

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Telecommunications Relay Services and |) | CG Docket No. 03-123 |
| Speech-to-Speech Services for Individuals with |) | |
| Hearing and Speech Disabilities |) | |
| |) | |
| Structure and Practice of the Video Relay Service |) | CG Docket No. 10-51 |
| Program |) | |
| |) | |
| Interstate Telecommunications Relay Services Fund |) | |
| Payment Formula and Fund Size Estimate for the |) | |
| July 2015 Through June 2016 Fund Year |) | |

To: Secretary, FCC
For: Chief, Consumer & Governmental Affairs Bureau

REPLY COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these reply comments in response to the *Public Notice* (“*Notice*”) issued by the Consumer & Governmental Affairs Bureau (“Bureau”) in the above-captioned proceedings.¹ In the *Notice*, the Bureau seeks comment on the compensation rates for various forms of interstate Telecommunications Relay Services (“TRS”) for the period beginning July 1, 2015 through June 30, 2016. The proposed TRS compensation rates were submitted by the interstate TRS Fund Administrator (“Administrator”) in its April 24, 2015 filing (“*2015 TRS Rate Filing*”), as supplemented on May 1, 2015.²

¹ *Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2015-2016 Fund Year*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 15-612 (rel. May 20, 2015) (“*Notice*”).

² See *Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for July 2015 Through June 2016*, CG Docket Nos. 03-123, 10-51 (filed Apr. 24, 2015) (“*2015 TRS Rate Filing*”); Supplemental Filing, CG Docket Nos. 03-123, 10-51 (filed May 1, 2015).

I. The MARS Rate Should Be Adopted for IP CTS

As noted in Hamilton's initial comments in this proceeding, the Multi-state Average Rate Structure ("MARS") has been used by the Commission since 2007 to calculate interstate compensation rates for traditional TRS, Speech-to-Speech, Captioned Telephone Services ("CTS"), and Internet Protocol CTS ("IP CTS").³ Each year MARS has produced rates that reasonably compensate providers for these services based on an average of competitively bid state relay rates.

Sprint also supports the use of MARS for these services.⁴ As Sprint aptly notes, "there is no reason to develop other rate methodologies that can do no better than artificially replicate the market-based rates already established under the MARS plan."⁵ Hamilton agrees. As noted in Hamilton's comments, MARS offers the following benefits:

- Consistency, reliability and predictability: Since its adoption in 2007, the MARS rate has increased at less than the average annual CPI increase.⁶
- Administrative efficiency: MARS permits the Administrator to calculate annual rates in an efficient manner based on an average of intrastate rate information provided by the state TRS programs regulated by the Commission.
- Rates based on competition: The Commission has frequently cited its preference for using competition to derive rates, rather than using artificial tools to derive rates that only approximate market-based rates.

³ Comments of Hamilton Comments Relay, Inc., CG Docket Nos. 03-123, 10-51, at 2-3 (filed June 4, 2015) ("Hamilton Comments").

⁴ Comments of Sprint Corporation, CG Docket Nos. 03-123, 10-52, at 2 (filed June 4, 2015) ("Sprint Comments").

⁵ *Id.* Sprint also recommends that the MARS plan be adopted for IP Relay. *Id.* Although Hamilton no longer provides IP Relay, Hamilton notes that it frequently advocated for the adoption of a MARS rate for IP Relay prior to Hamilton's exit from the IP Relay market in 2013 largely due to unsustainably low compensation rates. *See, e.g.*, Hamilton Ex Parte Filing, CG Docket Nos. 03-123, 12-38, at 2 (filed Mar. 15, 2012); Hamilton Ex Parte Filing, CG Docket No. 03-123, at 1-2 (filed June 15, 2007); Comments of Hamilton Relay, Inc., CG Docket No. 03-123, at 4 (filed May 16, 2007).

⁶ *See* Hamilton Comments at 4-5.

- Reasonable compensation at sustainable rates: MARS avoids the massive rate fluctuations that other methodologies may produce and consistently derives rates that are sustainable.

The only commenters that oppose the use of MARS for IP CTS are IDT Telecom, Inc. (“IDT”), a contributor to the interstate TRS Fund,⁷ and Sorenson Communications, Inc. and its affiliate, CaptionCall, LLC (collectively “Sorenson”),⁸ which has proposed a price cap plan for IP CTS in lieu of MARS. However, as explained below, IDT’s concerns with MARS are misplaced. In addition, for the reasons cited in Hamilton’s comments and in its reply comments below, the Commission should reject Sorenson’s price cap proposal for IP CTS. Moreover, this annual TRS rate proceeding is not the proper forum for resolving some of the concerns raised by IDT.

