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ATTORNEYS AT LAW

March 7, 2013

VIA HAND-FILING AND ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 and 0.459

Dear Ms. Dortch:

Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall, LLC (collectively “CaptionCall”) file this Emergency Petition for Waiver to allow CaptionCall to phase in Commission’s new requirement that Internet Protocol Captioning Telephone Service (“IP CTS”) providers implement a captions-off default setting.¹ CaptionCall is filing a confidential and publicly available version of its comments.

CaptionCall requests pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457, 0.459, that the Commission withhold from any future public inspection and accord confidential treatment to the sensitive business information it is providing—all of which has been redacted from the publically available version of the CaptionCall’s comments. The redacted data constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”). Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are ... (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). Because CaptionCall is providing commercial information “of a kind that would not customarily be released to the public” in its Emergency Petition for Waiver, this information is “confidential” under Exemption 4 of FOIA. *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

¹ *See 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, FCC 13-13, 28 FCC Rcd. 708, 722 ¶33 (2013).

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In support of this request and pursuant to Section 0.459(b) of the Commission’s rules, CaptionCall hereby states as follows:

1. Identification of the Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

CaptionCall seeks confidential treatment of detailed information regarding operational procedures, strategic business decisions, and customer usage data—all of which has been redacted from the publically available version of CaptionCall’s comments.

2. Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

CaptionCall is submitting this information in its Emergency Petition for Waiver in response to the Commission’s new requirement that IP CTS providers implement a captions-off default setting.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The information described above is protected from disclosure because it constitutes highly sensitive information about CaptionCall’s operational procedures, strategic business decisions, and customer usage data. This constitutes sensitive commercial information “which would customarily be guarded from competitors.” 47 C.F.R. § 0.457.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The IP Captioned Telephone Service (“IP CTS”) market is highly competitive throughout the United States.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of this information would provide CaptionCall’s competitors with sensitive insights related to CaptionCall’s operations, customer data, and strategic decisions—all of which would work to CaptionCall’s severe competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

CaptionCall does not make this information publicly available.

Marlene H. Dortch

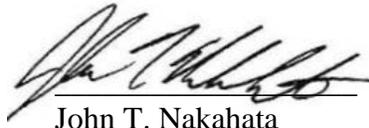
March 7, 2013

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7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

CaptionCall does not make this information publicly available.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", written over a horizontal line.

John T. Nakahata

Counsel to CaptionCall.

Attachments

**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 Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	

EMERGENCY PETITION FOR WAIVER

Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall, LLC, (collectively “CaptionCall”) hereby request a waiver allowing CaptionCall to phase in the Commission’s new mandatory minimum standard that Internet Protocol Captioning Telephone Service (“IP CTS”) providers implement a captions-off default setting.¹ To give the Commission assurance that CaptionCall continues to strive to meet the requirements of the rule, and to create an incentive to roll out a complete solution quickly, CaptionCall proposes that the TRS Fund Administrator compensate it for 85% of minutes from non-compliant devices during the waiver period.

CaptionCall makes this request on an emergency basis. As explained in more detail below, the company undertook a strong, good-faith effort to implement the new requirement immediately after the Commission released its *IP CTS Order* on January 25, 2013. The exceptionally short time frame between the *Order*’s release and the effective date of the “default

¹ See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Order and Notice of Proposed Rulemaking, FCC 13-13, ¶ 33 (rel. Jan. 25, 2013) (“*IP CTS Order*” or “*Order*”).

off” rule—which was much shorter than CaptionCall’s standard commercial development and deployment process—meant that the company was unable to thoroughly test the software update it developed to implement the rule or to educate customers about the new interface prior to deployment. As a result, the service was beset by customer confusion and technical glitches when the Company rolled out the update on March 3, 2013, several days ahead of the deadline.

