

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

In the Matter of	)	
Misuse of Internet Protocol (IP) Captioned	)	CG Docket No. 13-24
Telephone Service	)	
Telecommunications Relay Services and Speech-to-	)	CG Docket No. 03-123
Speech Services for Individuals with Hearing and	)	
Speech Disabilities	)	
Petition for Rulemaking Filed by Sorenson	)	
Communications, Inc. Regarding Cost Recovery	)	
Methodology for Internet Protocol Captioned	)	
Telephone Service	)	

To: Secretary, Federal Communications Commission

**COMMENTS OF HAMILTON RELAY, INC. ON  
SORENSEN PETITION FOR RULEMAKING**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby comments on the February 20, 2013 petition for rulemaking (“Petition”) of Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall, LLC (collectively, “Sorenson”).<sup>1</sup> The Petition requests that the Commission initiate a rulemaking proceeding to replace the current Multistate Average Rate Structure (“MARS”) rate methodology with a price cap regulatory approach for the provision of

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<sup>1</sup> See Petition for Rulemaking of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket No. 03-123 (filed Feb. 20, 2013) (“Petition”). The Federal Communications Commission’s (“Commission”) Consumer and Governmental Affairs Bureau (“CBG”) sought comment on the Petition on March 8, 2013. See *Request for Comment on the Petition for Rulemaking Filed by Sorenson Communications, Inc. Regarding Cost Recovery Methodology for Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket Nos. 13-24 and 03-123, DA 13-368 (rel. Mar. 8, 2013) (“Notice”).

Internet Protocol (“IP”) Captioned Telephone Service (“CTS”) (collectively, “IP CTS”).<sup>2</sup> For the reasons described below, the Commission should deny this request.

## **I. THE MARS RATE METHODOLOGY REMAINS APPROPRIATE FOR IP CTS**

In 2007, when the Commission first adopted the MARS plan for most telecommunications relay services (“TRS”) rates, including the IP CTS rate, the Commission found that the approach would “simplify the rate setting process and result in more predictable, fair, and reasonable rates.”<sup>3</sup> Further, noting that the MARS plan is based on competitively bid state rates, the Commission found that the MARS plan “produces a rate that better approximates providers’ reasonable costs, and therefore promotes the efficient recovery of all costs.”<sup>4</sup> The Commission also noted that the MARS plan “eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”<sup>5</sup> These justifications are equally applicable today as they were in 2007, and Sorenson makes no effort to suggest these findings are no longer applicable. Indeed, like in 2007, MARS remains the most “simpl[e] ... rate setting process and result[s] in ... predictable, fair, and reasonable rates” that accurately “approximate providers’ reasonable costs....”<sup>6</sup> Sorenson offers no evidence otherwise.<sup>7</sup>

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<sup>2</sup> Notice at 1.

<sup>3</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20151 ¶ 16 (2007) (“2007 TRS Rate Methodology Order”).

<sup>4</sup> *Id.* ¶ 18.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.*

<sup>7</sup> Without evidence that the competitively-bid state CTS contracts somehow systematically overstate providers’ reasonable costs, the fact that the IP CTS rates have increased under the

(continued on next page)

Sorenson also ignores the fact that the MARS rate methodology already incorporates competitive pressure to lower rates and increase efficiency. As the Commission observed in 2007, “[t]he MARS plan uses an average of *competitively bid* state rates as a measure of [the] reasonable costs” of providing telecommunications relay services (“TRS”).<sup>8</sup> To the extent that a provider, in a state CTS bid, proposes a rate in excess of the amount needed to reimburse its reasonable costs, it is likely that another provider will bid lower than the first provider and thus win the state contract. In this manner, competitive bidding exerts constant pressure on providers to lower costs and increase efficiency in order to win and maintain state TRS contracts. To the extent that Sorenson believes it can offer CTS more efficiently at lower rates than the rates in current competitively-bid state contracts,<sup>9</sup> it could begin participating in bidding for those contracts. For whatever reason, however, Sorenson has not done so.

## **II. THE COMMISSION HAS RECOGNIZED THAT THE MARS PLAN IS PREFERABLE TO A PRICE CAP METHODOLOGY**

To support its assertion that the Commission should adopt a price cap methodology for IP CTS, Sorenson points to the Commission’s “long history of instituting price caps to ensure

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(footnote continued)

MARS plan does not undermine the Commission’s 2007 findings or make the IP CTS rate *per se* unreasonable.

<sup>8</sup> 2007 TRS Rate Methodology Order ¶ 25 (emphasis added).

