Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling to Clarify That Part 15 Auditory Assistance Devices May Be Used in Support of Simultaneous Language Interpretation	)	ET Docket No. 10-26

COMMENTS OF

LISTEN TECHNOLOGIES CORPORATION

Catherine Wang
Frank G. Lamancusa
BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000

Counsel for
LISTEN TECHNOLOGIES CORPORATION

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SUMMARY

Listen Technologies Corporation ("Listen") supports the Petition for Declaratory Ruling submitted by Williams Sound Corporation[1] and requests that the Federal Communications Commission clarify that Part 15 auditory assistance devices operating in frequency bands 72.0-73.0 MHz, 74.6-74.8 MHz, and 75.2-76.0 MHz may be used to provide auditory assistance in support of language interpretation.[2]

BACKGROUND

Listen markets and sells wireless products that use infrared light and radio frequencies to transmit audio wirelessly in order to provide an enriching experience in assistive listening. At the heart of Listen's mission is the desire to fulfill the need for people to hear better and understand audio content in public venues. When people can fully hear what is being said, the experience becomes rewarding and meaningful. When people cannot hear, the experience becomes frustrating and disappointing.

There are many reasons why people cannot fully hear in public venues: environmental, acoustical, and building constraints. The individuals affected by those difficulties are in addition to the ten percent of Americans that are physically hearing impaired. Recognizing that such conditions could substantially limit major life activities, the United States government mandated equal access to sound under the Americans with Disabilities Act of 1990, requiring public venues to make auditory assistance devices available. As such, Listen's solutions not only allow

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[1] Petition for Declaratory Ruling to Clarify That Part 15 Auditory Assistance Devices May Be Used in Support of Simultaneous Language Interpretation, ET Docket No. 10-26, filed Sept. 25, 2009.

[2] Citation Issued to ProLingo by the Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, DA 09-831, at 2 (Apr. 17, 2009) ("*ProLingo Citation*").

a venue to comply with the ADA, more importantly they allow everyone to have full access to the sound and, therefore, the experience regardless of the obstacles presented by the environment.

This is the essence of Listen's technologies.

ARGUMENT

A. Auditory Assistance Devices Are Defined By Their Use, Users, and Location

Section 15.3 of the Commission's Rules defines what constitutes an "auditory assistance device" based on three parameters: the device's permissible uses, the individuals who may use the device, and the allowable locations for its operation. Specifically, an "auditory assistance device" may be used "[1] for auricular training in an education institution, [2] for auditory assistance at places of public gatherings, such as a church, theater, or auditorium, and [3] for auditory assistance to handicapped individuals, only, in other locations."[3] Devices not used for those purposes or not used in the specified locations by certain individuals cannot be classified as auditory assistance devices. It is noteworthy that the Commission's rule does not define an auditory assistance device based on the content of the speech being transmitted or the particular language used by the speaker.

For each provision of the Commission's "auditory assistance device" definition, the *location of use* is a fundamental characteristic of its classification. For example, the second provision states that an auditory assistance device may be used in "places of public gatherings." The definition does not restrict who may use the device or the reasons for its use other than to

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[3] 47 C.F.R. § 15.3(a).

provide auditory assistance. Consequently, the Commission's definition under that provision is constrained by *where* the auditory assistance device is used, not by *who* uses it.[4]

The third provision of the Commission's definition further illustrates the criteria used to classify an auditory assistance device – only "handicapped" individuals are permitted to use auditory assistance devices "in other locations," that is, venues other than places of public gatherings. This provision dovetails neatly into the previous one. While the second provision limits the locations for use of auditory assistance devices to public gatherings, the third expands the scope of eligible locations (*i.e.*, everywhere) but limits the eligible users to "handicapped" individuals. Once again, the content of the speech being transmitted is unrelated to the authorized use of an auditory assistance device.

Note that while the Commission's rules do not expressly define the term "handicapped," the scope of the term has not been limited by the Commission in the past to only those individuals who are aurally disabled. In the order that established "auditory assistance devices," the Commission recognized that such devices could also be used to help visually impaired persons as well. The Commission therein concluded that "[t]he words 'auditory assistance' are … to be construed to go beyond the mere amplification of sound," and can include aural assistance.[5] The Commission has also established rules in a later proceedings for auditory assistance communications to include simultaneous language translation applications for persons

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[4] The first provision of Section 15.3(a) is similar to the second in that the first provision defines where an auditory assistance device may be used (*i.e.*, an education institution) and for what purpose (*i.e.*, auricular training). Again, similar to the second provision, the first does not limit *who* may use the auditory assistance devices or *what* content may be transmitted.

