

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

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	
Structure and Practice of the Video Relay Service	)	CG Docket No. 10-51
Program	)	
	)	
Interstate Telecommunications Relay Services Fund	)	
Payment Formula and Fund Size Estimate for the	)	
July 2013 Through June 2014 Fund Year	)	

To: Secretary, FCC  
For: Chief, Consumer & Governmental Affairs Bureau

**COMMENTS OF HAMILTON RELAY, INC.**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these comments in response to the *Public Notice* (“*Notice*”) issued May 17, 2013 by the Consumer & Governmental Affairs Bureau (“Bureau”) in the above-captioned proceedings.<sup>1</sup> In the *Notice*, the Bureau seeks comment on the compensation rates for various forms of interstate Telecommunications Relay Services (“TRS”) for the period beginning July 1, 2013 through June 30, 2014. The proposed TRS compensation rates were submitted by the interstate TRS Fund Administrator (“Administrator”) in its May 1, 2013 filing (“*2013 TRS Rate Filing*”).<sup>2</sup>

As discussed below, Hamilton generally supports the proposed rates for traditional TRS and Speech-to-Speech (“STS”) services, but continues to believe that the Michigan intrastate

---

<sup>1</sup> *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2013 Through June 2014 Fund Year*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 13-1137 (rel. May 17, 2013) (“*Notice*”).

<sup>2</sup> *See Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123, 10-51 (filed May 1, 2013) (“*2013 TRS Rate Filing*”).

TRS rate should be included in the rate calculation. In addition, Hamilton supports the Bureau's proposal for the Internet Protocol Captioned Telephone Service ("IP CTS") rate, but believes that the IP CTS rate should be adopted for the entire 2013-2014 period rather than on an interim basis. Finally, Hamilton believes that the Administrator currently lacks sufficient data to make an informed projection of the estimated TRS Fund size for 2013-2014, in part because the IP CTS growth forecasts do not take into account recent interim rule changes. Until the Administrator can assess at least one month of data during which all providers are in compliance with the interim rules, the forecasts for continued IP CTS growth likely will be significantly higher than actual growth in IP CTS minutes of use.

**I. The MARS Calculation Should Include the Michigan Intrastate TRS Rate**

Since 2007, the Commission has used a weighted average of state TRS rates to calculate the Multi-state Average Rate Structure ("MARS") compensation rates for traditional TRS, Speech-to-speech, Captioned Telephone Service ("CTS") and Internet Protocol CTS ("IP CTS").<sup>3</sup> Hamilton supports the continued use of MARS for these services because it: a) is administratively efficient; b) is based on competitively bid rates; c) provides regulatory certainty to the industry; and d) provides reasonable cost reimbursements to TRS providers. No other rate methodology offers these benefits. Other methodologies suffer from irreparable flaws, principally because they artificially attempt to mimic the results of competition.

---

<sup>3</sup> See *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-12, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) ("*2007 Order*"). Hamilton and other providers have separately opposed Sorenson's efforts to change the IP CTS rate methodology from the predictability of MARS to the irrationality of a price cap plan. See, e.g., Comments of Hamilton Relay, Inc. on Sorenson Petition for Rulemaking, CG Docket Nos. 13-24, 03-123 (filed Mar. 25, 2013); Hamilton Ex Parte Letter, CG Docket Nos. 13-24, 10-51, 03-123 (filed May 2, 2013).

For the 2013-2014 funding year, the Administrator has proposed that the intrastate TRS and CTS rates for all states, other than Michigan, be included in the MARS calculation.<sup>4</sup> Specifically, the Administrator proposes to exclude Michigan's intrastate TRS and CTS rates because "[f]rom the data collected and follow up discussions with the state contacts, the Administrator found, as the Commission indicated in the *Cost Recovery Order*, that Michigan continues to recover their relay service providers [sic] costs on a flat rate per subscriber basis instead of per minute basis and thus does not have data that can be used for MARS calculation purposes."<sup>5</sup>

This conclusory statement, which is a verbatim determination from the Administrator's 2012 filing, fails to address the fact that the Michigan intrastate TRS entity, AT&T, has provided the Administrator with the data necessary to include Michigan in the MARS calculation, including the total dollar costs for intrastate TRS and CTS, and the total conversation minutes of use for those intrastate services. Hamilton therefore believes that it is unnecessary to exclude the state of Michigan as the Administrator has proposed, because the Administrator possesses the data that can be used for MARS calculation purposes.

