

Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

**COMMENTS OF MIRACOM USA, INC.
ON NOTICE OF PROPOSED RULEMAKING**

Miracom USA, Inc. (“Miracom”), by counsel and pursuant to FCC Rule Section 1.420 submits its comments on the August 26, 2013 Notice of Proposed Rulemaking in this proceeding, FCC 13-118 and shows the following.

I. Introduction.

The NPRM presents a wide ranging inquiry into the Internet Protocol Captioned Telephone Service (“IP CTS”), including mechanisms to prevent abuse and payment issues. Miracom has a vital interest in IP CTS. Miracom has pending since November 2011 an application for certification to provide IP CTS. The service Miracom will provide will be a substantial improvement over existing IP CTS. Miracom will provide seamless inbound calling to mobile devices. Miracom will provide accuracy of at least 95 percent. And Miracom will provide captioning with no more than a second or two of delay. No existing provider offers this combination of service quality.

Miracom welcomes this examination of IP CTS and the adoption of permanent rules to prevent abuse of this service. Since the filing of its application, Miracom has watched

with amazement various abusive practices engaged in by existing providers. Among the most abusive have been financial incentives offered to consumers designed to encourage use of the service by persons otherwise not needing the service and configuration of captioned telephones to be defaulted to captioning on even when used by persons without a hearing loss. Miracom applauds the Commission for taking action to end these and other abusive practices that threaten the relay service.

In these comments, Miracom sets forth its ideas for improving IP CTS, for protecting the service from abuse, and setting a fair and reasonable compensation system.

II. Discussion.

A. IP CTS rates must be tied to service quality.

The NPRM seeks comment (paras. 11-27) on whether and how to revise the current methodology for compensating IP CTS. The NPRM also seeks comment (paras. 141-43) on the need for mandatory minimum standards specific to IP CTS, including standards on speed and accuracy.

IP CTS rates must be tied to service quality. The Commission's legislative touchstone for the relay service is functional equivalence.¹ Yet, achievement of that goal is elusive. No one can rationally say that traditional text relay or IP Relay achieves functional equivalence. Text relay is unreasonably slow. Conference calls are problematic. And it is beset by hang ups from hearing persons who lack the patience to participate in a text relay

¹ 47 U.S.C. Sec. 225(a)(3): The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner 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.

call. VRS, on the other hand, comes the closest to allowing deaf and hard of hearing persons to communicate over the telephone network in a functionally equivalent manner to hearing persons. Similarly, IP CTS potentially allows for functionally equivalent communication depending on the quality of the service provider. However, the Commission currently lacks standards for IP CTS quality. In the absence of any service quality floor, providers have the incentive to maximize profits and provide the bare minimum service quality while still attracting customers.

The two key variants of IP CTS quality are speed of captioning and error rate. For example, most IP CTS providers employ relatively low wage CAs who re-voice the hearing person's speech to voice recognition software which then transmits captions to the deaf or hard of hearing IP CTS user. Substantial captioning errors result from this system. This system also suffers from substantial captioning delays.

The Commission cannot rationally address the payment rate for IP CTS without addressing these two critical measures of service quality: accuracy and captioning delay. In Miracom's view, to provide real functional equivalence, IP CTS providers must caption with a greater than 90 percent accuracy and provide captions with no more than a three second delay. Accordingly, the Commission should adopt these two criteria as minimum mandatory standards. Once those standards have been adopted and implemented with a sufficient operational history of two to three years, it would then be appropriate to examine the appropriate compensation methodology to support IP CTS with these minimum standards.

Miracom would support a payment regime which compensates IP CTS providers at the full rate for providing service at the minimum standards set forth above, and which

imposes a financial penalty where service quality is less than the minimum standard. That penalty should not be a total denial of compensation for missing the minimum standard. Total denial of compensation is a Draconian and irrational approach. A more reasonable approach would be something like a 15 percent penalty for falling under the 90 percent accuracy standard and an additional 15 percent penalty for failing the three second delay captioning standard. These penalties are sufficient to incentivize providers to maintain a sufficient level of service without being unduly punitive. They also account for the fact that some providers may have difficulty initially achieving the 91 percent/three second level of service. It would be unfair to simply deny any payment to these providers when they are servicing calls in good faith.

