Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)))	CG Docket No. 03-123
	)	
Structure and Practice of the Video Relay Service Program	))	CG Docket No. 10-51
	)	
Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the July 2016 Through June 2017 Fund Year	)))	

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

COMMENTS OF HAMILTON RELAY, INC.

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TABLE OF CONTENTS

SUMMARY

Hamilton Relay, Inc. ("Hamilton") appreciates the opportunity to file these comments in response to the TRS Fund Administrator's proposed compensation rates for the 2016-2017 funding year. As discussed in the comments below, Hamilton supports the continued use of MARS-based rates for traditional TRS, Speech-to-Speech, Captioned Telephone Service ("CTS"), and IP CTS for the July 1, 2016-June 30, 2017 funding year.

Hamilton supports MARS because it is a superior rate methodology that has proven over time to be the most effective and reliable TRS rate mechanism ever adopted by the Commission. MARS is free from the problems that have plagued other attempted rate methodologies for TRS, including price cap plans and cost-based, rate-of-return methodologies. A departure from MARS would not only be unwarranted but also premature at this time, as explained in the comments. Rather than focusing on harmful rate cuts that have been opposed by consumer groups, the Commission should instead focus on implementing GAO-recommended compliance measurements and provider-led innovations in providing relay services. These efforts should include the adoption of clearly defined, measurable standards for IP CTS, including answer speed, captioning accuracy standards, and verbatim transcribing.

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Hamilton Relay, Inc. ("Hamilton"), by its counsel, submits these comments in response to the *Public Notice* ("*Notice*") issued by the Commission's Consumer and 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, 2016 through June 30, 2017. The proposed TRS compensation rates were submitted by the interstate TRS Fund Administrator ("Administrator") in its April 29, 2016 filing ("*2016 TRS Rate Filing*").[2]

As discussed below, Hamilton supports the Administrator's proposed rates for traditional TRS and Speech-to-Speech ("STS") services, including the proposed additional per-minute

[1] *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2016-17 Fund Year*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 16-518 (rel. May 9, 2016) ("*Notice*").
[2] *See* Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed Apr. 29, 2016) ("*2016 TRS Rate Filing*").

amount for STS outreach. In addition, Hamilton supports the proposed rates for interstate Captioned Telephone Service ("CTS") and Internet Protocol Captioned Telephone Service ("IP CTS").[3] Hamilton also supports the Administrator's proposal to incorporate demand for the final two months of the 2015-2016 funding year, which will be paid for during the 2016-2017 funding year, and the proposal for the payment reserve to remain at two average months.[4]

Hamilton opposes the Administrator's proposed alternative IP CTS reimbursement calculations. Rather than focusing on harmful rate reductions, Hamilton believes the Commission should focus on improving its compliance measurements, as recommended by the Government Accountability Office ("GAO"), and on encouraging provider-led innovations in relay services. In addition, Hamilton notes that all IP CTS providers now uniformly oppose any move away from the current competitively-based rate methodology. The Administrator's proposed alternative rate approach, which has been suggested in the past, lacks any credible support in the record. Moreover, any change to the IP CTS compensation methodology would be premature and unwarranted at this time, as further described below.

I. Hamilton Supports the Proposed MARS Rates for Traditional TRS, STS, CTS, and IP CTS

Since 2007, the Commission has used a weighted average of state TRS rates to calculate the Multi-state Average Rate Structure ("MARS") compensation rates for interstate traditional TRS and STS, and a weighted average of state CTS rates to calculate the MARS compensation

[3] Hamilton does not offer Video Relay Services ("VRS") or IP Relay, and therefore is not commenting on the proposed rates for those services, other than to note that a proposed rate of $1.2122 for IP Relay, which is approximately 16 cents per minutes less than the 2015-2016 rate, is not a sustainable rate for the service and serves as a strong disincentive for Hamilton (and likely other former IP Relay providers) to begin offering the service again.
[4] *2016 TRS Rate Filing*, at 38-39.

rates for interstate CTS and IP CTS.[5] Hamilton supports the continued use of MARS for these services because MARS: a) is administratively efficient; b) is a competitively-based rate methodology; c) provides regulatory certainty to the industry (with only a 0.8% proposed increase in the CTS/IP CTS rate this year, a modest increase by any definition); d) provides reasonable cost reimbursements to TRS providers at sustainable rates; and e) has proven, year after year, to be the most stable rate methodology ever adopted by the Commission for TRS, with only modest annual increases principally related to rising labor costs. No other rate methodology offers these benefits, and the record lacks any sound support for a Commission decision to abandon competitively-based rate methodologies in favor of proxy models. Other methodologies suffer from irreparable flaws, mainly because they artificially attempt to mimic the results of competition, whereas MARS is fundamentally based on them.

