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VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, CG Docket Nos. 13-24 , 10-51, & 03-123

Dear Ms. Dortch:

On June 24, 2013, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") and Chair, Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN")[1] along with the undersigned of Bingham McCutchen LLP on behalf of TDI met separately with Priscilla Delgado Argeris, Office of Commissioner Jessica Rosenworcel, and Mark Stone, Office of Acting Chairwoman Mignon Clyburn.

During these meetings, we discussed issues associated with Commission's interim default captioning-off rule[2] for Internet Protocol Captioned Telephone Service ("IP CTS") and explained that the Commission should not impose this rule on a permanent basis. In addition, we requested that the Commission approve Miracom USA, Inc.'s ("Miracom") application for certification to provide IP CTS.[3]

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[1] While representatives from Hearing Loss Association of America ("HLAA"); National Association of the Deaf ("NAD"); Association of Late Deafened Adults, Inc. ("ALDA"); and Rehabilitation Engineering Research Center on Telecommunications Access ("RERC-TA") were unable to attend these meetings, they support the positions TDI advocated during these meetings.

[2] *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, 28 FCC Rcd 703, ¶ 33 (2013); 47 C.F.R. § 64.604(c)(10).

[3] *See* Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket No. 03-123 (filed Nov. 23, 2011). *See*

In urging that the interim default-off rule not be adopted permanently, TDI presented the views set forth in the attached handout. A copy of this handout was provided to Ms. Argeris and Mr. Stone. In addition, TDI discussed whether IP CTS consumers, who wish to have a "captions-on" default for the IP CTS devices, should be required to provide an additional certification.[4]

TDI also explained that the rights afforded under that Title IV of the Americans with Disabilities Act of 1990 ("ADA"), which Section 225 of the Act implements, mandates the availability of functionally equivalent telecommunications services.[5] We emphasized that the size or growth of the TRS fund does not restrict this civil statutory right under Section 225 and should not prevent the individuals this statute is designed to protect from obtaining IP CTS. We noted that the demand for IP CTS will increase as the population of older individuals in the United States increases[6] and that these individuals should not be denied their Section 225 rights to obtain IP CTS. We further stressed TDI's concerns that the default-off rule may be inconsistent with Sections 225 and 255 along with other rules and policy objectives.[7]

In addition, TDI explained that RERC-TA survey data on CTS usage does not support either fraud or misuse as the source of recent IP CTS growth and that a low incidence of misuse was found among survey respondents.[8] We noted that any misuse is likely *de minimis* and individuals not eligible to use IP CTS telephones would not want to use these phones because they are hard-wired devices and therefore in a fixed location in the home, typically in a place that an

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also Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket Nos. 03-123 & 10-51 (filed Nov. 28, 2011).

[4] As to whether such a certification should be made under penalty of perjury, see Comments of TDI *et al.*, CG Docket Nos. 13-24 and 03-123, at 9 (filed Feb. 26, 2013) ("TDI 2-26-2013 Comments") and Comments of HLAA, at 11 (filed Feb. 26, 2013).

[5] 47 U.S.C. § 225(a)(3).

[6] *See* TDI 2-26-2013 Comments at 3.

[7] *See id*. at 2-5.

[8] *See* Letter from Philip J. Macres, counsel for TDI, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-24 & 03-123, at 2 (filed Apr. 26, 2013).

eligible IP CTS user can easily access.[9] IP CTS telephones would not provide residential hearing consumers with either the convenience or mobility of typically wireless or cordless devices for telephone calls.[10] TDI explained that IP CTS providers should employ preventative measures to ensure IP CTS services are not misused. TDI also commented that RLSA's IP CTS demand projection for the 2013-14 fund year is overblown because it far exceeds the industry IP CTS demand projection.

In urging that the Commission approve Miracom's application (which has been pending for some time), TDI noted that once approved, Miracom's IP CTS service will be provisioned using Communications Access Realtime Translation ("CART") that provides more accurate and quicker captioning.[11] As a result, conversations can proceed with limited delay. TDI explained that there should be more competition among IP CTS providers and that the delay in approving Miracom's application has prevented IP CTS users from obtaining Miracom's proposed competitive and distinct IP CTS offering. TDI explained that there are more providers of VRS using different technologies than IP CTS and that there should be just as many for IP CTS. TDI emphasized that more competition among providers of IP CTS will promote technological advancement and innovations among the providers. TDI further mentioned that Miracom has proposed measures that it will voluntarily implement to prevent fraud.[12] In addition, TDI commented that as a result to the FCC's delay in approving Miracom's pending application, Miracom is facing financial hardship and cannot wait much longer for approval.

During the meeting with Ms. Argeris, TDI also emphasized that any permanent IP CTS rules should not include a db hearing loss threshold requirement.[13] TDI further urged that the Commission permit providers to offer a free IP CTS phone to potential or existing low income IP CTS users at no cost or at *de minimis* cost if such users are within 400% of the federal poverty guidelines.[14] This threshold

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[9] *Id*.

[10] *Id*.

[11] *See* Letter from George L. Lyon, counsel for Miracom, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at Presentation pp. 3-4 (filed May 7, 2012) ("Miracom 2-7-2012 *Ex Parte*").

[12] *See id*. at Presentation pp. 9-12.

[13] *See* TDI 2-26-2013 Comments, at 10-11.

[14] *See id*. at 5-7.

matches the definition of "low income" under the National Deaf-Blind Equipment Distribution Program ("NDBEDP").[15]

During the meeting with Mr. Stone, TDI further stated it was generally pleased with the Commission's recently released VRS order, and that it and other Consumer Groups will address FCC's inquiries related to IP-CTS.[16] In addition, TDI also noted that Miracom beta tested its proposed IP CTS InnoCaption offering to a fair number of consumers who indicated that they were very impressed with the service.[17] TDI further explained that the ADA serves to protect new technology like Miracom's, as the legislative history indicated that new technology should not be impaired or discouraged. TDI commented that RSLA needs to do a better job, by coordinating its future projections more closely with industry players to determine TRS demand projections so that it (as well as the FCC) is more confident in using industry demand projections in the future.

Respectfully submitted,

/s/ Philip Macres

Philip J. Macres

Counsel for TDI

cc (by email):

Acting Chairwoman Clyburn
Commissioner Rosenworcel
Priscilla Delgado
Mark Stone
Karen Strauss
Gregory Hlibok

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[15] *See id*. at 6.

[16] *In the Matter of Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82 (rel. June 10, 2013).

[17] *See* Miracom 2-7-2012 *Ex Parte* at Presentation pp. 6-8.