II. No Provider Supports the Adoption of IDT’s Cost-Plus Alternative to MARS, and Its Adoption in this Proceeding Would Be Irrational

In its comments, Hamilton opposed the adoption of a cost-plus or rate-of-return methodology for IP CTS, such as the methodology advocated by IDT.⁹ Other relay providers agree. Sprint notes that the cost-plus approach “unquestionably would not reflect the *true* costs of providing service.”¹⁰ As Hamilton has explained, labor costs associated with specialized communications assistant employees have been, and remain, the principle driver of costs in the TRS industry.¹¹ A traditional rate-of-return methodology fails to reflect the costs of IP CTS

⁷ Comments of IDT Telecom, Inc., CG Docket Nos. 03-123, 10-51, at 4 (filed June 4, 2015) (“IDT Comments”).

⁸ Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24, 10-51, 03-123, at 5-8 (filed June 4, 2015) (“Sorenson Comments”).

⁹ Hamilton Comments at 2, 7-9.

¹⁰ Sprint Comments at 2.

¹¹ Hamilton Comments at 5.

providers because it emphasizes capital over labor.¹² Sorenson observed that the Commission has determined that rate-of-return compensation “does not make sense for most of the telecommunications industry” and “even less sense for TRS, all forms of which are uniformly labor – not – capital intensive.”¹³ Moreover, traditional rate-of-return methodology fails to compensate providers for the types of capital investments that would drive innovation and efficiency in the field, such as research and development.¹⁴ Hamilton agrees with the Consumer Groups that conducting research and development facilitates better service.¹⁵ Unlike the rate-of-return methodology, MARS recognizes the full costs of IP CTS providers.

Only IDT supports the adoption of the cost-plus alternative approach, but IDT makes clear that its concern is not so much the rate for IP CTS as the effect that the rate would have *when combined with the projected minutes of use of IP CTS*. The MARS rate is not used to derive projected minutes of use – that is a separate factor compiled by the Administrator based on industry demand projections.¹⁶

Nonetheless, the Administrator deemed the IP CTS demand forecast to be “reasonably valid,” with demand affected by a number of factors. According to the Administrator, “[T]he most significant among those factors is the entry of an additional service provider, who

¹² Hamilton Comments at 7; Sorenson Comments at 6.

¹³ Sorenson Comments at 6.

¹⁴ *Id.* at 7; *see also* Joint Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al., CG Docket Nos. 03-123, 10-51, at 5 (filed June 4, 2015) (“Consumer Group Comments”) (observing that research and development is an “inherent and essential cost for any technologically-based company”).

¹⁵ Consumer Group Comments at 5 (“Telecommunications companies are compelled to conduct research and development, not only as a means of remaining competitive in an ever-evolving market, but also to facilitate improved service to their customers.”).

¹⁶ *See 2015 TRS Rate Filing* at 26-27.

aggressively expanded its market share over each of the past several years, the introduction of additional regulations, and litigation regarding those additional regulations.”¹⁷

Importantly, none of these factors has anything to do with MARS. As Sprint notes, there is “no evidence in the record that the MARS methodology is driving unwarranted growth in IP CTS usage or leading to inefficiencies.”¹⁸ Hamilton agrees. The factors that are driving IP CTS demand growth are completely extraneous to the MARS methodology or to the rate calculated using this methodology. Therefore, it would be arbitrary and capricious for the Commission to conclude that, in order to reign in projected IP CTS demand, it must abandon the MARS methodology in favor of a cost-plus methodology that would produce a lower compensation rate for IP CTS providers.

III. The Commission Cannot Rationally Adopt Sorenson’s Proposed Price Cap Plan for IP CTS

The Commission should not adopt Sorenson’s Proposed Price Cap proposal because it a) would rely on regulation, rather than the open market, to set rates; b) risks producing the same decimation in the IP CTS market as was experienced in the IP Relay market; c) is not based on any rational formula or methodology which accounts for labor intensive relay costs; and d) is intended to impermissibly shift TRS funds from one form of TRS to another.¹⁹ Like Hamilton, all other IP CTS providers have opposed Sorenson’s efforts to change the IP CTS rate

¹⁷ *Id.* at 27.

¹⁸ Sprint Comments at 2.

