

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	

REPLY COMMENTS OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC., ASSOCIATION OF LATE-DEAFENED ADULTS, INC., NATIONAL ASSOCIATION OF THE DEAF, DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK, CEREBRAL PALSY AND DEAF ORGANIZATION, CALIFORNIA COALITION OF AGENCIES SERVING THE DEAF AND HARD OF HEARING, AND AMERICAN ASSOCIATION OF THE DEAF-BLIND

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Association of Late-Deafened Adults, Inc. (“ALDA”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Cerebral Palsy and Deaf Organization (“CPADO”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), and American Association of the Deaf-Blind (“AADB”) (collectively, “Consumer Groups”), respectfully submit these reply comments in response to the Notice of Proposed Rulemaking issued by the Commission in the above-referenced dockets.¹

As discussed below, the Commission should determine if the default captions off requirement conflicts with existing law and scrutinize Rolka Loube Saltzer Associates’ (“RLSA”) IP CTS demand forecasting methodologies and rate design.

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

I. THE COMMISSION SHOULD CONSIDER WHETHER THE DEFAULT CAPTIONS OFF REQUIREMENT CONFLICTS WITH EXISTING LAW

In the *NPRM*, the Commission sought comment on whether to adopt permanently its interim rule requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have captions turned off as the default setting.² Given the impact that such a rule could have on the ability of IP CTS users to effectively operate their devices, Consumer Groups urged the Commission to refrain from permanently adopting its interim rule until it is proven through usability studies or other means that such a requirement would not unduly burden IP CTS consumers.³

Based on preliminary feedback received thus far regarding the interim default off requirement, it appears that this interim rule is unduly burdening certain IP CTS users. As a result, the Commission should recognize that permanent adoption of the default captions off rule may conflict with Section 255 of the Communications Act (“Section 255”),⁴ Section 716 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“Section 716”),⁵ the National Deaf-Blind Equipment Distribution Program (“NDBEDP”), Section 225 of the Communications Act (“Section 225”),⁶ and the regulations promulgated thereunder.⁷

Section 255 requires telecommunications equipment manufacturers to ensure that equipment is “designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.”⁸ Section 716 similarly requires manufacturers to ensure

² *Id.*, ¶ 51.

³ See Comments of Consumer Groups, CG Docket Nos. 13-24 & 03-123 (Feb. 26, 2013), at 12, 13.

⁴ 47 U.S.C. § 255.

⁵ 47 U.S.C. § 617.

⁶ 47 U.S.C. § 225.

⁷ See generally, 36 C.F.R. Part 1193; 47 C.F.R. Parts 6, 7, 14.

⁸ 47 U.S.C. § 255(b). “Readily achievable” for purposes of Section 255 means “easily accomplishable and able to be carried out without much difficulty or expense.” 47 U.S.C. § 255(a)(2), 42 U.S.C. § 12181(9).

that equipment and software used for advanced communications services are “accessible to and usable by individuals with disabilities, unless . . . not achievable.”⁹

For purposes of Section 255, “accessibility” means in part that manufacturers may not undertake any change that “decreases or has the effect of decreasing the net accessibility, usability, or compatibility of telecommunications equipment or customer premises equipment.”¹⁰ In order to be accessible, equipment must “[p]rovide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user,”¹¹ since “[m]any individuals have reduced cognitive abilities, including reduced memory, sequence tracking, and reading skills.”¹² For example, products may be “self-adjusting to eliminate additional controls which must be learned, and reduce the visual clutter.”¹³

Manufacturers must also “[p]rovide at least one mode that is operable with user limited reach and strength.”¹⁴ For example, manufacturers may “create short cuts that reduce the number of actions needed, or completely eliminate the need to operate controls wherever possible by having automatic adjustments.”¹⁵ Because “an accessibility feature for one group of individuals with disabilities may conflict with an accessibility feature for another,” manufacturers are also encouraged to incorporate “selectability” into their products by, for example, allowing users to switch one of the features on and off or by enabling users to turn a particular mode on or off where it is not possible to permit all functions to be selectable.¹⁶

Consumer Groups caution that prohibiting captions from being turned on by default may

⁹ 47 U.S.C. § 617(a)(1). “Achievable” for purposes of Section 716 means “with reasonable effort or expense, as determined by the Commission.” 47 U.S.C. § 617(g).

¹⁰ 47 C.F.R. §§ 1193.3, 1193.39(a).

¹¹ 47 C.F.R. §§ 1193.3, 1193.41(i), 6.3(a)(1)(x), 7.3(a)(1)(x), 14.21(b)(1)(x).

¹² 36 C.F.R. Part 1193, app.

¹³ *Id.*

¹⁴ 47 C.F.R. §§ 1193.41(f), 6.3(a)(1)(vi), 7.3(a)(1)(vi), 14.21(b)(1)(vi).

