

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) in this proceeding.¹ The *NPRM* raises important questions about the future regulation of Internet Protocol Captioned Telephone Services (“IP CTS”). Hamilton appreciates the opportunity to comment on these proposals, and supports the Commission’s efforts to curb waste and abuse of IP CTS in order to preserve the integrity of the interstate Telecommunications Relay Service (“TRS”) Fund. These efforts must be balanced with the equally important goal of protecting the interests of the numerous hard of hearing Americans, most of whom are elderly, who rely on IP CTS to communicate in a functionally equivalent manner when using the telephone.

As set forth below, Hamilton generally supports the proposals in the *NPRM* and recommends that the interim rules be made permanent. In addition, to the extent that the new registration and certification requirements that currently apply only to new users are extended to existing users, Hamilton supports the application of such requirements using the same criteria that are applied to new users – i.e., existing users may self-certify if they purchased the IP CTS

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 (rel. Jan. 25, 2013) (“*NPRM*” or “*Order*” as applicable).

equipment for \$75 or more or obtained the equipment from a governmental program, but must obtain a certification from an independent, third party professional if they obtained the IP CTS equipment for free or for less than \$75.

I. The Interim Ban on Referrals for Rewards Should Be Made Permanent

The *Order* accompanying the *NPRM* adopted interim rule Section 64.604(c)(8)(i), which provides:

An IP CTS provider shall not offer or provide to any person or entity any form of direct or indirect inducements, financial or otherwise, to subscribe to or use or encourage subscription to or use of IP CTS. IP CTS providers offering or providing such inducements shall be ineligible for any compensation for IP CTS from the TRS Fund.

Hamilton believes that the interim rule will be effective in ridding the industry of egregious marketing practices that are inappropriate in connection with a federal funding program.² At the same time, Hamilton is concerned that a literal interpretation of the rule could be construed to prohibit legitimate marketing and outreach practices.

Wholesale/Retail Arrangements

For example, Hamilton believes that the Commission, in adopting this interim rule, did not intend to restrict all wholesale/retail business arrangements. Clearly there is a financial benefit for a third party to contract with an IP CTS equipment distributor to buy IP CTS equipment at wholesale and sell that equipment for a profit at a retail price of \$75 or more. However, Hamilton believes that such arrangements do not constitute a “direct or indirect inducement[, financial or otherwise” for purposes of the interim rule, because such arrangements do not fundamentally encourage (or discourage) the subscription to or use of IP CTS. Moreover, the *Order* clearly indicates that not all

² See, e.g., *Order* ¶ 14.

financial inducements are prohibited – for example, the *Order* contemplates that providers might subsidize IP CTS equipment by selling the equipment for \$75, consistent with the practices of most smartphone providers which subsidize the cost of the phone in a similar manner. Hamilton believes that wholesale/retail arrangements are equally benign because they essentially represent an outsourcing of advertising/marketing by the IP CTS provider. There is no benefit (financial or otherwise) to an IP CTS user in connection with a wholesale/retail arrangement. In fact, the consumer is likely unaware of the arrangement, and the consumer’s decision to subscribe to or use IP CTS is not influenced by any financial benefit.

Hamilton requests that the Commission clarify the applicability of any permanent rule to such marketing practices.

Wholesale/Retail Arrangements with Audiologists

Hamilton also requests clarification as to whether wholesale/retail arrangements are permitted when the retailer is an audiologist or other independent hearing professional. The *Order* appears to indicate that *any* compensation to audiologists may be inconsistent with federal policy;³ however, it is not clear whether the interim rule in Section 64.604(c)(8)(i) prohibits an audiologist from making an independent determination to sell a phone at retail, for a price of \$75 or more, to a hard of hearing user if the audiologist purchased the phone from an IP CTS equipment distributor at wholesale. Clearly the provider could not give any financial benefit to an audiologist if the audiologist is distributing equipment for free or for less than \$75, and the audiologist is also issuing eligibility certifications to users. But when the audiologist is acting in the same capacity as any other wholesaler of IP CTS equipment, and is not issuing eligibility

³ *Id.* ¶ 17.

certifications to users at the time of the retail sale, then there does not appear to be the same policy concern that the audiologist is being improperly compensated by the provider.⁴ Hamilton requests clarification of these issues.

Combination Offers

Hamilton also believes that combination offers are a legitimate marketing practice, so long as the cost of the IP CTS phone is \$75 or more. For example, Hamilton offers a package of an IP CTS phone and a router for \$89-\$99, with the price of the phone being \$75 and the router being \$14-\$24 which is a reasonable price range for a router. In contrast, a package of an IP CTS phone and an iPad for \$99 clearly would be an unreasonable price for the iPad. The Commission can analyze such marketing practices on a case-by-case basis because, as noted in the *Order*, the Commission has the authority to request that a provider submit a description of its “reasonable practices.”⁵

II. Provider Dissemination of Free End User IP CTS Equipment

The Commission is concerned that the recent spike in IP CTS usage may be the direct result of free equipment giveaways and loan programs by certain IP CTS providers.⁶ Hamilton traditionally has not given away IP CTS equipment, but instead has sold its IP CTS at retail for a sufficient price (currently \$99) to confirm that the user legitimately needs to use IP CTS. Hamilton encourages the Commission to look to consumer groups for whether IP CTS equipment should continue to be available for free or on loan, and under what circumstances and conditions. Regardless of whatever action the Commission takes with respect to free equipment,

⁴ Moreover, wholesale/retail arrangements generally are appropriate because the consumer pays \$75 or more for the IP CTS phone. As the Commission notes, the fact that the consumer is paying for the equipment prompts the consumer to decide whether he or she needs the service. See *NPRM* ¶ 40.

