

January 10, 2013

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: **EX PARTE PRESENTATION**  
*Telecommunications Relay Services and Speech-to-Speech Services for  
Individuals with Hearing and Speech Disabilities*  
CG Docket No. 03-123

Dear Ms. Dortch:

On January 8, 2013, the undersigned, on behalf of Hamilton Relay, Inc. (“Hamilton”), spoke by telephone with Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn, and Priscilla Argeris, Wireline Legal Advisor to Commissioner Rosenworcel, to discuss the Internet Protocol Captioned Telephone Service (“IP CTS”) item on circulation.

**IP CTS User Certification**

Hamilton reiterated its agreement with consumer groups that the adoption of a 70 dB standard is unsupportable in either the record or the scientific literature. The record in this proceeding to date indicates that even a 40 dB standard may not be appropriate in all cases. Accordingly, Hamilton opposes any adoption of an across-the-board eligibility standard tied to dB loss.

A workable alternative would be to provide additional eligibility options to consumers. For example, the Commission could adopt a bifurcated eligibility standard, such that any consumer who accepts a free or *de minimis* cost IP CTS telephone must provide a certification from a professional in order to be eligible to use IP CTS, whereas any consumer who legitimately *purchases* an IP CTS telephone for less than *de minimis* cost would self-certify, because the user has already demonstrated through his or her purchase that the IP CTS telephone is needed.

Thus, providers would continue to be permitted to distribute free IP CTS telephones, but their user base would not qualify unless they provided appropriate proof of eligibility. In contrast, users who pay for IP CTS telephones would not be burdened with this additional requirement.

Hamilton believes that a third party certification of eligibility is simply unnecessary when the consumer has purchased an IP CTS telephone for more than a *de minimis* value. For example, Hamilton offers IP CTS phones for sale at \$99. In Hamilton's experience, \$99 is a sufficient price point to confirm that the user legitimately needs the service while also helping to offset the cost of the phone. As noted by the consumer groups, a professional certification eligibility requirement would be very burdensome for many hard of hearing consumers. A mechanism to avoid that burden, such as having a self-certification requirement if the user has purchased an IP CTS telephone, would be one method of lessening the burden for consumers. It would also offer additional choice to consumers in terms of the method of procuring equipment, while preserving the third party certification requirement in the event the consumer elects to accept a free IP CTS telephone.

The Commission has ample authority under its current TRS rules to adopt such a proposal. For example, Section 64.607 authorizes the Commission to regulate the price and manner of IP CTS phone distribution. That provision clearly contemplates that the Commission may regulate (through tariffs or otherwise) the price of TRS equipment. Section 64.607 could be modified to bring the rule up to date. In addition, requiring users that receive free equipment to demonstrate eligibility through a third party certification requirement would not violate Section 225's functional equivalence mandate.<sup>1</sup>

### **Default Captions Off**

We also discussed Hamilton's support for a "Captions off" feature. Hamilton notes that none of the states in which it currently is the Captioned Telephone provider require that the Captions feature be defaulted to the off position.<sup>2</sup> Nonetheless, a default-off requirement for IP CTS equipment is one that Hamilton could implement fairly quickly on a going-forward basis. It would be significantly more difficult to implement a software patch to address equipment that has already been deployed to users, and may not be successful in all instances. Therefore, Hamilton supports the adoption of a "Captions Off" default on a prospective basis only.<sup>3</sup> For

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<sup>1</sup> See *Sorenson Communs., Inc. v. FCC*, 567 F.3d 1215, 1224 (10th Cir. 2009).

<sup>2</sup> Defaulting captions to off is not recommended for non-IP (i.e., PSTN) one line captioned telephones.

<sup>3</sup> To the extent the Commission requires that captions be retroactively set to "Off" for devices that have already been deployed, Hamilton requests that providers be given sufficient time to prepare the software patch and make efforts to notify end users that a change will be made to the functionality of their IP CTS phones.

clarity, Hamilton notes that the default requirement should only apply on an “as shipped” basis – the default requirement should not be such that the user cannot elect to alter the default setting.

**Marketing Practices**

Finally, Hamilton reiterates its support for prohibiting referral fees, kickbacks, and other marketing practices that are inconsistent with precedent and good governance of the TRS Fund.<sup>4</sup>

This filing is made in accordance with Section 1.1206(b)(1) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(1). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O’Connor

David A. O’Connor

Counsel for Hamilton Relay, Inc.

cc (via e-mail): Elizabeth Andrion  
Zachary Katz  
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<sup>4</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Opinion, DA 05-140, 20 FCC Rcd 1466 (CGB 2005) (“[A]ny program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS call . . . is inconsistent with Section 225 of the Communications Act of 1934 and the TRS regulations.”).