

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

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
Telecommunications Relay Services and)	
Speech-to-Speech Services for Individuals with)	CG Docket No. 03-123
Hearing and Speech Disabilities)	

**PETITION FOR RECONSIDERATION
OF SPRINT CORPORATION**

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Pursuant to section 1.429 of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules,¹ Sprint Corporation (“Sprint”) hereby seeks reconsideration of certain rules adopted in the Report and Order the FCC recently issued in the above-captioned proceedings.²

I. INTRODUCTION AND SUMMARY

In its August 26th *Order*, the Commission took several important steps aimed at preventing waste, fraud and abuse by users and providers of IP Captioned Telephone Service (“IP CTS”). Sprint supports many of the Commission’s actions and agrees that IP CTS use must be limited to individuals who “need [the] service to communicate in a functionally equivalent

¹ 47 C.F.R. § 1.429.

² *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 and 03-123, Report and Order, FCC 13-118 (rel. Aug. 26, 2013), 78 Fed. Reg. 53684 (published Aug. 30, 2013) (“*Order*”).

manner.”³ Sprint is concerned, however, that contrary to the Commission’s intent, some of the newly adopted rules will prevent or deter hard-of-hearing individuals from using IP CTS even if they need the service “to communicate in a functionally equivalent manner.”⁴ Specifically, Sprint respectfully requests that the FCC reconsider the *Order* and the accompanying rules to the extent necessary to: (1) ensure that consumers who use web- or mobile-based IP CTS are not saddled with an unfair surcharge; and (2) preserve consumer access to publicly accessible IP CTS devices in communal locations, such as senior centers, nursing homes, airports and train stations. In addition, Sprint urges the FCC to revise its rules to give IP CTS providers some flexibility in how they present the required consumer notification.

II. DISCUSSION

A. The Commission Should Not Impose a Seventy-Five Dollar Surcharge on Software or Applications Used to Facilitate Access to IP CTS

Sprint understands the Commission’s decision to require providers to collect at least \$75 from consumers for specialized equipment that providers distribute to users of IP CTS.⁵ In part, this requirement reflects the significant cost of IP CTS equipment and ensures that consumers share in the burden of paying for these devices. Arguably, the new rule simulates the practice of wireless service providers, which typically offer subsidies on expensive handsets that defray, but do not eliminate, the cost of obtaining expensive mobile devices, such as smartphones. The rule also ensures that artificial demand is not being created. Accordingly, Sprint does not challenge, and in fact supports, the seventy-five dollar surcharge on equipment provided for IP CTS service.

³ *Id.* ¶ 8.

⁴ *Id.*

⁵ *See id.* ¶ 48; 47 C.F.R. § 64.604(c)(11)(i).

Despite the merits of the rule requiring consumers to pay for IP CTS hardware, however, there is no similar record evidence supporting the imposition of a \$75 fee on consumers who choose to access IP CTS using software or applications offered by IP CTS providers.⁶ There is no evidence that the software in question in fact costs more than \$75 or that consumers would ordinarily pay such a fee for an application. The Commission claims that it is imposing the \$75 fee in order to deter ineligible users from accessing IP CTS.⁷ There is no evidence, however, that IP CTS software is currently being used by ineligible individuals. Nor is there any evidence that a one-time \$75 charge would prevent such misuse even if it existed.⁸ Rather, the rule is based entirely on the Commission’s speculation that individuals without hearing loss “could find” IP CTS “desirable.”⁹

Although making consumers pay \$75 for software they previously received for free will almost certainly depress demand for IP CTS, there is no reason to believe that this reduction in demand will be the result of eliminating calls by ineligible users. To the contrary, it is likely that the new software fee will have the greatest impact on consumers who currently depend on IP CTS for their communications needs.¹⁰ Concerns about misuse of IP CTS should be adequately addressed by the Commission’s new registration and certification requirements.¹¹

⁶ See *Order* ¶ 58 (prohibiting compensation from the TRS Fund for IP CTS minutes of use generated by software distributed at a price below \$75).

⁷ See *id.* ¶¶ 42, 58.

⁸ See, e.g., Request for Stay of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket No. 13-24, at 20-22 (Sept. 23, 2013) (“Sorenson Request for Stay”) (noting that there is “an absence of record evidence” connecting the imposition of a surcharge to IP CTS misuse).

⁹ *Order* ¶ 58.

¹⁰ See, e.g., Sorenson Request for Stay at 10 (explaining that “a \$75 price increase will reduce demand from consumers who need the service – especially when the target users are predominantly older Americans on fixed incomes”).

¹¹ See 47 C.F.R. § 64.604(c)(9); *Order* ¶ 64.

