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January 7, 2013

VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

During the Consumer Groups' January 4, 2013 *ex parte* meeting with various Commission staff,¹ Commission staff asked Consumer Groups to comment on emergency interim rules, which would only last for approximately 180 days, that would establish eligibility requirements for new Internet Protocol Captioned Telephone Service ("IP CTS") users.²

Specifically, Commission staff requested comment on Dr. McBride's recommendation in her January 2, 2013 Declaration that proposes "a standard for certification of CTS users should be based on the following elements: (1) hearing loss in the better ear in excess of 40 dB HL, or (2) sufficient impairment in speech discrimination without visual cues which results in a not insubstantial impairment of an individual's social or business life in the absence of use of CTS."³ She stated that "[w]hile the first element of the test is plainly objective, the second has a subjective element requiring analysis by the hearing professional."⁴ Commission staff also requested comment on what hearing professionals

¹ See Letter from Philip J. Macres, counsel for TDI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Jan. 7, 2013) (listing the individuals that attended the meeting and summarizing the Consumer Groups' presentation during it).

² "Consumer Groups" supporting this letter include the Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), Association of Late-Deafened Adults, Inc. ("ALDA"), Hearing Loss Association of America ("HLAA"), National Association of the Deaf ("NAD") and Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN").

³ Declaration of Dr. Ingrid McBride at 1 (dated January 2, 2013). To the Consumer Groups' knowledge, as of the filing of this letter, Dr. McBride's January 2, 2013 Declaration has not appeared in the FCC's Electronic Comment Filing System ("ECFS") in CG Docket No. 03-123.

⁴ Declaration of Dr. Ingrid McBride at 1.

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could verify the alternative to the 40 dB HL threshold proposal and whether the list of hearing professionals should include the same individuals that may verify a person's disability for purposes of participating in the National Deaf-Blind Equipment Distribution Program.⁵

Consumer Groups oppose Dr. McBride's proposal because, as Consumer Groups have made clear, there is no record evidence that IP CTS users are intentionally misusing or otherwise defrauding the service and thus, the Commission has no good cause to adopt this proposal, in whole or in part, on an emergency interim basis. Consumer Groups would expect compelling record evidence to justify adopting any such proposed emergency rules, which could include, among other things, indictments, disciplinary or enforcement actions.⁶ Consumer Groups object to any Commission approach that involves hastily adopting such a substantive IP CTS eligibility requirement absent such compelling evidence and without having a formal notice and comment period on the proposal as the Administrative Procedure Act requires.

As Consumer Groups previously explained, Commission adoption of any dB criteria would be arbitrary. Dr. McBride agrees, stating that "any threshold standard will be **arbitrary.**"⁷ Dr. McBride's Declaration demonstrates that a 40 dB level is fatally flawed and should not be adopted because, as she stated, "[a]t 40 dB hearing loss, **the amount of an average conversational speech signal missed can be as high as 60 percent or more.**"⁸

Moreover, there is no evidence that IP CTS user self-certification is not currently working or that IP CTS users are engaged in fraud. Consumer Groups encourage the Commission to review the IP CTS verification discussed in UltraTec, Inc.'s IP Captioned

⁵ See 47 C.F.R. § 64.610(d)(1)(i). *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, FCC 11-56, 26 FCC Rcd 5640, ¶¶ 31-32 (2011) (establishing the National Deaf-Blind Equipment Distribution Program), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-56A1.pdf.

⁶ If the Commission has information that suggests IP CTS users are intentionally misusing or otherwise defrauding the service, the Commission should make such information part of the public record.

⁷ Declaration of Dr. Ingrid McBride at 4 (emphasis added).

⁸ Declaration of Dr. Ingrid McBride at 4 (emphasis added).

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Telephone Best Practices Policy⁹ that Hamilton Relay, Inc. (“Hamilton”) and Sprint support.¹⁰

At this time, Consumer Groups only support interim emergency rules that: (a) prohibit referral fees associated with IP CTS; and (b) immediately require IP CTS telephone providers to take all technically feasible and commercially reasonable steps to set the default position of such telephones at “captions off”, whether it be through a software or hardware fix. Purple Communications, Inc. and Hamilton likewise support having “captions off” on IP CTS devices.¹¹

To implement a default captions off requirement, the Commission could require the following for IP CTS devices: (1) for new devices, captions off be set as the default; (2) for existing devices, where feasible, default captions off be achieved via firmware update; and (3) for existing devices that cannot be updated to accommodate default off through a firmware update, a work-around solution be implemented, to the extent possible, such as keying in a confirmation to accept captions. IP CTS providers would need to conduct the appropriate consumer outreach and education to successfully implement this requirement.

The Commission should not wait until after the 180-day interim emergency period to institute the default captions off requirement. Rather, the Commission should notify the IP CTS equipment providers of this obligation now so that they make the necessary software or hardware changes with such changes going into effect by no later than the end of the 180-day period. Moreover, the 180-day period is sufficient time for the Commission to require that IP CTS providers prepare a report on the implementation of this “captions off by default” plan, and see the effect of the immediate prohibition of referral fees.

Consumer Groups appreciate the opportunity to provide the above comments and recommendations and would be happy to meet with Commission staff to discuss them further.

⁹ See Letter from Pamela Y. Holmes, Director, Consumer & Regulatory Affairs, Ultratec, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, Attachment at 4-5 (filed Sep. 21, 2012), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022018601>.

¹⁰ Comments of Hamilton Relay, Inc. in Support of IP CTS “Best Practices” Policy, CG Docket No. 03-123 (filed Nov. 1, 2012); Letter from Michael B. Fingerhut, Senior Counsel - Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Dec. 21, 2012).

¹¹ Letter from John Goodman, Chief Legal Officer, Purple Communications, Inc., to Marlene H. Dortch, Secretary FCC, CG Docket No. 03-123 (filed Dec. 18, 2012); Letter from Rosemary C. Harold and David A. O’Conner, counsel for Hamilton, to Marlene H. H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Dec. 21, 2012).

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Please contact me should you have any questions.

Respectfully submitted,

/s/ Philip J. Macres

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