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

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

EMERGENCY PETITION OF SPRINT NEXTEL
FOR LIMITED WAIVER AND CLARIFICATION

Sprint Nextel Corporation ("Sprint"), on behalf of the Telecommunications Relay Service ("TRS") operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully requests that the Federal Communications Commission ("FCC" or "Commission") waive the "default captions off" interim requirements adopted in its *Order and Notice of Proposed Rulemaking*, FCC 13-13 issued January 25, 2013, in the above-captions dockets ("*Interim Order*") for Wireless CapTel and WebCapTel.[1] As set forth in the following section, "good cause" exists for granting the requested waiver, *see* 47 C.F.R. §1.3, since "the particular facts" involved in provision of Wireless CapTel and WebCapTel make strict compliance" with the interim requirements "inconsistent with the public interest." *Northeast Cellular Telephone Co. v.*

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[1] Sprint is filing this waiver out of an abundance of caution. Although the FCC states that providers must "ensure that equipment and software used in conjunction with their IP CTS have captions turned off as a default setting," *Interim Order* at ¶ 33, it is not clear whether the term "software" encompasses applications that provides access to the Wireless CapTel and WebCapTel or is limited to the software that enables captions to be displayed on the screen of the IP CTS phone. If the FCC clarifies that the term software does not encompass the application, the requested wavier would not be necessary.

FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Sprint also requests that the FCC clarify its interim rules in two respects. First the FCC should make clear that new Wireless CapTel and WebCapTel users who are able to download the application at no charge to their wireless device or computer in order to access IP CTS do not have to obtain "a certification from an independent, third-party professional attesting" to the fact that they "ha[ve] a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users." *Interim Order* at ¶ 24. Second, the FCC should clarify the free provision of the Wireless CapTel mobile application and WebCapTel web browser application is not implicated by the FCC's rule proscribing "direct or indirect inducements, financial or otherwise, to subscribe to or use or encourage subscription to or use of IP CTS…" *Interim Order* at ¶ 15. Sprint explains the bases for the requested clarifications in Section B, below.

A. Sprint's Request To Exempt Wireless CapTel and WebCapTel From The "Default Captions Off" Requirement Easily Passes "High Hurdle" Faced By Petitioners Seeking Waivers.

The FCC has explained that the "default captions off" interim rule was adopted "to prevent billing of the TRS Fund for casual or inadvertent use of IP CTS by other individuals who do not need IP CTS to communicate by phone, in particular those who may be living in a subscriber's household or visiting a subscriber's house or office." *Interim Order* at ¶ 27. The FCC pointed out that if a person without a hearing loss decided to use the IP CTS phone in the home of the CapTel user to make a call simply because the phone was close by and the captions option was defaulted to "on," the TRS Fund would be billed regardless of the fact that captions were not necessary. Thus, the FCC reasoned that if the captions option were defaulted to "off"

thereby requiring the user to activate the captioning feature either when initiating or receiving a call, the chances that "individuals who do not need IP CTS would casually or inadvertently us[e] IP CTS, causing illegitimate minutes of use to be billed to the Fund" would be reduced. *Id.* at ¶ 33. The FCC recognized that the "default captions off" would require the user to activate the captions feature "such as pushing a button" but concluded that the "burden" it was imposed on the IP CTS user was small and that in any event was clearly "outweighed by the substantial public interest in preventing the misuse of [IP CapTel] service." *Id.*

The benefit/burden test is not as clear in the case of Wireless CapTel and WebCapTel. Using one's computer or mobile smartphone to make captioned calls is not as simple as dialing a number on the IP CapTel phone and "pushing a button" to enable captions (either at the outset of the call or during the call). To the contrary, there are a considerable numbers of steps a user must take in order to make or receive a captioned call on his computer or on his mobile smartphone. For example, an eligible CapTel user who wants to make a captioned call through his computer must (1) open the browser, type in the url (or click on the bookmark) of the site through which he would be able to place the call (*e.g.*, www.sprintcaptel.com/webcaptel.asp); (2) enter his user id. and passcode; (3) type in the number he is calling; and (4) click on the "Place Call" button. He then must wait until the phone attached to the computer rings and answer it. Only then will he be able to talk to the called party as well as receive captions on his computer. If he wants to receive a captioned call through his computer, he must (1) ensure that his computer is on and running and opened to the CapTel's provider's access page; (2) enter his user id and password; (3) enter the phone number attached to the computer; and (4) instruct the calling party to dial a toll-free number and enter the phone number of the phone attached to the computer. He must then answer

the attached phone when it rings to talk to the calling party and receive the captions on the computer.

Similarly, an eligible CapTel user who has downloaded the Wireless CapTel application to his smartphone and wants to make a captioned call from the phone must (1) open up and log onto the application, *i.e.,* by entering his user id and passcode; (2) wait until the app ensures that the mobile-broadband connection is fast enough for captioned calls; (3) enter the number of the person he is calling; and (4) tap the "call button" to dial the phone number and enable captions. To receive a captioned call on his mobile device the user must (1) ensure that the application is opened and he has entered his use id and passcode;[2] and, (2) wait until the application ensures that the broadband connection is fast enough for captioned calls. Upon receiving a call to the 10-digit number assigned to his Wireless CapTel upon completing the registration process, the user must tap the "Answer with Captions" button in order to receive captioning.