For these reasons, Hamilton supports the adoption of the Administrator's proposed MARS-based rate of $2.6245 per conversation minute for interstate traditional TRS and STS, with the Administrator's recommended addition of $1.131 per conversation minute for STS outreach.[6] Similarly, Hamilton supports the Administrator's proposed rate of $1.9058 per conversation minute for interstate CTS and IP CTS.

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[5] *See Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) ("*2007 Order*").

[6] *2016 TRS Rate Filing*, at 17-18. Hamilton welcomes Commission guidance on how or whether to allocate the outreach allocation between intrastate and interstate jurisdictions, recognizing that an STS provider does not always know how much of an outreach effort will impact intrastate or interstate minutes.

II. The IP CTS Rate for 2016-2017 Should Be Adopted Using the MARS Formula

The Administrator's proposed rate of $1.9058 for interstate CTS/IP CTS compensation is based on the MARS formula, consistent with the formula adopted by the Commission in 2007.[7] Hamilton agrees with the Administrator's characterization of the proposed rate as a "modest $0.0163 increase" from the current rate.[8] Indeed, the proposed rate for 2016-2017 is only 0.8% higher than the approved 2015-2016 rate, which can only be characterized as a minor, even *de minimis* increase. Moreover, a 0.8% increase is notably less than the previously approved 3.8% increase from 2014-2015 to 2015-2016. Hamilton agrees that MARS has produced a rational and reasonable reimbursement rate for CTS and IP CTS, and recommends adoption of the proposed rate for the 2016-2017 funding year. As explained below, MARS is superior to other rate methodologies such as the Administrator's cost-based alternatives.

A. <u>MARS Is a Superior Rate Methodology</u>

As Hamilton has explained previously, the Commission should continue to rely on MARS for IP CTS.[9] MARS is far superior to a cost-based mechanism. Because MARS relies on CTS providers' competitive bids at the state level, and because the costs for providing CTS accurately reflect the reasonable actual costs of providing IP CTS, MARS best reflects the market price for captioned relay services – the lowest price consistent with recouping providers' reasonable costs.[10] Providers bidding in an open market environment have both the incentive

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[7] *Id.* at 17.
[8] *Id.*
[9] *See, e.g.*, 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 1-9 (filed Dec. 4, 2013); Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 6-10 (filed May 23, 2014); Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 4-9 (filed June 4, 2015).
[10] The Administrator suggests that that the Commission in 2007 decided to reimburse IP CTS at the same rate as CTS because "there was a lack of data for IP CTS." *2016 TRS Rate Filing*, at (continued)…

and the ability to ensure that their bids reflect all relevant shifts in cost, and to formulate bids accordingly, in order that they may offer the most competitive price possible that will still recoup their costs. Under MARS there is no incentive for providers to overestimate costs, because they are unlikely to be the successful bidder if they do.[11] Thus, if costs fall, providers have every incentive to bid lower rates and to win business at the state level, which would, in turn, reduce MARS rates. This is the fundamental premise of market competition: Providers will seek to win market share by reducing their prices to beat out competitors' prices, so long as they can do so while recouping their costs.

B. The MARS Rate Has Kept Pace with the Consumer Price Index

The annual increase over the entire time the MARS rate has been in effect for CTS and IP CTS has averaged only 1.766%, or approximately 3 cents a year (see chart below). The difference between this average annual increase and the average annual increase of the Consumer Price Index -- 1.688% for the same period -- is not statistically significant.[12] Annual changes in the rate are summarized by the following chart:

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14. That is not correct. The Commission affirmatively selected the CTS MARS rate for IP CTS because it "believe[s] that the cost recovery rate for CTS will more accurately reflect the reasonable actual costs of providing IP CTS. As a result, [the Commission] will compensate IP CTS at the CTS MARS rate." *2007 Order*, ¶ 38. The record to date shows that the costs of providing CTS and IP CTS are virtually the same, given that providers use the same Communications Assistants ("CAs") for both CTS and IP CTS. Because labor is the most significant cost of providing CTS and IP CTS, and because both services use essentially the same infrastructure, the service costs are virtually the same. To the extent that the Commission disagrees with its previous finding that the cost recovery rate for CTS accurately reflects the reasonable actual costs of providing IP CTS, it should initiate a rulemaking proceeding to permit comment on these issues prior to altering the IP CTS rate methodology without a supporting record.