<sup>9</sup> See, e.g., Petition at 6 (suggesting that “[t]he current MARS methodology ... allows earnings to increase as state contract rates increase, without forcing providers to become more efficient.”). This suggestion is plainly contradicted by the competitive nature of state CTS bids. Moreover, the mere fact that state contract rates increase over time does not indicate that such rates are unreasonable or not competitively driven. State rates should be expected to increase over time, consistent with rising labor costs and consumer prices generally due to inflation.

quality service to consumers” and quotes an order that Sorenson admits is two decades old.<sup>10</sup>

However, the Commission found MARS preferable to a price cap methodology *more recently and in this specific context*:

For forms of TRS for which state rates are available, we believe the MARS plan is a better approach [than a price cap methodology] for determining the interstate compensation rate for the same service. As we have noted, under the TRS regime the compensation rate is not a “price” that is charged to, and paid by, a service user, but rather is a settlement mechanism to ensure that providers are compensated from the [interstate TRS] Fund for their actual reasonable costs of providing service. The MARS plan uses an average of competitively bid state rates as a measure of those reasonable costs. It also eliminates the need to review and possibly disallow costs reported by providers. Under price caps, we would have to determine an initial rate that accurately reflects providers’ historical, actual, reasonable costs. The best measure of these costs, where available, is the compensation rates by states for the same, *albeit* intrastate, service. Therefore, for those services for which there are competitively bid state rates, we believe the MARS plan is superior to price caps.<sup>11</sup>

The Commission has not applied the MARS formula to IP Relay and video relay service (“VRS”) because, and only because, those services are not subject to state competitive bidding.<sup>12</sup>

With respect to IP CTS, of which the costs of providing service are essentially the same as

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<sup>10</sup> Petition at 5 (citing *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2893 ¶ 36 (1989) (“*AT&T Price Cap Order*”). The order Sorenson cites is not only dated, but it also refers to dominant carrier regulation well before the implementation of the Telecommunications Act of 1996. In that situation, the Commission touted price cap regulation “to replicate more accurately ... the dynamic, consumer-oriented process that characterizes a competitive market.” *AT&T Price Cap Order* ¶ 36. In contrast, the state CTS rates are already driven by competitive processes.

<sup>11</sup> *2007 TRS Rate Methodology Order* ¶ 25 (footnotes omitted).

<sup>12</sup> See, e.g., *id.* ¶ 41 (“We conclude that the MARS methodology, as proposed, is not appropriate for IP Relay because there are no state rates for the service.”). Nevertheless, Hamilton believes that the Commission could apply the MARS formula to IP Relay because the costs associated with IP Relay and traditional TRS are essentially the same.

providing the competitively-bid CTS,<sup>13</sup> there is no rational basis for the Commission to move away from what it correctly determined in 2007.

Adoption of a price cap methodology also would re-introduce unnecessary burdens for providers, the Commission, and the interstate TRS Fund Administrator (“Administrator”). As the Commission has recognized, the MARS plan “eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”<sup>14</sup> In contrast, abandoning MARS in favor of a price cap methodology would *require* these additional efforts and introduce market uncertainties — as Sorenson implicitly recognizes.<sup>15</sup> Exogenous adjustments each year would create unpredictability for both providers and the Commission. Additional bureaucracy would also be introduced, given that the Administrator (and possibly the Commission thereafter) would need to review and decide whether or not to approve adjustment requests. In addition, the adoption of Sorenson’s proposal for a three-year IP CTS rate term would introduce the same significant concerns about locking in an artificially high rate that became all too evident in the VRS context.<sup>16</sup> There is simply no need to regress to this type of regulation given the competitively-based, predictable MARS alternative.

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<sup>13</sup> *See id.* ¶ 38 (“[W]e believe that the cost recovery rate for CTS will more accurately reflect the reasonable actual costs of providing IP CTS.”).

<sup>14</sup> *2007 TRS Rate Methodology Order* ¶ 18.

<sup>15</sup> Petition at 7 (acknowledging that a price cap methodology would require a “provision for cost changes beyond the control of the provider that are not captured by the inflation adjustment”).

<sup>16</sup> Petition at 8; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Public Notice and Notice of Proposed Rulemaking, CG Docket No. 03-123, 24 FCC Rcd 6029 (2009) (questioning whether the Commission should abandon the three-year rate cycle for VRS after only two years because the 3-year VRS rates “may not accurately reflect the providers’ reasonable actual costs of providing service. . . .”).

