

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

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

**REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC.
AND CAPTIONCALL, LLC**

Sorenson Communications, Inc. (“Sorenson”) and its wholly owned subsidiary, CaptionCall, LLC (collectively “CaptionCall”), respectfully submits these reply comments in support of its Petition for Rulemaking to migrate IP CTS to a price cap rate mechanism.¹ As CaptionCall established in its Petition for Rulemaking,² a price cap initialized at \$1.6766, coupled with the year-over-year rate reductions inherent in a price-cap methodology, will ultimately save the TRS Fund millions of dollars per year, while allowing IP CTS providers to offer hard-of-hearing consumers a high quality, functionally equivalent service. A price cap will also give providers the financial stability that allows them to plan for future investments. While

¹ See *Request for Comment on Petition for Rulemaking Filed by Sorenson Communications, Inc. Regarding Cost Recovery Methodology for Internet Protocol Captioned Telephone Service*, Public Notice, DA 13-369, 28 FCC Rcd. 2256 (2013).

² See *Petition for Rulemaking of Sorenson Communications, Inc.*, CG Docket No. 03-123 (filed Feb. 20, 2013).

other commenters oppose the rate reduction inherent in CaptionCall’s proposal, no commenter squares its position with the Commission’s interest in slowing the growth in IP CTS compensation. Moreover, the commenters fail to acknowledge the Commission’s substantial latitude in selecting ratemaking methodologies and cannot show that a price cap is an unreasonable means for the Commission to achieve its objectives. Rather, commenters endorse a status quo that will increase costs to the TRS Fund and, in turn, likely lead to unstable rates. Accordingly, to protect the TRS Fund and to ensure the financial stability that allows future investments in IP CTS, the Commission should adopt a price-cap methodology for IP CTS compensation.

I. A Price Cap Methodology Initiated at \$1.6766 is Reasonable and Should Be Adopted.

The Commission has broad ratemaking discretion, and its decisions must be simply “within a zone of reasonableness.”³ This “zone of reasonableness” allows the Commission to “employ price functionally in order to achieve relevant regulatory purposes.”⁴ In the TRS context, the Commission’s “regulatory purpose” is to ensure that functionally equivalent TRS technologies are available to the extent possible, and in the most efficient manner, to deaf and hard-of-hearing consumers.⁵ To carry out these “regulatory purposes,” the Commission must ensure the integrity and stability of the TRS Fund. Agencies are “not bound to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, to make pragmatic adjustments which may be called for by particular circumstances.”⁶

³ *Permian Basin Area Rate Cases*, 390 U.S. 747, 797 (1968) (internal quotation omitted).

⁴ *Id.*

⁵ *See* 47 U.S.C. §§ 225(a)(3), (b)(1).

⁶ *WorldCom, Inc. v. F.C.C.*, 238 F.3d 449, 460 (D.C. Cir. 2001), quoting *Permian Basin Area Rate Cases*, 390 U.S. at 776–77 (internal quotation omitted).

As demonstrated by its recent emergency order and NPRM, the Commission is concerned about the recent growth in IP CTS expenditures. The most effective way to address these concerns is to shift away from a rate methodology that allowed continuous and unpredictable rate increases and instead shift toward a price-cap methodology that prevents such increases and offers immediate savings, while enhancing the stability of IP CTS rates and giving providers an incentive to deploy their services as efficiently as possible.

With those regulatory purposes in mind, a price cap initialized at \$1.6766 is well within the zone of reasonableness. Even though it is lower than the current rate, ample evidence exists that such a rate will reasonably compensate providers. First, the initial rate is determined by the average of three previous rate years—years in which IP CTS providers were able to adequately provide IP CTS to hard-of-hearing users. None of the parties objecting to CaptionCall’s proposal claims that a price cap initialized at this level would be confiscatory or lead to a devastation of IP CTS services.⁷ Second, initiating a price cap will allow providers to make strategic investments that will continue to lower the rate of IP CTS—such that long-term efficiencies incumbent in rate stability will adequately make up for providers being compensated less. Currently, providers are forced to estimate their costs for the upcoming rate year without knowing what rate the Commission will select and how it might change the next year, creating an inefficient environment for allocating resources. A price cap will provide the rate stability providers need while substantially lowering the per-minute rate for IP CTS.

