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 Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	CG Docket No. 03-123

REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC. AND CAPTIONCALL, LLC

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I. INTRODUCTION AND SUMMARY

Sorenson Communications, Inc., and its wholly-owned subsidiary, CaptionCall, LLC (collectively "CaptionCall"), hereby reply to comments with respect to the Commission's Further Notice of Proposed Rulemaking regarding IP Captioned Telephone Services ("IP CTS").[1] The record in this proceeding shows remarkable consensus on a number of the Commission's proposals in the FNPRM, including the inappropriateness of cost-of-service regulation for a labor-intensive industry like IP CTS.

Of the comments filed in response to the FNPRM, only one party endorses cost-of-service (or rate-of-return) regulation—the Independent Telephone and Telecommunications Alliance ("ITTA"). Interestingly, ITTA's largest members are LECs regulated under price caps, making it particularly ironic for them to be advocating cost-of-service regulation. ITTA's position appears to be motivated more by concerns over the size of the TRS fund—indeed, it even suggests that the Commission impose a cap on IP CTS to "keep the TRS Fund within a defined budget,"[2] a step that would be wholly at odds with the Commission's mandate under the ADA. The Commission cannot manipulate rate methodologies to minimize the size of the TRS Fund in the face of the statute's direct mandate that hard-of-hearing persons have access to functionally equivalent services. To the contrary, the Commission must ensure that disabled consumers have access to functionally equivalent telecommunications services, "to the extent

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[1] *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118, 28 FCC Rcd. 13,420 (2013) ("FNPRM").

[2] Comments of the Independent Telephone & Telecommunications Alliance at 4, CG Docket Nos. 13-24 & 03-123 (filed Oct. 18, 2013) ("ITTA").

possible"[3] and that rates are "no greater than the rates paid for functionally equivalent voice communication services."[4]

Every commenter other than ITTA that discusses rate methodology agrees that cost-of-service cannot meet the ADA's mandates. The labor-intensive nature of the IP CTS industry means that, under cost-of-service regulation, providers would be deprived not only of any reasonable opportunity to make a profit but also of the financial wherewithal to invest in innovation and efficiency. Adoption of cost-of-service methods, either in whole or in part, has proven disastrous for IP Relay and VRS; cost-of-service would have a similar result for IP CTS. As the Commission recognized with respect to VRS, it should be seeking market-based rates: with IP CTS, it already has a basis for setting a market-based rate by reference to the competitively-bid state Captioned Telephone Service contracts on which the Commission has based its Multistate Average Rate Structure ("MARS") rates. While CaptionCall has questioned the continued revision of rates using the MARS data, rather than use of a price cap, this competitive bid information remains much more reliable an indicator of necessary compensation than the cost-of-service formula's calculations based on only a subset of costs with no margin on expenses—a basis on which no labor-intensive service-based industry could run.

CaptionCall continues to believe that a price cap initialized from historical state competitive bid data represents the best possible methodology for IP CTS. A price cap methodology is "fair, efficient, and predictable," adjusting only to accommodate inflation, exogenous costs, and an X-factor to encourage efficiency and innovation. And such a price cap for IP CTS will be sufficient to sustain service, but not excessive, because the initial rate is based on actual, competitively-bid rate information at which providers had to agree to provide service,

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[3] 47 U.S.C. § 225(b)(1).

[4] *Id.* § 225(d)(1)(D).

and not on some hypothetical calculation by regulators. Unlike VRS and IP Relay, IP CTS has six years of rate information based on state competitive bidding for an analogous captioned TRS service to use in establishing a base rate.

The record also shows widespread agreement on a number of the Commission's other proposals.

- Transitioning oversight and administration of IP CTS to the states would be unworkable and ill-advised.
- To the extent that requirement (currently under judicial review) is retained, the Commission should create additional exceptions to the default-off requirement, including in situations where the possibility of misuse is low or nonexistent.
- To the extent that requirement (currently under judicial review) is retained, the Commission should ensure that the $75 minimum payment requirement is waived for low-income consumers and for software/application purchases (particularly where the consumer already owns an IP CTS phone)—and that a consumer that paid $75 for a hardware captioning phone can obtain additional hardware, as well as software, phones without payment of an additional $75.
- A centralized database of IP CTS users would not reduce fraud, waste, and abuse, and will create an increased and unnecessary risk to consumers' personally identifying information.
- Mandatory minimum standards should be left to the market.

Moving forward in this proceeding, the Commission should ensure the long-term health of IP CTS, both by adopting a rate methodology that incentivizes providers to increase efficiency and invest in innovation, and by implementing changes to its IP CTS rules that increase providers' ability to provide functionally equivalent service to eligible consumers.

