

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

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

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Sprint Nextel Corporation ("Sprint"), on behalf of the Telecommunications Relay Service ("TRS") operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully submits its comments on the *Notice of Proposed Rulemaking* ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned dockets.¹

I. INTRODUCTION AND SUMMARY

The *NPRM* was issued as part of an *Interim Order* in which the FCC took immediate, interim steps to address certain practices related to the provision and marketing of Internet Protocol Captioned Telephone Service ("IP CTS")." *Interim Order* at ¶1. The FCC determined that such marketing practices appeared to be contributing to the "unprecedented and unusually rapid growth" in IP CTS usage, *id.* at ¶ 6, which left unchecked "threatened to overwhelm the Interstate Telecommunications Relay Service Fund ("TRS Fund" or "Fund")," *id.* at ¶ 1, thereby jeopardizing the other TRS services that are supported by the Fund.

¹ *Order and Notice of Proposed Rulemaking*, FCC 13-13 released January 25, 2013.

Specifically, the FCC banned “all referrals for rewards programs ... and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, IP CTS.” It also required each IP CTS provider to “register each new IP CTS user” and “obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users.” Moreover, if the IP CTS user “accepts IP CTS equipment at a price below \$75 from any source other than a governmental program” he/she must submit as part of the registration process “a certification from an independent, third party professional attesting” to such hearing loss. Finally all IP CTS providers are required “to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS.” *Id.* at ¶ 1.

Sprint applauds the Commission efforts here. Indeed, as a provider of IP CTS services (as well as PSTN-based Captel services) and as one of the few providers of TRS services whose customers of its wireline and wireless businesses must support the Fund through the charges they pay for their services, Sprint firmly believes that strong FCC intervention is necessary to protect the integrity of the Fund and prevent the type of marketing gimmicks and other questionable practices that have characterized the provision of or types of IP-enabled Relay services, especially VRS service, from infecting the provision of IP CTS. Thus, Sprint supports the FCC interim requirements and strongly recommends that such requirements with minor adjustments to reflect marketplace realities be made permanent.² In support thereof, Sprint states as follows.

² Sprint does believe that the interim requirements need to slightly clarified in certain respects and will file a petition seeking such clarification or in the alternative a waiver shortly.

II. DISCUSSION

A. The Recent Increase in IP CTS Minutes of Use

The FCC has observed that “IP CTS has been experiencing unprecedented and unusually rapid growth.” *NPRM* at ¶ 38. Although that observation may well be true for the industry overall, it certainly is not the case for Sprint. To the contrary, the growth that Sprint has seen in its provision of IP CTS usage is what one would expect with the aging of the “Baby Boom” generation, most of whom are already users of the Internet and broadband services or at least are not adverse to learning how to use new technologies.

Even with this aging population, Sprint growth in IP CTS usage has not be “unprecedented” or “unusually rapid.” Rather, on average, Sprint’s rate of growth has been consistent with Sprint’s historical growth patterns. This is not to say that there have not been months where Sprint has reported higher than normal usage levels. But such increases usually can be traced to a Sprint outreach campaign on TV and at various expos/conventions seeking to explain the benefits of Captel, either PSTN-based or IP-based, to those who may need a captioned service.³ Certainly, in the case of Sprint such growth cannot be related to offering free IP CTS phones or to a “referrals for reward programs.” With the exception of the IP CTS phones that Sprint provides through a government supervised or government funded program, the price of Sprint’s IP CTS phones is above the \$75 benchmark. Moreover, Sprint has not and does not offer bounties for referrals. In fact, upon learning that one of the newer entrants into the IP CTS market was providing free IP CTS phones and offering rewards for referrals, Sprint informed the FCC. Sprint noted that, although such free phone/bounty program may not technically have

³ Increases in IP CTS usage may also be a factor of eligible PSTN-based Captel users switching to IP CTS.

violated the FCC's then-existing prohibition on giving kick-backs for generating TRS usage, it placed the provision of IP CTS service on a slippery slope that could lead to the same types of questionable and outright fraudulent activities that have plagued the VRS segment of the market for years. Hopefully the interim requirements that the FCC adopted in the *Interim Order* and that Sprint recommends be made permanent will significantly limit the opportunity for certain providers to engage in such activities.