To address these twin problems—technical glitches and customer confusion—CaptionCall requests a five-month waiver allowing CaptionCall to phase in compliance with the “default off” rule. CaptionCall is confident that it can clearly identify and remedy the problems in that period, including educating its customer base so that they can adapt to the new service configuration. As indicated above, CaptionCall will have a strong incentive to come into compliance as soon as possible, as CaptionCall would be compensated for only 85 percent of minutes for non-compliant devices during the waiver period. Indeed, CaptionCall has begun a trial program through which CaptionCall will contact customers through a combination of phone calls and in-home visits to explain and provide training on the new firmware. As customers receive this training, the new firmware will be reinstalled on their phones, and CaptionCall will follow up to determine whether the firmware installed and functions correctly. If the program proves successful, CaptionCall will continue it.

As presented below, the public interest favors granting this limited waiver. CaptionCall has worked diligently and in good faith to develop and roll out a software upgrade to meet the requirements of the new rule prior to its effective date. The short time frame has resulted in a combination of customer-reported technical glitches and consumer confusion that are directly impacting the ability of eligible consumers to use the service. Depriving or substantially impeding eligible users—particularly less technically familiar, older Americans, the vast

majority of whom have either two hearing aids or a cochlear implant—from using the captions on which they rely and need to utilize the telephone fully does not advance the policy principles that lie at the foundation of the Americans with Disabilities Act. Moreover, the reduced 85% of minutes that would apply to non-compliant CaptionCall devices during the waiver period would protect the TRS Fund from any ineligible usage (even though, as CaptionCall has explained in the past, there is no record evidence of any material level of ineligible usage). Accordingly, to promote the public interest and ensure that eligible hard-of-hearing consumers can be transitioned to a default-off IP CTS environment without undue burden or disruption, the Commission should grant CaptionCall’s request for a waiver.

I. CaptionCall Made a Diligent and Good Faith Effort to Implement a Software Upgrade Prior to the Effective Date.

On January 25, 2013, the Commission released the *IP CTS Order*, which imposed several new requirements on IP CTS providers. Of relevance to this Petition, the *Order* requires that equipment and software used in conjunction with IP CTS service must have a default setting to captions off, so that IP CTS end users must affirmatively turn the captioning service on for each call.² The new rule takes effect on March 7, 2013.³

Prior to the *Order*, the firmware resident in all of CaptionCall’s devices had a default captions-on setting. To implement default-off, CaptionCall must completely revise the firmware resident in each endpoint, as well as educate and train customers on how to use a service that is default-off for every call.⁴ CaptionCall began the process of developing a firmware update

² *IP CTS Order* ¶¶ 27-35; 47 C.F.R. § 64.604(c)(10).

³ *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Interim Rule, 78 Fed.Reg. 8032, 8032 (Feb. 5, 2013).

⁴ *See Declaration of Michael Holm* ¶ 4, Attachment 1 (“Holm Declaration”).

addressing the Commission’s specifications immediately upon the release of the *Order*.⁵ The short timeline for compliance meant, however, that CaptionCall had to severely truncate its standard user-interface development, testing, quality assurance, and roll-out processes.⁶ These standard processes that were skipped here are designed to ensure that new features (1) actually work, (2) do not impede or interfere with other operations of the phone or IP CTS system, (3) are comprehensible to and usable by consumers, and (4) can be rolled-out in a phased manner that both allows for consumer training and education, and for the identification and correction of any problems that were not detected through the alpha and beta testing phases, including testing with volunteers from outside of the company.

CaptionCall developed a new user interface that complied with the new rules,⁷ but the new interface was far from ideal. Because CaptionCall had only five weeks to implement the new user interface, the company had to shorten its development and rollout processes severely.

Instead of *****BEGIN CONFIDENTIAL***** [REDACTED] *****END**

⁵ See *id.* Prior to the *Order*, CaptionCall had been working on other solutions for reminding consumers that only hard-of-hearing persons could use captioning, and making more readily apparent to users how to turn captions off. These solutions did not provide a foundation for implementing the *Order*’s requirements.

⁶ See *id.* ¶ 5. When CaptionCall updates a user interface, its standard process requires *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL*****. The standard process includes at least six weeks of design and code development to develop the new software, *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** of automated testing to verify the reliability of the new software, *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** of alpha testing with hard-of-hearing CaptionCall staff members, *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** of beta testing with customers who volunteer to participate, and *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** for focus group evaluations of user interface designs. Before and while CaptionCall rolls the software out to its customers, it engages in extensive marketing communications efforts to ensure that they understand the changes.

