

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

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

COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

**HEARING LOSS ASSOCIATION OF AMERICA
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK
CEREBRAL PALSY AND DEAF ORGANIZATION
AMERICAN ASSOCIATION OF THE DEAF-BLIND
MILL NECK SERVICES, INC.
NATIONAL ASSOCIATION OF THE DEAF
ASSOCIATION OF LATE-DEAFENED ADULTS, INC.**

DATED: NOVEMBER 4, 2013

SUMMARY

As Commissioner Adelstein observed, “IP captioned telephone service *is a great leap forward.*” In light of the many advantages of IP CTS, and the aging of the American population, the Commission should not be surprised that usage of IP CTS has grown and should not allow concerns about growth to halt continued progress. In considering methodologies for setting IP CTS rates, it must be mindful that providers will not be able to develop new technologies if the rates are based solely on historic cost or the cost of providing today’s IP CTS service without opportunity to earn a reasonable profit.

The Consumer Groups generally support the Commission’s proposal to adopt a centralized registration and verification program for IP-CTS. However, we oppose any proposal that IP CTS consumers provide their Social Security numbers, either in full or just the last four digits, for the proposed centralized database. In an era of burgeoning hacking, identity theft and cyber-attacks, the Consumer Groups are wary that malevolent entities may compromise and gain unauthorized access to the proposed IP CTS centralized database and verification system. Additionally, such requirements are not functionally equivalent to the information and data the general public is required to provide in order to obtain telephone service.

The Consumer Groups oppose the proposal to migrate responsibility for IP CTS to the states. Because each state has its own unique regulations regarding CTS, migration of IP CTS to the states, especially with significant discretion to adopt divergent standards, will create a hopelessly complex, confusing and often conflicting patchwork of IP CTS regulations. Many state programs are overly restrictive, chronically underfunded, under-staffed, and subject to the uncertainties of state appropriations processes. The District of Columbia and some states, including Florida, Kentucky, Nebraska and California, have already voiced concerns that they may not be able to fund IP CTS and/or that state legislative changes may be required if the state

is to assume jurisdiction over IP CTS. Most states have only one provider and migration to the states would also constrain consumers to using a single provider of IP CTS, which would be a step backward from the competitive alternatives available today.

The Consumer Groups support the establishment of minimum mandatory requirements for IP CTS. However, providers should not be permitted to compromise captioning speed for accuracy or vice versa because improvements in both parameters are needed to ensure high quality, functionally equivalent communications.

There is no record evidence supporting the Commission's \$75 threshold for software and applications. The Consumer Groups believe the cost of software and applications are (or should be) much lower than that for equipment. Because there are multiple FREE telephone apps available on the open market, it is not functionally equivalent to require hard of hearing users to pay \$75 for a software application necessary to access IP CTS. The Commission should gather data on the cost of software to set an appropriate threshold that likely will be lower than \$75. The Consumer Groups propose that the Commission adopt a low-income exception to the final rule's absolute \$75 threshold requirement for equipment, software, and applications. Absent an exception, consumers with hearing loss who are unable to pay \$75 for captioned telephone equipment, and who live in one of the many states without a state equipment distribution program, will be denied access to IP captioned telephone service and be unable to communicate effectively. The Commission should also establish additional exemptions from the captions off rule. IP CTS providers should be prohibited from linking volume control to the captions-on function. The Consumer Groups believe that no one venue or method will reach all consumers, and urge the Commission to ensure the consumer has access to as many possible venues and methods of outreach as possible.

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Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

The Hearing Loss Association of America (“HLAA”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Mill Neck Services, Inc., Cerebral Palsy and Deaf Organization, American Association of the Deaf-Blind, (collectively, the “Consumer Groups”) respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above referenced proceedings.

I. The Commission Has a Long History of Promoting Innovation in TRS Services, Including CTS, To Improve the Quality of Life for Deaf and Hard-of-Hearing Consumers And Realize the Overarching Goal of Functional Equivalence

Captioned Telephone Service (“CTS”) first began on a trial basis in Wisconsin on October 1, 2001.¹ After witnessing the overwhelming consumer approval that this service received over the ensuing months, on July 25, 2003, the FCC approved CTS as eligible for

¹ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121, 16126 ¶ 13, n.35, Declaratory Ruling (released Aug. 1, 2003) (2003) (“*Captioned Telephone Declaratory Ruling*”).

reimbursement from the Interstate TRS Fund under Section 225 of the Communications Act.² On July 14, 2005, the FCC expanded eligibility for reimbursement from the Interstate TRS Fund by clarifying³ that two-line CTS⁴ was eligible. Two-line CTS offered significant advantages over one-line CTS. For example, “because a two-line captioned telephone allows direct inbound dialing, no special ‘relay’ numbers are needed and users can give out their own telephone numbers to persons who may want to call them, not the number of a captioned telephone relay service provider.”⁵ In addition, two-line CTS enabled its users to obtain call waiting, call forwarding, direct 911 calling and other features.⁶

Recognizing these advantages, Commission Chairman Martin noted that the Commission’s actions with respect to two-line CTS “should improve the quality of life for individuals with hearing or speech disabilities,” and noted with approval that the “*popularity*” of certain TRS services, and therefore the minutes of use, were increasing “at a phenomenal rate.”⁷

In a Declaratory Ruling released on January 11, 2007, the Commission ruled that IP CTS is a

² *Captioned Telephone Declaratory Ruling* 18 FCC Rcd 16121, at ¶ 1.

³ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67, 03-123, FCC 05-141, 20 FCC Rcd 13195, Order, at ¶ 1-4, 10 (rel. July 19, 2005) (at 2, “Captioned telephone service uses a special telephone that has a text display. It permits, on one standard telephone line, the user—typically someone who has the ability to speak and some residual hearing— to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. A communications assistant (“CA”) using specially developed voice recognition technology generates the captions. No typing is involved.”) (“*Two-Line CTS Order*”).

⁴ *Id.* at 4 (“with one-line captioned telephone service the outbound call goes through the captioned telephone service provider to be connected to the called party; with two-line captioned telephone service, the primary telephone line links the calling and called parties directly, and the captioned telephone service is brought in on a second line.”).

⁵ *Id.* at 6.

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech*, CG Docket No. 03-123, FCC 06-182, 22 FCC Rcd 379, Declaratory Ruling, at ¶ 11 (rel. January 11, 2007) (“*IP CTS Declaratory Ruling*”).

⁷ *Two-Line CTS Order*, Statement of Chairman Kevin J. Martin, at 1 (emphasis added).

type of telecommunications relay service eligible for compensation from the Interstate TRS Fund.⁸ IP CTS⁹ offers advantages over prior forms of CTS in “that a consumer can use IP CTS with an existing voice telephone and a computer,” and in this implementation no specialized equipment is required.¹⁰ Moreover, as observed by the Commission, IP CTS “benefits consumers by giving them the flexibility of using a computer, PDA, or wireless device to make such a call, without having to purchase special telephone equipment.”¹¹ In addition, the captions provided on a computer screen under IP CTS can accommodate a much wider group of individuals, including people with hearing disabilities who also have low vision and who also have mobile disabilities, because they can take advantage of the large text, variable fonts, and variable colors that are available.¹² In the *IP CTS Declaratory Ruling*, the Commission recognized “that because this service offers consumers additional features- *e.g.*, portability, lower cost and easier availability, greater accessibility for persons with multiple disabilities - it represents an *important step towards functional equivalency.*”¹³

Commissioner Adelstein observed that: “[t]he record here suggests that IP captioned telephone service *is a great leap forward*, and that it will be particularly beneficial in the employment environment and other situations where seamless, real-time communications are so

⁸ *IP CTS Declaratory Ruling*, at ¶ 1.