## **II. The IP CTS Rate for 2013-2014 Should Be Adopted Using the MARS Formula**

The Bureau proposes to adopt the Administrator's recommended IP CTS rate of \$1.7877 as an interim rate "in light of the Commission's ongoing review of comments received in response to a recent *Public Notice* seeking comment on the IP CTS rate methodology."<sup>6</sup>

---

<sup>4</sup> *2013 TRS Rate Filing*, at 11 (footnote omitted). The TRS rates for 49 states, the District of Columbia, the U.S. Virgin Islands and Puerto Rico are included in the MARS calculation. *See id.*

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

<sup>6</sup> *Notice* at 3.

Hamilton supports the recommended IP CTS rate but opposes its adoption on an interim basis. Rather, the IP CTS rate should simply be adopted using the MARS formula, in the same manner as the recommended rates for traditional TRS, STS and CTS. As an initial matter, it would be irrational to find that the MARS-produced CTS rate, which is based on the average of competitively-bid intrastate CTS rates, reasonably compensates providers for the costs of providing interstate CTS, but simultaneously find that the MARS-produced IP CTS rate, which is based on the same average of competitively-bid intrastate CTS rates, is somehow unreasonably compensating IP CTS providers. Absent specific evidence that interstate CTS costs less to provide than IP CTS,<sup>7</sup> there is no rationale to depart from the Commission's 2007 determination that the MARS-based CTS rate best reflects the costs of providing IP CTS.<sup>8</sup>

Furthermore, there is no evidence in the record that the proposed IP CTS rate would unreasonably compensate IP CTS providers.<sup>9</sup> In contrast, there is ample evidence in the record that the *growth rate* of IP CTS has resulted in competitive distortions and unreasonable compensation to Sorenson based on that provider's abusive marketing practices that the Commission prohibited earlier this year. But that evidence cannot be used to call into question the use of MARS to calculate the IP CTS reimbursement rate.

---

<sup>7</sup> In fact, in Hamilton's experience the costs for providing interstate CTS and IP CTS are virtually identical, because CTS and IP CTS are provided using the same communications assistants, Automatic Call Distribution platform, switch, workstation, staff, software, training, and other shared infrastructure.

<sup>8</sup> *2007 Order*, ¶ 38.

<sup>9</sup> Sorenson's arguments to the contrary are unavailing, because they would have the Commission replace a rational, competitively based MARS rate with an arbitrary "price cap" rate that is based on an average of historical cost data from 2008-2010 – cost data that is meaningless in today's competitive environment for CTS. *See* Sorenson Petition for Rulemaking, CG Docket No. 03-123 (filed Feb. 20, 2013).

The proposed 2013-2014 IP CTS rate was calculated by the Administrator using MARS, which is based on competitively-bid intrastate CTS rates, and thus has been found to more closely approximate providers' reasonable costs.<sup>10</sup> As the Commission determined in 2007, the costs of providing IP CTS are comparable to the costs of providing CTS.<sup>11</sup> The first interstate MARS CTS/IP CTS rate, adopted in 2007, was \$1.62 per minute.<sup>12</sup> That rate has remained relatively stable, rising only 16 cents over six years to a proposed new rate of \$1.7877. This sort of incremental increase is fully consistent with inflation, particularly for such a labor-intensive service in which the majority of providers' costs is represented by communications assistants' salaries. In fact, the total increase over the entire time the MARS rate has been in effect for IP CTS has averaged 1.6% per year, which is slightly less than the increase in the Consumer Price Index for the same period.

Should the Bureau depart from precedent and decide not to adopt MARS on a permanent basis for 2013-2014, at the very least it should, as proposed, adopt the IP CTS MARS calculation of \$1.7877 on an interim basis until the impact of the interim IP CTS rules becomes clear.