⁷ The new interface turned captions off by default and included a conspicuous, large green button that instructed customers to “[t]ouch here to caption this call.” See Holm Declaration ¶ 6.

CONFIDENTIAL*** for code development, CaptionCall took only *****BEGIN**
CONFIDENTIAL*** [REDACTED] *****END CONFIDENTIAL***** and conducted the
*****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** automated
reliability testing in parallel with alpha testing. CaptionCall shortened alpha testing from
*****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** to *****BEGIN**
CONFIDENTIAL*** [REDACTED] *****END CONFIDENTIAL***** and eliminated *****BEGIN**
CONFIDENTIAL*** [REDACTED] *****END CONFIDENTIAL***** entirely.
As a result, CaptionCall could implement only the bare-minimum regulatory requirements and
could not develop features that would aid the customer's ability to use the new firmware
effectively. CaptionCall also had very little time to educate consumers about the changes in the
firmware, which extends the rollout process to at least *** **BEGIN CONFIDENTIAL** *** [REDACTED]
[REDACTED] *** **END CONFIDENTIAL** *** and in the case of most major updates, *** **BEGIN**
CONFIDENTIAL *** [REDACTED] *** **END CONFIDENTIAL** ***.

Moreover, because the final product generated by the herculean effort evolved over just
four weeks, the company could not thoroughly test the final firmware revision or provide a
detailed training on its operation to end users prior to roll out. Instead, the company was
constrained to *** **BEGIN CONFIDENTIAL** *** [REDACTED]
[REDACTED]
[REDACTED] *** **END CONFIDENTIAL** ***. In addition, the company did not
have time to engage in detailed consumer education about the changes. Instead, on February 27,
2013, CaptionCall mailed a one-page flyer to all consumers explaining the requirements of the

IP CTS Order and providing basic instructions on how to operate the device following the transition to default off.⁸

CaptionCall completed the firmware development in the first days of March and rolled it out to IP CTS devices on Sunday, March 3, 2013.⁹ Because CaptionCall had *** **BEGIN**

CONFIDENTIAL *** [REDACTED]

[REDACTED] *** **END**

CONFIDENTIAL ***.¹⁰ It conducted the roll out four days in advance of the deadline so that it could respond to consumer questions and resolve the minor technical glitches that typically occur following revisions.

II. The Accelerated Rollout has Resulted in a Substantial and Harmful Impact on Consumers.

While CaptionCall had expected and was prepared to manage a certain level of consumer confusion and technical glitches following any new firmware update, the impact of the captions default-off roll out has been unprecedented. The abrupt change in the phone's operation has caused CaptionCall's customers significant confusion and frustration. As indicated above, there have been two primary sources for customers' terrible experience. First, the expedited compliance timeline resulted in a variety of customer-reported technical glitches that CaptionCall expects it would have identified and removed if it had had sufficient time to conduct meaningful pre-launch testing.¹¹ These customer-reported problems include static on the audio

⁸ See CaptionCall Flyer, Attachment 2 ("CaptionCall Flyer").

⁹ See Holm Declaration ¶ 7.

¹⁰ See *id.*

¹¹ See *id.* ¶¶ 7-8.

line, instances in which the “captions on” button did not in fact turn them on, and phones being “hung” in an unusable state during the update process.¹²

Second, and even more critically, CaptionCall’s customers have been confused by and have had difficulty operating the revised “default off” interface—notwithstanding the fact that CaptionCall delivered notices and instructions to its customers in advance of the switch, and notwithstanding the fact that the interface was designed to be as user friendly as possible.¹³ As CaptionCall explained in letters filed with the Commission prior to the *Order*’s release, CaptionCall’s customer base is substantially older and less tech savvy than the population as a whole, meaning that any alteration to the service requiring more manual operation by the consumer would directly impact their ability and willingness to use the service.¹⁴

By Tuesday, March 5, 2013, more than *****BEGIN CONFIDENTIAL*****  *****END CONFIDENTIAL***** of CaptionCall’s active customers had received the new user interface. On March 4, 2013, CaptionCall received *****BEGIN CONFIDENTIAL*****  *****END CONFIDENTIAL***** calls to its customer support desk, which is *****BEGIN**

¹² *Id.* at ¶ 8.