⁹ *IP CTS Declaratory Ruling*, at ¶ 22 (“A service will be considered IP captioned telephone service as long as it allows the user to simultaneously listen to, and read the text of, what the other party in a telephone conversation has said, and the connection carrying the captions between the service and the user is via the Internet rather than the PSTN.”).

¹⁰ *IP CTS Declaratory Ruling*, at ¶ 14 (“For example, an IP captioned telephone call can be set up similar to a two-line captioned telephone call, except that the line from the user to the provider would be via the Internet, not a second PSTN line.”).

¹¹ *IP CTS Declaratory Ruling*, at ¶ 15.

¹² *Id.*

¹³ *IP CTS Declaratory Ruling*, at ¶ 23 (emphasis added).

valuable.”¹⁴ Commissioner Martin noted that: “[b]y not being constrained to a specific piece of equipment that resides in a particular location, users of this service have tremendous flexibility in how and where they use this service.”¹⁵ In light of the many advantages of IP CTS to deaf and hard of hearing persons,¹⁶ and the aging of the American population, the Commission should not be surprised that usage of IP CTS has grown as it represents a “great leap forward” on the path toward full functional equivalence. The enhanced capabilities of IP CTS and those on the near horizon are especially important to deaf and hard-of-hearing persons as their unemployment rate greatly exceeds that of other groups and was “an appalling 75 percent” when IP CTS was adopted.¹⁷

As Commissioner McDowell observed, “[i]mproving the human condition is at the heart of our mission,” and supporting IP CTS as part of TRS “does exactly that.”¹⁸ Recognizing this long-standing tradition of supporting such innovations that encourage greater use and more functional equivalence, the Commission should not allow concerns about growth in IP CTS use to halt continued progress. In sum, at each of these important junctures, the Commission has recognized the importance of continued innovation and of CTS in particular to enable a deaf or hard of hearing person to communicate in a manner that is “functionally equivalent” to the ability of persons without such impairment to do so, as required under section 225 of the Act.¹⁹

¹⁴ *IP CTS Declaratory Ruling*, Statement of Commissioner Jonathan S. Adelstein, at 1 (emphasis added).

¹⁵ *IP CTS Declaratory Ruling*, Statement of Chairman Kevin J. Martin, at 1.

¹⁶ Any reference to IP CTS consumers, users, or customers herein includes individuals who consider themselves deaf, hard of hearing, or with some other hearing loss, along with the deaf-blind and those individuals who are both deaf and have physically challenged mobility.

¹⁷ *IP CTS Declaratory Ruling*, Statement of Commissioner Michael J. Copps, at 1.

¹⁸ *IP CTS Declaratory Ruling*, Statement of Commissioner Robert M. McDowell, at 1.

¹⁹ *See, e.g., Captioned Telephone Declaratory Ruling*, at ¶ 8 (“The requisite functionality is

In reaching these conclusions, the Commission has “emphasized that section 225 obligates the Commission both ‘to ensure that interstate and intrastate [TRS] are available, *to the extent possible* and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States,’ and to ‘ensure that [the TRS] regulations ... *encourage ... the use of existing technology and do not discourage or impair the development of improved technology.*’”²⁰

II. The Rate Methodology Adopted for IP CTS Should Ensure That Providers Have Sufficient Economic Incentive to Innovate and Provide IP CTS Services that Take Advantage of Improvements in Technology

The Commission seeks comment on “whether modifications should be made to the current methodology for IP CTS, including whether an entirely different methodology would be more appropriate.”²¹ In particular, the Commission seeks comment on “whether the original premise underlying the adoption of the [Multi-state Average Rate Structure (“MARS”) Plan] - that the reasonable costs of IP CTS would be reflected in the average of the PSTN versions of this service competitively bid through the states - still supports use of this methodology for IP CTS.”²² The Commission also asks whether it should “adopt a rate methodology similar to that

that the service provides the ability for an individual who has a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of individuals without any such impairment to do so.”); *Two-Line CTS Order*, Statement of Chairman Kevin J. Martin, at 2 (“The actions we take today join the many others that the Commission has taken over the years to eradicate the barriers that stand in the way of functional equivalency”); *IP CTS Declaratory Ruling*, at ¶ 20; 47 U.S.C. § 225(a)(3).

²⁰ *IP CTS Declaratory Ruling*, at ¶ 11, quoting in part, 47 U.S.C. § 225(b)(1) and (d)(2) (emphasis added).

²¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 13-24, 03-123, FCC No. 13-118, Report and Order and Further Notice of Proposed Rulemaking, at ¶ 120 (rel. Aug. 26, 2013) (“*FNPRM*” or “*IP CTS Order*”).

²² *FNPRM*, at ¶ 120, n. 401 (“this past year, IP CTS providers voluntarily submitted their data for the 2013-14 Fund year. The Fund administrator used these data to determine that the average reported cost for IP CTS is \$1.48 per minute, as compared to the MARS-calculated rate of \$1.78 per minute.”).

for VRS and IP Relay, *i.e.*, based on a weighted average of actual and/or projected costs for each provider, or a rate methodology “that calculates rates based on each individual provider’s costs?”²³

The Consumer Groups have never had access to the accounting records of the IP-CTS providers. Thus, we cannot specify which methodology would work best for both the IP-CTS providers and consumers. As the Consumer Groups have stated with respect to other forms of TRS, such as VRS, IP Relay and STS, the Commission should select a rate methodology that will compensate providers adequately for the costs of providing IP-CTS while enabling them to provide *high quality* captioned telephone service at a reasonable profit that supports continued innovation.²⁴ Given that what is defined as functionally equivalent service will not remain static but rather will evolve, the Commission has held that “functional equivalence” requires “periodic reassessment” in light of the “ever-increasing availability of new services and the development of new technologies.”²⁵ Providers will not be able to develop new technologies, however, if rates are based solely on historic cost or the cost of providing today’s IP CTS service.

The compensation methodology should be altered from time to time to provide incentives and financial resources for further enhancements in service by the IP-CTS providers. The providers will not improve their offerings if they know ahead of time they will not be reimbursed

²³ *FNPRM*, at ¶ 121.

²⁴ *See, e.g.*, Structure and Practices of the Video Relay Service, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 10-51, 03-123, Consumer Group Comments, at 4 (March 9, 2012) (“the compensation mechanism must be able to adapt to continuing improvements in technology and cover applicable expenses to ensure availability and use of TRS. To help achieve functional equivalency . . . the Consumer Groups recommend that the cost methodology incorporate applicable expenses for improving technology.”).

²⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at ¶ 4 (2000).

for costs that are not in their current plans or service. The Commission, before it decides on a methodology or the rate per minute under the selected methodology, should consider the historical cost data, and more important, the future projected new costs that will arise as a result of providers competing on the basis of innovation in TRS services, including IP CTS, and ensuring that the users of IP-CTS service are getting a service that is current with today's consumer expectations and technologies. With the best possible methodology and rate per minute reimbursement determination, the providers must have the incentive to upgrade their offerings over time, not just to manage within constrained reimbursement limits. The Consumer Groups reserve further comment on the appropriate rate methodology for the reply comments after evaluation of the comments from the IP CTS providers and other stakeholders.