¹⁹ See Sorenson Comments at 8 (observing that its price cap proposal would conveniently lower the aggregate IP CTS expenditure by an amount sufficient to cover the amount in increased Video Relay Services (“VRS”) expenditure proposed by the Joint Provider Proposal for VRS, of which Sorenson is a party).

methodology from the predictability of MARS to the irrationality of cost-based or price cap rate regulation.²⁰

Unlike the direct MARS method, which relies on competitively bid intrastate CTS rates, price cap ratemaking introduces complexities such as *ad hoc* efficiency factors and exogenous cost adjustments. Further, Sorenson’s proposal relies on an arbitrary “X-factor” that inherently is a guess regarding whether there will be efficiency gains and, if so, at what level.²¹ The Commission’s recent experiences with such an efficiency factor in the IP Relay context should give all stakeholders pause about adopting a price cap formula for IP CTS. Specifically, in 2007 the Commission adopted a 0.5% efficiency factor for IP Relay.²² In 2013, the efficiency factor increased suddenly to 6.0%.²³ This overnight change to the efficiency factor was largely responsible for the market exit of all but the remaining IP Relay provider. On reconsideration,

²⁰ See, e.g., Hamilton Comments at 10-12; Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 13-24, at 1-10 (filed Nov. 4, 2013); Reply Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 13-24, at 3-10 (filed Dec. 4, 2013); Comments of Purple Communications, Inc., CG Docket Nos. 03-123, 13-24, at 1-5 (filed Nov. 4, 2013); Reply Comments of Sprint Corporation, CG Docket Nos. 03-123, 13-24, at 2-4 (filed Dec. 4, 2013); see also Comments of Hamilton Relay, Inc. on Sorenson Petition for Rulemaking, CG Docket Nos. 03-123, 13-24 (filed Mar. 25, 2013); Hamilton Ex Parte Letter, CG Docket Nos. 03-123, 10-51, 13-24 (filed May 2, 2013); Opposition of Miracom USA, Inc. to Petition for Rulemaking, CG Docket Nos. 03-123, 13-24, at 2-7 (filed May 10, 2013). Even Sorenson opposes the introduction of a price cap formula if the initialized rate is based on a cost-of-service calculation that includes only a subset of providers’ actual costs. See Sorenson Comments at 6-8; Reply Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 03-123, 13-24, at 4 (filed Dec. 4, 2013).

²¹ Sorenson Comments at 5 (suggesting the Commission adopt a “0.5% X-factor”).

²² *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20159-60 ¶ 43 (2007) (“2007 Order”).

²³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 28 FCC Rcd 9219, 9224-25 ¶¶ 18-20 (CGB 2013) (“2013 Rate Order”).

the efficiency factor was reduced to 0% in 2014,²⁴ but by then the damage had been done. In addition to these major adjustments to the IP Relay efficiency factor, the compensation rate for IP Relay was substantially altered on several occasions recently further demonstrating the unpredictability and corresponding debilitating effect of a price cap methodology.²⁵ These dramatic fluctuations in the IP Relay rate, caused by the need for retroactive ratemaking (which has never occurred with MARS) and the need for significant adjustments to the efficiency factor, are demonstrative of the inherent problems with using non-market based tools to calculate compensation TRS rates.

In addition, rather than let the base rate float according to the market, Sorenson proposes to fix rates at an unrealistically low level for five years based on average rates from seven, six, and five years ago – before the transition from CTS to IP CTS and before recent increases in labor costs.²⁶ As explained above, Sorenson opposes a rate-of-return methodology because, among other reasons, such an approach fails to account for the labor intensity of providing high

²⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 29 FCC Rcd 8044, 8051 ¶ 18 (CGB 2014) (“2014 Rate Order”).

²⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 27 FCC Rcd 7150, 7154 ¶ 10 (CGB 2012) (setting a rate of \$1.2855); *2013 Rate Order*, 28 FCC Rcd at 9225 ¶ 20 (lowering the rate nearly 22% to \$1.0147); *2014 Rate Order*, 29 FCC Rcd at 8052 ¶ 19 (retroactively increasing the rate to \$1.0309 for two months in 2013, and then to \$1.0607 for the period September 1, 2013 to June 30, 2015); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, 16278 ¶ 12 (CGB 2014) (increasing the IP Relay rate on an interim basis to \$1.37 for the remainder of the 2014-2015 fund year, but with a separate rate of \$1.67 for any monthly minutes in excess of 300,000, representing a mid-year increase of anywhere from 32% to 61% in the IP Relay rate).

