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August 15, 2013

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: **EX PARTE PRESENTATION**
Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket Nos. 13-24, 03-123

Dear Ms. Dortch:

On August 13, 2013, the undersigned counsel for Hamilton Relay, Inc. ("Hamilton") met with Dave Grimaldi, Chief Counsel and Senior Legal Advisor to Acting Chairwoman Clyburn, along with Eliot Greenwald and Robert Aldrich of the Consumer & Governmental Affairs Bureau regarding the above-captioned proceeding. Hamilton also met separately with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel, and Nicholas Degani, Legal Advisor to Commissioner Pai. Dixie Ziegler, Vice President of Hamilton, participated in the meetings by telephone.

During each meeting, the participants discussed the pending order to adopt permanent rules for Internet Protocol Captioned Telephone Service ("IP CTS"). Specifically, we discussed the following issues:

Certification Requirements

The Interim IP CTS Order[1] takes a bifurcated approach to certification under which IP CTS consumers could either a) self-certify their eligibility for the service by demonstrating that they purchased the IP CTS equipment for $75 or more; or b) provide an eligibility certification

[1] *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703 (2013), *petition for review docketed sub nom.* Sorenson Comm'ns Inc. v. FCC, Case No. 13-1122 (D.C. Cir. Apr. 8, 2013).

from an independent, third party professional when the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program.

Hamilton supported the bifurcated approach and continues to believe that it provides consumers with a reasonable choice between paying for the equipment or taking the additional step of obtaining a third party certification. At the same time, Hamilton is sensitive to the Commission's concern that the distribution of free or loaned equipment to consumers may be problematic. Hamilton noted that from 2003-2011, the vast majority of CTS and IP CTS equipment was paid for by consumers or distributed through state equipment distribution programs ("EDPs"). Thus, while valid concerns remain about the impact of free and loaned equipment, the Commission also should be sensitive to the concerns raised in recent consumer group ex parte filings about a blanket requirement that all users pay at least $75 for IP CTS equipment.[2]

Registration Requirements

Hamilton also understands that the Commission may require all IP CTS users to be registered, including the base of users who were not subject to the interim IP CTS registration requirements. If such a requirement is adopted, the Commission should takes the same approach that it did with the interim rules, i.e., allow users who paid $75 or more for their IP CTS equipment, or who acquired the equipment from a governmental program, to register with a self-certification as to their eligibility to use the service. In contrast, unregistered users who did not pay $75 or more for their IP CTS equipment and who did not acquire the equipment from a governmental program should be required to obtain a certification from a third party professional in order to ensure the integrity of the registration process. Hamilton also supports further defining the class of third party professionals who are eligible to issue such certifications, to ensure that such individuals are professionally qualified to evaluate an individual's hearing loss.

Hamilton encourages the Commission to afford all unregistered IP CTS users a sufficient period of time in which to register, and believes that 6 months after the effective date of the order should be sufficient for this purpose.

Default Captions Off

Of all the interim IP CTS rules adopted by the Commission, the most difficult for consumers has been the requirement that the captions feature for each and every call be defaulted to the off position. Consumers have complained that the requirement means they miss the initial

[2] See, e.g., Letter from Phil Macres, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc. et al., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123, at 2-3 (filed Aug. 9, 2013); Letter from Jennifer P. Bagg, Counsel for S. George Ghorphade, Ph.D., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123, at 2-3 (filed Aug. 12, 2013).

portions of incoming and outgoing calls because of the delay in receiving captions once the captions on feature is selected. This can be particularly problematic, for example, when accessing an interactive voice response ("IVR") menu, where key information can be missed in the initial moments.

Hamilton shares the concern that the "default captions off" requirement, while perhaps understandable on an interim basis, is too burdensome to consumers to adopt on a permanent basis in its present form.[3] Hamilton encourages the Commission to revisit the bright line rule against defaulting captions to the on position. In adopting permanent IP CTS rules, at the very least the Commission should create specific exemptions as proposed by consumer groups.

Alternatively, to the extent that the Commission adopts a general requirement that IP CTS users must purchase their equipment for at least $75, the Commission in doing so may have obviated the need for any captions off requirement, because casual or inadvertent use would essentially be eliminated through the purchase requirement.

Wholesale/Retail Arrangements

Finally, Hamilton discussed possible clarifications to the interim rules concerning IP CTS marketing practices. While Hamilton continues to oppose referral fees, awards programs and other questionable marketing incentives or inducements, Hamilton noted in its comments in this proceeding that traditional wholesale/retail arrangements should not be viewed as an impermissible "inducement" to use IP CTS.[4] Wholesale/retail arrangements generally are appropriate where the consumer pays $75 or more for the IP CTS equipment because, as the Commission noted in the interim IP CTS order, the fact that the consumer is paying for the equipment prompts the consumer to decide whether he or she needs the service. In other words, the consumer is not induced by external sources such as the retailer since the minimum retail amount is the same – $75. Hamilton therefore requests that the Commission clarify in the permanent rules that such wholesale/retail arrangements, including combination offers, remain permissible.

Hamilton also requests that the Commission clarify the application of wholesale/retail arrangements to audiologists and other third party professionals.[5] To the extent that the Commission adopts a general requirement that IP CTS users must purchase their equipment for at least $75, the Commission in doing so may have obviated the need for prohibiting such wholesale/retail arrangements, because those third party professionals would no longer be issuing certifications to IP CTS users.

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[3] *See, e.g.*, Letter from Ray M. Rothermel, Counsel for Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 (filed Apr. 16, 2013).
[4] Hamilton Comments, CG Docket Nos. 13-24, 03-123, at 2-3 (filed Feb. 26, 2013).
[5] *See id.* at 3-4.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O'Connor
Counsel for Hamilton Relay, Inc.

cc (via e-mail): Participants