

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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 HAMILTON RELAY, INC.**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these reply comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”)<sup>1</sup> concerning the regulation of Internet Protocol Captioned Telephone Services (“IP CTS”) provided to hard of hearing individuals.

In its comments, Hamilton generally stated its support for the proposals in the *NPRM* and making the interim rules permanent, with one possible exception discussed below. Other commenters also largely support making the interim rules permanent.<sup>2</sup> There is, on the other hand, little to no support in the record for a dB threshold for IP CTS user eligibility,<sup>3</sup> and Hamilton reiterates its opposition to any such dB eligibility criteria. Hamilton instead continues to support a bifurcated approach that allows users to self-certify if they purchase IP CTS specialized equipment for \$75 or more (or whatever amount is ultimately established by the Commission), or if they obtain such equipment through a governmental program, and a

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<sup>1</sup> *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*”).

<sup>2</sup> *See, e.g.*, Comments of United States Telecom Association, at 2; Comments of Sprint Nextel Corporation, at 2; Comments of CTIA-The Wireless Association, at 1-2 (“CTIA Comments”); *but see* Comments of Hearing Loss Association of America, at 4, 10 (“HLAA Comments”);

<sup>3</sup> *See, e.g.*, Comments of Rehabilitation Engineering Research Center on Telecommunications Access, at 10-12; CTIA Comments, at 6.

requirement that users obtain an independent third party professional certification in all other situations. There is significant support for the \$75 threshold in the comments.<sup>4</sup> The record is mixed with respect to extending registration and certification requirements to existing IP CTS users. To the extent the Commission imposes such requirements on existing users, Hamilton supports extending the interim IP CTS rules to such users. Under this approach, all existing users would need to self-certify that they purchased the equipment for \$75 or more, or obtained it through a governmental program, and providers would need to maintain documentation sufficient to verify the self-certification. In contrast, in situations where a user purchased the equipment for less than \$75, the user would need to provide an independent third party certification in order to prove continuing eligibility.

Hamilton takes this opportunity in its reply comments to address several other issues raised in the *NPRM* and other pleadings filed in this proceeding.

#### **“Default Captions Off”**

The interim rules require that all IP CTS providers “must ensure that equipment and software used in conjunction with their service have a default setting of captions off, so that new and existing IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.”<sup>5</sup> Working diligently with its vendors, Hamilton implemented this requirement to the maximum extent possible prior to the effective date on March 7. Hamilton’s solution to comply with this interim rule relies in part on the user placing or receiving a captioned call to initiate the software update, and then allowing the update to

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<sup>4</sup> See, e.g., Comments of Telecommunications Equipment Distribution Program Association, at 2; Comments of National Association of State Relay Administration, at 2; HLAAs Comments at 9; Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al., at 8 (“Consumer Group Comments”).

<sup>5</sup> 47 C.F.R. § 64.604(c)(10)(i).

complete after the call has ended. Hamilton has no ability to control when the user elects to take these steps, and therefore Hamilton filed a petition for limited waiver for relief on this discrete issue.<sup>6</sup> With this minor exception, however, Hamilton complied with the March 7 implementation deadline, and would expect the Commission to require similar compliance by all IP CTS providers, as opposed to any phased-in allowances, particularly any phased-in allowance that covers almost the entire interim period.

As noted above, Hamilton generally supports making the interim rules permanent, but is concerned that the “default captions off” requirement imposes too many burdens on consumers, particularly the elderly consumers who tend to rely most on IP CTS.

Accordingly, before the Commission implements the default captions off rule on a permanent basis, Hamilton encourages the Commission to examine whether the rule’s intended purpose, of ensuring that consumers do not inadvertently use IP CTS with the captions feature on when captions are unnecessary, can be accomplished through other means which fall short of removing an important and convenient feature for users such as the default captions on feature.