[11] In contrast, there is every incentive over time for providers to overestimate projected costs under non-MARS rate methodologies.

[12] *See* Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: U.S. City Average, All Items 2008-2015 average (latest annual figures available), available at http://data.bls.gov/pdq/SurveyOutputServlet?request_action=wh&graph_name=CU_cpibrief (continued)…

Year	CTS/IP CTS MARS Rate	Increase	% change
2008-09	$1.6569		
2009-10	$1.6778	$0.0209	1.26%
2010-11	$1.6951	$0.0173	1.03%
2011-12	$1.763	$0.0679	4.01%
2012-13	$1.773	$0.01	0.57%
2013-14	$1.7877	$0.0147	0.83%
2014-15	$1.8205	$0.0328	1.83%
2015-16	$1.8895	$0.069	3.8%
2016-17 (proposed)	$1.9058	$0.0163	0.8%
Average		$.0311	1.766%

The Administrator has repeatedly recognized that such minor annual increases are "modest."[13] Indeed, the proposed increase this year is slightly more than a penny. These modest, stable increases are almost entirely the result of unavoidable increases in labor costs. The labor costs associated with specialized communications assistant ("CA") employees have been (and remain) the principal driver of costs in the TRS industry. Despite these rising labor costs, the MARS IP CTS rate has remained remarkably steady and predictable. Tellingly, the Commission has never found it necessary to retroactively adjust any MARS rate, despite reserving the right to do so.[14]

C. <u>The Commission Should Not Adopt an IP CTS Rate Based on the Projected Costs Calculated by the Administrator</u>

The *Notice* indicates that the Commission has an open rulemaking "to consider whether to adopt a different compensation rate methodology for IP CTS, such as a calculation method

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(last visited May 10, 2016). The data show that annual CPI increases between 2008 and 2015 were 3.8%, -0.4%, 1.6%, 3.2%, 2.1%, 1.5%, 1.6%, and 0.1%, respectively, thus averaging 1.688% over that period.

[13] *2016 TRS Rate Filing*, at 19; *2015 TRS Rate Filing*, at 17; *2014 TRS Rate Filing*, at 13.

[14] *2007 Order*, 22 FCC Rcd at 20151 ¶¶ 21, 35 & nn. 86, 106. In contrast, the Commission has found it necessary to retroactively adjust the rates for VRS and IP Relay. *See* discussion *infra* Section II.D.

based on providers' actual and projected costs."[15] Using provider-submitted cost data, the Administrator has calculated two alternative IP CTS rates.[16] The *Notice* indicates that since 2011 the Administrator has been requesting and compiling data on IP CTS costs, consistent with the annual provider data requests for IP Relay and VRS services, and reporting the provider reported IP CTS costs in the Administrator's annual report. The Commission seeks comment on whether the Administrator has correctly calculated the average projected costs for IP CTS.[17]

Hamilton has been providing the Administrator with annual data on its IP CTS costs using a form that is also used for IP Relay and VRS, using the same cost categories for all three services. However, there are inherent problems with relying on that data.

As an initial matter, neither the Administrator nor the Commission has ever sought public comment on whether the cost of providing IP CTS is similar to IP Relay and VRS, and thus whether the cost categories on the Administrator's form accurately capture all IP CTS provider costs. Nor has the public been afforded an opportunity to comment on what costs should be deemed reasonable in providing IP CTS.[18] Hamilton notes that the differences between IP CTS, IP Relay and VRS, in terms of how the services are provisioned, how customers interact with the services, and the technology used, are significant. Therefore, Hamilton questions the accuracy of using IP Relay or VRS cost categories for IP CTS. Until the Commission analyzes appropriate cost categories for IP CTS, and provides the public with an opportunity for notice and comment on those proposed cost categories, it remains unknown whether the data gathered by the

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[15] *Notice* at 2.
[16] *2016 TRS Rate Filing* at 20-21.
[17] *Notice* at 2.
[18] For example, research and development costs, marketing costs, and equipment costs are all potentially reasonable costs for consideration with IP CTS, even though those costs have been excluded from VRS rate calculations. *See 2007 Order*, 22 FCC Rcd 20170-71 ¶ 82.