¹³ *See id.* As indicated in the flyer that CaptionCall distributed to its customers, the new interface simply requires customers to press a prominent button located in the middle of the touch screen and labeled “Touch Here to Caption This Call” in order to activate captioning. *See* CaptionCall Flyer.

¹⁴ *See* Letter from Christopher J. Wright, Counsel, Sorenson Communications, Inc. and CaptionCall LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2, CG Docket No. 03-123 (filed Jan. 15, 2013); *see also* Comments of Sorenson Communications, Inc., *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03- 123 (filed Feb. 26, 2013). CaptionCall’s customer base is the hard-of-hearing population, which primarily includes elderly Americans. The median age of a CaptionCall customer is 74 years of age. In CaptionCall’s experience, these customers are less tech savvy than the general population, and they are more likely to be confused by sudden changes in the way they interact with CaptionCall’s technology. *See* Holm Declaration ¶ 3.

CONFIDENTIAL*** [REDACTED] ***END CONFIDENTIAL*** higher than the average of
BEGIN CONFIDENTIAL [REDACTED] ***END
CONFIDENTIAL*** and ***BEGIN CONFIDENTIAL*** [REDACTED] ***END
CONFIDENTIAL*** higher than the highest number of daily calls—***BEGIN
CONFIDENTIAL*** [REDACTED] ***END CONFIDENTIAL***—received in the four prior
weeks.¹⁵

Some customers thought that their selection of captioning on or off would require them to return their devices to CaptionCall or might somehow incapacitate their traditional telephones; others thought that the default off requirement was somehow linked to submitting certification forms or paying \$75; and some complained that they simply can't keep up with changes CaptionCall has made in an effort to address regulatory concerns.¹⁶ As a result of this upheaval, on Tuesday, March 5, 2013, CaptionCall began the process of temporarily restoring its customers' phones to the previous user interface until it can ensure that the upgrade is debugged and that it can present this change to consumers in a more orderly fashion.¹⁷ CaptionCall, however, has begun a trial program through which it contacts customers individually to educate them on the new default-off requirement and the new firmware. CaptionCall will re-install the default-off feature to the phone of each customer who receives this individual contact and training, and CaptionCall will follow up with these customers to ensure that the firmware installed and functions correctly. If the program proves successful, CaptionCall will continue it.¹⁸

¹⁵ See Holm Declaration ¶ 3.

¹⁶ See *id.* ¶ 9.

¹⁷ See *id.* ¶ 10.

¹⁸ See *id.*

As with the disruptive technical glitches, this consumer confusion and aggravation is a product of the extraordinarily truncated compliance timeline. With more time to produce and roll out the firmware revision, CaptionCall could have developed a more robust firmware update and a more effective consumer outreach and training initiative to ensure that its customer base was fully prepared for the transition. The customer backlash demonstrates that the new process was flawed in some respect. However, because CaptionCall did not have time to *** BEGIN

CONFIDENTIAL *** [REDACTED]

[REDACTED] *** END

CONFIDENTIAL ***¹⁹

III. A Waiver Would Advance the Public Interest.

The Commission recognized in the *IP CTS Order* that “it may take some time to develop a software patch for equipment already deployed with consumers,” and it therefore allowed providers to “request additional time by seeking a limited waiver of the effective date.”²⁰ The Commission may waive its rules when there is “good cause” to do so.²¹ Good cause exists when circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than would strict adherence to the general rule.²²

Good cause exists here because a five-month waiver allowing CaptionCall to phase in compliance with the default-off rule would generate public-interest benefits far greater than strict adherence to the arbitrary deadline adopted in the *Order*, which bears no relationship to the amount of time actually required to implement this requirement. The additional time that

¹⁹ See *id.* ¶ 7.

²⁰ *IP CTS Order* at ¶ 35.