At the very least, the Commission should consider allowing individual users to specifically request permission to default their captions to on, and to require providers to maintain records of such requests. The Commission and the interstate TRS Fund Administrator have ample call detail records to examine call trend patterns and determine whether such users experience sudden spikes in call volumes once their equipment is set to default captions on. Hamilton anticipates that there will be no such increases. The Commission could also consider allowing a discrete pool of users to be permitted to default captions on, and compare those users’ minutes of use to data from another set of users who have default captions off. Gathering this

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<sup>6</sup> See Hamilton, Sprint Communications Company, L.P. and Captel, Inc., Petition for Limited Waiver, CG Docket Nos. 03-123, 13-24 (filed Feb. 22, 2013).

kind of empirical evidence, including the usability studies proposed by the Consumer Groups,<sup>7</sup> during the interim period will help inform the Commission's decision when assessing whether to implement these rules on a permanent basis.

### **The Commission Should Clarify Speed of Answer Requirements**

The *NPRM* seeks comment on whether the Commission's current "speed of answer" rules are appropriate for IP CTS.<sup>8</sup> Hamilton believes that the current speed of answer rules are appropriate for IP CTS, but the decision to require default captions off necessitates a clarification of this rule. Specifically, Hamilton requests clarification that the speed of answer calculation for IP CTS calls does not begin until the user elects to caption the call. This clarification is necessary in recognition of the fact that a hard of hearing user may elect to use the IP CTS phone to make a call without captions, in which case the call is not a relay call. The call only becomes a relay call when the user elects to make it one, and that is the point at which the call should be deemed "in queue" for speed of answer purposes.<sup>9</sup>

### **Mobile and WebCaption Services Are Already Defaulted to Off**

Hamilton notes that another provider has filed a request for waiver and clarification requesting that the Commission waive the interim default captions off requirement for mobile and web-based IP CTS.<sup>10</sup> Although Hamilton supports a waiver or clarification to the extent necessary, and requests any relief granted thereby, Hamilton believes that mobile and web-based IP CTS may already be compliant. This is because both mobile and web-based IP CTS products are automatically defaulted to off. A user must affirmatively open the application or visit the

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<sup>7</sup> Consumer Group Comments, at 13.

<sup>8</sup> 47 C.F.R. § 64.604(b)(2)(i)-(ii).

<sup>9</sup> See Comments of Purple Communications, Inc., at 7-8.

<sup>10</sup> Emergency Petition of Sprint Nextel for Limited Waiver and Clarification, CG Docket Nos. 03-123, 13-24 (filed Mar. 5, 2013).

web portal and log in in order to use IP CTS. Unlike with an IP CTS phone, where a casual user might inadvertently make a phone call with captions on, a web or mobile user is far less likely to do so because the user must affirmatively download the application to his or her phone, or register on the website, before placing any IP CTS calls. In addition, the mobile user would only open the IP CTS application if they intended to use captions. Otherwise the user would simply use their mobile phone to make a call as any other hearing user would, by using the dial buttons on the phone and not through any application. In short, until a consumer takes positive action to make captions available (by opening the application, launching the web page, or clicking on a prompt on their mobile device), the captions feature is not accessible and thus is already defaulted to off.<sup>11</sup>

Finally, Hamilton believes that if a user has paid \$75 for specialized IP CTS equipment, the user should be permitted to download the IP CTS mobile application or use the web-based portal for free. In other words, through consciously spending at least \$75 to purchase the specialized equipment (or acquiring such equipment through a governmental program), the user has clearly demonstrated an actual need for the service. That user should be free to access IP CTS where and when necessary through other platforms. On the other hand, if a consumer has *not* purchased specialized IP CTS equipment for \$75 or more or obtained such equipment through a governmental program, he or she should be required to purchase an IP CTS application or web-access account, or obtain a certification from an independent third party professional. In this regard, Hamilton agrees with another commenter that “a smartphone or other wireless

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<sup>11</sup> In addition, Hamilton has amended its terms and conditions to require users to affirm that, by opening the Hamilton IP CTS mobile application or logging into the Hamilton WebCaptel website, the user is agreeing that he/she intends to access the captions feature. As of March 7, 2013, all new and existing Hamilton IP CTS users were required to agree to the revised terms and conditions in order to use the service.

devices not primarily intended to be used for, or distributed for the use of, IP CTS should not be considered IP CTS equipment merely because it runs software or applications that support IP CTS.”<sup>12</sup>

Respectfully submitted,

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<sup>12</sup> CTIA Comments, at 9.