Administrator would produce an accurate assessment of IP CTS providers' true costs of providing the service.

In addition, the Administrator's data request forms do not bear an OMB Control Number, and there is no indication in the record that the Administrator's forms have ever been approved as an information collection by the Office of Management and Budget ("OMB"), which raises serious questions about any reliance on the data collected in the forms, in light of the OMB approval requirements under the Paperwork Reduction Act of 1995.[19]

Finally, Hamilton is unable to verify whether the Administrator has correctly calculated the providers' projected costs because Hamilton lacks information as to how any provider's cost data was used, even its own.[20] For these reasons, Hamilton objects to any use of the Administrator's proposed alternative rates for the 2016-2017 funding year, and it objects to any assumption that projected costs captured on the Administrator's form can be used to derive a rational reimbursement rate for IP CTS.

D. The Administrator's Proposed Alternative Methodologies Would Lead to Unpredictable Rates with Potentially Massive Changes Each Year

The superior benefits of MARS are clear when compared to the negative unintended consequences that have plagued other TRS ratemaking methodologies. For example, despite Commission efforts to stabilize VRS rates, the Commission found it necessary earlier this year to re-visit the VRS rates established only a short time ago.[21] These frequent rate changes have real-

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[19] 44 U.S.C. ch. 35; *see also* 5 C.F.R. Part 1320.

[20] In addition, the information provided by the Administrator in Exhibit 1-4 does not provide sufficient insight into how the Administrator calculated the alternative rate proposals. *See 2016 TRS Rate Filing*, Exh. 1-4.

[21] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 31 FCC Rcd 2339 (rel. Mar. 3, 2016); *see also* Joint Proposal of ASL Services Holdings, LLC et al. for Improving Functional Equivalence and Stabilizing Rates, CG Docket (continued)…

world consequences. As consumer groups have noted, unstable rate policies have the potential to harm consumers and interpreters.[22]

The price-cap approach applied to IP Relay services has not fared any better, and has resulted in wildly unpredictable rates. In June 2013, the IP Relay rate dropped dramatically, from $1.2855[23] to $1.0147, a nearly 22% reduction, prompting most providers to exit the market.[24] In June 2014, the rate was retroactively increased from $1.0147 to $1.0309 for two months in 2013, and then to $1.0607 for the period September 1, 2013 to June 30, 2015.[25] Less than six months later, following the market exit of another IP Relay provider, and in an effort to entice the one remaining provider to continue offering IP Relay services at all, the Bureau increased 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] These unpredictable rate problems will continue into the 2016-2017 funding year, with the Administrator proposing a nearly 12% decrease in the IP Relay rate beginning July 1, 2016.[27]

Nos. 03-123, 10-51, at 7 (filed Apr. 9, 2015) (noting that a "stable rate environment is necessary to support investments in service innovation and improvements").

[22] Telecommunications for the Deaf and Hard of Hearing, Inc. et al., Ex Parte Letter, at 1 (filed May 18, 2015) (expressing "concerns about the quality of VRS if rate cuts continue and stress[ing] that consumers and interpreters should not have to bear the burden of a rate cut that directly impacts quality.").

[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, 27 FCC Rcd 7150, ¶ 10 (CGB 2012).

[24] *2013 Rate Order* ¶ 20.

[25] *2014 Rate Order* ¶ 19.

[26] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, ¶ 12 (CGB 2014).

[27] *2016 TRS Rate Filing*, at 23.

These dramatic fluctuations in the IP Relay rate, including the need for retroactive ratemaking (which has never occurred with MARS), expose the inherent problems with using non-market based tools to calculate compensation TRS rates. Ultimately these uncertainties do harm consumers because providers do not know what their reasonable compensation will be, which harms future innovation planning.

