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December 23, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Kris Anne Monteith
Acting Chief, Consumer and Governmental Affairs Bureau
TRS Certification Program
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Presentation – Internet-Based TRS Certification Application of CaptionCall, LLC; Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123

Dear Ms. Dortch and Ms. Monteith:

Ultratec, Inc. (Ultratec"), by and through its attorneys, files this *ex parte* communication pursuant to Section 1.1206 of the rules of the Federal Communications Commission ("Commission") to petition the Commission to deny the Internet Protocol captioned telephone service certification ("IP CTS") application of CaptionCall, LLC ("CaptionCall") filed on December 2, 2014 in the above-captioned proceeding ("Application"). Based on information publicly disclosed by CaptionCall during a recent jury trial, Ultratec has grave concerns about CaptionCall's compliance with certain mandatory minimum Telecommunications Relay Services ("TRS") standards and therefore requests the Commission to deny the Application.

As set forth herein, the testimony of CaptionCall representatives under oath demonstrates that CaptionCall does not comply with the Commission's requirement that all IP CTS calls be

captioned verbatim.[1] To the contrary, CaptionCall decided early on that its strategy when communications assistants ("CAs") fall behind in a conversation is to "skip to the current conversation and context."[2] Accordingly, CaptionCall instructs its CAs to skip portions of IP CTS calls in order to keep up with the conversation and *to hide the fact that portions of the conversation have been dropped*. CaptionCall's instructions to its CAs to drop text when they miss portions of a conversation are consistent with CaptionCall's marketing strategy to claim that they have less delay than other IP CTS providers. To artificially shorten the delay in its captioning, CaptionCall evidently is willing to sacrifice the accuracy of its captions, thereby depriving the user of a complete and accurate transcript of the conversation and causing CaptionCall to fail to comply with the FCC's verbatim requirement. Because CaptionCall does not satisfy the Commission's verbatim captioning requirements, CaptionCall does not possess the minimum qualifications required of an IP CTS provider to seek compensation from the Telecommunications Relay Service ("TRS") Fund. Therefore, CaptionCall's Application should be denied by the Commission.

CaptionCall is an affiliate of Sorenson Communications, Inc. ("Sorenson"), which holds a conditional IP CTS certification.[3] CaptionCall supports Sorenson's IP CTS offering and is the brand under which Sorenson currently provides IP CTS to the deaf and hard of hearing community.[4] On December 2, 2014, CaptionCall and Sorenson filed the Application with the Commission requesting the Commission to grant CaptionCall an IP CTS certification separate and apart from Sorenson's certification.[5] In the Application, the parties explained that Sorenson

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[1] 47 C.F.R. § 64.604(a)(2)(ii).

[2] *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-346-BBC (W.D. Wis.) ("*Patent Litigation Trial Transcript*"), Dkt. 730, at 134-35; *see also infra* note 15 and accompanying text.

[3] *See Notice of Grant of Conditional Certification for Sorenson Communications, Inc., as Reorganized Pursuant to Chapter 11, to Provide Internet-Based Telecommunications Relay Services Pending Commission Action on Sorenson's Application for Certification*, Public Notice, 29 FCC Rcd 4111 (CGB 2014).

[4] *See* https://www.captioncall.com/captioncall (last visited on Dec. 18, 2014); *see also* Internet-Based TRS Certification Application of CaptionCall, LLC and Update and Verification of Internet-Based TRS Certification Application of Sorenson Communications, Inc., CG Docket No. 03-123 (filed Dec. 2, 2014) ("CaptionCall Application").

[5] *See generally* CaptionCall Application.

will cease offering IP CTS once CaptionCall receives its own certification and that thereafter CaptionCall will submit its own request for compensation from the TRS Fund.[6] For this reason, Ultratec assumes that CaptionCall is proposing to offer IP CTS in the same manner—and using the same technology—that it currently offers IP CTS through Sorenson. Therefore, CaptionCall's proposed IP CTS offering will suffer from the same deficiencies as the IP CTS currently being offered by CaptionCall through Sorenson. These deficiencies warrant denial of CaptionCall's Application.