B. Referrals for Rewards

As stated, Sprint fully supports the permanent adoption of the interim rule prohibiting any IP CTS providers from offering of rewards or other financial inducements for referrals of customers who subscribe to the provider's IP CTS service.⁴ Sprint points out, however, that for any such rule to be effective, it needs to be vigorously enforced. If the FCC, based upon credible information, has reason to believe that an IP CTS provider may be engaged in activities that appear to violate the prohibition, it should immediately issue a show cause order. Such order would set forth the evidence and tentatively find that the provider's authority to offer IP CTS service will be revoke unless the provider is able to demonstrate that it has not and is not engaging in proscribed activities. Moreover pending the outcome of the show cause proceeding, all IP CTS compensation to the provider should be suspended. In Sprint's view, such enforcement actions are necessary if the FCC is to minimize, if not eliminate, the types of

⁴ In the *Interim Order* the FCC stated that the "temporary prohibition against any other form of direct or indirect inducements, financial or otherwise, to subscribe or use or encourage subscription to or use of IP CTS would prohibit ... a provider from reimbursing a consumer for the cost of his or her examination by a hearing or health professional that would be needed to establish the consumer's hearing loss or for the cost of obtaining other eligibility documentation." *Interim Order* at fn. 59. Sprint recommends that this prohibition be made permanent.

improper activities that based on the what has occurred in the VRS market will undoubtedly result in waste fraud and abuse.

C. Provider Dissemination of Free End IP CTS User Equipment

The FCC also has expressed concern that the “programs to give away or loan end user IP CTS equipment to IP CTS users who subscribe to their services” initiated by certain IP CTS providers in recent months may be contributing to “the recent spike in IP CTS usage.” *NPRM at* ¶ 40. Sprint agrees that the ability to obtain a free telephone especially when linked a bounty program is likely to be a major, and perhaps sole, reason for the spike in IP CTS usage.

Sprint also agrees that the provision of free IP CTS equipment especially when coupled with a rewards program is likely a major reason why there has been a spike in IP CTS usage recently. Indeed, as the FCC observes, “when a consumer is required to pay some amount of money for an IP CTS phone, that individual has the incentive to first consider whether he or she needs the service, *i.e.*, to evaluate whether the benefit from the service is worth the cost of the specialized phone.” Thus Sprint and its partner Ultratec charges \$99 to users seeking to avail themselves of Sprint’s IP CTS services.⁵

For this reason, Sprint supported the FCC’s decision in the *Interim Order* to exempt potential IP CTS user who decides to purchase a IP CTS phone at or above a minimum price from a requirement that he/she submit an audiologist’s report attesting to the fact that such user’s hearing loss is such that the user would benefit from using IP CTS service. Moreover, Sprint believes that tying the purchase of an IP CTS phone to the certification requirement should be made permanent. Such tying arrangement should obviate the need for the FCC to set a minimum

⁵ As stated, Sprint does offer IP CTS phones at prices less than the \$99 price point as part of a State government supervised or federal government funding program. Sprint’s programs are consistent with the *Interim Order*’s exception to the \$75 price floor for government programs.

price for IP CTS phones. *See NPRM* at ¶ 41 (proposing to “prohibit all provider programs that give away or loan equipment to potential or existing IP CTS users at no cost or at *de minimis* cost” and seeking comment on a proposed definition of “*de minimis cost*”). In fact attempting to set a minimum price for IP CTS phones may be beyond the FCC’s jurisdiction since the FCC has long considered the telephone equipment market to be outside the FCC’s Title II regulatory authority.