[5] *In the Matter of Amendment of Subpart G of Part 15 of the Commission's Rules and Regulations Regarding Auditory Training Devices*, Report & Order, General Dkt. 81-786, ¶ 5 (rel. July 30, 1982).

who require such services.[6] Thus, the clarification that simultaneous language translation is a permissible use for an "auditory assistance device" under Part 15 would be consistent with the Commission's interpretation of the phrase "auditory assistance" within other provisions of the Commission's rules.

Thus, by the very terms of the Commission's definition, the content of what is being transmitted over the auditory assistance device has no bearing on the classification of the device itself. So long as the equipment is providing auditory assistance in places of public gatherings or to "handicapped" individuals in all other locations, the auditory assistance device is being used in a manner consistent with its authorization. Accordingly, the use of a device in a public setting that provides auditory assistance to its users, like an interpreter on a busy Washington street translating a tour guide's presentation for a smaller group of non-English speaking visitors, falls squarely within the Commission's definition of an auditory assistance device. As in the example, the fact that a device is transmitting a simultaneous language translation has no bearing on the device's classification – only that the device is helping people hear the translator in a public gathering matters. The Commission should, therefore, clarify its Part 15 rules that such a use is permissible.

B. The *Pro Lingo Citation* Is Flawed

The Commission's Enforcement Bureau recently asserted in a citation issued to ProLingo that the marketing of a certified Listen auditory assistance device as a language interpretation system was inconsistent with the terms of that device's authorization and section 15.237 of the

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[6] 47 C.F.R. § 95.1009 Permissible communications: "(a) Auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation) for: (1) Persons with disabilities. ...; (2) Persons who require language translation; or (3) Persons who may otherwise benefit from auditory assistance communications in educational settings."

Commission's Rules.[7] While the Enforcement Bureau noted that intentional radiators operating in the frequency bands 72.0-73.0 MHz, 74.6-74.8 MHz, and 75.2-76.0 MHz were restricted to use as auditory assistance devices,[8] the Enforcement Bureau concluded that using such a device was not authorized for language translation.

The Enforcement Bureau, however, failed to analyze the entire Commission rule. Instead, the Bureau merely quoted the first portion of the "auditory assistance device" definition that references such devices as providing "auditory assistance to handicapped" individuals.[9] The Enforcement Bureau did not address the portions of the "auditory assistance device" definition discussed above or the inconsistency of its decision with prior Commission orders and other Commission rules. By doing so, the Enforcement Bureau has created uncertainty in a market where for nearly thirty years there had been none. Accordingly, the Commission must clarify its interpretation of the definition of "auditory assistance devices" and correct the Enforcement Bureau's statements in the *Pro Lingo Citation.*

As noted above, the definition of an "auditory assistance device" is multifaceted and a function of a device's use, users, and location. The *Pro Lingo Citation*, however, does not analyze the use of such devices under the various scenarios expressly permitted by the Commission's Rule. Specifically, the Enforcement Bureau does not address the fact that language translation services are provided in public settings to provide auditory assistance to its listeners – a use clearly permissible under the second provision of the Commission's definition.[10]

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[7] Citation Issued to ProLingo by the Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, DA 09-831, at 2 (Apr. 17, 2009) ("ProLingo Citation").

[8] 47 C.F.R. § 15.237(a).

[9] *ProLingo Citation*, at 1 n.4.

[10] Nor does the Enforcement Bureau even entertain the possibility that language translation services may be being provided to "handicapped" individuals – again, a clearly permissible use.

Instead the Enforcement Bureau concludes that a language translation service is an impermissible use without any analysis, ignoring the three definitional parameters of use, users, and location as established by the Commission.

The Enforcement Bureau's summary conclusion would restrict the use of auditory assistance devices to only "handicapped" individuals. Such an interpretation, however, is inconsistent on its face with the remainder of the "auditory assistance devices" definition that permits the use of such devices in other clearly defined scenarios. As noted above, such an interpretation is also inconsistent with prior Commission orders, other Commission rules, and Commission policy. Given that the Commission expressly permits the use of such devices for auditory assistance by non-handicapped individuals, the restrictions created the *Pro Lingo Citation* are not justified.

CONCLUSION

Accordingly, the Commission should clarify that the definition of auditory assistance devices under Section 15.3(a) of the Commission's rules permits the devise's use in language translation services. Additionally, the Commission should reconsider, *sua sponte*, the *Pro Lingo Citation* in order to conform the Enforcement Bureau's statements with Commission decisions.

Respectfully submitted,

/s/

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