I. CAPTIONCALL REPRESENTATIVES' SWORN TESTIMONY DEMONSTRATES THAT CAPTIONCALL DOES NOT COMPLY WITH THE COMMISSION'S VERBATIM CAPTIONING REQUIREMENT

Under the Commission's rules, the Commission only shall certify a TRS applicant as eligible to receive compensation from the Interstate TRS Fund if the Commission determines both that the applicant (i) will meet all of the non-waived, operational, technical, and functional minimum standards contained in Section 64.604 of the Commission's rules and (ii) has implemented adequate procedures and remedies for ensuring compliance with these requirements.[7] As further set forth herein, by the admission of its representatives and contrary to the certifications provided in its Application, CaptionCall does not satisfy either of these criteria. First, CaptionCall does not consistently comply with the verbatim captioning requirement set forth in Section 64.604(a)(2) of the Commission's rules. Second, CaptionCall has not only failed to implement adequate procedures for ensuring compliance with the verbatim requirement, but has expressly instructed its CAs *not to* caption calls verbatim if (and when) the CAs cannot keep up with the speed of the spoken conversation or miss words or whole sections of the call for another reason. CaptionCall has gone even further still in instructing its CAs to *cover up* missed words by purposefully declining to use an identifier such as an ellipsis to indicate a missed word or two. Moreover, CaptionCall instructs CAs merely to insert a placeholder when the CAs miss "whole sections" of a conversation. CaptionCall's operation of its service in violation of the Commission's verbatim captioning requirement thus warrants denial of the Application.

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[6] *Id.* at 1-2.

[7] 47 C.F.R. § 64.606(b)(2)(i)-(ii) ("After review of certification documentation, the Commission shall certify, by Public Notice, that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation: (i) [e]stablishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604; (ii) [e]stablishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in §64.604.").

Section 64.604(a)(2)(ii) of the Commission's rules requires that CAs relay all conversations verbatim unless the relay user specifically requests summarization:

> CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call.[8]

As recently as last year, the Commission emphasized in a further notice of proposed rulemaking ("FNPRM") the importance of compliance with this requirement: "We are concerned that a practice may be emerging wherein providers summarize the conversation content of IP CTS calls. We remind providers that our rules require that all conversational content must be relayed verbatim, unless summarization is requested by the user."[9] In addition, in their comments in response to the FNPRM, Hamilton Relay, Inc., Sprint Corporation, and Ultratec all expressed concern that certain IP CTS providers may not be captioning calls verbatim, and they sought for increased enforcement of this requirement by the Commission.[10]

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[8] *Id.* Section 225(d)(1)(G) of the Americans with Disabilities Act ("ADA") of 1990 added to the Communications Act of 1934, as amended, a provision requiring the Commission to adopt rules prohibiting relay operators from intentionally altering a relayed conversation. 47 U.S.C. § 225(d)(1)(G) ("The Commission shall, not later than 1 year after the date of enactment of this section [July 26, 1990], prescribe regulations to implement this section, including regulations that … (G) prohibit relay operators from intentionally altering a relayed conversation."). The FCC adopted the verbatim requirement in Section 64.604(a)(2)(ii) to implement this statute. *See Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, 7189-90 ¶ 17 (1990) ("*1990 NPRM*"); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4660 ¶ 16 (1991). Accordingly, the verbatim captioning requirement is imposed by statute and is not subject to Commission waiver.

[9] *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 and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13485 n.438 (2013).

[10] *See* Comments of Hamilton Relay, Inc., CG Docket No. 13-24, CG Docket No. 03-123, at 13-15 (filed Nov. 4, 2013) ("Hamilton agrees that the summarization of conversation content, in the absence of a specific request by a user for summarization, is a cause for concern and should be dealt with strictly by the Commission…. [I]t should be clear that IP CTS providers may not

CaptionCall also commented in the proceeding, insisting that it does not summarize conversations – though remaining silent on whether it relays conversations verbatim – and declined to support the IP CTS speed and accuracy requirements proposed in the FNPRM.[11]

According to CaptionCall representatives, in violation of the Commission's verbatim captioning requirement, CaptionCall instructs its CAs to skip portions of IP CTS conversations to enable the CAs to catch up with the speakers if the CAs fall behind when captioning the conversations or miss portions of the conversation. Moreover, in some cases, CaptionCall purposefully masks this practice from IP CTS users so that the users do not know that their conversations have not been relayed verbatim.