### **III. The TRS Fund Size Cannot Be Accurately Projected Until the Administrator Takes the Impact of the Interim IP CTS Rules Into Account**

The Administrator has proposed a funding requirement of \$1.5436 billion,<sup>13</sup> more than double the previous year's projection of \$711.4 million.<sup>14</sup> Hamilton believes that the proposed

---

<sup>10</sup> *2007 Order*, ¶ 18 (“We believe the MARS plan, because it is based on competitively bid state rates, produces a rate that better approximates providers' reasonable costs, and therefore promotes the efficient recovery of all costs. Further, the MARS plan eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”).

<sup>11</sup> *2007 Order*, ¶ 38.

<sup>12</sup> *Id.* ¶ 62.

<sup>13</sup> *2013 TRS Rate Filing*, at 34.

funding requirement for 2013-2014 is significantly overestimated because, as the Administrator acknowledges, the projection fails to account for the likely impact of the strict new interim IP CTS rules that were adopted earlier this year.<sup>15</sup>

The interim IP CTS rules were specifically designed to rein in the abusive marketing efforts of one IP CTS provider in particular – Sorenson.<sup>16</sup> The interim rules became effective in February and March 2013. However, Sorenson may have only recently come into compliance with all of the interim rules, if indeed it is in compliance. Upon information and belief based on reports of telephone calls from Sorenson customer representatives to its user base, Sorenson began complying with the “captions off” requirement on approximately May 18, 2013, some nine days after its captions off waiver request was denied by the Bureau (and despite the fact that Sorenson had previously advised the Commission that it would not be in compliance with the captions off requirement until August 2013).<sup>17</sup>

---

<sup>14</sup> Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket No. 03-123, at 20 (filed Apr. 30, 2012).

<sup>15</sup> *2013 TRS Rate Filing*, at 28 (“In light of the recently adopted [IP CTS] interim measures, RLSA does not expect that any of the demand projections will produce an accurate reflection of demand during the 2013-2014 funding year.”).

<sup>16</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 and 03-123, FCC 13-13 (rel. Jan. 25, 2013) (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...”).

<sup>17</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, CG Docket Nos. 13-24, 03-123, DA 13-1045, ¶ 21 (CGB rel. May 9, 2013)

(Sorenson/CaptionCall “has failed to provide a reasonable explanation for its conscious choice not to comply – or even to make a good faith effort to comply – with the rule”).

In light of the waiver denial, at least two months' worth (and perhaps more) of the IP CTS minutes billed by a dominant IP CTS provider will not be reimbursed from the Fund.<sup>18</sup> The Bureau and the Administrator should factor these significant cost savings into their IP CTS projections, and determine whether those savings will be held in reserve, or used as an offset against the 2013-2014 contribution factor, or used as a catch-up 13<sup>th</sup> payment to eligible TRS providers as the Administrator has been discussing informally with providers.

It is clear that the various projections that the Administrator puts forward in its report are all based on inaccurate forecasts of ever-increasing minutes of use at unsustainable growth levels caused by Sorenson's inappropriate marketing practices and other abuses that have since been banned. Hamilton believes that the industry projection for IP CTS minutes of use in the 2013-2014 funding year – 181,429,401 minutes – is a more rational, and likely more accurate, projection of IP CTS minutes of use for 2013-2014 once the impact of the interim rules is taken into account. This figure is significantly lower than the 409,268,995 minutes projected by the Administrator which results in the \$1.5 billion fund projection.

Because the Administrator currently lacks the data necessary to make an accurate projection of the TRS Fund size, Hamilton submits that the Administrator should be directed to make a new projection once it has a full month of IP CTS minutes of use data reflecting compliance by all IP CTS providers with the interim rules. Whether that data can be collected for June 2013 is dependent on whether Sorenson is in full compliance with the interim IP CTS rules by then, and whether it remains so for the entire month. To the extent that this data is not collected before June 30, the Commission should use the industry's projection of 181,429,401

---

<sup>18</sup> *Id.* n.104.