The *Order* does not include any discussion of the cost of the software and applications in question, or an analysis showing any connection between the \$75 fee adopted by the Commission and the actual cost or value of the software that is the subject of the FCC's new levy. Although the record contains support for the Commission's decision to impose a \$75 charge for IP CTS equipment,¹² there is no similar discussion in the record establishing \$75 as the appropriate assessment for IP CTS software.¹³

In addition to lacking support in the record, the decision to impose a \$75 surcharge on IP CTS software also places a financial burden on hard-of-hearing individuals that does not apply to hearing individuals (unlike equipment). This type of discrimination is contrary to both the spirit and the letter of the Americans with Disabilities Act ("ADA"). Specifically, the Commission's new rule requires IP CTS users to pay \$75 for the software they need to access the service even though hearing users of voice telephone service do not have to incur a similar charge simply to access basic phone service. While there is a reasonable argument that the charge imposed for IP CTS equipment is comparable to the price that hearing users must pay to purchase a telephone, there is no justification for requiring hearing-impaired individuals to pay \$75 for software after they have already paid to purchase a mobile phone or computer. To the contrary, a hearing individual who purchases either a mobile device or computer can often access voice services – and certainly the software needed to use those services – at no additional cost.¹⁴ The rule imposing a \$75 surcharge on software provided to IP CTS users therefore violates the ADA by

¹² See *Order* ¶ 39 (noting that both HLAA and the Consumer Groups agree that a \$75 price threshold for IP CTS equipment is appropriate).

¹³ In fact, the same parties that supported the \$75 fee on equipment explicitly opposed the imposition of any similar fee on IP CTS software. *Id.* ¶ 40 (citing HLAA's and the Consumer Groups' opposition to restrictions on the free distribution of software).

¹⁴ See, e.g., Skype Downloads, <http://www.skype.com/en/download-skype/skype-for-computer/> (viewed Sept. 30, 2013).

discriminating against hard-of-hearing users that rely on IP CTS as a communication service that is “functionally equivalent” to the service provided to hearing users.¹⁵ Accordingly, the Commission should reconsider its rule imposing a \$75 fee on software and applications needed to access IP CTS and limit any such fee to hardware distributed by IP CTS providers.

B. The Commission Should Modify Its Rules to Allow Access to IP CTS Phones in Public Places

Sprint continues to support the Commission’s registration and certification requirements as they apply to the vast majority of circumstances.¹⁶ Sprint is concerned, however, that the new rules requiring an IP CTS provider to register each consumer prior to requesting compensation from the TRS Fund for serving that consumer will prevent hearing-impaired individuals from using shared or public IP CTS devices outside their homes.¹⁷ For example, if an airport or nursing home chooses to provide an IP CTS phone in a common area as an accommodation to hearing-impaired visitors or residents, the FCC’s new rule would effectively prohibit any IP CTS provider from handling calls from that device.¹⁸ Sprint assumes that this result was not the

¹⁵ See 47 U.S.C. § 225(a)(3). In the case of a consumer who accesses IP CTS via mobile phone, for example, the consumer must pay the same price as a hearing user to acquire a phone and for mobile service but, under the FCC’s rule, the hard-of-hearing consumer must pay an additional charge for the software needed to access IP CTS. This is a clear violation of the ADA, 47 U.S.C. § 225(d)(1)(D) (requiring that users of TRS pay no more than hearing users pay for “functionally equivalent voice communication services”).

¹⁶ See Comments of Sprint, CG Docket No. 13-24, at 7 (Feb. 26, 2013); see also *Order* ¶ 60 (explaining that the new registration requirement will help prevent waste, fraud and abuse and will improve access to 911).

¹⁷ See *Order* ¶ 2; 47 C.F.R. § 64.604(c)(9).

¹⁸ Although the FCC’s rules do not explicitly prohibit the provision of IP CTS where an entity providing a public phone has not complied with the registration and certification requirements, the rules prohibit providers from being compensated for calls from those unregistered users/devices. This restriction will almost certainly prompt providers to deny service to public phones.

Commission’s intent, particularly given that barring the use of shared or public devices could be inconsistent with Titles II and III of the ADA.¹⁹

Eliminating public access to IP CTS devices would be at odds with Title III of the ADA and the implementing regulations, which require that public accommodations that offer “the opportunity to make outgoing telephone calls using the public accommodation’s equipment on more than an incidental convenience basis shall make available public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing.”²⁰ It is also difficult to square the effects of the new rule with Title II of the ADA, which requires public entities to “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.”²¹ Such benefits can include the ability to place or receive telephone calls.²²

The unfortunate, and presumably unintended, consequence of the new registration and certification requirements can easily be addressed by making relatively minor modifications to

¹⁹ 42 U.S.C. §§ 12131 *et seq.*, 12181 *et seq.*; *see also* 28 C.F.R. §§ 35.101 *et seq.*, 36.101 *et seq.*

²⁰ 28 C.F.R. § 36.303(d)(2). Although the ADA does not specifically require access to IP CTS – indeed, the statute predates the advent of IP CTS – it does direct entities to choose the accommodation that best serves its likely users by considering “the requests of individuals with disabilities,” the effectiveness of the resulting communication, and whether the accommodation would “protect the privacy and independence of the individual with a disability.” *See, e.g.*, 28 C.F.R. §§ 35.160(b)(2); *see also* 28 C.F.R. § 36.303(c)(1)(ii). For many hard-of-hearing individuals, IP CTS represents the best and most functionally equivalent substitute for traditional phone service. For example, IP CTS allows hearing-impaired individuals to use their voices to communicate over the phone. This closely mirrors a traditional phone call and preserves the hearing-impaired individuals’ independence and privacy. In addition, because IP CTS, unlike IP Relay or TTY, does not require the user to type, it might be the only viable option for hearing-impaired individuals who have difficult typing due to arthritis, poor vision, or a lack of typing skills.