II. THE COMMISSION MUST REJECT COST-OF-SERVICE REGULATION FOR IP CTS.

The Commission does not have authority to select a compensation method based solely on its desire to force slower fund growth while ignoring the damage it will inflict on service.[5]

[5] *See* 47 U.S.C. § 225 (mandating provision of functionally equivalent service "to the extent possible"); 47 C.F.R. 64.604(c)(5)(iii)(E) (providing that the Commission shall set rate

The core mandate of the ADA is access to functionally equivalent service—which cannot exist if there is not a real-world economic model to provide the service. When the Commission sets rates below viable levels, there will be only one result: providers exiting the service.

Thus, it should not be surprising that the Commission's proposal to adopt cost-of-service methods—either entirely or as part of a price-cap mechanism initialized from deficient and irrational cost-of-service calculations that include only a subset of providers' actual costs—is entirely without support in the record. No commenter substantiates the FNPRM's contention that state competitively-bid contracts for TDM-based Captioned Telephone Service are not a reasonable market-based proxy for market-based IP CTS rates due to unspecified and unarticulated changes from a nascent IP CTS service to a growing IP CTS service.

A. The Record Indicates that Cost-of-Service Regulation Is Unworkable for the Labor-Intensive IP CTS Industry.

The record is clear that cost-of-service regulation is not capable of ensuring that providers are compensated at a level sustaining service and innovation in a labor-intensive industry. Cost-of-service regulation based on the Commission's limited set of "allowable costs" provides for no margin on expenses in a labor-intensive business and would undermine the ability of IP CTS providers to offer "*high quality* captioned telephone service at a reasonable profit that supports continued innovation."[6]

The Commission does not need to look far afield to see the detrimental effect of cost-of-service regulation on labor-intensive products and services. When the Commission applied cost-of-service calculations to reinitialize its IP Relay price cap and set the going-forward X factor, it

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formulas "designed to compensate TRS providers for reasonable costs of providing interstate TRS").

[6] Comments of Consumer Groups at 6, CG Docket Nos. 13-24 & 03-123 (filed Nov. 4, 2013) ("Consumer Groups") (emphasis in the original).

shrank the number of providers to just two—and possibly only to one. Similarly, the Commission has adopted VRS rates that no provider can sustain, which will degrade the quality of VRS and thwart innovation. The Commission's prior TRS cost-of-service implementations cannot ensure a "fair, efficient, and predictable" compensation rate because they deny a margin on nearly all costs incurred by IP CTS providers, most notably labor costs.

Indeed, the Commission's TRS cost-of-service methodologies have been repeatedly demonstrated to be inappropriate in a labor-intensive industry like IP CTS. For instance, the FCC has historically refused to consider several actual costs, like equipment, taxes, research and development of equipment and functions beyond mandatory minimum standards, actual working capital and financing, with the result that providers are chronically under-compensated because the rates do not reflect their actual costs. For IP CTS, the only way to use captions is to have either a hardware or software phone provided by the IP CTS provider, as there are no IP CTS phones on the open market nor are there standards for such devices. The Commission cannot rationally exclude the costs of equipment without which captioning does not exist—especially when nearly every IP CTS user has already purchased non-captioning equipment that they used prior to needing captioning. In contrast, as pointed out by other IP CTS providers, the chief benefit of MARS is that it "relies on the competitive market, rather than prescriptive regulation and proxies."[7]

The only provider to support cost-of-service determination of IP CTS is ITTA.[8] ITTA's comments are particularly ironic because its largest members are LECs that elected FCC price

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[7] Comments of Hamilton Relay, Inc. at 2, CG Docket Nos. 13-24 & 03-123 (filed Nov. 4, 2013) ("Hamilton"); *see also* Comments of Purple Communications, Inc. at 3, CG Docket Nos. 13-24 & 03-123 (filed Nov. 4, 2013) ("Purple") (noting that MARS has been robust and effective because it is a competitive market-based rate).

[8] ITTA at 4.

cap regulation as an alternative to cost-of-service – and all of its members can choose to elect price cap regulation. Under the price-cap regime governing ITTA's members' rates, the Commission regulates *prices*, not costs. If one of ITTA's members cuts its expenses by becoming more efficient, it earns more profit—and has no future rate cut tied to those cost reductions; if it develops a new technology that enables it to provide the same or better service at a lower cost, it earns more profit, again without future rate cuts tied to those cost reductions. ITTA's members are free to reinvest that profit however they see fit, including by creating new and innovative products or through distributions to their owners.[9] These are hallmarks of a price-cap mechanism—and are what make price caps more socially beneficial than cost-of-service regulation. Yet ITTA eschews price caps for IP CTS even though its members largely fled innovation—and efficiency—dampening cost-of service regulation.

