Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for	)	
Individuals with Hearing and Speech	)	
Disabilities	)	

PETITION FOR RULEMAKING

Pursuant to 47 C.F.R. § 1.401, Sorenson Communications, Inc. ("Sorenson") and its wholly owned subsidiary, CaptionCall, LLC (collectively with Sorenson, "CaptionCall") respectfully submit this Petition for Rulemaking requesting that the Commission initiate a rulemaking proceeding to adopt a price cap regulatory approach to govern the rates for the provision of Internet Protocol Captioned Telephone Service ("IP CTS").[1]

CaptionCall believes that the Commission should adopt a price cap rate methodology for IP CTS based on the regulatory framework the Commission adopted in 2007 to govern rates for IP Relay, which itself was patterned after incentive regulation adopted for AT&T and the larger incumbent LECs in the early 1990s. Moving to a price cap for IP CTS will stem the continued IP CTS rate increases that have resulted in recent years from the current Multistate Average Rate Structure ("MARS") rate methodology, while still fundamentally anchoring IP CTS rates to the market-determined rates that were the basis for the MARS calculations. In addition to reversing the recent trend in the IP CTS rate, adopting a price cap methodology similar to the one used for

[1] Section 1.401(c) requires a party filing a rulemaking petition to indicate how its interests will be affected by the action requested. Here, CaptionCall believes that its interests are aligned with those of all other legitimate providers of IP CTS by ensuring a predictable IP CTS rate that will enable providers to offer quality service and ensure the long-term stability of the TRS Fund.

IP Relay will reflect the Commission's preference for incentive regulation, giving providers greater rate stability, incentivizing providers to offer service more efficiently and to innovate, and lowering rates.[2] Further, CaptionCall believes the Commission should initiate a price cap based on an average of the 2008, 2009, and 2010 IP CTS rate years: $1.6766. Adopting this rate would result in an immediate savings of nearly ten cents per minute over the current IP CTS rate.

I. Background

In 2007, the Commission adopted the MARS plan to set the per-minute rate for interstate CTS and for all IP CTS.[3] It did so believing the approach would "simplify the rate setting process and result in more predictable, fair, and reasonable rates."[4] Significantly, the MARS methodology is based on the intrastate CTS rates that are set through competitive bidding in the states. Thus, the MARS plan yields rates anchored in market-based determinations. Furthermore, the MARS plan avoided the innovation and incentive-deadening features of rate-of-return regulation, including incentives to increase, rather than decrease, costs, and the "the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data."[5] As the chief proponent of the MARS methodology explained at the time, the MARS

2 *See, e.g., Joint Petition of Price Cap Holding Cos. for Conversion of Average Schedule Affiliates to Price Cap Regulation & for Ltd. Waiver Relief,* Order, FCC 12-154, 2012 WL 6468885, *42 ¶ 12 (Rel. Dec. 13, 2012) ("In 1990, the Commission concluded that incentive-based regulation is preferable to rate-of-return regulation, finding that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.")

3 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20140, 20149-50 ¶16 ("*2007 TRS Rate Methodology Order*").

4 *Id*.

5 *Id.* at 20150 ¶ 18.

methodology obviated the need for "detailed cost calculations for categories such as marketing, outreach, legal costs, lobbying costs, executive compensation, and overhead costs."[6]

At the time the Commission adopted the MARS methodology for setting IP CTS rates, it did not also adopt a price cap mechanism to limit any future rate increases, but allowed the MARS formula to change rates from year to year. Presumably, the Commission did so expecting rates to decline over time. That, however, did not occur, but the IP CTS rate did remain relatively stable for the first four years.

In 2007, the initial MARS-based rate for IP CTS was set at $1.629 per minute, derived from dividing $15,867,338 by 9,739,138 minutes.[7] In 2008, that rate increased to $1.6569 per minute, derived from dividing $24,051,751 by 14,516,188 minutes.[8] In 2009, the rate modestly increased to $1.6778 per minute, derived from dividing $31,198,613 by 18,595,404 minutes.[9] In 2010, the rate was $1.6951, derived from dividing $42,073,235 by 24,820,430 minutes.[10]

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6 *Id*. at 20150-51 ¶ 19.

