



January 15, 2013

Ex Parte

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

*Re: Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51;  
Telecommunications Relay Service and Speech-to-Speech Services for Individuals with  
Hearing and Speech Disabilities, CG Docket No. 03-123*

Dear Ms. Dortch:

CaptionCall writes to supplement the record concerning whether the Commission should issue a rule requiring captioned telephones to have “captions off” as their default setting in connection with IP Captioned Telephone Service (“IP CTS”). The Commission appears to be under the misimpression that it is self-evident that captioned telephones should be set to “off,” so there is no need to allow comment before taking action. But (a) the typical user of captioned telephone service is likely to have some difficulty toggling between “on” and “off” settings, and ought to be able at least to choose an “always on” setting, and (b) there is no evidence in the record that a “captions on” default setting leads to increased use by persons who are not hard-of-hearing or do not need captioning and, to the contrary, the evidence supports the conclusion that a “default on” option leads to increased minutes of use by hard-of-hearing persons by removing an obstacle to their ability to take full advantage of IP CTS. Accordingly, the Commission should seek comment rather than rush to a judgment that will make it more difficult for users to obtain service without eliminating any substantial amount of improper use. Upon reflection and consideration of a record, the Commission is likely to appreciate that a rule requiring “captions off” will burden hard-of-hearing users without eliminating any substantial amount of improper use.

As an initial matter, a “default on” setting advances the important goal of enabling the demographic group most in need of captioned telephone service to use it. CaptionCall is used overwhelmingly by people over 70 years old, and ensuring ease of use is critical since a substantial portion of that demographic group has difficulty turning captioning “on” when they need it and not inadvertently turning it “off” when they do not wish to do so (and would not be required to do so). The “default on” functionality that the company implemented on June 25,

2012, has largely eliminated consumer complaints related to turning captioning off inadvertently, which were common before the change. The feature has made the service more equivalent to standard hearing telephone service, where the user does not need to manually set any preferences or operate features in advance of every call.

Before June 25, CaptionCall phones permitted customers to toggle captioning on and off by pressing a button on the touchscreen, and the unit remained in the state last toggled until changed. Although this type of on-screen operational control is common on smartphones, tablets, and other devices, it generated confusion among CaptionCall customers. Some customers inadvertently turned captioning off, often without realizing what had caused the change. These customers then either stopped using the service even though they needed it or called customer service to report that their phone was not working.

To rectify this problem, on June 25, 2012, as part of a broader firmware release, CaptionCall implemented the “default on” feature to make the device easier to use—that is, to make it less likely that a user would deactivate captioning inadvertently.<sup>1</sup> The change reflects the fact that more than a third of CaptionCall customers are over 80 years old, nearly two-thirds are over 70, and their median age is 74. Ease of use is critical for this demographic group. Before the change, allowing users to toggle between “on” and “off” using the touchscreen meant that some eligible users—who inadvertently toggled the setting—were prevented from using the service at least part of the time. The implementation of the “default on” feature has effectively eliminated this problem.

There is no evidence supporting the conclusion that implementation of the “default on” feature increased usage by persons who are not hard-of-hearing. While it is impossible as a practical matter to determine definitively whether a non-hearing-impaired person is using captioning on any particular call—regardless of whether the default for the captioning is “on” or “off”—data related to average minutes of use (“MOU”) suggest that an increase in usage following implementation of the feature comes from eligible users who find the service more accessible. Two data points lead to this conclusion.

---

<sup>1</sup> This firmware release also, among other things:

- Added a “Volume Override” feature (audio volume stays at user settings from call to call instead of resetting to “normal” at the end of each call);
- Improved audio quality (revisions to audio processing in the Digital Signal Processor);
- Improved touch screen scrolling performance (making it easier to navigate in lists);
- Increased “Heartbeat” reliability (to enable future updates to phones without requiring users to do anything);
- Improved text entry for user contacts, passwords, and other user information (entry and display of all ASCII characters supported); and
- Provided firmware support for a new display and touch panel device hardware (*i.e.*, all-glass face on 57Tx version of the phone).

First, according to a survey conducted in October 2012 of a random sample of 655<sup>2</sup> CaptionCall users who had more than ten minutes of captioning usage within the prior three consecutive months, average monthly MOU for CaptionCall customers are 54% *higher* in households composed only of hard-of-hearing individuals than in “mixed” households composed of both hard-of-hearing and non-hard-of-hearing individuals. Stated differently, usage is actually lower in the places where one might expect to see higher averages if the feature were in fact generating ineligible usage. Usage data show that this pattern persists whether measured by the entire household’s use of the service or use by individual household members. This supports the conclusion that the switch to “default on” did not result in increased use of captioning by ineligible persons.

Second, while average MOU per CaptionCall customer increased modestly following implementation of the “default on” option, average MOU increased approximately 10% *more* in hard-of-hearing-only households than in mixed households.<sup>3</sup> This suggests that the MOU increase resulted not from ineligible users but rather from eligible subscribers who, thanks to improved ease of use and greater functional equivalence, were no longer confused by inadvertently turning captions off either before or in the middle of a call. In other words, the data indicate that the feature is enabling more eligible usage, not more ineligible usage.

CaptionCall shares the Commission’s goal of ensuring that captioned telephone service is used only by persons eligible to do so. Although there is no reliable evidence of widespread abuse of the service, there are undoubtedly steps the Commission could take to better ensure the use of captioning only when needed. CaptionCall believes that the most promising means of ensuring eligible use without unreasonably burdening use by those needing captions would be the issuance of a rule mandating a notice at the beginning of each call that persons who are not hard-of-hearing or do not need captions for a particular call must turn the captioning off. But the Commission should compile a record and make a reasoned choice among the alternatives proposed, as required by the Administrative Procedure Act, before adopting any rule. The Commission should not fail to obtain relevant data before issuing a rule. And, in particular, the Commission should not adopt a rule requiring “captions off” when the only evidence in the record supports the conclusion that a “captions on” option enables use by persons who need captioning. At the least, the Commission should permit users to choose to set “captions on” as their default option, as Purple and Hamilton suggest.<sup>4</sup> There is no good reason why, for example, an elderly person who lives alone and is severely hearing-impaired should be required to switch to captions on before each and every call.

---

<sup>2</sup> This represents a statistically representative customer sample with a confidence level of 99% and a confidence interval of +/- 5%.

<sup>3</sup> Some of the increase in usage—whether in hard-of-hearing-only households or in mixed households—may be due to the other service improvements that were part of the June 25, 2012, firmware release.

<sup>4</sup> See Letter from David A. O’Connor to M. Dortch, CG Docket No. 03-123 (Jan. 10, 2013), at 3 (Hamilton); Letter from John Goodman to M. Dortch, CG Docket No. 03-123 (Dec. 17, 2012), at 2 (Purple).

Sincerely,

/s/

John T. Nakahata  
Christopher J. Wright  
Charles Breckinridge  
*Counsel to CaptionCall, LLC*

cc: Elizabeth Andrion  
Christine Kurth  
Angela Kronenberg  
Priscilla Argeris  
Nicolas Degani  
Jonathan Chambers  
Suzanne Tetrault  
Karen Peltz Strauss  
Robert Aldrich