⁷ The Commission’s interim and proposed new rule requiring that captioning default to off at the start of a call is much more likely to disrupt consumers’ use of IP CTS when they need it, particularly for older consumers who may have more difficulty adapting to changing user interfaces.

As further evidence that a price cap initiated at \$1.6766 is reasonable, CaptionCall can provide excellent IP CTS to users at such a rate. So long as the \$1.6766 rate is coupled with a price cap methodology, CaptionCall can make the strategic investments that will lower its costs of providing IP CTS, mirroring the de-escalation of the IP CTS per-minute rate.

Neither Sprint Nextel Corporation (“Sprint”) nor Hamilton Relay Inc. (“Hamilton”) claim that a price cap initiated at \$1.6766 is unreasonable. Nor could they. Rather, both parties simply suggest that the current higher rate, set by the MARS plan, is more reasonable.⁸ Both argue that the MARS plan has structural advantages, which they believe make it a more reasonable formula for the IP CTS rate than a price cap methodology. Neither party, however, acknowledges that the rate continues to escalate under the MARS plan and is subject to year-to-year changes. Defenders of the MARS methodology point out that rates can go down, as well as up, under MARS. While that is theoretically true, the rate has not gone down in the six years under MARS, and MARS defenders present no basis for concluding that MARS-based rates will decline this year. By contrast, the price cap mechanism that CaptionCall proposed would automatically lower IP CTS compensation rates each and every year.

Neither party opposing the Petition acknowledges that MARS simply uses state contracts as a proxy for appropriate, market-driven rates, which can also be accomplished by use of a price cap mechanism that is initialized using MARS-derived rates, but thereafter is subject to adjustments for inflation and efficiency gains.⁹ The FCC can, in the light of six years of

⁸ See Comments of Sprint Nextel Corporation at 2-3, CG Docket No. 13-24 and 03-123 (filed Mar. 25, 2013); Comments of Hamilton Relay Inc. at 6-7, CG Docket Nos. 13-24 & 03-123 (filed Mar. 25, 2013) (“Hamilton Comments”).

⁹ Hamilton notes that exogenous costs may “create unpredictability for both providers and the Commission.” Hamilton Comments at 5. The Commission need only review its own history with IP Relay in order to disapprove such a notion. Further, to the extent that exogenous cost determinations would introduce “additional bureaucracy,” Hamilton Comments at 5,

experience under MARS, reasonably conclude that a price cap mechanism provides a more reasonable means of setting rates, with guaranteed annual rate reductions rather than MARS' history of annual rate increases.¹⁰ Thus, even if MARS methodology may produce a reasonable rate, a price cap initiated at \$1.6766 also produces a reasonable rate that fully effectuates the Commission's goals, a rate which the Commission may now reasonably select.

II. Conclusion

A price cap initiated at \$1.6766 best serves the TRS Fund and the hard-of-hearing consumers who depend upon it. While the MARS methodology held initial promise, MARS has caused steady increases in the IP CTS rate. Under a price cap methodology initiated at \$1.6766, the TRS Fund will immediately realize millions of dollars in savings and save more in subsequent rate years. CaptionCall can offer IP CTS at such a rate today, and the resulting stability will allow CaptionCall and other providers to make the investments necessary to increase efficiency as the rate declines over time.

Respectfully submitted,



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CaptionCall believes that such additional costs, if any, will be far off-set by the introduction of a rate-setting mechanism designed to deescalate the IP CTS rate.

¹⁰ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009) (“We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review. The Act mentions no such heightened standard.”)