7 *Id.* at 20166-67 ¶ 64.

8 NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at Exhibit 1-2 (filed May 1, 2008).

9 NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at Exhibit 1-2 (filed May 1, 2009).

10 NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at Exhibit 1-2 (filed April 30, 2010) *("NECA 2010 TRS Filing*").

Those moderate rate increases were upended in 2011. That year, the rate jumped over $.07 per minute, nearly doubling the previous three years' increases in just one year.[11] While this dramatic jump is partially explained by the inclusion of rates from the State of California,[12] even the exclusion of California would have still seen the MARS-based rate increase by nearly 4.5 cents per minute that year alone.[13] In 2012, the MARS-calculated IP CTS rate continued to rise beyond the 2011 rate to a record high of $1.7730 per minute.[14] Given six years of experience, the rates yielded by the MARS formula seem unlikely to decline.

Rather than continuing to have the IP CTS rate float with whatever the MARS methodology produces, CaptionCall proposes that the Commission now institute a price cap methodology which will incentivize providers to offer more efficient service and exert downward pressure on the IP CTS rate, and initialize the price cap rate at $1.6766, the average IP CTS rate for the three years prior to the 2011 rate jump. CaptionCall believes that by doing so the Commission will reasonably compensate providers for the cost of providing service, incentivize providers to lower the cost of providing service, immediately and gradually lower the per-minute IP CTS rate, and ultimately ensure the long-term viability of the TRS Fund.

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11 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 26 FCC Rcd. 9972, 9979 ¶19.

12 *See id*. at 9977 ¶ 14.

13 *See* NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 12 (filed Apr. 29, 2011).

14 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 27 FCC Rcd. 7150, 7153-54 ¶ 9 (June 26, 2012).

II. The Commission Should Adopt a Price Cap Methodology for the IP CTS Rate.

A. The Commission Has Long Recognized the Inherent Benefits of Price Caps.

The Commission is already successfully using a price cap to regulate IP Relay rates and should do the same for IP CTS. Under the price cap plan regulating IP Relay, the compensation rate is set for a period of three years, during which time the rates are adjusted upward annually for inflation (according to a pre-defined inflation factor) and downward to account for efficiency gains (according to a factor also set at the outset of price caps).[15] These rates are then subject to upward or downward adjustments based on exogenous factors beyond providers' control.[16] As the Commission has previously recognized, such an approach has the benefit of incentivizing providers to lower costs, gives predictability to providers so that they may allocate resources to programs that will reduce costs in the future, and simplifies the rate setting process, thus saving the TRS Fund—and consumers—money.[17]

Indeed, the Commission has a long history of instituting price caps to ensure quality service to consumers. More than two decades ago the Commission noted:

> The attractiveness of incentive regulation lies in its ability to replicate more accurately than rate of return the dynamic, consumer-oriented process that characterizes a competitive market. In general, such regulation operates by placing limits on the rates carriers may charge for services. In the face of such constraints, a carrier's primary means of increasing earnings are to enhance its efficiency and innovate in the provision of service. . . . The system also is less complex than rate of return regulation and easier to administer in the long run, which should reduce the cost of regulation.[18]

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15 *2007 TRS Rate Methodology Order* at 20159-60 ¶ 43.

16 *See id*. at 20160 ¶ 44.

17 *See id*. at 20159-60 ¶¶ 43-45. *See also*, *e.g.*, n.2, *supra*.

18 *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd. 2873, 2893 ¶ 36 (1989) ("*AT&T Price Cap Order*").