Specifically, in connection with ongoing patent litigation between Sorenson and CaptionCall, on the one hand, and Ultratec and CapTel, Inc. ("CapTel"), on the other hand, Jason Dunn, Vice President for CaptionCall Call Centers who is "responsible for hiring, training, and managing" thousands of CaptionCall employees,[12] confirmed, under oath, that CaptionCall actually instructs CAs to skip text:

Q: What happens if a call assistant falls behind in captioning?

A: They will try and catch up.

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purposefully skip sentences in a conversation to 'catch up' with the conversation or otherwise truncate the conversation through summarization, unless a user specifically requests it."); Reply Comments of Hamilton Relay, Inc., CG Docket No. 13-24, CG Docket No. 03-123, at 10-11 (filed Dec. 4, 2013) ("Hamilton also agrees with the Consumer Groups that providers should not be permitted to compromise captioning speed for accuracy or vice versa ….") (internal quotations and citations omitted); Reply Comments of Sprint Corporation, CG Docket No. 13-24, CG Docket No. 03-123, at 7-8 (filed Dec. 4, 2013) ("Sprint urges the Commission to issue more than a reminder, but to investigate this matter thoroughly to determine whether violations have incurred and whether compensation should be denied."); Reply Comments of Ultratec, Inc., CG Docket No. 13-24, CG Docket No. 03-123, at 8-9 (filed Dec. 4, 2013) (asserting that failure to comply with the verbatim captioning requirement results in "lower quality of IP CTS that is not functionally equivalent to the telephone service available to the general public.").

[11] Reply Comments of Sorenson and CaptionCall, CG Docket No. 13-24, CG Docket No. 03-123, at 14-15 (filed Dec. 4, 2013).

[12] CaptionCall, Executive Bios, https://www.captioncall.com/Captioncall/About-Us/Executive-Bios.aspx (last visited Dec. 16, 2014).

Q: How do they do that?

A: Do the best they possibly can in terms of captioning.

Q: Do they speak quicker?

A: They could, yes.

Q: Do they skip to the current conversation?

A: It is possible for them to get to that point. Every individual will be different. I don't control them in what they do.

Q: Do you instruct them that it's okay to skip to the current conversation if they fall behind?

A: Yes.[13]

Mr. Dunn further confirmed that CaptionCall instructs its CAs not to indicate to CaptionCall's IP CTS users that the CAs have dropped words. Reading from a CaptionCall document containing instructions for how CAs should address missed call content, Mr. Dunn said the following:

Q: Do you see in [EX 412] in the paragraph under "missing one or two words" where it says "do not" in bold?

A: Uh-huh (affirmative).

Q: Can you read from there on to the end of the paragraph?

A: It says, "Do not add any ellipsis. This will only draw attention to the area that was missed. Simply move on to the next word."

Q: Is this something that call assistants are told to do?

A: In this document, yes.[14]

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[13] *Patent Litigation Trial Transcript*, vol. 1, Dkt. 687, 48:5-19, Jan. 24, 2014 (Dunn Testimony) (emphasis added).

[14] *Id* at 79:11-21 (emphasis added).

Similarly, Sorenson Software Engineering Manager Shane Roylance testified as follows regarding an internal CaptionCall e-mail:

> Q: Okay. And [the e-mail] reads, "CaptionCall has different requirements than IP relay. A note from previous meetings. The team has agreed that in CaptionCall if a CA…" – now a CA is a call assistant, correct?
>
> A: That is correct.
>
> Q: "The team has agreed that in CaptionCall if a CA falls behind in dictating, then it is acceptable to skip to the current conversation and context." Do you read that?
>
> A: Yes.
>
> . . . .
>
> ***Q: So in other words, the team had agreed that if a call assistant falls behind in the conversation, they can skip ahead in the conversation skipping text?***
>
> ***A: That's what it says, yes.***
>
> ***Q: And that means skipping words spoken that they're receiving in their headset from the hearing user who is speaking. Is that how you understand that?***
>
> ***A: I assume that's what it means.***[15]

The training document referred to above by Mr. Dunn, when read in its entirety makes clear that CaptionCall instructs its CAs not to caption verbatim:

> **Missed Call Content**
>
> On this page you will find information about what to do when you have missed or didn't hear a portion of a call. This section will explain *every scenario* you may come across when missing content on calls that you receive. Although we strive for perfection, we understand that there may be portions of the call you miss or do

[15] *Patent Litigation Trial Transcript*, Dkt. 730, at 134:1-20, 135:3-5, 135:9-14 (emphasis added).

not understand. If you follow these steps, we can better help our customers and improve on, not only ourselves but, their satisfaction as well.