III. Centralized Registration and Verification of IP CTS Users

In the *IP CTS Order*, the Commission adopted “on a permanent basis its interim rule requiring IP CTS providers to register each new IP CTS user, and adopt[ed] a new rule requiring providers to register all existing IP CTS users within specific timelines.”²⁶ The Commission seeks comment “on the application of the centralized processes for registration and verification that [it] adopted for VRS to IP CTS.”²⁷

The Consumer Groups generally support the Commission's proposal to adopt a centralized registration and verification program for IP-CTS. The *Interim IP CTS Order* required that “IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS, must first register the consumer by obtaining the following registration information: *the applicant's name, address and telephone number.*”²⁸ In the *IP CTS Order*,

²⁶ *IP CTS Order*, at ¶ 34.

²⁷ *FNPRM*, at ¶ 129.

²⁸ Interim Rule, 47 C.F.R. § 64.604(c)(9)(i) (emphasis added); *Misuse of Internet Protocol*

however, the Commission went further and adopted a rule requiring that in addition to the consumer's full name, address and telephone number, that consumers also provide to the IP CTS providers as part of the present registration process the date of birth and the "last four digits of the consumer's social security number."²⁹

The Consumer Groups do not object to the establishment of a centralized database that contains the names, home and office addresses, and ten-digit telephone numbers of IP CTS applicants and consumers, provided that the Commission requires all entities that populate, develop, maintain, use, or access the database to implement rigorous processes, procedures and methods to protect the data from theft, loss, or disclosure to unauthorized persons. Further, the Commission should restrict access to the database to authorized entities, such as qualified IP CTS providers, and only for authorized purposes (*e.g.*, an identification verification check).³⁰

However, the Consumer Groups oppose any proposal that IP CTS consumers provide their Social Security numbers, either in full or just the last four digits of the social security number, for inclusion in the proposed centralized registration and verification database. In an era of burgeoning hacking, identity theft and cyber-attacks, the Consumer Groups are wary that hackers or other malevolent external entities may compromise and gain unauthorized access to the proposed IP CTS centralized database and verification system or that the information will be compromised at the data entry stage (whether or not data entry is performed by state personnel or IP CTS personnel). In light of the risk of identity theft and compromise and the leveling off of

(IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 13-24, 03-123, FCC No. 13-13, Order and Notice of Proposed Rulemaking, at ¶¶ 21-22 (rel. Jan. 25, 2013) ("*Interim IP CTS Order*").

²⁹ *IP CTS Order*, at ¶ 64, Appendix B, Final Rule 64.604(c)(9)(i).

³⁰ *VRS Structural Reform Order*, 28 FCC Rcd at 8654-44, ¶¶ 75-76.

interstate IP CTS usage, the Commission has not established that IP CTS providers, the Commission, or the states need access to deaf and hard-of-hearing consumer's social security numbers in a centralized database in order to "ensure greater efficiency in the IP CTS program," and its presumption of rampant "fraud, waste and abuse" is unsupported as established in the Consumer Group's Petition for Stay.³¹ In the *IP CTS Order*, the Commission acknowledged that "IP CTS usage continued to climb until March 2013, the month in which its interim rules took effect."³² "[D]ata submitted by providers to RLSA for March, April, May and June 2013 indicate that usage of IP CTS is *no longer climbing*."³³ It noted that "since publication of the interim rules, the program has seen an average of 3.7% decline per month."³⁴ Thus, the record establishes not only that concerns of fraud and abuse are overblown but also that the measures taken in the *Interim IP CTS Order* were sufficient to address those concerns.

IV. The Consumer Groups Oppose Migration of IP CTS to State TRS Programs

The Commission seeks comment on "whether it should transfer the responsibilities for administering and overseeing IP CTS to state TRS programs," including transferring "the responsibility for registering and certifying the eligibility of new IP CTS users from [IP CTS] providers to the state relay programs."³⁵ The Commission asks "[t]o what extent should each state program be permitted to define its own eligibility criteria for IP CTS use" and whether it should "establish a mandatory *minimum* standard on eligibility by which all states must

³¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 13-24, 03-123, Consumer Group Petition for Stay, at 8-10, 16 (Sept. 30, 2013) ("*Consumer Group's Petition for Stay*").

³² *IP CTS Order*, at ¶ 96, and n.14.

³³ *Id.* (emphasis added). The Consumer Groups have not seen the RLSA data for July and August of 2013.

³⁴ *IP CTS Order*, at ¶ 96.

³⁵ *IP CTS Order*, at ¶¶ 131-132.

comply.”³⁶ The Commission appears to be considering affording the states significant discretion to establish more stringent eligibility criteria than the Commission imposes in the event it determines to migrate IP CTS to the states. Consumer Groups strongly oppose any such move.

A. Migration of IP CTS to the States Will Result In Inconsistent Regulations and Underfunding as IP CTS Will Be Subject to the Uncertainties of State Budgets

The Consumer Groups oppose the Commission’s proposal to migrate responsibility for registration, verification, administration and/or operations of IP CTS to the states. Each state has its own unique regulations regarding CTS today, such that migration of IP CTS to the states, especially with significant discretion to adopt divergent standards, will create a hopelessly complex, confusing and often conflicting patchwork of IP CTS regulations that will be difficult for IP CTS consumers, many of whom are elderly and over 80 years old, to navigate.³⁷

If states are given discretion to set minimum eligibility standards that exceed those of the Commission, some states will use this to exclude consumers that need the service to minimize state expenditures. Already, many state programs are overly restrictive, chronically underfunded, under-staffed, and are subject to the uncertainties of state appropriations processes. For example, some states have just one staff person designated to work full time or part time on TRS issues. While other states may have a staff of five to ten members, they must also devote their time, attention and support to other TRS programs and issues. In addition, many states have a long history of failing to reach out to the people who need captioned telephones and some have effectively discouraged use of captioned phones. Also, very few states have Advisory Boards

³⁶ *IP CTS Order*, at ¶ 133 (emphasis added).

³⁷ *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Replay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 13-24 and 03-123, Sorenson Communications, Inc. and CaptionCall, LLC’s Request for Stay (Sept. 23, 2013) (41% of CaptionCall’s customers are over 80 years old.).

which are important in understanding deaf and hard-of-hearing consumers' experience and satisfaction with TRS technologies, programs, and processes.

CTS has been available through state programs on a voluntary basis since 2003. During this time, each state created its own rules regarding the distribution of captioned telephones and handling of the captioning service, with no apparent attention paid to the rules set in other states. Moreover many state rules resulted in restricting access to captioned phones. HLAA, TDI and other organizations have noted that in the past "states offering services have restricted access to CTS is by placing a limit on the number of residents who may join the state captioned telephone program in any one month."³⁸ New York, for example, limits equipment sales to approximately 300 users per month, notwithstanding the fact that New York has an estimated 2 million residents with hearing loss. New York is also one of six states that lack an Equipment Distribution Program ("EDP") to assist low-income consumers.³⁹ The Consumer Groups fear states will impose restrictions if financial responsibility is shifted to the states or they are given discretion on minimum eligibility standards.