²¹ 47 C.F.R. § 1.3.

²² *Ne. Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

CaptionCall requests would allow the company to evaluate and address the technical glitches that ensued following the March 3 firmware rollout, to address consumer complaints and inquiries about the change, to develop (and test) any additional patches necessary to achieve full but non-disruptive compliance, and to provide customers with detailed information about the change.

The requested waiver extension presents virtually no risk to the public interest. To the contrary, a waiver would clearly advance the public interest as it will mitigate the disruptive impact that the new requirement has on IP CTS end users. Rather than subject users to a flash cut solution that effectively prevents many IP CTS customers from legitimately using the service, an extension will allow CaptionCall to roll out a tested and vetted firmware update in conjunction with detailed outreach designed to educate consumers fully about the transition.

IV. Conclusion.

A five-month waiver allowing CaptionCall to phase in compliance with the default-off requirement would best serve the hard-of-hearing consumers who depend on CaptionCall's services. To protect the TRS Fund and create an incentive for rapid compliance, CaptionCall proposes that the TRS Fund Administrator compensate it for only 85% of minutes from non-compliant devices during the waiver period. (As CaptionCall rolls out new software, however, CaptionCall would expect to receive full compensation for phones with a default-off captions setting.) In light of the public interest favoring grant of the waiver and the absence of any negative impact on the TRS Fund, CaptionCall respectfully requests that the Commission grant the Petition.

Respectfully submitted,



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*Counsel to CaptionCall, LLC and Sorenson
Communications, Inc.*

March 7, 2013

ATTACHMENT 1

Declaration of Michael Holm

DECLARATION OF MICHAEL HOLM

I, Michael Holm, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Michael Holm. I am the Senior Director of Engineering for CaptionCall, LLC, which is a wholly owned subsidiary of Sorenson Communications, Inc. and is based in Salt Lake City. I have held this position since I joined CaptionCall in February 2012. I have served as Director of Program Management for Sorenson Communications, Senior Global Program Manager for Logitech, Director of Product Development for Microsoft, and Product Line Manager for Apple Computer. I received a Bachelor of Arts degree from California State University San Jose.
2. CaptionCall provides internet protocol captioned telephone service (“IP CTS”) for hard-of-hearing Americans. IP CTS permits hard-of-hearing persons to use the telephone while viewing captions of what the other party is saying. IP CTS has changed the lives of thousands of hard-of-hearing consumers whose hearing impairment previously prevented them from using the phone, but who can now engage in communications in a manner that is functionally equivalent to the communications in which a hearing person can engage.
3. CaptionCall’s customer base is the hard-of-hearing population, which primarily includes elderly Americans. The median age of a CaptionCall customer is 74 years of age. In CaptionCall’s experience, these customers are far less tech savvy than the general population, and they are more likely to be confused by sudden changes in the way they interact with any form of high technology, including CaptionCall’s.
4. On January 25, 2013, the Commission released, and on February 5, 2013, published in the Federal Register an emergency order requiring that all IP CTS providers program their phones to automatically turn the captioning function off at the beginning of each call from an IP CTS phone, which requires the hard-of-hearing consumer to turn captions on for each call they make using the IP CTS phone. Prior to this order, CaptionCall’s phones were set to turn captions on by default at the beginning of each call. CaptionCall had also been developing solutions to notify consumers at the beginning of the call that only qualified users could use IP CTS, with express directions on how to turn captioning off. Therefore, following the Order, CaptionCall had to develop the means to reprogram the user interface for each of its customers’ phones to comply with the Commission’s emergency order in accordance with the Commission’s specifications. CaptionCall’s engineering department immediately began implementing this change. The Commission’s order required that the change be completed thirty days after publication in the Federal Register, which is March 7, 2013.
5. The short timeline for compliance meant that CaptionCall had to severely truncate its standard user-interface development, testing, quality assurance, user acceptance testing, and roll-out processes. These processes are designed to ensure that new features (1)