The FCC should also eschew any attempt to set a purchase price for the software applications that are necessary for users to obtain IP CTS service using their Android-based or iOS-based wireless devices (Wireless IP CTS) and/or using their computers (WebCapTel).⁶ Sprint, for one, has offered a downloadable application free of charge to users who have purchased such phones and computers for a little more than a year now and give the fact that Sprint’s growth in IP CTS usage has been within historical norms, the offering of such software is not contributing to the concerns that led to the adoption of the *Interim Order* and the issuance of the instant *NPRM*.

Moreover, users of Sprint’s Wireless Captel service have to buy a smart phone and subscribe to a Sprint wireless data plan while users of Sprint’s WebCaptel services must have a computer (desk top or laptop) or a tablet and subscribe to a broadband service.⁷ Users must also have entered a user id and a passcode before using Wireless Captel or WebCaptel.⁸ Thus, unlike IP CTS phones which, as the FCC observes, can be easily used by other members of the IP CTS

⁶ Subjecting software to price regulation, like the regulating the price of IP Captel phones, may be outside the FCC’s statutory authority.

⁷ Smartphones, computers and tablets are not inexpensive, often costing several hundreds of dollars.

⁸ A user who downloads the Application to his or her smart phone must also register with Sprint and obtain a 10 digit telephone number.

user's family to make or receive calls with or without captions, such safeguards should strictly limit, if not eliminate, the use of these services by other members of the eligible user's family or by those visiting the eligible user's house or office. Stated differently, unlike service provided using IP CTS phones, there is little risk that Wireless Captel or WebCaptel services will be used by those who do not need to make or receive captioned calls.

D. Registration, Threshold Eligibility and Certification Requirements

Sprint fully supports the interim rules governing registration and certification of new IP CTS users and recommends that such rules should be made permanent. Requiring those who wish to utilize IP CTS to meet their communications needs to register for the service is not burdensome and does not violate the functional equivalency principle set forth in Section 225 of the Act. To the contrary, registering to obtain goods and services is not only a common practice in the telecommunications industry – for example one must register in order to obtain a phone number, VoIP service or broadband connectivity – registration is a common practice in many sectors of the economy. Sprint also believes that the interim self-certification requirement should be made permanent. Such certification would not appear to be burdensome and should help the FCC further its goal of deterring fraud and misuse in the provision of what is becoming a vital service to those individuals who can speak but who may have difficulty hearing and participating in a phone conversation because of a hearing loss.

Moreover Sprint agrees that the certification should be on a separate page on the web site increasing the probability that the person registering to obtain IP CTS service actually reads the certification. However, Sprint does not believe that such “self-certification should be made “under penalty of perjury.” *NPRM* at ¶ 43. It suggests that all users registering to obtain IP CTS service who had to pay at least \$75 for an IP CTS phone or go the expense of having to obtain a

licensed audiologist's certificate attesting to a hearing loss in order to utilize a service that eliminates the privacy of the non-CTS user's conversation simply cannot be trusted. Of equal significance since the crime of perjury could lead to jail time, the requirement is likely to deter individuals from registering for a service that they may need "to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users," *Interim Order* at ¶ 1, because of a concern that their hearing loss may not pass perhaps some arbitrary test to establish that they are eligible for IP CTS.⁹

In any event the requirement is unenforceable. An IP CTS provider is neither the police nor a court of law and cannot be expected to conduct surveillance operations to determine if their IP CTS registrants have suffered a hearing loss and need IP CTS service in order to continue make and receive phone calls. Adopting an unenforceable rule can hardly be deemed in the public interest.¹⁰

E. Default Captions Off

In the *Interim Order*, the FCC adopted a rule "requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have captions turned off as the

⁹ The FCC has asked for comments on whether it should "make permanent our interim rule requiring each IP CTS provider to maintain the confidentiality of such registration and certification information obtained by the provider, and to not disclose such registration and certification information, as well as the content of such registration and certification information except as required by law." *NPRM* at ¶ 48. Sprint always protects the confidentiality of the personal information it obtains from its users and only discloses such information if required to do so pursuant to a court order or subpoena. Sprint will continue to do so regardless of whether the FCC makes permanent the interim rule governing confidentiality.