⁵ *Order* ¶ 36.

⁶ *NPRM* ¶ 40.

Hamilton believes that there should always be the ability for a legitimate IP CTS user to purchase an IP CTS phone at retail for \$75 or more (or whatever price is set by the Commission, but in no event less than \$75), and thereby self-certify that he or she is eligible to use the service.

Hamilton believes there is no better indication that a user legitimately needs the service than a user's decision to pay his or her own money for the specialized equipment needed to use the service. As the Commission noted, "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."⁷

III. Registration, Threshold Eligibility and Certification Requirements

The Commission is also seeking comment on whether to require each IP CTS provider to register and certify existing IP CTS users. Hamilton does not object to extending these requirements to existing users, provided that existing users may self-certify if they purchased the IP CTS equipment for \$75 or more or obtained the equipment from a governmental program, and provided that they must obtain a certification from an independent, third party professional if they obtained the IP CTS equipment for free or for less than \$75. Hamilton continues to believe that self-certification is appropriate where an existing user made a conscious decision to purchase, at a price of \$75 or more, specific end-user equipment whose primary function is to access IP CTS.

If registration and certification requirements are applied to existing IP CTS users, the self-certification process should require the user to certify that: (1) the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to

⁷ *Id.*

communication by conventional voice telephone users; (2) the user understands that the captioning service is provided by a live communications assistant (CA); and (3) the user understands that the cost of the IP CTS calls is funded by the federal TRS Fund.

Providers should be afforded sufficient time (up to 180 days after any effective date) in order to complete the registration and certification of existing users.

The Commission also seeks comment on whether to adopt any quantitative threshold requirements to be eligible to use IP CTS, such as a minimum decibel (dB) hearing loss. Hamilton opposes the adoption of any such requirements, and believes that the interim rules strike the appropriate balance for determining eligibility and requiring certification without the need for the FCC to insert itself into scientific determinations of hearing loss. In Hamilton's experience, it is not appropriate to use dB hearing loss as an eligibility gateway, because hearing comprehension is an equally important part of the analysis. Ultimately, hearing comprehension cannot be easily measured using objective criteria, and is best left to audiologists and other independent professionals to determine. For these reasons, Hamilton believes that any dB threshold would be arbitrary and would exclude legitimate users of the service.

IV. Default Captions Off

Hamilton is on record in support of the interim "default captions off" rule,⁸ and urges the Commission to analyze the effectiveness of this requirement during the interim period. It may be necessary to re-evaluate the decision to prohibit a user in all instances from selecting captions on as the default setting. The consumers' loss of this efficiency and functionality may outweigh

⁸ Hamilton, *Ex Parte* Letter, CG Docket No. 03-123, Jan. 10, 2013, at 2.

whatever benefits are derived from the restriction. Therefore, Hamilton urges the Commission to carefully analyze consumers' needs before making this requirement permanent.⁹

In addition, Hamilton notes that it is a party to a recent Petition for Limited Waiver regarding the interim default captions off requirement, and requests prompt relief as described in that petition.¹⁰ Hamilton also requests that any relief afforded in connection with the interim rules also be extended to afford relief under any permanent counterpart rules.

V. New IP CTS Regulations, if Made Permanent and Enforced, Would Obviate the Need for Commission Action on IP CTS Rates

Hamilton notes that a Petition for Rulemaking was recently filed proposing a new rate methodology for IP CTS.¹¹ Under the proposed rate methodology, providers would be compensated based on a “price cap” approach rather than the current method of using competitively bid state rates to calculate the interstate IP CTS rate. Hamilton looks forward to commenting on this proposal more fully, to the extent the Commission seeks formal comment on the proposal. However, Hamilton takes this opportunity to note that a decision to make the interim IP CTS rules permanent, and to enforce those rules vigorously, is more likely to decrease pressure on the TRS Fund size than any rate reform effort, given that the

⁹ *NPRM* ¶ 51.

¹⁰ Hamilton Relay, Inc., Sprint Communications Company, L.P. and Captel Inc., Petition for Limited Waiver, CG Docket Nos. 13-24, 03-123 (filed Feb. 22, 2013).

¹¹ Sorenson Communications, Inc. and CaptionCall, LLC, Petition for Rulemaking, CG Docket No. 03-123 (filed Feb. 20, 2013).

Commission's concerns in the *Order* are limited to the growth rate of IP CTS as opposed to the per-minute rate for IP CTS.

Respectfully submitted,

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