The Commission should not abandon MARS in favor of a mechanism for IP CTS rates based on providers' projected costs. Like the failed price cap approach for IP Relay, a projected cost approach would also be subject to unpredictable fluctuations each year. For example, under the Administrator's own projected cost analyses, the IP CTS rate in 2014 and 2015 could have been as high as $3.35 per minute,[28] a substantial increase over the MARS per minute rates for those years ($1.8205 and $1.8895, respectively). In 2013, the Administrator calculated a cost-based rate of $1.4826 for IP CTS. The very next year, the Administrator calculated a cost-based rate of $1.7180, an increase of more than 23 cents per minute (15.5%) in one year.[29] This kind of significant year-over-year change merely highlights the lack of predictability inherent in a cost-based rate methodology, the very kind of uncertainty that led to so many problems with other forms of relay.

It is instructive to recall why the Commission adopted MARS in the first place, as a replacement for cost-based rates. In the 2007 decision adopting MARS, the Commission determined that it could no longer sustain a rate methodology "based on a weighted average of

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[28] *2016 TRS Rate Filing*, Exh. 1-4 (using a marginal projected cost per minute).

[29] Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51, at 14 (filed May 1, 2014).

the providers' *projected* minutes of use of the service, and their *projected* costs of providing these minutes, for a future two-year period."[30] The Commission concluded:

> This methodology has several inherent drawbacks. First, the resulting rate is only as accurate as the providers' projected minutes of use and costs. Providers have an inherent incentive to submit higher, rather than lower, costs to ensure the compensation rate is as high as possible to cover their costs and presumably make a profit. For the same reason, they have an incentive to underestimate minutes of use. We also recognize that, under the present cost recovery methodology, the resulting rates do not correlate precisely to any of the providers' actual costs.[31]

In contrast, the Commission found that, because MARS is based on competitively bid state rates, it "produces a rate that better approximates providers' reasonable costs, and therefore promotes the efficient recovery of all costs. Further, the MARS plan eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data."[32] MARS has been so successful as a rate methodology in part because of the regulatory certainty it has provided over time.

Compared with other problem-plagued rate methodologies, MARS has operated well for nearly ten years without issue. Moreover, the MARS plan does not need to guess at an appropriate compensation rate – the market sets the rate in accordance with competitive principles. As Purple has argued, there is "no reason to artificially develop other forms of market-based rates given the effectiveness of the MARS policy."[33] Indeed, the one provider that previously advocated a rate methodology other than MARS has since determined that MARS is in fact the superior rate methodology, stating:

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[30] *2007 Order*, ¶ 17 (emphasis in original).
[31] *Id.* (footnotes omitted).
[32] *Id.* ¶ 18.
[33] Comments of Purple Communications, Inc., CG Docket Nos. 03-123, 13-24, at 3 (filed Nov. 4, 2013) ("Purple Rate Comments").

> IP CTS remains the only relay service that does not incorporate the deeply flawed "allowable-cost" concept into its rate-setting methodology, and CaptionCall can no longer support a departure from MARS....[34]

In short, no model can ever be a better approximation of reasonable costs than a competitively-based methodology such as MARS. The Commission should abandon any effort to return to a regressive form of ratemaking, and instead should continue with the MARS methodology which has proven to be the most rational form of TRS ratemaking ever adopted by the Commission.

E. Switching IP CTS Rate Methodologies Would Be Premature At This Time

Even if the Commission were inclined to alter its IP CTS ratemaking methodology (which it should not, for the reasons set forth above), now would not be an appropriate time for it to effectuate such a change. Specifically, as discussed below in Section III, the Commission should focus on implementing the GAO's recommended performance standards, including compliance measurements for providing IP CTS, prior to adopting any changes to the IP CTS compensation mechanism. The Commission's Managing Director has already noted in response to the GAO Report that the Commission will be focusing on developing "clearer, more stringent goals and performance measures for TRS," and that the Commission is establishing "an ongoing testing program that will assess the quality of the handling of TRS calls, as well as provider compliance with TRS rules."[35] Hamilton applauds these efforts and encourages the Commission to continue focusing on them. In this vein, Hamilton believes that the providers' varying approaches to compliance with the quality of TRS call handling may be leading to inconsistencies in provider-reported costs and minutes of use. Accordingly, until the GAO-

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[34] CaptionCall, LLC, Ex Parte Letter, at 3 (filed Jan. 27, 2016) ("CaptionCall Ex Parte").
[35] GAO Report, at 47.

recommended performance measures are implemented and their results analyzed, Hamilton believes it would be premature to alter the existing IP CTS rate mechanism.