¹⁰ Sprint agrees that IP CTS providers be required "to obtain registration and certification from their existing users." *NPRM* at ¶ 49. Sprint also believes that a 90-day window should be enough time to obtain such registration and certification with the caveat that providers should be able to obtain a limited extension of the deadline if they can demonstrate that such extension is in the public interest.

default setting at the beginning of each call.” *NPRM* at ¶ 51. The FCC reasoned that a captions-off default setting which would require a user to take “affirmative step to turn on the captions each time [he/she] wishe[d] to use IP CTS” would reduce the incidence that the family, friends or business acquaintances of an eligible user who did not need IP CTS to meet their communications needs would use the phone with the “caption-on” feature thereby “resulting in improper billing of the TRS Fund.” The FCC now asks whether it “should make this interim rule permanent.” *Id.*

Although there is no evidence that the default captions-off requirement will limit the use of the IP CTS service – in fact Ultratec has provided some information that suggests that is not the case – Sprint supports making the default captions off requirement adopted in the *Interim Order* permanent for IP CTS phones.¹¹ Indeed, Ultratec has made the necessary changes to the software to implement the interim rule both for new and existing phones.¹² However, Sprint does not believe that a default captions off requirement should be required for Wireless Captel and WebCaptel users. Indeed, such a requirement makes little sense when in order to access Captel services on a mobile device or through a computer or tablet, the eligible user must have opened the application and entered his or her user id and passcode. This step can be viewed as

¹¹ Sprint recommends that the default captions-off rule not apply to 911 calls to Public Safety Answering Points. Thus the IP CTS would automatically provide captions to someone in need of emergency services. Sprint’s recommendation here is based on its view that a person who otherwise needs captions to meet his/her communications needs and who is in an emergency situation such that he/she may not be acting in rational manner should not be required to remember that he/she must also turn activate the captions functionality when calling 911 services.

¹² Petition for Limited Waiver filed February 22, 2013 by Hamilton Relay, Sprint Communications Company L.P. and Captel Inc. in this proceeding, explaining the process that Ultratec will use to update the software in the existing phones to provide the captions off functionality and requesting a limited waiver in order to allow sufficient time for new and already-deployed IP CTS equipment to fully comply with new requirement. .

equivalent to pushing the captions-on button on the IP CTS phone. These access requirements that otherwise ineligible users must take in order to make captioned calls using Wireless Captel and WebCaptel should minimize to the great extent if not prevent the casual or inadvertent use of these services. In any event, at the present time, Sprint is not aware of any technological fix to the Wireless Captel and WebCaptel software that will close the application on the mobile device or computer each and every time the user ends a captioned call.

F. Notification Label

The last issue raised in the *NPRM* that Sprint wishes to address is whether the FCC should adopt a rule to “require that each piece of new IP CTS equipment have a label on its face in a conspicuous location specifying that FCC regulations require that captions may be used only by people with hearing loss who require captions to fully understand telephone conversations.” *NPRM* at ¶ 55. Sprint supports a labeling requirement for both new and existing IP Captel phones. However, Sprint believes that IP CTS providers should have the flexibility of either printing such labels for new and existing users to affix to the phone or having the notice appear on the screen.

III. CONCLUSION

Again the FCC is to be commended for taking swift action to try to halt the types of questionable marketing gimmicks and other ploys being employed by some providers of IP CTS service. Sprint is hopeful that such action and increased vigilance by the FCC will minimize, if not prevent, fraud and misuse in the provision of IP CTS services. For these reasons, Sprint supports adoption of the requirements as set forth above.

Respectfully submitted,

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