Price caps allow providers to benefit from savings accompanying cost reductions as long as their prices remain below the indexed maximum. The current MARS methodology, which continues to escalate the IP CTS rate, allows earnings to increase as state contract rates increase, without forcing providers to become more efficient. Price caps, on the other hand, will draft IP CTS providers into a constructive partnership with the TRS Fund to provide service at a more efficient level and economic rate.

B. Price Caps will Incentivize Provider Efficiency, Thereby Lowering the IP CTS Rate.

Price caps will bring increased efficiency in the provisioning of IP CTS. As with IP Relay, a price cap mechanism will incentivize long-term cost savings. IP CTS providers will be encouraged to restrain labor prices and more efficiently use communications assistants. Moreover, implementing price caps for a definitive number of years allows predictability about revenue, which will allow IP CTS providers to invest in advances in technology which will provide greater efficiency and reliability for IP CTS users. These investments in technology will ultimately lower the cost of providing service, thereby creating future opportunities for additional savings to the TRS Fund.

Price caps' ability to drive down the per-minute rate for IP CTS is in stark contrast to the upward trajectory of IP CTS rates under the MARS methodology. The ultimate rate for provisioning IP CTS will decrease by using the IP Relay price cap formula. Setting aside any exogenous cost adjustments, that formula guarantees a real (*i.e.*, factoring out inflation) price decrease of 0.5 percent per year—which has never heretofore occurred for IP CTS. This will occur even if an improving economy increases communications assistant wages and benefits, which is the largest component of IP CTS costs. Providers will be forced to seek efficiencies just to keep margins from shrinking.

C. The Commission Should Use the Same Price Cap Formula it Adopted for IP Relay.

Recognizing the benefits of price caps over the MARS plan, the Commission should adopt the price cap formula it successfully uses to set the IP Relay rate. The Commission's price cap formula for IP Relay has three basic components: (1) an inflation factor; (2) an efficiency (or "X") factor; and (3) a provision for cost changes beyond the control of the provider that are not captured by the inflation adjustment ("exogenous" cost changes).[19]

For IP Relay, the Commission used an efficiency factor equal to GDP-PI (the inflation factor), less .5 percent (.005) to account for productivity gains.[20] As such, if annual inflation is 3 percent, the corresponding X-factor will be -3.5 percent, yielding a net downward rate adjustment of 0.5 percent, ignoring any exogenous cost reductions.[21] This ensures that providers must not just increase efficiency to absorb inflationary cost increases, but they must find additional efficiencies in order to maintain profitability, and that rates decline in real terms every year.

Use of the IP Relay X-factor has substantial advantages over trying to determine or calculate any other X-factor. The Commission has experience using the IP Relay X-factor with

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19 *2007 TRS Rate Methodology Order* at 20159-60 ¶ 43; *see also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, 6787 ¶2 ("*LEC Price Cap Report and Order*"); *AT&T Price Cap Order* at 2895 ¶ 42.

20 *2007 TRS Rate Methodology Order* at 20159-60 ¶ 43.

21 In adopting price caps for IP Relay the Commission noted that it would "adjust the rate, as necessary, due to exogenous costs, *i.e.*, those costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment." *2007 TRS Rate Methodology Order* at 20160 ¶ 44. "Exogenous costs" have long been recognized by the Commission as costs that are not reflected in the inflation adjustment. "Exogenous costs are in general those costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers." *LEC Price Cap Report and Order* at 6807 ¶ 166. Such costs would also include new rules and regulations regarding the provision of IP CTS that alter the costs of providing service. For exogenous events that are ongoing, the formula adjustment would be ongoing, while one-time cost adjustments would be eliminated from future rates.

respect to another service in which it compensates for both interstate and intrastate usage. Use of the IP Relay factor will also obviate lengthy and indeterminate proceedings to determine an X-factor, such as analyses of Total Factor Productivity.[22]

As discussed below, CaptionCall believes the Commission should adopt a three-year rate period for IP CTS before adjusting the base rate. A three-year rate period will give providers the ability to make investments to improve efficiency, lower administrative costs, and is short enough in duration to allow TRS Contributors to benefit from any significant cost reductions. As with ILECs and IP Relay, the Commission should use this formula to deescalate the costs of providing IP CTS by incentivizing providers to lower their costs. What is more, this price cap formula has not only prevented the IP Relay rate from escalating, it has successfully lowered that rate.[23] Implementing this price cap formula will do the same for IP CTS.