The question then arises as to the appropriate means to enforce these minimum standards. We suggest the TRS Fund administrator be charged with conducting test calls to gauge adherence to the quality standards. Based on the result of these test calls, the administrator would calculate the payments due providers and furnish reports to both providers and the Commission of the test call results.

In terms of a specific IP CTS relay amount, subject to the comments above, Miracom has no objection to freezing the current IP CTS rate pending obtaining operational experience with the quality standards proposed above.

Adopting this proposal will immediately benefit consumers who will undoubtedly see immediate improvement in IP CTS quality. By contrast, reducing the IP CTS rate to match the current low quality of service will lock consumers into IP CTS service which fails to provide full functional equivalence.

B. IP CTS oversight responsibilities should stay with the FCC.

The NPRM also seeks comment (paras. 131-40) on: (1) the extent to which the funding and responsibilities for overseeing and determining eligibility for IP CTS should be shifted to state TRS programs. Funding on oversight responsibilities for IP CTS should not be shifted to state TRS programs. IP CTS, like other IP based relay services is inherently an interstate service under the FCC's jurisdiction. Beyond that, oversight at the federal level has several salutary benefits. The most significant benefit is competition. Most states award relay contracts to a single provider, resulting in a lack of competition. Competition, however, helps assure service quality as providers compete at least partially on service and competition promotes innovation. Keeping IP CTS at the federal level also keeps costs down as providers have a larger customer base on which to spread fixed costs. Providers also are spared state regulatory costs if IP CTS remains at the federal level.

IP CTS is growing in the direction of mobile communications, making it difficult to track interstate versus intrastate calling. The additional logistics needed to monitor this activity would be wasteful and difficult to manage.

Finally, funding may not be available in every state to provide the proper oversight or services to manage this service. Some states may not be able to support a new program without additional funding or personnel and there is no synergy between every state to maintain the same standards. For all of these reasons, IP CTS funding and oversight should remain at the federal level.

C. A Central IP CTS database is unnecessary.

The NPRM asks (paras. 138-40) whether the Commission should adopt a central database for IP CTS. Although Miracom supports mandatory registration, it does not believe a central database is necessary. Unlike VRS, which is provided entirely over the Internet, IP CTS generally uses the Internet to only provide the captions to a telephone device. Thus, central registration is unnecessary in order to provide call routing to the user. Miracom does not see a need for central registration to prevent fraud or abuse. The origin of the abuse appeared to be coming from a combination of (1) providers who distributed free phones set to default captions on to consumers without regard to their need for the service in the expectation that these consumers would place captioned calls whether or not needing the service, and (2) providers giving consumers a financial incentive to sign up for the service or to refer others to sign up for the service. The Commission has resolutely addressed this issue by prohibiting the distribution of free phones, by requiring that phones default to captions off, and by reiterating that financial incentives are forbidden. A central database is not needed to address any additional area of abuse.

Nor is it necessary for the Commission to adopt a default provider regime. In that connection, however, we note that the Commission should adopt a requirement of interoperability on equipment distributed by providers. A provider should not be able to distribute a captioned telephone that only works with that provider's service. Just as with VRS, an IP CTS provider should not be able to lock a consumer into using only their provider's service.

D. Web site warnings concerning eligibility should be mandatory.

The NPRM proposes (paras. 151-52) that the following wording be prominently displayed on all IP CTS provider web sites, advertising brochures and other advertising and consumer education and informational materials, including provider-supplied literature and user manuals:

FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS
WITH HEARING LOSS FROM USING IP CAPTIONED TELEPHONES
WITH THE CAPTIONS TURNED ON.

