ("ASR") technology. ClearCaptions urged the Commission to adopt its proposed multi-tier rate structure as the best way to achieve technology investment, competition, and constrained Fund growth.

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*,

December 10, 2018

Page 3

During the meetings with Mr. Carowitz and Mr. Aldrich, Staff, and Commissioner Rosenworcel and Mr. Litman, ClearCaptions urged the Commission to grant its partial waiver request relating to certain 911 obligations³ so that ClearCaptions can offer its customers a mobile application for IP CTS as soon as possible.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Tamar E. Finn

Tamar Finn
Danielle Burt

Counsel for ClearCaptions, LLC

cc (via email): Commissioner O’Rielly
Commissioner Rosenworcel
Michael Carowitz
Arielle Roth
Jamie Susskind
Travis Litman
Karen Peltz Strauss
Robert Aldrich
Eliot Greenwald
Michael Scott
David Schmidt

Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, CG Docket Nos. 13-24 and 03-123, FCC 17-89 (rel. June 8, 2018).

² Initial Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123 (filed Sept. 17, 2018).

³ Request for Partial Waiver of Sections 64.605(a)(2)(iv) and 64.605(a)(2)(v) of the Commission’s Rules in Connection with ClearCaptions, LLC Web and Wireless Forms of Internet Protocol Captioned Telephone Service (“IP CTS”), CG Docket Nos. 03-123 and 13-24 (filed March 2, 2018).