²⁶ Sorenson Comments at 5; *id.* at n.10 (“CaptionCall’s proposal based its \$1.6766 calculation on the average MARS-based rates from 2008, 2009, and 2010....”).

quality IP CTS²⁷ – and labor costs which change over time. Even so, Sorenson suggests that holding its preferred base rate for five years will “avoid the catastrophic consequences that occurred after the Commission reset the IP Relay rate at unsustainably low levels only three years after it adopted an IP Relay price cap.”²⁸ Adopting an *initially* unrealistic rate for the next five years will do just as much damage.

Moreover, it would be impermissible for the Commission to adopt Sorenson’s price cap approach for the purpose of reducing overall spending on IP CTS to fund requested increases in VRS rates as implicitly proposed by Sorenson.²⁹ Section 225 of the Communications Act³⁰ does not contemplate or sanction this kind of transparent, ledger-shifting. Instead, Congress required the rate for each form of TRS to be reasonable standing alone, and the Commission’s TRS precedent supports this objective.³¹ Consumers should be free to utilize the type of TRS that meets their individual needs, which, in turn, will cause the market to determine how much of the TRS Fund is directed to particular types of TRS. The Commission should not attempt to substitute its judgment here by using the ratemaking process to favor one type of TRS over another.

²⁷ See *supra* Section II.

²⁸ *Id.* at 5.

²⁹ See *supra* note 20.

³⁰ See 47 U.S.C. § 225.

³¹ See *2007 Order*, 22 FCC Rcd at 20144 ¶ 4 (“Section 225 creates a cost recovery regime whereby providers of TRS are compensated for their costs of providing TRS.”); see also *id.* at 20144 ¶ 5 (explaining that a rate for particular TRS form is “not a ‘price’ that is charged to, and paid by, a service user, but rather is a settlement mechanism to ensure that providers are compensated from the Fund *for their reasonable actual costs of providing service.*”) (emphasis added).

IV. COMPTTEL and IDT Have Raised Issues that Are Beyond the Scope of this Proceeding

The requests by COMPEL and IDT to examine line-item billing and to initiate a rulemaking on the jurisdictional separation of the TRS Fund, respectively, are beyond the scope of this proceeding.³² In the *Notice*, the Commission sought comment on particular issues related to the “provider compensation rates, funding requirement, and carrier contribution factor” as proposed by the Administrator.³³ Issues concerning requests for line-item billing on customer bills are outside the scope of the *Notice* and are not appropriately considered in this proceeding.

The Commission should disregard requests to change the TRS funding mechanism and to delay the approval of the TRS Fund budget for the upcoming year. In particular, IDT objects to the current method of calculating and assessing the proposed budget and contribution factor “because both are calculated, in part, based on funding intrastate IP Relay and IP CTS from interstate and international revenue and not from intrastate revenue.”³⁴ The Commission rightly dismissed such a request in last year’s TRS ratemaking proceeding³⁵ and should do so again this year. As the Commission and IDT observed, IDT’s Petition for Rulemaking and the Ad Hoc Coalition of International Telecommunications Companies’ own Petition for Rulemaking and Application for Review remain pending.³⁶ Any issues concerning the jurisdictional separation of the TRS Fund are properly addressed in the Commission’s proceedings related to those rulemaking petitions. Moreover, the Commission should dismiss IDT’s requests to adopt an interim TRS budget for the upcoming fund year or otherwise delay adopting a budget for the full

³² Comments of COMPTTEL, CG Docket Nos. 03-123, 10-51, at 3-8 (June 4, 2015); IDT Comments at 18-20.

³³ *Notice* at 1.

³⁴ IDT Comments at 6.

³⁵ *2014 Rate Order*, 29 FCC Rcd at 8054 n.70.

³⁶ *Id.*; IDT Comments at 19-20.

year,³⁷ as doing so would violate Commission rules.³⁸ Under no circumstances should the Commission jeopardize TRS services by delaying the approval and implementation of the upcoming TRS fund year budget and contribution factor.

V. Conclusion

Hamilton supports the adoption of MARS-based rates for traditional TRS, STS, CTS and IP CTS for the July 1, 2015-June 30, 2016 funding year. Further, Hamilton objects to any shift in the IP CTS rate methodology in this proceeding. Any such change away from the MARS methodology would be premature and is unwarranted.

Respectfully submitted,

HAMILTON RELAY, INC.

/s/ David A. O'Connor

David A. O'Connor
Rachel S. Wolkowitz
Wilkinson Barker Knauer, LLP
2300 N Street NW, Suite 700
Washington, DC 20037
Tel: 202.783.4141
Its Counsel

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³⁷ IDT Comments at 18-19.

³⁸ 47 C.F.R. § 64.604(c)(5)(iii)(H) (“TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1.”).