actually work, (2) do not impede or interfere with other operations of the phone or IP CTS system, (3) are comprehensible to and usable by consumers, and (4) can be rolled-out in a phased manner that both allows for consumer training and education and for the identification and correction of any problems that were not detected through the alpha and beta testing phases, including testing with volunteers from outside of the company. When CaptionCall updates a user interface, its standard process requires a bare minimum of **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL *****, and depending on the nature and magnitude of the change, up to **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL *****. The typical process includes at least **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** of code design and development for initial development of new software, a minimum of **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** of automated testing to test the reliability of the new software, **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** of alpha testing with hard-of-hearing CaptionCall staff members, **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** of beta testing with customers who volunteer to participate, and **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** for rounds of focus group reviews. Moreover, CaptionCall would not customarily roll out a new firmware upgrade to all of its customers simultaneously, but would stage that rollout incrementally so as to be able to detect and correct any problems on a more limited scale rather than risking disrupting the service and user experience of its entire customer base, who depend on its captions in order fully to utilize the telephone. Before and while CaptionCall rolls the software out to its customers, it ordinarily engages in extensive consumer education efforts to ensure that they understand the changes. The usual time for a software update to go from development to full commercial rollout is six month, and, in the case of major updates, a year.

6. In the short time allowed under the order, CaptionCall Engineering was able to develop a new user interface that turned captions off by default and included a conspicuous, large green button that instructed customers, "Touch here to caption this call." However, because CaptionCall had only 4 weeks to design, implement, test, and deliver the new user interface, CaptionCall had to curtail its development and rollout processes severely. Instead of **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** for code design and development, CaptionCall took only **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL *****. CaptionCall executed automated reliability testing for **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL *****, in parallel with a shortened alpha test cycle **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL ***** and eliminated **** BEGIN CONFIDENTIAL *** [REDACTED] *** END CONFIDENTIAL *****. CaptionCall also

had very little time to prepare customers for this change in a fundamental user interface element of the device. CaptionCall distributed materials to its customers explaining the new default-off implementation and how to turn captions on, but because CaptionCall needed time to develop those materials, they were mailed on Wednesday, February 27, 2013, only one week prior to the deadline for implementing default-off captions.

7. CaptionCall begin deploying the new user interface to all of its customers' phones on Sunday, March 3, 2013, four days prior to the deadline for implementing default-off captions. Because CaptionCall had ***** BEGIN CONFIDENTIAL ***** [REDACTED] ***** END CONFIDENTIAL *****. When CaptionCall implemented the new user interface, it inserted a step that had not previously existed—turning captions on individually for each call—into the procedure a user must follow to use the CaptionCall service. The customer backlash demonstrates that the new process is flawed in some respect. However, because CaptionCall did not have time to conduct normal beta testing or focus groups, CaptionCall was not able to obtain customer feedback in advance and cannot readily identify the flaw in its process. CaptionCall was also unable to identify and remedy technical glitches in advance of the rollout.
8. According to the complaints received from consumers, which CaptionCall has not yet had the opportunity to diagnose, the new user interface had technical glitches, including audio static on the line and instances where the “captions on” button did not function properly, and it generated significant confusion among CaptionCall’s customer base, which as I describe above, is more elderly and far less accustomed to or comfortable with technology than the general population. Indeed, CaptionCall’s decision in early 2012 to switch to captions being on by default (which itself took approximately six months to implement) was in response to reported customer confusion about how to turn captions on and off, and in the 9 months since, all customers have come to assume that all they need do is pick up the handset and start dialing or speaking to use CaptionCall’s service. The very transparency of the current design generates an increased necessity for design testing and consumer education to successfully enable a significant change. On March 4, 2013, CaptionCall received ***** BEGIN CONFIDENTIAL ***** [REDACTED] ***** END CONFIDENTIAL ***** calls to its customer support desk, which is ***** BEGIN CONFIDENTIAL ***** [REDACTED] ***** END CONFIDENTIAL ***** than the average of ***** BEGIN CONFIDENTIAL ***** [REDACTED] ***** END CONFIDENTIAL *****.
9. According to CaptionCall’s customer-service center staff, some customers thought that if they did not select captioning on for every call, they would either have to give their phone back, or that other telephones in their house would cease to function. Some

customers requested to return their phones because of the repeated changes to their service. Some customers reported that the captions-on button on the phone's touch screen was not functioning or that the phone appeared to be "stuck" and non-responsive; we are investigating these reports at this writing.