At least four state commissions have already voiced concerns that they may not be able to fund IP CTS if the FCC requires the states to assume the intrastate costs of IP CTS, and several

³⁸ See, e.g., *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Petitioners' Supplement to Petition to Mandate Captioned Telephone Relay Service, at 17-18 (June 10, 2009) ("*Petitioner's Supplement*").

³⁹ When last HLLA researched the issue, populous New York, Michigan, and Ohio, did not have a statewide equipment distribution program for low income consumers. In addition to these three states, Delaware, the District of Columbia, and Idaho also did not have statewide EDPs. *Consumer Group's Petition for Stay*, at 5; *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 13-24, Comments of the Public Service Commission of the District of Columbia, at 3 (Nov. 1, 2013) ("*Comments of DC PSC*") ("*the DC PSC does not have a TRS or CTS equipment program that provides free TRS or CTS equipment*").

states note that they may not have jurisdiction under state law to administer IP CTS. The Florida Public Service Commission (“PSC”), for example, notes that its TRS Surcharge can “be collected only from local exchange company access lines” and that it may need legislative changes to how the Florida Relay program is funded if these costs are shifted from the federal TRS Fund to the states.⁴⁰ The Florida PSC also “urges the FCC to provide historical [IP CTS] minutes and units by state as soon as possible so states can make informed decisions on possible migration” based on the financial impact on the state.⁴¹ The D.C. PSC opposes the Commission’s “proposal to transfer the responsibilities for administering and overseeing IP CTS to state TRS programs” because it has no existing registration process and it is “particularly concerned about being required to fund a potentially large cost through its DC USTF for an IP service that cannot be regulated by the DC PSC.”⁴²

The Nebraska Public Service Commission (“NPSC”) “stresses first and foremost that until state specific data and information is provided allowing the states to estimate with a reasonable amount of certainty the cost to the state TRS programs to administer intrastate IP CTS, it is impossible to take a position for or against migrating intrastate IP TRS to the states.”⁴³ The NPSC states that Nebraska TRS statutes must be changed to permit migration of Intrastate TRS because the relevant statutes “are framed in terms of ‘conventional telephone systems’ and

⁴⁰ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 13-24, Comments of the Florida Public Service Commission (“PSC”), at 7 (Sept. 25, 2013) (“Comments of Florida PSC”).

⁴¹ Comments of Florida PSC, at 4.

⁴² Comments of DC PSC, at 4.

⁴³ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 13-24, Comments of the Nebraska Public Service Commission, at 2 (Nov. 1, 2013) (“Comments of NPSC”).

would not in their current state allow Nebraska to collect, administer, or contract to provide IP CTS under the current Nebraska TRS program.”⁴⁴ Moreover, Nebraska’s TRS surcharge is capped at \$.20 per number per month, and it may also require a statutory change to raise the funding cap. The NPSC estimates the needed statutory changes could take 5 years to implement and warns that such “an unfunded mandate from the FCC” in the current state budget environment “could be difficult to sell to state legislators.”⁴⁵ Similarly, the Kentucky PSC notes that it “lacks legislative authority to assume responsibility of [IP CTS] because it is provided in part over the Internet,” and estimates that it “would likely take up to 5 years to change state law” to allow it to assume jurisdiction.⁴⁶

Likewise, the California Public Utilities Commission (“PUC”) “opposes the transfer of the IP CTS program to the states unless the FCC ensures that states can adequately fund the program and that states are afforded sufficient time to transition the program in a manner that does not discommode program users.”⁴⁷ The California PUC states that it lacks basic information on “call volumes, the number of people using IP CTS, and usage forecasts” to even “guesstimate’ the fiscal impact.”⁴⁸

Moreover, the California PUC warns that “states have varying degrees of authority to

⁴⁴ Comments of NPSC, at 3.

⁴⁵ Comments of NPSC, at 3-4.

⁴⁶ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 13-24, 03-123, Comments of the Kentucky Public Service Commission, at ¶ 3 (Oct. 18, 2013) (“Ky PSC Comments”).

⁴⁷ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 13-24, 03-123, Comments of the California PUC, at 2 (Oct. 23, 2013) (“CPUC Comments”).

⁴⁸ *Id.*

regulate IP-based services.”⁴⁹ It notes that “California Public Utilities Code § 710, enacted in 2012, ‘prohibits’ the CPUC from exercising ‘regulatory jurisdiction or control over [VoIP] and Internet Protocol [IP] enabled services,’” such that it may not have jurisdiction to administer IP CTS.⁵⁰ The California PUC also points out that CTS in California is funded by a surcharge that by statute may not exceed “one-half of 1 percent.”⁵¹ Thus, the California PUC would likely “need to seek a legislative change in order to raise the surcharge level above that cap,” which would easily take at least 18 months.⁵²

The Consumer Groups note that it was the need for a more uniform and ubiquitous nationwide service in the first instance that prompted Congress to adopt the relay mandates contained in Title IV of the ADA, and that led the FCC to adopt a series of mandatory minimum standards with which all certified state programs would have to abide. The Consumer Groups believe the Commission should retain control over the standards, registration, funding, and other issues relating to IP CTS to ensure that IP CTS services meet the functional equivalence standard, evolve with improvements in technology and receive sufficient funding.

B. The States Typically Contract With Only One Provider, Unduly Limiting Competition

If IP CTS migrates to the states, consumers will have little choice in IP CTS providers, and therefore which phone is selected for use in that state.⁵³ As the Commission noted in the *IP*

⁴⁹ *Id.*, at 3.

⁵⁰ *Id.*, at 3.

⁵¹ *Id.*, at 6 (*quoting*, CA PUC Code § 2881(k)).

⁵² *Id.*, at 7.

⁵³ For example, the Florida Public Service Commission notes that mandating IP CTS “may eliminate competition for those services in Florida since, *by statute, Florida can have only one relay service provider*. Consumers currently have a choice of providers in Florida because it is a federal program, not state. Comments of Florida PSC, at 2, 7 (emphasis added); Florida Stat. 427.704(1).

CTS Order, the states typically contract with one provider for the provision of intrastate TRS services.⁵⁴ California contracts with two providers.⁵⁵ In their comments, the Florida PSC and Kentucky PSC have both confirmed that migrating IP CTS to state jurisdiction will eliminate competition for these services in their respective states.⁵⁶ Historically, the state's interests have revolved around the need to keep the state's costs low. Particular features that consumers might find they need, such as a phone answering machine that works for them or the ability to input an audiogram to get a better sound quality, likely will not be among the criteria that the state uses when they choose a provider. These are not small issues: people working or looking for work may depend on the answering machine to keep a job or find a job; someone with an atypical hearing loss may depend on the input of their audiogram to ensure they can hear as much as possible, particularly considering the error rate of captioned phones is considerable.

In addition, at this time only one provider offers a mobile application. If the states contract with only one provider, it will necessarily mean that some consumers will have access to the equipment and/or applications they need; while other consumers will be stuck with a system that does not work well for them. It may also mean consumers in some states have no access to a mobile application at all.

⁵⁴ *IP CTS Order*, at n. 409; Washington has a specific CTS provider, CapTel, through a contract with Sprint Relay. Wash. Admin. Code, § 388-818-0030. *See, e.g.*, State of Arizona, Application for Renewal of Current Certification, CG Docket No. 03-123 (filed Sept. 26, 2012); State of Ohio, FCC Certification Renewal and Supporting Document, CG Docket No. 03-123 (filed Oct. 22, 2012), each containing a copy of the Request for Proposals that was used to competitively select a vendor for the provision of PSTN-based TRS service in these states.