¹⁵ 36 C.F.R. Part 1193, app.

¹⁶ *Id.*

conflict with these statutory and regulatory provisions, especially given the burdens certain IP CTS users are experiencing under the interim default off rule. Enabling consumers to turn captions on by default is clearly “readily achievable,” since most IP CTS equipment and software already has this capability. The default on capability allows manufacturers to comply with their obligation to ensure that “at least one mode . . . minimizes the cognitive, memory, language, and learning skills required of the user,”¹⁷ since it frees IP CTS consumers with cognitive disabilities such as dementia, Alzheimer’s disease, and aging memory loss from having to remember to turn the captions on each time they use the phone.

A default captions off requirement would not minimize the “cognitive, memory, language, and learning skills of the user” because it could render IP CTS equipment effectively useless for consumers with cognitive disabilities. A default captions off requirement may also conflict with manufacturers’ obligation to “[p]rovide at least one mode that is operable with user limited reach and strength,”¹⁸ since many IP CTS consumers with mobile disabilities may not be able to reach the on/off switch. In addition, because the rule would be more burdensome on all consumers (especially those with cognitive and mobile disabilities), it may conflict with manufacturers’ obligation not to undertake any change that “decreases or has the effect of decreasing the net accessibility, usability, or compatibility of telecommunications equipment or customer premises equipment.”¹⁹

Furthermore, the default off requirement appears to be inconsistent with rules and policy objectives associated with the NDBEDP. Accessibility and usability of telecommunications equipment for individuals with disabilities is an important aspect of this program. In establishing the NDBEDP, for example, the Commission adopted a rule “prohibiting certified programs from disabling or otherwise making more difficult to access, capabilities, functions or features on

¹⁷ 47 C.F.R. §§ 1193.41(i), 6.3(a)(1)(x), 7.3(a)(1)(x), 14.21(b)(1)(x).

¹⁸ 47 C.F.R. §§ 1193.41(f), 6.3(a)(1)(vi), 7.3(a)(1)(vi), 14.21(b)(1)(vi).

¹⁹ 47 C.F.R. § 1193.39(a).

distributed equipment.”²⁰

Finally, permanent adoption of the default captions off requirement may conflict with Section 225 of the Communications Act, which mandates the availability of telecommunications relay services (“TRS”) and defines TRS as a service that enables communication “in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.”²¹ As Consumer Groups have described in greater detail in their *TRS Policy Statement*, “functionally equivalent” means, among other things, that persons making or receiving calls must experience the same service within the call as if the call were between individuals not using relay services.²² Requiring consumers to manually turn the captions on each time they make or receive a call would not be “functionally equivalent” because it would impose an additional burden unique to certain IP CTS consumers.

II. THE COMMISSION SHOULD SCRUTINIZE RLSA’S IP CTS DEMAND FORECASTING METHODOLOGIES AND RATE DESIGN

In the *NPRM*, the Commission sought comment on whether “the growth in IP CTS [is] the result of a natural growth curve, wherein consumer acceptance of new products is initially slow, followed by a period of rapid growth that ultimately levels off.”²³ The Rehabilitation

²⁰ *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, FCC 11-56, 26 FCC Rcd 5640, ¶ 54 (2011). See 47 C.F.R. § 64.610(e)(2)(ii) (requiring that no program certified under the NDBEDP may “[d]isable or otherwise intentionally make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section, or direct manufacturers or vendors of specialized CPE to disable or make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section”).

²¹ 47 U.S.C. § 225(b)(1), (a)(3). See also *NPRM*, ¶¶ 4, 10.

²² See Letter from Tamar E. Finn and Brett P. Ferenchak to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 10-51 (Apr. 12, 2011) (attaching the Consumer Groups’ *TRS Policy Statement*).

²³ *NPRM*, ¶ 38.

Engineering Research Center on Telecommunications Access (“RERC-TA”) submitted detailed comments addressing this question.²⁴ Consumer Groups believe that the information provided by RERC-TA regarding the growth in IP CTS use compared to the growth in video relay service use confirm the need for the Commission to review and determine the reliability and validity of the IP CTS demand forecasting methodologies and rate design currently used by RLSA, the TRS Fund Administrator.

III. CONCLUSION

For the foregoing reasons, in addition to the recommendations Consumer Groups made in their February 26, 2013 comments filed in this case, the Commission should consider whether a default captions off rule would conflict with or otherwise offend aforementioned statutory and regulatory obligations before it permanently adopts the interim rule and closely review RLSA’s IP CTS demand forecast and rate design.

Respectfully submitted,

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²⁴ Comments of the Rehabilitation Engineering Research Center on Telecommunications Access, CG Docket Nos. 13-24 & 03-123 (Feb. 26, 2013).