Moreover, with competitive innovations being introduced in the marketplace, such as Real-time Text, the Commission should not be focused on changing ratemaking methodologies but instead should be focused on fostering these innovations which may improve relay services overall.[36]

F. The Scant Support in the Record for an Alternative Rate Methodology Is Now Stale and Would Require the Commission to Refresh the Record

The support in the record for MARS is now overwhelming – Hamilton, Purple, Sprint, Ultratec, and now CaptionCall support MARS.[37] In contrast, there is scant support in the record for any alternative rate methodology to MARS for IP CTS; none of it is detailed and it is expressed from the self-interested viewpoint of contributors desiring to lower the contribution rate.[38] The record is simply devoid of any detailed rationale for moving away from MARS. Moreover, any support in the record is now stale, dating to 2013.

Additional proceedings would be necessary before the Commission could decide to move forward with any rate alternative. Specifically, the public must be given an opportunity to adequately assess the Administrator's proposed alternative rate methodologies. At the very least,

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[36] *See, e.g., Transition from TTY to Real-Time Text Technology; Petition For Rulemaking to Update the Commission's Rules for Access To Support the Transition From TTY To Real-Time Text Technology, And Petition for Waiver of Rules Requiring Support of TTY Technology*, Notice of Proposed Rulemaking, CG Docket No. 16-145, GN Docket No. 15-178, ¶¶ 35, 76-78 (rel. Apr. 29, 2016).

[37] Purple Rate Comments, at 3; Comments of Sprint Corporation, CG Docket Nos. 03-123, 10-51, at 1-2 (filed June 4, 2015); Reply Comments of Ultratec, Inc., CG Docket Nos. 03-123, 10-51, at 2-4 (filed June 11, 2015); CaptionCall Ex Parte, at 3.

[38] Comments of ITTA, CG Docket Nos. 03-123, 13-24, at 3 (filed Oct. 18, 2013) (incorrectly noting that MARS "produces rates that are only as accurate as providers' projected minutes of use and costs."); Comments of IDT Telecom, Inc. et al., CG Docket Nos. 03-123, 10-51, at 7 (filed May 31, 2013).

the Commission must engage in traditional administrative notice-and-comment procedures[39] to allow a robust assessment of any alternative rate methodology before moving forward with adopting new rules, and to consider other alternatives, such as the rate methodology suggested by Hamilton in the Consortia Report.[40] Additionally, the agency would be obliged to explain why any decision to use a proxy for market-based rates, rather than the market-based rates themselves, is somehow appropriate. In addition, the Commission should afford providers the opportunity to comment on the proposed costs to be included in any cost-based rate methodology, which to date the Commission has not done with respect to IP CTS costs.

III. Consistent with Consumer Group Suggestions, the Commission Should Focus on Adopting GAO-Recommended Compliance Standards for IP CTS Rather than Engaging in Harmful Rate Cuts

In its recent report on the state of the TRS industry, the GAO found that the Commission has not sufficiently developed a robust risk assessment program that would help identify and analyze risks to providing functional equivalent services to TRS users.[41] As part of this effort, the Commission should focus on adopting workable IP CTS compliance standards in coordination with all stakeholders, including providers and consumer groups. These standards should include the adoption of clearly defined, measurable standards for IP CTS, including answer speed, captioning accuracy standards, and verbatim transcribing.

Consumer groups have already noted their preference for the adoption of performance goals over further rate reductions: "As stated in the GAO Report, the FCC needs to establish performance goals and internal controls to oversee its national TRS Program. Unless and until the FCC acts on this responsibility, further rate cuts threaten to erode deaf, hard of hearing, deaf-

[39] 5 U.S.C. § 553.
[40] *See* Hamilton Relay, Inc., CG Docket No. 13-24, 03-123, Ex Parte Letter (filed June 16, 2014).
[41] GAO Report at 21-28.

blind, and deaf and mobile-disabled consumers' access to telecommunications services."[42] The Commission's focus should be on adopting workable performance goals, including new IP CTS compliance standards, rather than concentrating its efforts on rate reductions or modifications to its ratemaking methodologies.

Respectfully submitted,

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[42] Telecommunications for the Deaf and Hard of Hearing, Inc. et al., Ex Parte Letter, at 1 (filed May 20, 2015).