



August 12, 2013

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Misuse of Internet Protocol Captioned Telephone Service*, CG Docket No. 13-24;  
*Telecommunications Relay Service and Speech-to-Speech Services for Individuals with  
Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

On August 8, 2013, on behalf of the CaptionCall, LLC subsidiary of Sorenson Communications, Inc., Bruce Peterson of CaptionCall and John Nakahata and I met with Suzanne Tetreault, Diane Griffin Holland, and Marcus Maher of the Office of General Counsel, and Kris Monteith and Robert Aldrich of the Consumer and Governmental Affairs Bureau regarding the above-referenced proceeding. On August 12, 2013, John Nakahata and I also met with Nicholas Degani, Commissioner Pai's legal advisor.

At the meetings, we discussed the issues addressed in CaptionCall's August 5, 2013 ex parte filing in this docket. At both meetings, we distributed the attached handout, which illustrates that hard-of-hearing individuals must pay all the costs associated with generic telephone service—buying a handset, obtaining local, long-distance, and perhaps international service—and also pay for broadband Internet service, before they are able to obtain IP-Captioned Telephone Service. In that circumstance, it violates the functional equivalence principle of 47 U.S.C. § 225 to require hard-of-hearing individuals to purchase a captioned telephone at the cost of at least \$75 in addition to all the other costs they bear. At the meeting with Mr. Degani, we also distributed the attached handout showing that amplified phones are available at a very low cost, and noted that they do not require a broadband Internet connection, in response to concerns that consumers might choose captioned phones rather than amplified phones, when the consumer does not have to pay \$75 for the captioned phone (but does have to obtain an Internet access connection).

More generally, we emphasized that the Commission needs to carefully consider the burden any proposed regulation places on disabled persons compared to any reduction in misuse resulting from the regulation. The Commission seems to think that any possible reduction in misuse—even if hypothetical rather than demonstrated—justifies placing substantial burdens on hard-of-hearing individuals, and their use of TRS. As explained below, that is exactly backwards. At a minimum, before adopting a regulation limiting the right to functionally equivalent telecommunications service, the Commission should obtain evidence demonstrating clear proof of misuse and should also conclude that the misuse that will be curbed far exceeds

the burden placed on hard-of-hearing persons. As matters stand there is no evidence of misuse—and the Commission cannot avoid the absence of record evidence by “cast[ing] its analysis as a prediction of future trends.” *BellSouth Telecoms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006).

In that connection, we emphasized that section 225 is a civil rights statute, added to the Communications Act by the Americans with Disabilities Act of 1990, designed to require telephone companies to remedy the discriminatory effects of the telephone network. The Commission so stated nearly a decade ago. It explained that section 225 is “an accommodation ... for persons with disabilities.” *Telecomm. Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 19 FCC Rcd. 12,475, 12,543 ¶ 179 (2004). Section 225 “places the obligation on carriers providing voice telephone services to *also* offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities.” *Id.* The Commission added that “the costs of providing TRS are really just another cost of doing business generally, *i.e.*, of providing voice telephone service.” *Id.* In other words, Congress concluded that the telephone system discriminates against persons with hearing or speech disabilities and required the telephone companies to remedy that discrimination by providing services such as IP CTS. As administered by the Commission, the role of telephone companies has changed from providing service to paying for service. But the key point remains that section 225 is a civil rights statute, not a social welfare statute, providing *inter alia* that hard-of-hearing Americans have the *right* to functionally equivalent telecommunications services and telephone companies have the *duty* to provide or fund those services.<sup>1</sup>

Of course, the discrimination against hard-of-hearing persons inherent in the voice telephone system is like the discrimination caused by stairs with respect to persons in wheelchairs—not intentionally malicious, but real nonetheless. But Congress simultaneously dealt with issues such as public access to buildings for people with disabilities in 1990 when it provided the right to functionally equivalent telecommunications service—and Congress provided far more elaborate defenses for building owners than for telephone companies. For example, the relevant provision in Title III of the ADA provides that architectural barriers need not be removed when that is not “readily achievable.” Americans with Disabilities Act of 1990, Pub. L. 101-336, § 302(b)(2)(v) (1990). Similarly, a provision in Title II creates an “undue financial burden limitation” on the duty to make buses accessible. *Id.* § 223(c)(4). And Title I,