In addition, the NPRM proposes that IP CTS provider websites display this information on the home page, each page that provides consumer information about IP CTS, and each page that provides information on how to order IP CTS or IP CTS equipment. The NPRM also proposes that all IP CTS provider websites, advertising brochures and other advertising and consumer education and informational materials, including provider-supplied literature and user manuals, contain clear and prominently located statements and information (1) that the captions on captioned telephone service are provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone, and (2) that the cost of captioning each Internet protocol captioned telephone call is funded through a federal program. Miracom supports these proposals and believes they involve minimal cost while helping to minimize usage by persons who do not need the service.

E. The \$75 minimum fee for low income consumers should be waived.

The NPRM asks (para. 144) whether to adopt any low income exceptions to the rule restricting the provision of IP CTS equipment for less than \$75. Miracom supports a low income exception that allows those who qualify for the service to obtain a waiver of the \$75

fee. This program should never be based on the ability to pay a fee of \$75 alone to gain access to this service. A person should have to qualify for the service regardless of their income, then if the person cannot pay due to income restrictions, a provision should be made to waive this fee. Providers should be required to retain documentation of eligibility for waiver. We do not believe that charitable organizations affiliated with or funded by providers should be allowed to distribute equipment free to consumers without documentation of need. There is too much risk of abuse in that instance.

F. The \$75 fee should not be necessary for software designed for mobile phones.

The NPRM asks (para. 145) whether the Commission should modify the \$75 minimum fee for software and applications. We understand the Commission's intent to discourage non-qualified users from using IP CTS when they have no need for the service. We do not believe, however, that a fee-based system is the only way to accomplish this necessary goal. We continue to believe that certification by a completely *independent* third party hearing health professional would accomplish this goal more effectively. At the very least, these should be alternative options. The hearing health professional would determine the consumers need for IP CTS based on an examination of hearing loss and speech discrimination ability. Thus, we do not believe there is a need for a \$75 fee in the case of software applications because the user would still need to have purchased a device on which to use the software application. For example, with respect to Miracom's service, the user will still need to meet the following criteria:

1. Have a Smartphone with Android or iPhone OS;
2. Have telephone service with a wireless network provider using a US-based telephone number and a voice and data phone plan.

Costs for this equipment and service will run much higher than \$75.

G. Default captions off should be maintained.

Miracom supports the default caption-off requirement to help ensure that calls are not accidentally captioned when no need exists for captioning. *See generally NPRM* at paras. 146-50). We believe a conscious decision should be made by the user before captioning inbound or outbound calls. There should be a notification that must be acknowledged on the display screen before any outbound call can be made. On inbound calls, the user should be required to acknowledge the need for captions before accepting an incoming call. We believe the additional delay in captioning will be minimal to ensure that only calls in need of captioning will be captioned.

H. Miracom supports a general prohibition against providing service to users who do not need IP CTS.

Although we believe it is implicit under the rules, we nevertheless support a general prohibition on payment for IP CTS provided to persons who do not need the service. *See NPRM* at para. 153). We are concerned; however, with what obligation that places on IP CTS providers to go beyond an applicant's FCC mandated certification of need. Obviously, counseling or encouraging a consumer to provide a false certification of need would constitute the crime of subornation of perjury and should subject the offender to harsh sanction. Equally subject to sanction should be any attempt to market the service to persons known to have no need for the service. Beyond that, however, the Commission needs to

explain what degree of due diligence, if any, providers and provider representatives are expected to perform in addition to obtaining the required certification under penalty of perjury to ensure they are not providing service to persons who do not need the service.

We raise again the potential benefit of requiring objective evidence of need in order to qualify for IP CTS service, including having a cochlear implant, prescription for a hearing aid, or certification by an independent hearing professional of need for the service. We realize this suggestion is not popular with consumer groups and believe the Commission should fully consider consumers' position on this matter. Equally so, we believe that providers would need guidance on exactly what the FCC expects of them in the case where they provide service in good faith based on a consumer's certification of need, only for it later to be determined that this consumer did not in fact have a legitimate need for the service.

Respectfully submitted,

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