⁵⁵ CPUC, DDTP, 2008-2011 Consolidated Annual Report, at 16, 19 (“California Relay Service’s (CRS) multi-vendor environment (Hamilton Relay and AT&T Relay) gives users the chance to experience the service of both providers, after which they can select a preferred provider for processing all of their Relay calls or continue using both vendors.”).

⁵⁶ Ky PSC Comments, at 2 (“may eliminate competition for these services in Kentucky since historically Kentucky has only one relay service provider”); Comments of Florida PSC, at 3.

For years the Commission raised concerns about the fact that there was only one technology provider of CTS, CapTel. In fact, it appears that the Commission declined to mandate CTS largely based on its contention that it could not support a system that had only one provider of a given technology. Yet just at the time when there is more competition than ever, with at least three separate phones available and four service providers, and with a second mobile technology waiting for Commission approval, the Commission is making an about-face by suggesting the consumers should live with the one technology that their state chooses based on state needs, not consumer needs. Instead of moving ahead with competitive services that strive to meet the needs of every consumer, we would have providers bidding for contracts that meet the needs of a particular state program, and consumers will suffer from being constrained to using a single provider of IP CTS with no competitive alternatives available.

C. Many States Have a History of Failing to Reach Out to People Who Need Captioned Telephones or Discouraging the Use of Captioned Telephones

One of the reasons that captioned phone service has only recently been more widely adopted by consumers is that the marketing practices in states that provided captioned phone service failed to reach the very people who need the phones. Historically, state relay service programs targeted the community of people who are deaf and use TTY's for outreach. For example, in 2009, Michigan reported of 14 events and locations the outreach manager visited, seven were specifically targeted to the deaf community, five were schools, and only one targeted people with hearing loss.⁵⁷ No senior center or senior community was visited. While state relay programs generally do provide information about captioned phone services on their website, people with hearing loss who age into their loss, or who have sudden deafness at any point in their life, are typically not aware of state relay or equipment distribution programs. Consumers

⁵⁷ Michigan Relay Center, Annual Report for 2009, at 5.

who do not know of these programs likely will not search for or find the relay service websites, unless they stumble across them. In addition, while we applaud state contractors who hire someone to focus solely on captioned telephone service outreach, if a contractor hires only one person to provide captioned telephone outreach for an entire state, that person is hard pressed to fill the needs of the state's population of people with hearing loss who could benefit from the service. Finally, state outreach program personnel are often not familiar with the visual and hearing needs of deaf-blind persons seeking IP CTS and other services.

D. During the Great Recession, State Funds for TRS Services Were Diverted

During the recent so-called "Great Recession" that began in 2008, state funds for TRS and Relay Services were diverted by state legislatures from state relay funds and used for other purposes even though the funds were collected through a surcharge that was designed to support TRS. HLAA learned that by May 2011, at least six states had diverted funds away from their respective state relay funds to use for purposes other than supporting the state relay programs.⁵⁸ Thus, the provision of in-state CTS has been subject to the vagaries of internal state political and budgetary processes, such that these services often are treated like a charitable contribution that the state can grant or rescind at any time. This tenuous status has become intolerable for consumers of TRS and relay services, which benefit hearing users as well as deaf and hard-of-hearing persons by enabling communications between both groups of persons. When CTS services are denied or restricted, it significantly affects an individual's independence and

⁵⁸ HLAA, *Statement on State's Diversion of Relay Services Funds*, at 1. (Available at www.hearingloss.org/sites/default/files/HLAA_Statement_StateRelayFunds.pdf). For example, California made a loan of approximately \$30 million from its TRS funds to the "General Fund" in FY 2008-09. The California Deaf and Disabled Telecommunications Program is funded by a surcharge which appears on customer bills as "CA Relay Service and Communications Device Fund." Programs of the California Public Utilities Commission ("CPUC"), Deaf and Disabled Telecommunications Program, Consolidated Annual Report 2011-2012 Supplement, at 6.

livelihood, and threatens that individual's well-being. Based on this history, the Consumer Groups oppose migration of IP CTS to the states because many states lack the consistent budgetary commitment, capacity, staff, advisory boards and infrastructure needed to properly administer their existing, yet alone an additional, TRS services.

E. The Population of People Who Need IP CTS Is Expanding Due to Aging of the “Baby Boomer” Generation

The number of Americans experiencing hearing loss at levels that impair communication in daily life is steadily rising as the “baby boomer” generation ages. In addition, many of these aging baby boomers are also experiencing increased loss of vision. Dr. Frank R. Lin, M.D., Ph.D., an otolaryngologist and epidemiologist at Johns Hopkins, conducted a study that revealed that “[n]early a fifth of all Americans 12 years or older have hearing loss so severe that it may make communication difficult.”⁵⁹ Using the World Health Organization’s definition for hearing loss, “the researchers found that overall, about 30 million Americans, or 12.7 percent of the population, had hearing loss in both ears.”⁶⁰ That prevalence of hearing loss “jumps to about 48 million, or 20.3 percent, for people who have hearing loss in at least one ear.” These more accurate figures “far surpass previous estimates of 21 to 29 million” persons.⁶¹ The Florida PSC estimates that the state of Florida alone has “nearly three million deaf, hard-of-hearing, deaf-blind, and speech impaired citizens.”⁶²

The growth in the numbers of people who have hearing loss necessarily means that over

⁵⁹ Press Release, Johns Hopkins Medicine, *New Nationally Representative Estimate Shows Wide Scope of Problem*, at 1 (Nov. 14, 2011), (Press Release available at http://www.hopkinsmedicine.org/news/media/releases/one_in_five_americans_has_hearing_loss, last checked Oct. 15, 2013); Frank R. Lin, MD, PhD, John K. Niparko, MD; Luigi Ferrucci, MD, PhD, Vol. 171 *Arch. Intern. Med.* No. 20, at 1851 (Nov. 14, 2011).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Comments of Florida PSC, at 9.

time more people will need services to accommodate that hearing loss. In addition, baby boomers have historically been more willing to adopt leading technologies that help them address problems than their parents, and in some cases, than their children.⁶³ According to a study by Forrester Research, “[i]t’s actually a myth that baby boomers aren’t into technology. They represent 25% of the population, but they consume 40% [in total dollars spent] of it.”⁶⁴ Thus, we can anticipate that there will be more demand for captioning technology, including IP CTS, that assists people with hearing loss to stay in the workplace, or communicate more easily with friends and family, than was generated by the prior generation of telephone users.

Rather than misuse or fraud, the record demonstrates that the recent increase in IP CTS minutes of use, which has leveled off since the restrictions of the *Interim IP CTS Order* were put in place, is due to the legitimate growth in overall usage of TRS as a result of the aging of the “baby boomer” population, and outreach efforts by providers and Consumer Groups.⁶⁵ Sprint, for example, notes that “the growth that Sprint has seen in the provision of IP CTS usage is what one would expect with the aging of the ‘Baby Boom’ generation, most of whom are already users of the Internet and broadband services or at least are not adverse to learning how to use new technologies.”⁶⁶ In sum, the growth in IP CTS minutes is attributable to the growth in the population with hearing loss, driven by the aging of the baby boomer generation, combined with

⁶³ Jon Stein, Forbes, *It’s Stupid and Insulting to Pitch Baby Boomers as Tech Novices*,” at 1 (Jan. 29, 2013) (Baby boomers are “active users and shapers of technology.”).

