

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Misuse of Internet Protocol (IP) Captioned Telephone Service)	CG Docket No. 13-24
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	

To: Secretary, FCC
For: Chief, Consumer & Governmental Affairs Bureau

PETITION FOR LIMITED WAIVER

Pursuant to Paragraph 34 of the January 25, 2013 *Order* in the above-captioned proceeding,¹ Hamilton Relay, Inc. (“Hamilton”), Sprint Communications Company, L.P. (“Sprint”), and their equipment provider, Captel Inc. (“Captel” and, collectively with Hamilton and Sprint, the “Petitioners”), hereby petition the Consumer and Governmental Affairs Bureau (“Bureau”) for a limited waiver of the “default captions off” requirement which will take effect on March 7, 2013.² As set forth below, a limited waiver is necessary in order to allow sufficient time for new and already-deployed Internet Protocol Captioned Telephone Service (“IP CTS”)³ equipment to fully comply with the default captions off requirement.

I. Background

The *Order* adopted a new interim rule, Section 64.604(c)(10)(i), which provides that “IP CTS providers must ensure that equipment and software used in conjunction with their service

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, CG Docket Nos. 13-24, 03-123, FCC 13-13, ¶ 34 (rel. Jan. 25, 2013) (“*Order*”).

² See 78 Fed. Reg. 8030 (Feb. 5, 2013).

³ IP CTS is an approved form of Telecommunications Relay Services (“TRS”) for hard of hearing individuals. See *Order* ¶ 1.

have a default setting of captions off, so that new and existing IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.”⁴

Hamilton and Sprint are both on record as supporting a default captions off requirement,⁵ and are actively working with Captel in order to comply with this interim rule. In order to comply with the captions off requirement, Captel is developing and releasing new software for the 800i, 840i and 880i IP CTS phones. The software update will set the captions to the “Off” mode and remove the menu setting that currently permits users to default the phone to captions on. Once the software update is completed, each time the user hangs up the phone, the captions will return to “Off” mode, and when a user places or receives an IP CTS call, the user will need to press the Captions On button to connect the call to a Communications Assistant for captioning services.⁶

Two distinct user groups – existing users and new users – present unique challenges in implementing the default captions off requirement. Those challenges, and the Petitioners’ efforts to address them, are described below.

⁴ 47 C.F.R. § 64.604(c)(10)(i); *see also Order* ¶¶ 27-35. Petitioners note that Section 64.604(c)(10)(ii) as adopted in Appendix D of the *Order* indicates that the default captions off interim rule will cease to be effective 180 days after its effective date. *See Order*, App. D (cross-referencing Section 64.604(c)(9)). However, Section 64.604(c)(10)(ii) as published in the *Federal Register* simply states: “[Reserved].” *See* 78 Fed. Reg. 8032, 8039 (Feb. 5, 2013). Petitioners request that the Bureau clarify this discrepancy.

⁵ Hamilton, *Ex Parte* Letter, CG Docket No. 03-123, Jan. 10, 2013, at 2; Sprint, *Ex Parte* Letter, CG Docket No. 03-123, Jan. 14, 2013; *see also Order* ¶ 28.

⁶ The 840i and 880i answering machine function is also being changed. Currently, if a user has the answering machine function set to on, the phone automatically answers each call, connects to the captioning service, and stores both the caller’s voice and the captions for later review. The interim rule requires that captions be off for each call unless the user selects captions for that call. Accordingly, once the software patch has been completed, the phone will automatically answer an answering machine call and record the caller’s voice for later review. When the user is playing back the messages, he/she can manually press the captions button on to caption the messages at that time.

A. Existing Users

Petitioners anticipate that they will be in a position to begin sending the required software update to existing users by February 27, 2013, well ahead of the March 7 deadline. Beginning on February 27, the software update can be pushed to a particular IP CTS phone, but only once the user places or receives a call with the captions feature turned on. When the user hangs up from such a call, the update will start. Typically the update will take a few minutes to complete.

However, if a particular IP CTS phone is not used prior to March 7, or is used only with the captions feature turned off, the phone will technically be non-compliant until the update has completed. Petitioners have no control over whether a particular user takes such action by March 7. Many IP CTS users are elderly and may use the phone infrequently. Petitioners therefore seek a waiver to accommodate any users that do not take such action by March 7, and to provide those users an opportunity to complete a captioned IP CTS call and thus trigger the software update.

B. New Users

It typically takes a number of weeks for IP CTS equipment to move through the production line. Thus, there are hundreds if not thousands of phones that are in the production line which do not have the software necessary to default captions to off. It will take some time for production to catch up to the new requirement, such that all IP CTS phones delivered to new users automatically contain a default captions off feature.

