

December 29, 2014

**Via Electronic Filing**

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

*Re: Telecommunications Relay Service 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.*

Dear Ms. Dortch:

Sorenson Communications, Inc. and its affiliate CaptionCall, LLC (collectively “CaptionCall”), through undersigned counsel, submit this letter to supplement the record in these proceedings. As discussed in the Petition for Declaratory Ruling (“Petition”) that CaptionCall filed on November 19, 2014, a jury recently rendered a verdict in a lawsuit Ultratec filed against CaptionCall in the United States District Court for the Western District of Wisconsin. Among other things, Ultratec asserted that, by allowing customers to activate captions during a call, CaptionCall infringed Claim 8 of U.S. Patent No. 6,603,835 (the “’835 Patent”). Before trial, however, the district court concluded that CaptionCall does not infringe this claim in the normal operation of its system. Accordingly, the jury never reached this issue.

Though Ultratec failed in its initial challenge to CaptionCall’s feature that allows customers to turn captions on and off during a call, this issue is likely to arise again. Indeed, Ultratec continues to pursue patents related to the manual initiation of captions (*e.g.*, via a button that allows the customer to toggle captions on and off). Specifically, Ultratec recently filed another lawsuit against CaptionCall alleging infringement of recently issued U.S. Patent No. 8,908,838 (the “’838 Patent”), which is part of the same patent family as the ‘835 Patent. In addition to the ‘838 Patent, another of Ultratec’s pending applications in this family (U.S. Appl. No. 14/299,651) issued as a patent on December 23, 2014. Furthermore, Ultratec has received a Notice of Allowance and paid the issue fees for U.S. Patent Application No. 13/486,205, which will likely issue as a patent within the next month.

Unlike Claim 8 of the ‘835 patent, which covered only in-call initiation of captions, the claims of each of these new patents and applications cover initiation of captioning service either prior to or during the conversation. The claims in U.S. Appl. No. 13/486,205 also cover a process that allows a call assistant to generate corrections to the text stream.

These patents and applications are relevant to these proceedings for two reasons, if the relevant claims are ultimately deemed valid. First, Ultratec’s obligation to license its technology at reasonable rates—which the Petition asks the Commission to confirm—will include an obligation to license functionality that allows IP CTS users to initiate captioning before or during a call.

Second, as discussed in CaptionCall’s August 4, 2014 ex parte letter, the Commission’s rules currently require IP CTS providers to offer a “feature that is easily operable and requires only one step for the consumer to turn on captioning.”<sup>1</sup> Thus, if these claims are ultimately deemed valid, and if Ultratec refuses to license this feature at reasonable rates, then Ultratec’s competitors will have to decide between placing themselves in Ultratec’s patent-litigation crosshairs or knowingly violating the Commission’s rules.

Sincerely,

/s/

John T. Nakahata

*Counsel for CaptionCall, LLC*

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<sup>1</sup> Letter from John T. Nakahata, counsel to CaptionCall, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24; 03-123, at 1 n.1 (Aug. 4, 2014) (quoting 47 C.F.R. § 64.604(c)(10)(ii)).