1. Missing One or Two Words

2. Missing Whole Sections

Missing One or Two Words

When you come across a word or two that you don't quite understand or you don't hear, you should simply skip over to the next word and move on. Chances are there will be a few words in each call that you will not quite understand. When this happens skip over the words and keep going. ***Do not*** *add any ellipses (….). This will only draw attention to the area that was missed.* Simply move on to the next word.

Missing Whole Sections

When you come across whole sections that you miss, you need to use a QuickWord. These QuickWords lists should be in every cubicle. In case the list is missing, the quickwords you use for missing portions are:

- inaud – (Speaker is inaudible.)

- interbkd – (Loud background noises interfering with captioning.)

- muf – (Muffled audio.)

- nnout – (Audio is cutting in and out.)

- cntcap – (Unable to caption this portion of the call, we will remain on the line in case captioning is later required).

- techdiff – (Due to technical difficulties captioning is temporarily unavailable.)

- sttc – (Static)[16]

[16] This training document is attached as Exhibit A (bold and underline in original; italics added for emphasis). Exhibit A contains a stamp that reads "Outside Counsel Only." However, by Order of the District Court for the Western District of Wisconsin, Exhibit A, and the contents

Notably, the *only* instruction CaptionCall provides to CAs who miss words or fall behind in a conversation is to drop text in order to catch up. In contrast, to ensure that their CAs can comply with the Commission's verbatim captioning requirement if they fall behind when captioning a conversation, each CapTel service provider CA is instructed to pause the words being presented to them using specially designed software and hardware so that they can catch up their captioning. The CAs can then restart the playback of the conversation from that point onwards to ensure that the entire conversation is captioned verbatim. CaptionCall, on the other hand, instructs its CAs to just skip over portions of calls in order to catch up to the speakers' current context and conversation.

II. CAPTIONCALL INTENTIONALLY INSTRUCTS THEIR CAS TO SKIP PORTIONS OF IP CTS CONVERSATIONS TO ARTIFICIALLY REDUCE DELAY IN THE CAPTIONS

At the expense of IP CTS users who do not receive an accurate transcript of what is being said, CaptionCall's CAs are instructed to skip text in a conversation if they fall behind. This practice is inconsistent with the FCC's verbatim captioning requirement and is intended to provide a marketing advantage over CapTel service providers, whose CAs are instructed to caption every word of an IP CTS conversation. CaptionCall has apparently always prioritized speed (*i.e.*, reduced latency) over accuracy. For example, in an early email regarding Sorenson's strategy for beating the CapTel service providers in the IP CTS market, the head of the CaptionCall project, Robert Puzey, asserted "From the ground up, CapIP's system design must be focused on beating CapTel *in minimizing this latency*."[17] Further, according to Mr. Roylance, "The [CaptionCall] team has agreed that in CaptionCall if a CA falls behind in dictating, then it is acceptable to skip to the current conversation and context."[18]

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thereof, is a public document because it was used during public testimony given during trial. *See Patent Litigation*, Dkt. 694; *see also Patent Litigation Trial Transcript*, Dkt. 760, at 86:9 & Dkt. 687, Dunn Testimony at 79:11-21).

[17] This email from Robert Puzey to Pat Nola, Michael Jordan and Joseph Romriell is attached as Exhibit B (emphasis added). Exhibit B contains a stamp that reads "Outside Counsel Only." However, by Order of the District Court for the Western District of Wisconsin, Exhibit B, and the contents thereof, is a public document because it was used during public testimony given during trial. *See Patent Litigation*, Dkt. 694; *see also Patent Litigation Trial Transcript*, Dkt. 730, at 22-26. Mr. Nola testified that the "CapIP" referred to in this email was the product that eventually became CaptionCall's IP CTS offering. *Id.* at 24:5-12.

[18] *See supra* note 15 and accompanying text.