Moreover, unlike an IP CTS phone sitting on a table or on a desk easily accessible "by other individuals who do not need IP CTS to communicate by phone, in particular those who may be living in a subscriber's household or visiting a subscriber's house or office," *Interim Order* at ¶ 27, a CapTel user's computer and smartphone is not susceptible to inadvertent or causal use by such individuals. Logging on to a computer, especially one in an office usually requires the person to whom the computer is assigned to enter an id and password.[3] Access to

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[2] The user has the option of keeping the Wireless CapTel application opened once he has logged on to it, thereby eliminating the need for the user to enter his id and password each time he wishes to make or receive a captioned call. However, keeping the application the application opened will drain the phone's battery and take up bandwidth. Thus, the user has a strong incentive to close the application after making or receiving one or more captioned calls.

[3] If the user logs on the computer but does not use it for a period of time, the computer will lock thereby requiring the user the re-enter his password to again access to his homepage and the applications that have been downloaded to the computer.

one's smartphone may be password protected and in any event the phone's owner is likely to have it in his possession most of the time.

Plainly the steps that otherwise ineligible users must take in order to make or receive captioned calls using the WebCapTel or Wireless CapTel applications the eligible user has downloaded to his computer or smartphone, coupled with the fact that their opportunity to access the computer or smartphone to which the CapTel application has been downloaded is highly limited, minimize to a great extent, if not prevent, the casual or inadvertent use of these particular IP CapTel services. Indeed, Sprint believes that it is simply unrealistic to assume that a hearing individual would even attempt to make a WebCapTel or Wireless CapTel call even if they had access to the computer or smartphone with the downloaded applications and knew the CapTel's user's logon information. It is much easier and more efficient to simply use the phone attached to the computer or the smartphone to make or receive calls.

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. Thus to require Sprint and other providers of these services to attempt to develop a "default captions off" solution to try to prevent a problem that is virtually non-existent makes no sense. In short, to inflexibly apply the default captions off requirement to WebCapTel and Wireless CapTel is simply not in the public interest. *See, WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("… a general rule, deemed valid because its overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest").

B. The FCC Should Clarify That The Interim Rules Do Not Apply To The WebCapTel and Wireless CapTel Applications That Are Available To Eligible Users Of These IP-Enabled Caption Services At No Charge.

Sprint fully supports the interim rule proscribing "direct or indirect inducements, financial or otherwise to subscribe to or use or encourage subscription to or use of IP CTS...," *Interim Order* at ¶ 15. Sprint also fully supports the interim rule that requires a provider to obtain "a certification from an independent, third-party professional attesting" to the fact that they "has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users." *Interim Order* at ¶ 24, when the IP CTS user obtains IP CTS equipment for less than $75. However, Sprint respectfully requests that the FCC make clear that neither of these requirements applies to the downloadable applications which are available at no charge and which enables the user to access CapTel services through his computer or his smartphone.

There is nothing in the *Interim Order* on the interim rules barring financial or other inducements to subscribe to or use IP CTS that suggests that the free downloadable application constitutes such an inducement and encourages the use of IP CTS by those who do not need CapTel. The WebCapTel and the Wireless CapTel applications simply provide access to IP CTS. The individual who downloads the applications may choose not to use such access to make or receive captioned calls.[4] Indeed, given that obtaining access to the captions through either of these offerings is not as easy as obtaining captioning by using an IP CTS phone, many

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[4] Moreover an individual who has downloaded either application has to register for CapTel service, a process which includes providing name, address and email information as well as certifying that they have a hearing loss. In the case of Wireless CapTel, Sprint also issues a 10-digit number to be used with the application.

individuals may choose to use WebCapTel or Wireless CapTel only when they are away from their IP CTS phones at home or in their offices.[5]

There is also nothing in the *Interim Order* or the interim rules suggesting that because the application is available at no charge the user who downloads the application to his wireless device or computer is required to furnish such certificate. To the contrary, the language in the *Interim Order* and in the rules refers to "IP CTS equipment." *See id.* at ¶ 24 and 47 C.F.R. § 64.604 (c) (9) (v). In the case of WebCapTel, such equipment includes a laptop or desk top computer; in the case of Wireless CapTel, such equipment includes an Android phone or a 4G iPhone. The price of such equipment invariably is above, and in some cases significantly above, the $75 threshold.[6]

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[5] A decision that the provision of the WebCapTel and the Wireless CapTel applications is barred by the "no inducements, financial or otherwise" rule would appear to be at odds with the FCC's decision in CG Docket No. 10-213 (*Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 14557, 14564-14565 ¶ 13 (2011).

[6] If contrary to Sprint's argument here the FCC finds that the WebCapTel and Wireless CapTel applications are covered by the rules, Sprint respectfully requests that the FCC waive such requirements for the reasons stated above.

For the reasons stated above, Sprint respectfully ask that its requested waiver and clarification be granted as soon as possible.[7]

Respectfully submitted

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[7] So as to remove any doubt as to whether Sprint's requested waiver and clarification applies to all similarly-situated IP CTS providers, Sprint also respectfully requests that FCC clearly state that any relief granted to Sprint extends to such other providers.