---

<sup>1</sup> Moreover, it bears note that the Commission has prohibited telephone companies from using line items to recover their costs of funding TRS. In 1993, the Commission stated that “In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on end user’s lines.” *Telecomm. Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, FCC 93-104, 8 FCC Rcd. 1802, 1806 ¶ 22 (1993). In 2005, the Commission noted, in the course of adopting Truth-In-Billing rules, that those rules do “not alter the role of any other specific prohibition or restriction on use of line items. For example, this Commission has prohibited line items for interstate Telephone Relay Service (TRS) costs.” *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55, 20 FCC Rcd. 6448, 6459 n.64 (2005).

which generally prohibits employment discrimination against disabled persons, requires only “reasonable” accommodations and provides an “undue hardship” exception. *Id.* §§ 101(9), (10). The courts have construed those provisions to give employers a defense when the costs of an accommodation are “clearly disproportionate” to the benefits. *Borkowski v. Valley Cent. Sch. Dist.*, 63 F. 3d 131, 138 (2d Cir. 1995). Thus, an employer should not be required “to make a multi-million dollar modification for the benefit of a single individual.” *Id.* The analogous question here would be whether a regulation is needed because it will eliminate misuse that is “clearly disproportionate” to the burden placed on hard-of-hearing individuals. Yet, as stated above, the Commission appears to be looking at matters from the opposite perspective, assuming that a regulation that might eliminate some small quantity of misuse is desirable notwithstanding that it places a significant burden on the right to functionally equivalent communications services.

Moreover, the text of Title IV of the ADA is less protective of telephone companies than the analogous text in the other titles are to employers, bus systems, and building owners. There is nothing in section 225—the provision of the Communications Act added by Title IV of the ADA—analogue to an “undue burden” defense or an “undue financial burden” limitation or a “readily achievable” standard. To the contrary, section 225(3) establishes the right to communications service “that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.” Period. This is a duty placed on “[e]ach common carrier providing telephone transmission services” by section 225(c). The Commission is directed in section 225(b)(1) to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” Congress used very strong language in providing the right of disabled Americans to functionally equivalent communications services.

The Commission has stated that the requirement that services be provided “in the most efficient manner” supports the conclusion that providers should not be over-compensated for providing service. *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, 28 FCC Rcd. 8618, 8628 ¶ 17 (2013). CaptionCall does not dispute that principle. In fact, CaptionCall has proposed that the IP CTS rate be *reduced*. Petition for Rulemaking of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket No. 03-123 (filed Feb. 20, 2013). But the Commission has focused on limiting access to IP CTS rather than reducing the rate even when presented with the unusual circumstance of a provider suggesting a lower rate. In any event, the “in the most efficient manner” language has nothing to do with regulations at issue. That is, a requirement that hard-of-hearing individuals demonstrate their need for IP CTS by paying \$75 does not advance efficiency. As an initial matter, the language is directed at the Commission and appears to call for regulations requiring providers to perform efficiently rather than having anything to do with determining who is eligible for a service.

If the language can be read to address eligibility, it certainly cannot be used to justify the \$75 requirement. It would clearly be more efficient for a person who already had an audiogram showing serious hearing loss or a doctor’s statement that the person needs captioned telephone service to use that already-existing evidence to show eligibility rather than being required to pay

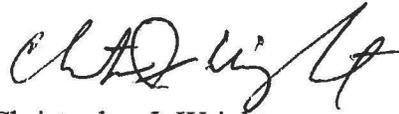
\$75, which is merely a proxy for establishing need. And it would be more efficient to presume that a person with hearing aids or a cochlear implant had a serious hearing loss, since people are unlikely to go to the trouble and expense of purchasing hearing aids or getting an implant unless they have been diagnosed with serious hearing loss. Similarly, it would be more efficient, not less, to permit persons who have been diagnosed with serious cognitive or physical disabilities or who live in hard-of-hearing-only households to use a “captions on” default setting.