However, there is a relatively straightforward software update that can be performed for new IP CTS phones that do not yet have this feature. Specifically, when a new user purchases an IP CTS phone, after installation the equipment will automatically search for any updates, and thus will be compliant before the first call is made by the new user. In most cases, a user will not

place any calls before the phone defaults to captions off. However, there is a possibility that a user may interrupt the software download, or try to complete a call before the update is completed. In those instances, Petitioners requests a limited waiver to accommodate those eventualities.

C. Minutes of Use Associated with the Update

In either of the above situations, the software update may take several minutes to download, depending on the particular phone model and the user's Internet connection speed. During this time, new or existing users could place an IP CTS call with the captions feature still defaulted to on.⁷ Typically a user will only make one call that does not have the captions feature defaulted to off, and that will be the call that initiates the software update.⁸ As detailed below, Hamilton and Sprint seek a limited waiver to obtain compensation from the interstate TRS Fund Administrator for any calls associated with the default captions off software update, even if such calls are placed after March 7.

II. Petitioners Have Satisfied Their Burden Under the Applicable Waiver Standard

The Bureau, acting under delegated authority, may waive a rule when good cause is demonstrated.⁹ Under the good cause standard, the Bureau may exercise its discretion to waive a

⁷ Petitioners have no ability to forecast the length of such calls or the ability to control their length.

⁸ It is possible that a user may make more than one call before the software update is completed. For example, there could be a power failure which interrupts the update, or a loss of Internet connectivity could interrupt the update. It is also possible that a user could immediately hang up the phone and place another IP CTS call while the software is updating. However, Petitioners anticipate extremely few, if any, interruptions in the updating process to occur, and in any event these interruptions are beyond the control of the Petitioners. Moreover, because the update process will likely be completely transparent to users, Petitioners strongly doubt that anyone will be able to stop the installation of the software from occurring.

⁹ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In considering a waiver request, the Bureau may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.¹¹ Thus, waiver of the Commission's rules is appropriate when special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹² In this case, the Commission has specifically contemplated that a limited waiver may be necessary.¹³

Petitioners submit that a limited waiver in this instance is justified in light of the unique circumstances presented by the nature of the software update, which must be initiated by existing users in order to take effect. Despite Petitioners' best efforts to make the update available well ahead of the March 7 deadline, it will be difficult to fully comply with Section 64.604(c)(10)(i) by March 7 because Petitioners must rely in part on new and existing users to help implement the update. There simply can be no assurance that 100% of those users will take the necessary steps by March 7. A limited waiver to allow those users sufficient time to initiate the update by lifting the IP CTS receiver with the captions feature on (even if such action occurs after March 7) will result in a more effective implementation of the Commission's overall policy goal of ensuring that all IP CTS equipment automatically defaults to captions off.

Sprint and Hamilton also submit that the special circumstances applicable here warrant a deviation from the general rule that the TRS Fund Administrator shall make payments only to

¹⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹¹ *Id.*; *WAIT Radio*, 418 F.2d at 1159.

¹² See *Northeast Cellular*, 897 F.2d at 1166.

¹³ *Order*, ¶ 35 (An IP CTS provider “may request additional time by seeking a limited waiver of the effective date, supported by an appropriate good cause showing.”).

eligible TRS providers operating pursuant to the mandatory minimum standards.¹⁴ As an initial matter, many users will cause the software update to be initiated between February 27 and March 7, and thus no waiver is necessary for reimbursement for such calls because the “default captions off” rule will not be effective yet. Thus, there will likely be only a small subset of users who will not make an IP CTS call with the captions feature on between February 27 and March 7. Even among those users, in nearly all cases there will be only one non-compliant call from each user before captions are defaulted to off for that user. Such calls will be made by users in the typical course, and merely serve as the trigger event for initiating the software update. Moreover, had the user elected to make such a call prior to March 7, the provider clearly would have been justified in seeking compensation for the call. Under these unique circumstances, a limited waiver is warranted to allow providers to be compensated for such calls. A waiver in this instance will also serve the public interest in meeting the reasonable expectations of the provider to be compensated for legitimate IP CTS calls.

III. Conclusion

For the reasons set forth above, Petitioners respectfully request a limited waiver of interim rule Section 64.604(c)(10)(i), such that all existing Hamilton and Sprint IP CTS users are given an opportunity to complete a captioned IP CTS call and thus trigger the software update. In addition, Hamilton and Sprint request authority to seek compensation for any calls associated

¹⁴ 47 C.F.R. § 64.604(c)(5)(iii)(E)(4). Because the “default captions off” requirement has been added on an interim basis to subsection 64.604(c)(10), it is categorized as a mandatory minimum standard once it becomes effective on March 7, 2013.

with the default captions off software update, even if such calls are placed after March 7.

Respectfully submitted,



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