CaptionCall should not be permitted to unilaterally determine that it will focus on reducing latency even if doing so causes CaptionCall to violate the Commission's verbatim mandatory minimum IP CTS standard. In particular, the Commission should not permit CaptionCall unilaterally to make this impermissible determination to be noncompliant with FCC requirements in order to gain a competitive advantage over IPCTS providers that comply with the Commission's verbatim captioning requirement.

Recent Consumer and Governmental Affairs Bureau precedent mandates denial of CaptionCall's Application if the Commission determines that CaptionCall does not comply with the Commission's mandatory minimum standards, including the verbatim captioning requirement.[19] In November 2014, the Bureau issued an Order affirming the TRS administrator's withholding of compensation for the web and wireless IP CTS offerings of Purple Communications, Inc. ("Purple"), which the Commission determined did not comply with applicable emergency calling requirements.[20] On the same day, the Bureau conditioned renewal of Purple's TRS certification on Purple's discontinuance of TRS services that were in violation of the mandatory minimum standards.[21] Similarly, the Consumer and Governmental Affairs

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[19] *See Notice of Grant of Conditional Certification for CSDVRS, LLC, to Provide Video Relay Service After Its Acquisition by Kinderhook Capital Fund IV, L.P.*, Public Notice, CG Docket Nos. 03-123 & 10-51, DA 14-1887, at 3 (CGB rel. Dec. 22, 2014) ("The Commission's rules provide that providers of Internet-based TRS must be granted certification by the Commission in order to receive compensation from the TRS Fund…. Being granted certification requires the provider, among other things, to establish that its provision of TRS will meet the minimum TRS standards of section 64.604.") (citations omitted).

[20] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Purple Communications, Inc.; Request for Review of Withholding of TRS Payments*, Order, CG Docket No. 03-123, DA 14-1625 (CGB Nov. 7, 2014) ("*Purple Order*"), Application for Review filed (Dec. 8, 2014). Letter Opinion from Kris Monteith, Acting Chief, Consumer and Governmental Affairs Bureau, to Stanley Schoenbach, M.D., Managing Member and CEO, Healinc Telecom, LLC, 28 FCC Rcd 1375 (CGB 2013) ("*Healinc Opinion Letter*").

[21] *Notice of Grant of Conditional Certification for Purple Communications, Inc. to Provide Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket Nos. 03-123 and 10-51, DA 14-1627 (CGB rel. Nov. 7, 2014) ("*Purple PN*"). The Order and Public Notice allowed Purple to continue providing TRS services that are not in violation of the minimum standards. *Purple Order* ¶ 16; *Purple PN*. On December 12, 2014, the Consumer and Governmental Affairs Bureau suspended, on an interim basis and until further notice, the requirement that Purple discontinue the provision of certain IP CTS services. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure*

Bureau denied payment to Healinc Telecom, LLC ("Healinc") for video relay services provided in violation of the Commission's rules for the month of September 2011.[22] The Commission found that Healinc violated the Commission's minimum standards for that month and therefore was not eligible for compensation with respect to VRS calls relayed during that month.

III. FCC PRECEDENT REQUIRES THE FCC TO DENY THE APPLICATION IF, BASED ON FCC TESTING, IT DETERMINES THAT CAPTIONCALL DOES NOT COMPLY WITH THE VERBATIM CAPTIONING REQUIREMENT

As set forth above, two senior CaptionCall employees made statements under oath that confirm that CaptionCall does not consistently comply with the Commission's verbatim captioning requirement, and CaptionCall's CA training documents expressly instruct CaptionCall's CAs to skip portions of conversations. Accordingly, the Commission's Purple and Healinc precedents mandate denial by the Commission of CaptionCall's Application. At minimum, in light of the testimony set forth above, the Commission should thoroughly investigate CaptionCall's compliance with the verbatim captioning requirement prior to acting on the Application. Among other things, the Commission should acquire a CaptionCall phone and put CaptionCall's IPCTS to the test by making a variety of IP CTS calls to see for themselves the real-world detrimental impact of CaptionCall's practice of dropping text. The Commission should test the CaptionCall service under a variety of test conditions including testing at various speeds from 100 words per minute to at least 200 or more words per minute. The Commission should also require CaptionCall to *prove* that its service is (and always has been) in compliance with the verbatim requirement by demonstrating that it has (and always has had) the ability, the system, the tools, the intent, and an action plan in place to meet this mandatory minimum standard.[23] If CaptionCall is unable to do so, then, in addition to denying CaptionCall's Application, the Commission should consider the current and past compliance of