⁶⁴ *Id.* (“baby boomer’s growth rate in adoption and use of information and communications technology is higher than – and in some cases surpassing – that of younger generations.”).

⁶⁵ *Consumer Group’s Petition for Stay*, at 9-10.

⁶⁶ *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Replay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 13-24 and 03-123, Comments of Sprint Nextel, at 3 (Feb. 26, 2013) (“Even with this aging population, Sprint growth in IP CTS usage has not been ‘unprecedented’ or ‘unusually rapid.’ Rather, on average, Sprint’s rate of growth has been consistent with Sprint’s historical growth patterns.”).

greater consumer awareness of IP CTS. These are natural developments, not indirect indicators of fraud or abuse as presumed in the *IP CTS Order*.

V. The Commission Should Establish Minimum Mandatory Requirements For IP CTS

The Commission seeks comment on the “need for and propriety of imposing certain minimum mandatory requirements for IP CTS,” such as establishing a minimum speed of captioning and a specified error rate.⁶⁷ The Commission also asks whether IP CTS providers should “be permitted to compromise speed in favor of greater accuracy or *vice versa*?”⁶⁸

The Consumer Groups support the establishment of minimum mandatory requirements for IP CTS. Consumers of IP CTS have regularly reported problems with the error rate, delays between speech and appearance of text, and the variability of quality of captioning from call to call.⁶⁹ The greater the error rate in the text, the more difficulty consumers have in following the conversation. The Consumer Groups are not aware of any standards that have been set for CTS answer rate or speed. However, we do know that Communication Access Realtime Translation (“CART”) providers are able to meet minimum standards set by the National Court Reporter Association during certification testing including: “[a]ccurately writing realtime for five minutes at 96% accuracy from professionally recorded literary material at the speed of 180 words per minute.”⁷⁰ The Consumer Groups understand that many implementations of speech recognition technology are unlikely to meet an accuracy rate of 96% at this time. Although, Miracom, whose application to provide IP CTS is pending, states that its technology “will provide accuracy of at

⁶⁷ *FNPRM*, at ¶ 141.

⁶⁸ *FNPRM*, at ¶ 142.

⁶⁹ *Notice of Ex Parte*, RERC-Technology Access Program, Gallaudet University, at 20 (filed April 12, 1013).

⁷⁰ *See*, National Court Recorder’s Association Website at <http://www.ncra.org/Certifications/content.cfm?ItemNumber=11602&navItemNumber=11603> (last checked on Oct. 14, 2013).

least 95 percent,” and “captioning with no more than a second or two of delay.”⁷¹ Nonetheless, current users attest to the fact that the error rate is often far above 4%, and some potential users opt out of the service for this sole reason. Standards should be set in part by considering at what point errors and delay create problems for the user in understanding the conversation. Miracom suggests that IP CTS providers should be required to “caption with a greater than 90 accuracy.”⁷²

Special attention should be given to the fact that speed is not just a matter of keeping up with the conversation, but also minimizing delay between what is being said and what appears as text on the captioned telephone. Delays will naturally occur because the Communications Assistant (“CA”) must listen to, then re-voice what is being said. However, consumers report that the delay becomes greater and greater during a conversation as the CA stops to correct errors, or if the CA is switched mid-conversation, or the CA otherwise has trouble re-voicing, particularly if the speaker on the other side engages in a long soliloquy. Miracom suggests that a minimum mandatory standard of “no more than a three second delay” be adopted.⁷³ Whatever standards are set, providers should be required to regularly update their software to ensure that available innovations in speech recognition technology are also available to captioned telephone users.

The Consumer Groups do not believe that providers should be permitted to compromise captioning speed for accuracy or vice versa because improvements in both parameters are needed to ensure high quality, functionally equivalent communications. Rather than trading one

⁷¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 13-24, 03-123, Comments of Miracom USA, Inc., at 1 (Oct. 22, 2013) (“Comments of Miracom”).

⁷² Comments of Miracom, at 3.

⁷³ Comments of Miracom, at 3.

performance parameter against the other, providers should invest in technology improvements to improve performance on both parameters. In fact, a survey conducted by RERC-Telecom Access Program found that 60% of survey participants indicated that there is too much of a delay between when the other person on the call speaks and when the captions appear, and 36% stated that there are too many errors in the captions indicating that both parameters should be improved.⁷⁴

The Consumer Groups also encourage the Commission to revisit IP CTS standards periodically to ensure that standards for captioned phones incorporate the latest version of technology that meets the needs of the consumers who use it. There are important consumer needs that are currently not well served by the technologies on the market. For example, persons with low vision that are also deaf or hard of hearing could benefit from IP CTS technologies that accommodate braille readers. The Consumer Groups urge the Commission to promote competition among providers and update its minimum standards so that new and improved IP CTS technologies emerge. Finally, the Consumer Groups urge the Commission to impose recordkeeping and reporting requirements to ensure that the IP CTS providers are held to account for achieving the standards established by the Commission.

VI. The Consumer Groups Urge the Commission to Adopt Exceptions to Its Rules That Address the Needs of Low Income Consumers

The Commission asks whether it “[s]hould allow for a low-income exception to the prohibition of providing compensation for IP CTS minutes of use generated by equipment that is distributed for less than \$75,” and “what types of thresholds [it] should set for low income?”⁷⁵ The Commission also asks what it should do to “address the needs of low income consumers” in

⁷⁴ *Notice of Ex Parte Presentation, TDI and HLAA et al., Attachment, Christian Vogler et al., Gallaudet University, RERC-TA Presentation on Captioned Telephone Service, at slide 36 (April 26, 2013).*

⁷⁵ *FNPRM*, at ¶ 144.

states that do not have Equipment Distribution Programs , or those “that are not fully meeting the needs of low income consumers?”⁷⁶

A. The Commission Should Create a Low-Income Exception to the \$75 Threshold

The Consumer Groups propose that the Commission adopt a low-income exception and make other rule changes to remediate the flaws in the final rule’s absolute \$75 threshold requirement for equipment, software, and applications. As established in the *Consumer Group’s Petition for Stay*, if the rules are not changed, consumers with hearing loss who are unable to pay \$75 for captioned telephone equipment, and who live in one of the many states without a state equipment distribution program, will be denied access to IP captioned telephone service, and therefore will be unable to communicate effectively, as is their right under Section 225 of the Act.⁷⁷ Several consumers have provided declarations to the Consumer Groups establishing that many consumers will be denied access to IP CTS absent changes to the rules. For example, Theresa Best, an unemployed mother who has a 15-year old son with hearing loss and who lives in Michigan, one of the states with no equipment distribution program, stated that it would be difficult for her to afford a payment of \$75 per telephone, as this represents the cost of a week’s worth of groceries for her family.⁷⁸ Ann Liming and Carol Rose Fouts also provided Declarations to the Consumer Groups further confirming the harm the new rules impose on significant numbers of low-income individuals.⁷⁹

In prior comments, HLAA suggested:

⁷⁶ *Id.*

⁷⁷ *Consumer Group’s Petition for Stay*, at 4-16.

⁷⁸ *Consumer Group’s Petition for Stay*, at 14-15, Declaration of Theresa Best, at ¶¶ 4-5.