In addition, the Commission’s prior determinations indisputably establish that IP CTS is a service to which hard-of-individuals are entitled by section 225. The Commission concluded in 2003 that captioning services “offers consumers the benefit of operating more like conventional voice telephone service [than other forms of TRS], with direct dialing of the called party’s number and the nearly simultaneous delivery of the actual voice of the called party and written text of what the called party has said as generated by the CA re-voicing the message.” *Telecomm. Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, FCC 03-190, 18 FCC Rcd. 16,121, 16,123-24 ¶ 16 (2003). It added: “The record reflects that it is less intrusive and more natural for the call participants, and that users who become hearing impaired later in life may find it easier to adjust to captioned telephone VCO service than to traditional TRS services.” *Id.* While those findings related to any captioning service rather than to IP CTS only, the Commission in 2007 found IP CTS eligible for compensation from the Fund because it is another and better form of captioning service. *See Telecom. Relay Services & Speech-to-Speech Services For Individuals with Hearing and Speech Disabilities Internet-Based Captioned Telephone Services*, Declaratory Ruling, FCC 06-182, 22 FCC Rcd. 379, 387 ¶ 19 (2007). Because the Commission correctly concluded that captioning services are superior to pre-existing services in terms of providing functionally equivalent service, hard-of-hearing individuals are entitled to IP CTS and the Commission has a duty to “ensure” that it is “available, to the extent possible.” Regulations establishing arbitrary fees and hindering persons from obtaining captions at the beginning of calls are impermissible under that standard.

Finally, it bears emphasis that the “*Commission*” has the statutory duty to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech impaired individuals in the United States.” 47 U.S.C. § 225(b)(1) (emphasis added). Although state programs may provide useful services, it seems clear that the Commission may not transfer its statutory obligation to the States. So while we understand that the Commission intends to inquire about state programs, and it will be permissible for the Commission to encourage such programs, the Commission has the obligation of fostering functionally equivalent communications service such as IP CTS.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Wright', written in a cursive style.

Christopher J. Wright  
*Counsel to CaptionCall, LLC*

cc: Dave Grimaldi  
Priscilla Argeris  
Nicholas Degani  
Suzanne Tetrault  
Diane Griffin Holland  
Marcus Maher  
Kris Monteith  
Robert Aldrich  
Elaine Gardner  
Eliot Greenwald

Attachments



Free shipping on college essentials

New customer? [Sign In](#) | [Help](#)

Value of the Day Local Ad Store Finder Registry Gift Cards

[Track My Orders](#) [My Account](#) [My Lists](#)

Electronics  Submit

(0) My Store: Alexandria

All Departments

Electronics

- Office(63)
- Phones & Accessories(63)

Refine Results

Brand

- Clarity (32)
- GE (3)
- Panasonic (19)
- Uniden (3)
- Fanstel (2)
- Plantronics (2)
- RCA (1)

Price

- \$  to \$
- \$10 - \$20 (1)
  - \$20 - \$50 (16)
  - \$50 - \$100 (38)
  - \$100 - \$150 (8)

Customer Rating

- (33)
- (9)
- (1)
- (1)

Free Store Pickup

- Available Today (5)
- Show All (44)

Retailer

- Walmart.com (44)
- Shoplet (17)
- ToolKing.com (2)

Recently Viewed Items

-  Uniden 1100 Slimline Corded Phone, White  
★★★★★  
**\$5.97**
  -  AT&T Corded Telephone With Caller ID, Ca...  
★★★★★  
**\$23.21**
- [Clear this list](#)

Electronics > amplified phone ( See results in All Departments)



Refine by Price Top Brands Store Availability Sort by Price: Low to High

63 Results 16 32 Per Page 1 2 3 4 Next

Showing the most relevant results sorted by Price: Low to High. See all sorted results			
	<p><b>Uniden Corded Phone</b></p> <p>Model#: CEZ202 (10)</p> <ul style="list-style-type: none"> <li>Amplified big button trim-style design</li> <li>Visual ringer on handset</li> <li>Large backlit keys and comfortable handset</li> </ul>	<p>Online</p> <p><b>\$15.00</b></p>	<ul style="list-style-type: none"> <li>Free store pickup as soon as 8/15 with <a href="#">sita to store</a></li> </ul>
	<p><b>Clarity D703HS Cordless Handset</b></p> <p>Model#: 52703 (1)</p> <ul style="list-style-type: none"> <li>Amplifies incoming sound up to 35dB</li> <li>DECT 6.0 Interface-free technology</li> <li>Adjustable tone control</li> </ul>	<p>Online</p> <p><b>\$25.88</b></p>	<ul style="list-style-type: none"> <li>Free store pickup as soon as 8/15 with <a href="#">sita to store</a></li> </ul>
	<p><b>Clarity C200 Amplified Corded Trimline Phone with Clarity Power</b></p> <p>Model#: C200 (6)</p> <ul style="list-style-type: none"> <li>Clarity Power technology</li> <li>Amplifies incoming sounds up to 26 db</li> <li>Bright visual ring indicator</li> </ul>	<p>Online</p> <p><b>\$26.49</b></p>	<ul style="list-style-type: none"> <li>Free store pickup as soon as 8/15 with <a href="#">sita to store</a></li> </ul>
	<p><b>Clarity C200 Amplified Trimline Basic Telephone</b></p> <p>The Clarity C200, featuring Clarity Power technology, makes sounds not only louder, but also clearer and easier to understand. With up to 26 decibels of amplification, the easy to use C200 is an ideal...</p>	<p>Online</p> <p><b>\$27.95</b></p>	<ul style="list-style-type: none"> <li>Sold &amp; shipped by Shoplet</li> </ul>
	<p><b>Clarity D702HS Expandable 700 Series Handset</b></p> <p>Model#: CalrityD702HS</p> <ul style="list-style-type: none"> <li>Clarity Power technology makes sounds louder, clearer and easier to understand</li> <li>Amplifies incoming sounds up to 30 decibels</li> <li>Backlit LCD display and bright visual ringer</li> </ul>	<p>Online</p> <p><b>\$31.49</b></p>	<ul style="list-style-type: none"> <li>Free store pickup as soon as 8/15 with <a href="#">sita to store</a></li> </ul>