### III. THERE IS NO EVIDENCE THAT CURRENT IP CTS RATES ARE UNREASONABLE

Sorenson urges the Commission to consider a price cap methodology because, in Sorenson's opinion, such a methodology would "incentivize long-term cost savings" through incentivized efficiency.<sup>17</sup> However, as noted above, providers are already incentivized to cut costs and increase efficiency through the state competitive bid process. Nevertheless, the Commission should be guided by ensuring that TRS rates are reasonable as compared to the cost of providing service, not by a goal of artificially reducing the IP CTS rate. A price cap methodology for IP CTS would create a significant risk of systematically undercompensating providers, and it could potentially overcompensate providers by locking in a rate that, over time, may become irrational.<sup>18</sup>

Despite the position it takes in its Petition, Sorenson elsewhere has endorsed the current IP CTS rate as reasonable. Less than one year ago, Sorenson asserted that the IP CTS rate proposed by the Administrator "reasonably compensates service providers."<sup>19</sup> Sorenson did not

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> Hamilton notes that Sorenson's proposal to use a three-year rate period also raises a new opportunity for waste as compared to the MARS plan, which readjusts rates based on competitive bids annually. In the VRS context, where the Commission has employed a three-year rate term in the past, the Commission found that compensation rates were inflated well above actual costs. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8694 ¶ 9 (2010) ("2010 TRS Rate Order"), *aff'd sub nom. Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (2011) (finding that in each of the years 2006, 2007, 2008, and 2009, VRS compensation rates were more than \$2.00 per minute higher than providers' actual costs). A three-year term can fix rates at a cost above the reasonable rate for the service. In the alternative, if the rate were fixed below the actual cost of providing service, providers would be undercompensated and might need to significantly reduce quality of service to lower costs.

<sup>19</sup> Reply Comments of CaptionCall, CG Docket Nos. 03-123 and 10-51, at 2 (filed May 23, 2012).

suggest that the rate was excessive or unreasonable, nor did it assert that IP CTS providers have been systematically overcompensated through state contract bids. Sorenson simply stated its belief that the current IP CTS rate reasonably reflects service providers' costs — the same “record high” rate<sup>20</sup> that Sorenson now decries.<sup>21</sup>

Finally, the Commission has already undertaken major reform efforts in the IP CTS industry, efforts that, ironically, were necessitated by the petitioner in this proceeding.<sup>22</sup> Hamilton believes that the adoption of the interim rules in that proceeding will go a long way toward eliminating concerns about the unsustainable growth curve of IP CTS. In addition, Hamilton believes 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 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.<sup>23</sup>

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<sup>20</sup> Petition at 4.

<sup>21</sup> Sorenson presumes that the Commission “did not ... adopt a price cap mechanism to limit any future [IP CTS] rate increases, but allowed the MARS to change rates from year to year,” “[p]resumably ... expecting rates to decline over time.” *Id.* at 3. Sorenson's presumption is without support in the *2007 TRS Rate Methodology Order* and is in any event irrelevant. In the *2007 TRS Rate Methodology Order*, the Commission emphasized that “the compensation rate is not a ‘price’ that is charged to, and paid by, a service user, but rather a settlement mechanism to ensure that providers are compensated from the Fund for their actual reasonable costs of providing service.” *2007 TRS Rate Methodology Order* ¶ 25. The Commission's goal was to set rates as close as possible to the providers' reasonable costs of providing the service. The Commission never suggested that such rates should decline at an arbitrary rate.

<sup>22</sup> 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, CG Docket Nos. 13-24 and 03-123, FCC 13-13 (rel. Jan. 25, 2013) (“*Order*”) (Separate Statement of Commissioner Pai Approving in Part and Dissenting in Part) (“[T]he interim rules for certification and eligibility are clearly targeted at the practices of one provider—Sorenson, which provides free equipment to users . . .”).

<sup>23</sup> See Hamilton Comments, at 7-8, CG Docket Nos. 03-123 and 13-24 (filed Feb. 26, 2013).

#### IV. CONCLUSION

Sorenson has provided no support for the Commission to review its determination that the MARS plan is appropriate for the IP CTS rate. Nor has Sorenson provided evidence to suggest that the Commission's 2007 determination that the MARS plan is superior to a price cap methodology where state rates are available was flawed. Finally, Sorenson has made no suggestion that the actual IP CTS rate is unreasonable and, in fact, agrees that the rate indeed is reasonable. For these reasons, the Commission should deny the Petition.

Respectfully submitted,

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March 25, 2013