⁷⁹ *Id.*, at 14-16, Declaration of Ann Liming, at ¶¶ 4-8; Declaration of Carol Rose Fouts, at ¶¶ 7-9.

The Commission should create a federal program [for] provision of IP CTS phones to income eligible consumers for free or at a low cost, just as they have for the Deaf-Blind Equipment Distribution program. Such a program would be able to set requirements and standards to allow a uniform distribution of IP CTS phones regardless of where someone lives, or which phone or service the consumer chose to use. Like the Deaf-Blind equipment program, establishing criteria that is based on income, such as a 400% of Federal Poverty Guidelines,⁸⁰ would allow people who could not otherwise purchase the phone to be able to benefit from the service.⁸¹

The Consumer Groups support this HLAA proposal or a similar proposal that will provide access to IP CTS for low income users on a national basis. Such a proposal should ensure provision not only of landline captioned phones, but also applications for mobile devices. The D.C. PSC has also called for the Commission “to create a program that will assist low income consumers in obtaining IP CTS equipment.”⁸²

B. The Commission Should Permit Low Cost Software Applications for Mobile Phones and Free Applications Where the Consumer Has Not Purchased IP CTS Hardware

The Commission imposed a final rule establishing a \$75 threshold for software and applications, and then sought “comment on whether the purchase of IP CTS software and applications raises considerations that make it appropriate to set a different price threshold for software and applications” than that established for hardware.⁸³ There is no record evidence

⁸⁰ The Consumer Groups recommend that the definition of “low income” be set at 400% of the federal poverty guidelines (as defined in 42 U.S.C. § 9902(2)) to match the definition of “low income” under the National Deaf-Blind Equipment Distribution Program. *See, e.g.*, 47 C.F.R. § 64.610(d)(2); *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, FCC 11-56, 26 FCC Rcd 5640, ¶¶ 36-37 (2011).

⁸¹ *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, Comments of HLAA, at 8 (Feb. 26, 2013) (“HLAA Comments”).

⁸² Comments of DC PSC, at 6.

⁸³ *Id.*

supporting the Commission's \$75 threshold for software and applications.⁸⁴ As demonstrated below, the Consumer Groups believe the costs of software and applications are (or should be) lower than that for equipment. The Commission should gather data on the costs of software to set an appropriate threshold.

Consumers have reached out to HLAA and TDI on a number of issues concerning the *IP CTS Order* as well as questions raised in the FNPRM. We have had more feedback from consumers regarding the prospect of paying \$75 for a software application than perhaps any other issue. Even with understanding that if they already have a landline captioned phone that cost more than \$75, consumers will not need to pay an additional \$75 for software or applications, the rule has sparked widespread concern. Deaf and hard-of-hearing consumers will continue to migrate from reliance on landline phones to mobile devices, just like everyone else. According to the National Center for Health Statistics, the percentage of U.S. households that have no land line service but at least one wireless telephone jumped to 35.8% by June 2012, compared with 34% at the end of 2011, and only 10.5% five years earlier.⁸⁵ Thus, deaf or hard-of-hearing consumers who only have mobile devices will end up paying \$75 simply to obtain access to IP CTS.

The Commission attempts to justify its \$75 threshold for software and applications that allow consumers to use IP CTS without dedicated IP CTS equipment, in part, on speculation that "persons who do not have a sufficient degree of hearing loss to require this service to understand

⁸⁴ *Consumer Group's Petition for Stay*, at 11. Courts may vacate agency action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . [or] unsupported by substantial evidence." *Cross-Sound Ferry Services v. ICC*, 738 F.2d 481, 483 (D.C. Cir. 1984), *quoting*, 5 U.S.C. § 706(2)(A) and (E).

⁸⁵ Michelle V. Rafter, MSN Money, *Cutting the Cord on a Land Line Phone*, at 1 (available at <http://money.msn.com/saving-money-tips/post.aspx?post=5286b168-3a48-4b93-9793-315933feafe>, last checked on Oct. 13, 2013).

conversation over the phone (or who do not have any hearing loss at all) *could find this service desirable for reasons such as creating a transcript or calls in noisy locations.*”⁸⁶ The Commission’s reasoning is flawed and suggests that the Commission has limited actual experience using IP CTS services. Consumers currently find the error rate so high as to be difficult to read, much less serve as a useful transcript for someone who can actually hear the conversation. Deaf and hard-of-hearing consumers tolerate the high error rate because they have no other option which underscores the need for minimum mandatory standards as discussed above. In addition, the delays in IP CTS are often so long that it would likely be disorienting for a hearing person to hold a conversation reading text and listening at the same time with an IP CTS mobile application.

Should the Commission persist in believing that the provision of transcripts is a compelling reason for people who don’t need captions to download a captioning application, the Commission could simply disallow the provision of transcripts for mobile applications. Currently, CapTel phones allow a setting for saving transcripts of conversations, which is helpful to people with hearing loss who may not remember the entire conversation. However, CaptionCall is configured so that the transcript is not saved, and in fact disappears in less than a minute after the call has been completed. Presumably, such a setting could be required in a downloadable application as well.

The argument that an individual would download IP CTS applications for noisy situations is also speculative and flawed. If someone has knowledge about captioned phones and puts forth the effort and forethought to download the application in advance of arriving in a noisy situation, then the Commission should consider that the person is likely in fact someone with a hearing loss

⁸⁶ *IP CTS Order*, at ¶ 58; *Interim IP CTS Order*, 28 FCC Rcd at 716, at ¶ 20.

so significant that he or she should be registered and simply needs to be educated to do so.

The Consumer Groups demonstrated in their *Petition for Stay* that the application of the \$75 threshold to software and applications violates the Administrative Procedures Act because it is arbitrary and unsupported by substantial evidence in the record.⁸⁷ HLAA has conducted limited market research regarding the price of applications for providing services to disabled persons and found that price is considerably lower than that for equipment. As shown in the bullets below, such applications range in price from zero to just under \$10, indicating that the costs of development and production for software and applications is considerably lower than that for equipment (which also includes a significant software component):

- Speech to text apps:
 - Google play: ListNote Speech/Text Notepad: **Free**
 - itunes.apple.com: Voice Dream Reader – Text to Speech app: **\$9.99**
- Text to speech apps:
 - itunes.apple.com: TapToTalk - turns the device into an AAC (augmentative and alternative communication) device: **Free**
 - Google play: SVOX mobile voices, classic text to speech engine: **Free**
- Assistive listening:
 - itunes.apple.com: SoundAMP Lite – turns the phone into an assistive listening system: **Free**
- Stimulating memory
 - itunes.apple.com: for people with Alzheimer’s disease, the app helps to stimulate conversation and memories based on the images that are shown on the app: **\$1.99**

While this market research is not comprehensive, it indicates that the Commission should gather more comprehensive information on similar software applications for persons with disabilities and establish a threshold for such applications, if any, that is supported by such record evidence and is well below the current \$75 threshold. In addition, the Commission should gather information on the actual costs of design and delivery of applications to form a better understanding of what these applications should cost.

⁸⁷ *Consumer Group’s Petition for Stay*, at 11-13; 5 U.S.C. § 706(2)(A), (E) and (F).