	<p><b>RCA Amplified Corded Telephone with Speakerphone</b></p> <p><b>Model#: 11231WTGA</b> (1)</p> <ul style="list-style-type: none"> <li>• Backlit keypad and screen</li> <li>• Call Waiting/Caller ID</li> <li>• Speakerphone</li> </ul>	<p>Online <b>\$32.00</b></p>	<ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
	<p><b>Plantronics 51000.101 Clarity C1000 Big button</b></p> <p><b>Model#: 51000.101</b> (16)</p> <p>Plantronics 51000.101 Clarity C1000 Big button</p>	<p>Online <b>\$33.97</b></p>	<ul style="list-style-type: none"> <li>• Sold &amp; shipped by ToolKing.com</li> </ul>
	<p><b>Clarity P-300 Amplified Phone with Photo Memory Buttons</b></p> <p><b>Model#: P-300</b> (49)</p> <p>Nine programmable photo memory buttons and up to 18 decibels of amplification</p>	<p>Online <b>\$34.99</b></p>	<ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
	<p><b>Clarity AMPLIFIED CORDED PHONE</b></p> <p>The Clarity Amplified Corded Phone features Clarity Power technology to make sounds not only louder, but also clearer and easier to understand. With up to 26 decibels of amplification, this unit is an...</p>	<p>Online <b>\$39.55</b></p>	<ul style="list-style-type: none"> <li>• Sold &amp; shipped by Shoplet</li> </ul>
	<p><b>GE Dect Amplified Cordless 29115ae1</b></p> <p><b>Model#: 29115AE1</b> (6)</p>	<p>Online <b>\$39.82</b></p>	<ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
	<p><b>Clarity P300 Standard Phone</b></p> <p>The P300 amplified corded phone, by Clarity features Clarity Power technology to make sounds not only louder, but also clearer and easier to understand. With up to 18 decibels of amplification and pro...</p>	<p>Online <b>\$40.95</b></p>	<ul style="list-style-type: none"> <li>• Sold &amp; shipped by Shoplet</li> </ul>
	<p><b>Uniden Digital Answering System with Amplified Audio</b></p> <p><b>Model#: D3097</b> (4)</p> <ul style="list-style-type: none"> <li>• Up to 30 dB audio boost</li> <li>• Visual ringer on handset and base</li> <li>• Silent mode quiets all ringers and incoming messages</li> </ul>	<p>Online <b>\$41.79</b></p>	<ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
	<p><b>Clarity SR100 Amplified Telephone Ringer</b></p> <p><b>Model#: SR100</b> (3)</p>	<p>Online <b>\$43.59</b></p>	<ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>

