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December 21, 2012

**VIA ELECTRONIC FILING**

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

Re: Notice of Ex Parte Communications, Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123

Dear Ms. Dortch:

On December 20, 2012, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Andrew S. Phillips, Policy Attorney, National Association of the Deaf (“NAD”), Stephanie Buell, Board Member of TDI, Cheryl Heppner, Association of Late-Deafened Adults, Inc. (“ALDA”), and Lise Hamlin, Director, Public Policy Advocacy, Hearing Loss Association of America (“HLAA”) (together, the “Consumer Groups”) along with Edward Kirsch and the undersigned of Bingham McCutchen met via teleconference with Christine Kurth,<sup>1</sup> Legal Advisor to Commissioner Robert McDowell, Courtney Reinhard, Legal Advisor to Commissioner Ajit Pai, Priscilla Argeris, Legal Advisor to Commissioner Jessica Rosenworcel and Angela Kronenberg, Legal Advisor to Commissioner Mignon Clyburn, to discuss the Internet Protocol (IP) Captioned Telephone Relay Service item currently on circulation.

The discussion was consistent with the points addressed in the Consumer Group’s written ex parte letter of December 19, 2012, and the points addressed in the written ex parte letter of HLAA filed on December 20, 2012, copies of both of which were provided to the Commissioners’ advisors prior to the teleconference meetings and are attached to this filing (“Attachments”). Specifically, the Consumer Groups reiterated their strong opposition to the Commission taking action on an interim rule for IP CTS eligibility without notice and comment. The opportunity for consumer input is critical as the contemplated rules will significantly affect and impact consumers for whom IP CTS could be a vital communications link to avoid isolation, may impose an undue burden on the very consumers that the Americans with Disabilities Act was designed to protect, and may run afoul of the principle of functional equivalency. In addition, a few other points that were discussed in these meetings are summarized below.

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<sup>1</sup> Mr. Kirsch was not present for the discussion with Ms. Kurth and Ms. Heppner was present only for the discussion with Ms. Kurth.

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The contemplated eligibility criteria of 71 dB hearing loss contained in the draft order conveys nothing about a person's ability to discriminate speech, especially over the telephone when a person's face is not visible. This arbitrary threshold will have the unacceptable effect of excluding from the TRS program many persons who could use and benefit from IP CTS. Additionally, many people experience types of hearing loss that are not the same from one day to the next. For example, persons with Meniere's disease may not meet the 71 dB threshold but periodically experience that degree of functional loss or more. The Mayo Clinic describes Meniere's disease as "a disorder of the inner ear that causes spontaneous episodes of vertigo — a sensation of a spinning motion — along with fluctuating hearing loss, ringing in the ear (tinnitus), and sometimes a feeling of fullness or pressure in your ear."<sup>2</sup> The hearing loss experienced by these persons varies with time and may or may not reach a level of 71 dB, even though they may in fact be unable to comprehend speech over a phone during certain periods of time. It is estimated that between 50,000 to 100,000 people a year in the United States develop Meniere's disease.<sup>3</sup> Moreover, audibility is a function of not only the level of hearing loss but also the shape of the hearing loss in terms of the frequency spectrum, and is impacted by the noise and distortion on the devices used as well as a host of other variables, most of which are not possible to capture by any extant medical test, hearing threshold test or discrimination test.

The Consumer Groups emphasized, as they have told the Commission in the past, that there will continue to be legitimate growth in the overall usage of TRS as the nation's population of "baby boomers" ages. It is well established that many people become hard-of-hearing as they advance in age. In fact, a recent study by Johns Hopkins University establishes that one in five Americans 12 years and older are deaf or hard of hearing.<sup>4</sup>

It is important for the Commission to keep in mind regarding this fact, that most older citizens who "age-into" hearing loss live in denial of their hearing loss and would often times prefer to become isolated from family and friends rather than do things that make them look or feel "different." Requiring a primary care visit and then obtaining a referral to a specialist (which audiologists and ENTs are) resulting in two insurance co-pays, in order to "prove" what they already know (they can't understand what is said on the phone!) will cause many who can benefit from the service to opt out. This is age and disability discrimination and must not happen.

It should come as no surprise that over time, the contribution factor for funding TRS will need to increase to address the growing population of persons requiring caption phone services to remain productive and healthy members of society.

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<sup>2</sup> Mayo Clinic, *Meniere's disease*, at 1 (found at <http://www.mayoclinic.com>).

<sup>3</sup> U.S. National Library of Medicine, A.D.A.M. Medical Encyclopedia, Atlanta, Georgia (2011) (found at [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov)).

<sup>4</sup> Vol. 171 Arch. Intern Med No. 20, at 1851 (Nov. 14, 2011).

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The increase in the contribution factor necessary to address this growing population is modest and constitutes “a drop in the bucket” in comparison to the overall telecommunications industry revenue base against which TRS contributions are assessed. The Consumer Groups strongly support efforts to reach out and educate consumers about TRS options, including IP CTS, that could enhance their lifestyles, and this necessarily will increase demand on the TRS Fund.

Finally, the Consumer Groups support a rule requiring providers to design IP CTS devices to necessitate consumers turn on the captioning capability through the push of a button or other simple positive action, rather than defaulting to always-on captioning, so long as the Commission also sets standards for connection time after the consumer activates the captions. Such a rule should certainly prevent persons in the household that do not need the caption support from using the device with the captioning on, which may result in inadvertent expenditures of TRS funds.

Please contact me should you have any questions.

Respectfully submitted,

*/s/ Tamar Finn*

Tamar Finn

Counsel for TDI

cc (by e-mail):

Christine Kurth  
Courtney Reinhard  
Priscilla Argeris  
Angela Kronenberg