²¹ 28 C.F.R. § 35.160(b)(1); *see also* 28 C.F.R. § 35.152(b)(1).

²² *See, e.g., Clarkson v. Coughlin*, 898 F.Supp. 1019 (S.D.N.Y. 1995).

the FCC's rules. For example, the Commission could amend its rules to require an entity that provides a public IP CTS phone to provide location and other identifying information needed to facilitate access to 911 services and to provide the Commission with a record of who owns the phone. In addition, the FCC could modify its certification requirements for users of public IP CTS phones.²³ The current certification requirement is problematic for public IP CTS phones because, in many instances, there may be no single individual responsible for the phone, much less one with a hearing impairment. Thus, there may not be anyone who can make the required certification.

One possible solution to this problem would be to carve out a narrow exception to the FCC's rules and exempt public phones from the self-certification requirement. Alternatively, the Commission could allow self-certification to take place on a per-call basis. For example, the Commission could require consumers who use a public IP CTS phone to self-certify their hearing-impairment and agree to the conditions of service before placing a call. Under this scenario, each time the public phone's receiver is lifted, the display would show the certification requirements and require the user to affirmatively assent to the conditions before a call could be placed. Another possibility is for the Commission to adopt a verification system that allows registered users to confirm that they have already submitted the required self-certification before they place a call.²⁴ Regardless of the specific mechanism the Commission chooses to use, it

²³ See 47 C.F.R. § 64.604(c)(9); see also *Order* ¶ 64 (requiring any consumer that registers for IP CTS service to provide a self-certification stating, *inter alia*, that he or she “has a hearing loss that necessitates use of captioned telephone service”).

²⁴ See, e.g., Comments of CSDVRS, LLC, CG Docket No. 10-51, at 32-33 (Nov. 14, 2012); Comments of CSDVRS, LLC, CG Docket No. 03-123, at 20 (Aug. 8, 2008) (suggesting that VRS users be verified on a per-call basis by checking their ten-digit telephone number against the central numbering database and noting that such a system would help promote the availability of public videophones for VRS users).

should amend the registration and certification requirements to the extent necessary to permit the distribution and use of public IP CTS devices.

C. The Commission Should Give Providers Flexibility to Present the Required Consumer Alert in the Most Effective Manner

Sprint has no objection to the Commission’s decision to require providers to supply consumers with a notification stating that only registered users with hearing loss may use an IP CTS device with captions on.²⁵ Sprint asks only that the Commission allow providers the flexibility to tailor the wording of the notification to ensure that it has the desired impact. For example, Sprint would prefer to replace the Commission’s designated wording with the following label: “FEDERAL LAW REQUIRES THAT ONLY REGISTERED USERS WITH HEARING LOSS MAY USE THIS DEVICE WITH CAPTIONS ON.” This wording is nearly identical to the notice promulgated by the Commission and in no way affects the substance of the notification. Nonetheless, Sprint believes that its proposed label is more “consumer-friendly” than the language specified in the new rule. And, Sprint expects that other providers may wish to make their own subtle adjustments to the label language.

Sprint also recognizes, however, that the Commission likely does not wish to give providers free reign to modify the notification as they see fit. Accordingly, Sprint proposes that the Commission modify its rule to allow companies the flexibility to adjust the specific language of the label, provided that the changes do not affect the substance of the notification. If the Commission is concerned about giving providers too much discretion, it can add a requirement that any departure from the pre-approved language in the rule must be cleared with FCC staff before it can be used with consumers.

²⁵ *Order* ¶ 89; 47 C.F.R. § 64.604(c)(11)(iii).

Finally, Sprint urges the Commission to give providers the option of providing the required notification electronically, on the screen of any IP CTS equipment, or on a hard copy label that can be affixed to an IP CTS device. This request is consistent with the Commission's decision to require an electronic notification for software-based IP CTS provided via mobile phones, computers or similar devices and to require a printed label for use with other IP CTS devices.²⁶

²⁶ See Order ¶¶ 87-89.

III. CONCLUSION

For the foregoing reasons, Sprint respectfully asks the Commission to reconsider the rules related to software charges, registration and certification requirements and notification labels and to amend the relevant rules consistent with the discussion above.

Respectfully submitted,

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