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and Practices of the Video Relay Service Program; Purple Communications, Inc.; Application for Certification to Provide Internet Protocol Captioned Telephone Service, CG Docket Nos. 03-123 and 10-51, DA 14-1827 (CGB rel. Dec. 12, 2014). The Bureau found that Purple had submitted extensive information detailing its efforts to come into compliance with the Commission's minimum standards. *Id.*

[22] *Healinc Opinion Letter*, 28 FCC Rcd 1375.

[23] *See* 47 C.F.R. § 64.606(a)(3) ("In order to assess the merits of a certification application submitted by an Internet-based TRS provider, the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent.").

Sorenson with this requirement.[24] Ultimately, if the Commission has withheld or withdrawn the TRS compensation of other providers due to their present and past noncompliance with FCC requirements, then CaptionCall and Sorenson should receive the same treatment.

* * * * *

The Commission instituted the verbatim requirement as a clear recognition of the critical importance of captioning IP CTS calls verbatim. If portions of a call are not captioned for a deaf or hard of hearing IP CTS user, he or she likely will not know what he or she missed–be it a critical piece of information or a mere pleasantry.[25] Instead of ensuring that it satisfies this requirement, CaptionCall capitalizes on the fact that its customers generally will not know *that* they missed anything, let alone the extent of what they missed—be it a few words, in which case a user's captions will not even indicate that the words were skipped, or a whole section of a conversation, in which case the user has no way of knowing the scope of the missing captions.

For the reasons set forth herein, the Commission should deny CaptionCall's Application. It is squarely inconsistent with the public interest for the FCC to grant the TRS certification application of an applicant that, by its own admission, is not compliant with the FCC's mandatory minimum TRS standards and has not implemented adequate procedures and remedies to ensure compliance with those standards. Granting CaptionCall's Application in light of the evidence set forth herein would set a dangerous precedent that the mandatory minimum

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[24] *See id.* § 64.604(c)(5)(iii)(L)(4) ("Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.").

[25] CAs should not be permitted unilaterally to determine on behalf of IP CTS users whether specific words or whole sections of conversations are critical to the users or mere pleasantries. The Commission's verbatim captioning requirement is intended to avoid empowering CAs to substitute their judgment for the judgment of the participants in an IP CTS call, which would be fundamentally inconsistent with Congress' mandate that TRS be functionally equivalent. *See* 47 U.S.C. § 225(a)(3) ("The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is *functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio*.") (emphasis added).

standards are mere suggestions to be disregarded at the option of a TRS provider in an effort to gain a competitive advantage over other, compliant TRS providers.

Please address any questions regarding the foregoing to the undersigned.

Sincerely,

/s/ Phil Marchesiello
Phil Marchesiello
Counsel to Ultratec, Inc.

EXHIBIT A

Missed Call Content

On this page you will find information about what to do when you have missed or didn't hear a portion of a call. This section will explain every scenario you may come across when missing content on calls that you receive. Although we strive for perfection, we understand that there may be portions of the call you miss or do not understand. If you follow these steps, we can better help our customers and improve on, not only ourselves but, their satisfaction as well.

1. Missing One or Two Words

2. Missing Whole Sections

Missing One of Two Words

When you come across a word or two that you don't quite understand or you don't hear, you should simply skip over to the next word and move on. Chances are there will be a few words in each call that you will not quite understand. When this happens skip over the words and keep going. **Do not** add any ellipsis (…). This will only draw attention to the area that was missed. Simply move on to the next word.

Missing Whole Sections

When you come across whole sections that you miss, you need to use a QuickWord. These QuickWords lists should be in every cubicle. In case the list is missing, the quickwords you use for missing portions are:

- **inaud – (Speaker is inaudible.)**

- **interbkd – (Loud background noises interfering with captioning.)**

- **muf – (Muffled audio.)**

- **nnout – (Audio is cutting in and out.)**

- **cntcap – (Unable to caption this portion of the call, we will remain on the line in case captioning is later required.)**

- **techdiff – (Due to technical difficulties captioning is temporarily unavailable.)**

- **sttc – (Static)**

EXHIBIT B

From: Robert Puzey
Sent: Monday, December 05, 2005 8:57 AM
To: Pat Nola; Michael Jordan; Joe Romriell
Subject: Captioned Telephone article

Positioning CapTel as having a "one or two second" delay. From the ground up, CapIP's system design must be focused on beating CapTel in minimizing this latency.