	<ul style="list-style-type: none"> <li>• Super loud telephone ringer (95 decibels)</li> <li>• Adjustable ring volume</li> <li>• Adjustable ring tone control (250 - 1200Hz)</li> </ul>	
	<p><b>Clarity P-400 Photo Phone</b>  <b>Model#: P-400</b>                  (2)</p> <ul style="list-style-type: none"> <li>• Clarity Power technology</li> <li>• Amplifies incoming sounds up to 26 decibels</li> <li>• Large, high-contrast keypad</li> </ul>	<p><b>Online</b>  <b>\$44.88</b></p> <ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
	<p><b>Clarity P400 Standard Phone</b></p> <p>The Clarity P400 amplified corded phone, featuring Clarity Power technology, makes sounds not only louder, but also clearer and easier to understand. With up to 26 decibels of amplification and Pictur...</p>	<p><b>Online</b>  <b>\$47.95</b></p> <ul style="list-style-type: none"> <li>• Sold &amp; shipped by Shoplet</li> </ul>
	<p><b>Panasonic KX-TG4741B DECT 6.0 Plus Expandable Digital Cordless Answering System with 1 Handset</b>  <b>Model#: KX-TG4741B</b>                  (7)</p> <ul style="list-style-type: none"> <li>• Answering system total recording time approximately 18 minutes</li> <li>• Talking Caller ID (requires subscription)</li> <li>• Large, 1.8" white backlit handset display</li> </ul>	<p><b>Online</b>  <b>\$48.92</b></p> <ul style="list-style-type: none"> <li>• Free store pickup as soon as 8/15 with <a href="#">site to store</a></li> </ul>
<p><b>Related Searches</b></p> <p> <a href="#">amplified cordless phone</a>    <a href="#">amplified corded phone</a>    <a href="#">amplified speaker phones</a>  <a href="#">hearing impaired phones</a>    <a href="#">cabinet under shelf basket</a>    <a href="#">under cabinet shelf</a>  <a href="#">big button phone</a> </p> <p style="text-align: center;"> <a href="#">Previous</a>    <a href="#">1</a>    <a href="#">2</a>    <a href="#">3</a>    <a href="#">4</a>    <a href="#">Next</a> </p>		

**People Who Viewed These Items Also Viewed**

				
<p>AT&amp;T Corded Telephone With Caller ID, Call...</p> <p><b>\$23.21</b></p>	<p>AT&amp;T CL2940 Corded Telephone with Caller...</p> <p><b>\$24.97</b></p>	<p>Clarity JV-35B Amplified Corded Telephone</p> <p><b>\$79.98</b></p>	<p>VTech Communications At&amp;T CL2939 Corded...</p> <p><b>\$28.84</b></p>	<p>Clarity Professional XL40D Digital Extra...</p> <p><b>\$83.23</b></p>

Did you find the product or service you were looking for?  Yes  No

**Sign up for savings** Get Walmart values delivered to your inbox.

[Privacy policy](#)

[Like us](#)    [Mobile apps](#)

[Apply Now](#)



**Financial Services**

- [Walmart Credit Card](#)
- [Walmart MoneyCenter](#)
- [Manage Account & Pay Bill](#)

- [Corporate](#)
- [Our Story](#)
- [News & Views](#)
- [Giving Back](#)
- [Global Responsibility](#)
- [Investors](#)
- [Suppliers](#)
- [Careers](#)
- [@WalmartLabs](#)

- [About Walmart.com](#)
- [Terms of Use](#)
- [Affiliate Program](#)
- [Sponsorship Submission](#)
- [International Customers](#)
- [About Our Ads](#)
- [Store Finder](#)
- [Printable Coupons](#)
- [See All Departments](#)
- [View Mobile Site](#)

- [Help Center](#)
- [Track Your Order](#)
- [Returns Policy](#)
- [Return an Item](#)
- [Product Recalls](#)
- [Associate Discount](#)
- [Privacy & Security](#)
- [California Privacy Rights](#)
- [Contact Us](#)
- [Feedback](#)

- [\[+\] Electronics](#)
- [\[+\] Bikes](#)
- [\[+\] Patio and Garden](#)
- [\[+\] Camping](#)
- [\[+\] Video Games](#)
- [\[+\] Home](#)
- [\[+\] Baby](#)
- [\[+\] Cell Phones](#)
- [\[+\] Gifts](#)
- [\[+\] Walmart Specials](#)
- [\[+\] Popular Products](#)

© 2013 Wal-Mart Stores, Inc.

ew87  
 ldg=-1  
 /search/search-ng.do, /search/search-p.do  
 /include/dynamic/tiles/templates/search/polarisTemplate.jsp

**Comparison of Service-Related Expenditures for  
Fully Hearing User v. IP CTS User**

Equipment/Service	Fully Hearing User Pays In Order to Use Voice Service	IP CTS User Pays in Order to Use Voice Service
Hearing telephone handset	Yes	Yes
Local telephone service	Yes	Yes
Long distance telephone service	Yes	Yes
International telephone service	Yes	Yes
Broadband Internet access	No	Yes
IP CTS handset/display device	No	<i>FCC proposes to require payment of at least \$75, with no exception for hearing health professional certified need.</i>