C. The Rate Should Initialize the IP CTS Price Cap at a Market-Determined Rate of $1.6766.

A price cap formula must, of course, be initialized. Fortunately, in this case, the Commission can draw upon its MARS-based rates to use market-rates to initialize the IP CTS price cap. Because MARS rates were the result of competitive bids, they provide a snapshot proxy for a market-based IP CTS rate. This distinguishes the task of setting a price cap for IP CTS from, for example, VRS, for which there has never been a history of analogous rates set

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[22] In fact, with respect to incumbent LECs, the Commission's X-factor determination was not resolved until the Commission moved away from a productivity-based factor to an interim price-adjustment factor as part of its *CALLS Order*. *In the Matter of Access Charge Reform*, Report and Order, 15 FCC Rcd. 12962 (2000) ("*CALLS Order*").

[23] *See NECA 2010 TRS Filing*. "Under price caps, the IP Relay compensation rate has declined from the base rate of $1.293 for the 2007-2008 Fund year to the 2009-2010 fund year compensation rate of $1.2801 per minute." *Id.* at 12. The Commission ultimately raised the rate for IP Relay given the Commission's E-911 and ten digit number requirements. *See id*. at 15.

through competitive bidding. CaptionCall thus proposes that the Commission initialize the price cap for IP CTS at $1.6766, the average of the rates for 2008, 2009 and 2010, immediately saving the Fund nearly ten cents per minute over the current rate.

Using the three years prior to the dramatic rate increase in 2011 will allow the Commission to replicate those reasonable rates that were derived from market-based competitive bidding as the price cap begins deescalating the IP CTS rate. In effect, $1.6766 will be the ceiling for IP CTS, excluding exogenous costs, thereby preventing any further escalation in per-minute rates from weakening the TRS Fund.[24] CaptionCall is confident that rolling back the rate increase from the past two years will not disrupt IP CTS service or undermine service quality.

D. Price Cap Performance Review.

As with IP Relay and the ILECs, the price caps should be in place for at least three years before revisiting the formula, based on a performance review. The Commission waited four years before it commenced a performance review on the ILECs, noting:

> To provide a fair evaluation of the program, it is also important that the initial period before periodic review and the possibility of major adjustments be long enough for incentives to operate. We believe that a four-year period without major adjustment (to, for example, the productivity factor) is reasonable. The real test of any such program is experience. Failure to provide a reasonable period of acclimation could result in regulatory ambiguity, and resulting uncertainty, that would effectively stifle the intended incentives.[25]

The Commission adopted a three-year period for IP Relay.[26]

During such a review, the Commission should ensure that the price cap furthers the statutory goals for IP CTS. Additionally, the Commission should review trends in the number of

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[24] *See* Section II.C, *supra*.

[25] *LEC Price Cap Report and Order* at 6834 ¶ 386.

[26] *2007 Rate Methodology Order* at 20160 ¶ 45.

IP CTS minutes provided, entry and exit of IP CTS providers, and changes to quality of services. The Commission might also compare the results under the price cap with what would have resulted under the MARS methodology. If such a review suggests that changes must be made to the formula, the Commission could do so during its performance review and implement those changes for the subsequent three-year cycle.

III. Conclusion

For the foregoing reasons CaptionCall believes the Commission should implement a price cap for the provisioning of IP CTS. The Commission should initialize the rate at $1.6766 per minute and use the modification formula used for IP Relay and ILECs. The Commission should commence using price caps for IP CTS in July of 2013.

Respectfully submitted,

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