Comments Needed on Captioned Telephone

Deadline December 30, 2005!

Captioned telephone service has quickly become a preferred choice for phone communication by many people who are deaf and hard of hearing. Ultratec's CapTel is currently the only captioned telephone on the market. It offers the convenience of being able to use the CapTel phone to dial the number you want to call and speak for yourself. You can use your residual hearing to listen to the voice of the person you called, while reading a text display of what is being said with a delay of one or two seconds as backup if you do not understand the words being spoken. In addition, if you have a second telephone line, people who call you will automatically be connected to the captioning service.

Some states do not offer this service and others that offer it are limiting the number of people who are allowed to have it. NVRC believes this is a discriminatory practice; there are no such restrictions on other forms of relay service such as "traditional" TTY to voice/voice to TTY relay, IP relay, and Video Relay Service. The intent of the Americans with Disabilities Act's Title IV was to make telecommunications relay service as functionally equivalent as a call between two people who can hear. For a very large number of people with hearing loss, the captioned phone is the only option that meets this requirement.

The Federal Communications Commission (FCC) is now considering whether to require captioned telephone service throughout the United States.

NVRC was involved in working with 13 national consumer organizations who filed a petition on October 31, 2005, with the FCC, asking them to make captioned telephone service available to any person in any state. The FCC is now seeking the public's thoughts on this petition. The Commission wants to hear whether this is something that you feel should be mandated.

If you are you interested in seeing captioned telephone service become a permanent, full time service in all states in the U.S., send in your comments by December 30, 2005, when the first round of comments are due. If you wish to read a copy of the consumer coalition petition, it is available on Self Help for Hard of Hearing's website at http://www.hearingloss.org/html/fccpetition.html

It's easy to file comments by e-mail with these E-filing Instructions:

There are three ways to file a comment with the FCC.

The easiest way is to file comments that are brief (under a page in length):

1. Go to: http://gullfoss2.fcc.gov/ecfs/Upload/. When you get to that page, scroll down and click the circle next to "Telecommunications Relay Service Docket 03-123."

Plaintiffs' Trial Exhibit
3:13-cv-00346-bbc
EX. 545

Outside Counsel Only

CaptionCall057752

EX. 545_0001

2. Then scroll down again and click "continue." You will be brought to a page to fill in brief comments.

3. Type in your name, and address in the form provided.

4. In the section marked "Send a brief comment to FCC," tell the FCC whether you believe that captioned telephone service should be mandated. If you do believe it should be required in all states, briefly explain why. If you are in a state that presently does not have this service, you can note that as well.

The second way to file comments that are longer (more than a page):

1. Go to: http://gullfoss2.fcc.gov/ecfs/Upload/. On the left hand side, under "other comments," you will see the option to use "the expert version" to file comments for proceedings not listed on ECFS Express. Click that, which will take you to the main ECFS page.

2. On the right side of the screen, under ECFS Main Links, you will see an option that says "Submit a Filing." Click that. 3. Fill out the form, putting 03-123 as the proceeding (line #1). Note that while your name and address are required, having an attorney or law firm is not.

4. At the bottom, there is another box entitled "Send Comment Files to the FCC (Attachments)" To the right of that is a box entitled "browse." Browse to your computer files.

5. Click on the proper document, select a file type (e.g. Microsoft WORD) in the middle box, and click "Send Attached File."

6. If you have a second document to send, on the next page, you will be prompted to send additional documents or finish the transaction.

The third way to send comments to the FCC is by mail. You can mail your comments to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Please refer to CG Docket No. 03-123 on your comments if you send them in by paper. Because of mail delays, you may want to send your comments in around 2 weeks before the deadline.

If you miss the deadline of December 30, 2005, don't worry. The FCC will be accepting a second round of comments that are due by January 17, 2006. (Note that you can even submit comments if you miss that deadline, only you would need to write down "ex parte letter" on your filing if you file after January 17th.)

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