10. In light of the customer complaints CaptionCall was receiving, with data indicating that large numbers of users were having substantial difficulty in activating the captions that they relied upon and needed, on Tuesday, March 5, 2013, CaptionCall began the process of temporarily restoring its customers' phones to the previous user interface so that customers could continue to use the service on which they rely while CaptionCall both diagnoses whether there are bugs in its firmware that are impeding operation and can conduct a more orderly rollout with integrated customer education and training. CaptionCall, however, has begun a trial process through which it contacts customers individually to educate them on the new default-off requirement. CaptionCall will re-install the default-off feature to the phone of each customer who receives this individual contact and training, and CaptionCall will follow up with these customers to ensure that the firmware installed and functions correctly.
11. This concludes my declaration.

Executed on March 7, 2013.



Michael Holm
Senior Director, Engineering
CaptionCall, LLC
4215 South Riverboat Road
Salt Lake City, Utah 84123

ATTACHMENT 2
CaptionCall Flyer

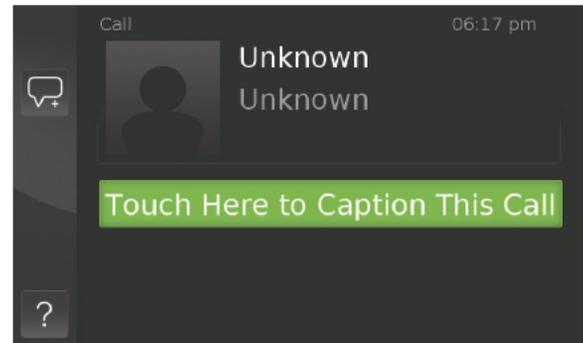


New FCC Regulations Involving CaptionCall

CaptionCall is made available to all qualified users as a fulfillment of the Americans with Disabilities Act (ADA). This free service can be used by all Americans with hearing loss who are not able to communicate on the telephone so they can once again use the phone with confidence.

The captioned telephone industry is regulated by the federal government through the Federal Communications Commission (FCC). The recent growth in the number of people using the service has attracted additional attention from the FCC and they want to secure the ongoing success of this program. The FCC recently issued new regulations for the captioned telephone industry that affect you. The new FCC regulations don't change our commitment to you. CaptionCall will continue to provide you with free captioned telephone service and free customer support. The new regulations are:

1. **All referral programs are suspended.** Captioned Telephone Service (CTS) providers can no longer pay for customer referrals. This change went into effect January 31, 2013.
2. **Captions Off by Default.** All captioned telephone users are required to turn captions on at the beginning of each call. By March 6, 2013, your CaptionCall phone will automatically update. You will now see a "Touch Here to Caption This Call" button at the beginning of every call.



If you do not see this button during your calls by the end of the day on March 7, 2013, please call our Technical Support Team at 1-877-557-2227.

The Future of the Customer Referral Program

The FCC also orders that we must charge new customers for the CaptionCall phone unless they provide third-party certification of hearing loss that requires captioning to communicate by phone. Your friends and family who qualify can receive a CaptionCall phone for a subsidized price of \$75, or for free if they provide the necessary certification.

If you have friends and family who have difficulty hearing over the phone, we encourage you to have them visit www.CaptionCall.com, click on "Request Info" and submit their information. They can use your Personal Promo Code in the Promo Code field. Soon, they will also be able to download the form required for professional certification from our website.

Thank you for your willingness to share CaptionCall with your friends and family. Customer referrals are an important way to get CaptionCall to everyone who qualifies for and needs the service, and we can only do that with your help.

If you disagree with the new regulations, or wish to provide the FCC with your opinions about the new rules, please visit www.KeepCaptions.com.

Please let us know if we can do anything to improve your CaptionCall experience. If you have any questions, please contact our Customer Service Team at 1-877-557-2227.

Thank you,
The CaptionCall Team