VIII. The Volume Control Should Be Independent of Captions

The Commission seeks comment on whether IP CTS providers should be “prohibited from linking volume control to the captions-on function?”⁸⁸ The Consumer Groups support such a prohibition. There are times when a legitimate user of captioned telephone services has no need for the captions, but may still need to increase the gain on the volume of the sound coming in. For example, consumers may have access to conference calls using remote Communication Access Real-time Translation with their computer at their desk to participate. If a consumer is using remote CART, there is no need for the consumer to use the captioning provided by the phone. However, if that is the only phone in the home or at the workplace, the captioned phone may be the only option to hear what’s being said. If the captions are turned off, the consumer will still need to ensure that she or he can hear to the best of her or his ability, and will want to be able to adjust the volume accordingly. If the volume control is linked to the captions, that is, only enabled when the captions are on, that person will be unable to fully participate in the call and will be at a distinct disadvantage. If the volume control is linked to the captions, that person may be tempted to turn on the captions, even if they are not being used, just so the volume is loud enough to help the consumer understand.

IX. The Commission Should Establish Additional Exemptions From the Captions Off Rule for People Who Live Alone or Work at a Home Office, Retrieval of Messages from Answering Machines, and 911 Calls

The Commission is “concerned that consumers who live alone or have a private phone in a workplace receive functionally equivalent service” and seeks comment on whether an

⁸⁸ *FNPRM*, at ¶ 147.

exception to the rule requiring a default setting of captions off should be established to address these circumstances.⁸⁹ The Consumer Groups support a new exception to address this situation.

A person who lives alone or works at a home office should not be burdened with the extra step of turning on captions each and every time she or he must make a call. If the FCC's intent is to ensure that there is no misuse of the TRS Fund, surely someone living alone who has already registered as a legitimate consumer user of IP CTS does not pose a threat to the Fund. For example, if a senior is living home alone, with the captioned phone as their connection to the rest of the world, access to a phone that is easy to use is of primary concern to the consumer. The Consumer Groups also believe an exception should apply in the case of a household consisting of only people with hearing loss. Whether it is one person or two parents and their children, if they all have a hearing loss in that household, each person should not have to go through the additional process of turning the captions on each time.

Likewise, registered consumers using the phone in a home office find it equally important to have the default position set to captions on. People running their own business are dependent on phones to ensure their livelihood. If they make many calls, taking that extra step for each call can cost time and potential customers. In addition, if the consumer misses valuable information at the beginning of incoming calls, the result could be disastrous for the individual trying to stay in business. Particularly in this economy when competition is so intense, imposing additional steps on people with hearing loss could be the difference between them staying in business and failing.

The Commission also seeks "comment on how answering machines or other IP CTS devices capture captions, and whether we should amend our rules to address the retrieval of

⁸⁹ *FNPRM*, at ¶ 149.

messages from such machines?”⁹⁰ Ultratec states that since the default captions off rule went into effect “users must press the captions ‘on’ button and ‘re-caption the incoming voice message each time the user wants to play (or replay) a voice recorded message.”⁹¹ Ultratec observes that as to answering devices “the default off setting creates inefficiencies, in that it incurs extra costs to the Fund each time the user replays the incoming message.”⁹² It is both inefficient and a violation of the functional equivalence principle to require IP CTS users to press the captions “on” button each time a deaf or hard of hearing consumer retrieves an individual message, even if many messages are retrieved during a single session. The Commission should create an exception to the default captions off rule to enable consumers to press the captions “on” button only once in a single session or call to review all of the answering machine messages that were left on the IP CTS device or external answering machine.

Finally, the Consumer Groups support an exception to the default captions off rule for emergency calls to 911 and for people with low vision that are also deaf or hard of hearing. When people dial 911 they are most often under duress or stress from an accident, criminal or other violent threat, health emergency such as a heart attack or fall, fire or other emergency. People under conditions of stress, panic, or duress, especially the often elderly users of IP CTS, should not be required to remember to turn the captions on in these situations. Thus, the Commission should establish a rule requiring that the captions are automatically on for calls to 911. In addition, people that have low vision and are deaf and hard of hearing often have difficulty locating the button or other interface to set the captions “on” which could catastrophic

⁹⁰ *FNPRM*, at ¶ 148.

⁹¹ *FNPRM*, at ¶ 148.

⁹² *Id.*

in a high pressure emergency situation. An exception to the default captions “off” rule should be made for such low vision consumers.

X. Educational Information on IP CTS Should Be Made Available Via As Many Venues And Methods as Possible

In the *IP CTS Order*, the Commission appears focused on “ensur[ing] that consumers receive multiple and repeated sources of information regarding *legitimate use* of IP CTS” through the use of notification labels fixed to IP CTS devices, notices on websites and other means.⁹³ By contrast, the Consumer Group’s focus is much broader and centers on establishing and maintaining effective outreach programs to educate consumers about IP CTS and other forms of TRS.

The Consumer Groups maintain that information about the TRS Fund, how the captioned telephones works, and related information should be made available to consumers in as many venues and via as many methods as possible. Some states such as California use multiple venues and methods for their outreach program. For example, California established ten service centers where consumers can select, learn to use, and take home equipment that can best benefit them (29,180 consumer visits in 2011-12); a Contact Center that can be reached over a toll free number, web chat or via email; and California sponsors field advisor visits to consumer’s homes (9,760 such visits in 2011-12).⁹⁴ Starting in 2008, California also “placed statewide newspaper advertisements in Parade Magazine—the Sunday newspaper insert that covers 18 major newspapers throughout the state,” and launched a “broadcast media (TV and radio) campaign

⁹³ *FNPRM*, at ¶ 152.

⁹⁴ Programs of the CPUC, Deaf and Disabled Telecommunications Program (“DDTP”), Consolidated Annual Report 2011-2012 Supplement, at 2-3.

featuring celebrity spokesperson, Leeza Gibbons, [which] resulted in a major increase in Contact Center activity in 2009 and 2010.”⁹⁵

The venues and methods that should be used for outreach programs should be diverse and include the following:⁹⁶

- Manufacturers’ websites;
- IP CTS Providers’ websites;
- Phone, Internet, and cable providers’ websites;
- The Commission’s website;
- Printed brochures, flyers;
- Registration materials;
- On the box of the phone;
- In manuals for the equipment, both on line and printed;
- On contracts with consumers;
- Advertisements for the service and equipment, both on line and in print;
- In updates and notices sent to current consumers by providers, no matter how delivered (*e.g.*, via print or emailed updates);
- In person by providers at national conference workshops that focus on people with hearing loss and/or seniors, at booths and events;
- Non-profit organization chapter and state meetings;
- In doctors’ offices;
- Community training at libraries and in senior centers, retirement communities;
- Advertisements in newspapers and magazines;
- Ads on social media and other Internet sites;
- Kiosks in malls, town centers;
- Public Service Announcements over broadcast and cable television;
- State Offices for people who are deaf or hard of hearing; and
- State Relay Offices.

The Consumer Groups believe that no one venue or method will reach all consumers, and urge the Commission to ensure the consumer has access to as many possible venues and methods of outreach as possible.

XI. CONCLUSION

For the foregoing reasons, the Commission should adopt the Consumer Groups proposals and suggested revisions to the rules governing IP CTS set forth herein.

⁹⁵ CPUC, DDTP, 2008-2011 Consolidated Annual Report, at 8.

⁹⁶ HLAA Comments, at 15-16 (Feb. 26, 2013).

Respectfully submitted,

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