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May 21, 2015

VIA ECFS

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

Re: Ex Parte Presentation Regarding CG Dkt. Nos. 03-123, 13-24

Dear Ms. Dortch:

On May 19, 2015, on behalf of Sorenson Communications, Inc. and CaptionCall, LLC (together, "CaptionCall"), Bruce Peterson of CaptionCall; John Nakahata and Walter Anderson of Harris, Wiltshire & Grannis LLP; and John Flynn, Doug Wilson, and I of Jenner & Block LLP met with Gregory Hlibok, Robert Aldrich, Elliot Greenwald, and Caitlin Vogus of the Federal Communication Commission's ("FCC" or "Commission") Consumer and Governmental Affairs Bureau, Disability Rights Office.

During the meeting, CaptionCall's representatives discussed CaptionCall's Petition for a Declaratory Ruling that concerning the obligation of Ultratec Inc. ("Ultratec") to license its IP CTS-related technologies to all FCC-certified IP CTS providers at reasonable rates,[1] as well as the recent stay granted in one of the pending patent litigations between CaptionCall and Ultratec.[2] The presentation addressed three main points:

First, the only logical reading of the Commission's 2007 Declaratory Ruling requires Ultratec to license its captioned phone technologies to CaptionCall and any other FCC-certified providers.[3] Any other reading would undermine the core purpose of the 2007 Ruling and would leave Ultratec as the unilateral decision-maker with respect to which companies will be permitted to participate in the IP CTS market and on what

[1] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service, Petition for Declaratory Ruling of Sorenson Communications, Inc. and CaptionCall, LLC to Ensure Competition in Internet Protocol Captioned Telephone Service*, CG Dkt. Nos. 03-123, 13-24 (filed on Nov. 19, 2014) ("Petition").

[2] *Ultratec, Inc. v. Sorenson Commc'ns, Inc.*, Opinion and Order, Case No. 13-cv-346-bbc (W.D. Wis. May 13, 2015).

[3] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, 22 FCC Rcd 379, ¶ 24 ("2007 Declaratory Ruling").

terms. This common sense reading is consistent with the text of the Ruling and was explicitly confirmed in the Chairman's accompanying statement and the Commission's accompanying press release.[4]

Second, CaptionCall's representatives explained that the recent stay order in one of the pending patent lawsuits between Ultratec and CaptionCall does not moot CaptionCall's Petition. While the stay order issued by the United States District Court removed the immediate threat of an injunction in that case against CaptionCall's provision of IP CTS services to new customers, Ultratec persists in seeking injunctive relief in another of its cases against CaptionCall, which is *not* stayed.[5] That case is currently scheduled for trial in September 2015. Without clarification from the Commission that Ultratec must license any valid patents at reasonable rates, CaptionCall remains under the threat of an injunction in a matter of months should Ultratec prevail in that case. Moreover, this threat likely will remain even after the current suits are resolved. Ultratec continues to prosecute additional IP CTS-related patents and apparently has made the business decision to attempt to drive CaptionCall out of the market rather than compete with it.[6]

Third, the Commission can provide the requested relief as to the scope of the duty it imposed on Ultratec in 2007 without becoming the arbiter of what constitutes reasonable terms with respect to any given patent or set of patents. The parties and, if necessary, the courts will determine what patents are valid, whether they are infringed, and the terms of any required licensing agreements. The Commission need only confirm that, under the 2007 Declaratory Ruling, Ultratec is required to license its captioned telephone technologies to all other certified IP CTS providers at reasonable rates.

CaptionCall appreciates the opportunity to speak with the Commission's staff regarding its Petition.

Sincerely,

Michael B. DeSanctis
Counsel for CaptionCall, LLC

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[4] Statement of Chairman Kevin J. Martin, *Re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service* CG Dkt. No. 03-123 (Dec. 20, 2006); Internet Protocol Captioned Telephone Service Eligible for Compensation from the Interstate TRS Fund, (News Release), released December 20, 2006.

[5] *Ultratec, Inc. v. Sorenson Commc'ns, Inc.*, Case No. 14-cv-066-jdp (W.D. Wis.). In this case, unlike the other suits, there are no currently pending IPR proceedings before the Patent Trial and Appeal Board regarding the validity of the underlying patents.

[6] Nor is this issue limited to CaptionCall. The FCC's end-point reference platform may also encounter similar barriers to using patented technologies.

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