In any event, ITTA's arguments are unsupported. It does nothing more than cite the growth of IP CTS, as compared to TDM-based CTS, as evidence that the Commission cannot continue to rely on state competitive award data. But it does not provide any actual analysis that state competitively-bid CTS contracts are no longer a reasonable proxy for market-based IP CTS rates. Given that the greatest cost for both services are communications assistant labor—which must scale directly in proportion to the number of minutes of use—the fact that IP CTS has grown does not prove that TDM-based CTS per-minute rates are an inappropriate measure of a market-based IP CTS rate. Hamilton highlights the fundamental illogic of justifying changes in rate methodology based on minute growth: "the very premise of the suggestion that growth has rendered MARS rates invalid is wrong….That logic might hold for a capital-intensive service whose costs are predominantly fixed rather than variable….But CTS is not such a business [and]

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[9] *See Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, FCC 95-132, 10 FCC Rcd. 8961, 8973-8974 ¶ 28 (1995).

the costs are incremental—i.e., the provider incurs these costs as usage grows."[10] As Hamilton further notes, "[a] failure to estimate future usage will have much less consequence in the context of a labor-intensive product such as CTS than in a capital-intensive product, because an increase in volumes will result in a concomitant increase in costs, such that *per-minute costs* change very little or not at all."[11] ITTA's naked assertions justify nothing. Purple similarly points out the inappropriateness of cost-of-service regulation for IP CTS, noting that "the FCC's historic methodology, which is oriented toward capital intensive utility carriers, is misplaced as applied to TRS services, including IP CTS, because these are labor intensive services, with very low capital investment requirements."[12] A weighted cost-of-service methodology will not account for the disproportionate cost of labor—nor, as Purple notes, will it account for "how the service actually works."[13] As Sorenson pointed out and as no commenter contradicts:

- The public utility rate-of-return ratemaking formula cannot, by its nature, generate a sustainable rate for a labor intensive industry. By its terms, the rate-of-return ratemaking formula provides for no margin (profit) on expenses; the only profit comes on booked capital investment. Under this formula, CaptionCall earns no profit on its principal asset—its workers—and earns only an 11.25 percent on its desks, some computer equipment, and perhaps a capital lease for office space. For VRS, that amounts to at best a 1-2 percent margin on all allowable costs (and well under 1 percent on actual total costs); it is difficult to see why IP CTS would enjoy a significantly better margin. A temp agency could not operate on these margins, and it is not reasonable to assume that IP CTS providers would fare any better. The FCC would be *de facto* limiting IP CTS to non-profit entities, and even then it is not at all clear that such entities could obtain financing for a high-risk, mandated low return operation.

- "Allowable costs," as defined by the Commission for other TRS services, have not included all the necessary costs of providing service. Notably excluded are actual taxes, end user equipment/software, research and development of equipment and functions beyond the mandatory minimum, installation of equipment, actual working

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[10] Hamilton at 5.

[11] Hamilton at 6 (emphasis in the original).

[12] Purple at 2.

[13] *Id.*

capital, and financing. Without end user equipment, whether hardware or software, IP CTS service cannot exist. And all entities—including non-profits—must pay their taxes, maintain working capital and finance capital investment, so excluding these costs masks the true extent to which allowed margins approach zero.

- The 11.25 percent rate-of-return permitted on book capital investment, which was developed for the Bell telephone companies in 1990—before the introduction of local telephone competition—is wholly out-of-date and inappropriate for much smaller companies operating in highly competitive, labor intensive markets.[14]

The Commission cannot ignore the overwhelming consensus. Cost-of-service regulation will not suddenly change the fundamental structure of IP CTS. As in any labor-intensive market, the per-minute cost of IP CTS will increase as usage increases—exactly the opposite of costs for a capital-intensive service like landline telephony. Per-minute TDM-based CTS costs are, and will continue to be, an appropriate measure of per-minute IP CTS costs. And cost-of-service regulation will never adequately compensate IP CTS providers, thus threatening the future of the service. The Commission must not, as noted by the Consumer Groups, "allow concerns about growth in IP CTS use to halt continued progress."[15]

B. Cost-of-Service Regulation Is Vastly Different from Either MARS or a Competitive Awards-Based Price Cap Regime.

In seeking to reform its rate methodology for IP CTS, the Commission must recognize that the differences between the two alternative regulation proposals in the record—the existing MARS plan and Sorenson's MARS-initialized price cap plan—pale in comparison with the differences between those proposals and any cost-of-service based regulation. As CaptionCall has noted, a cost-of-service methodology that calculates rates based on "allowable" costs creates perverse incentives. Providers will never reduce their costs if the result is that their rates will

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[14] Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 & 03-123, at 2-3 (Nov. 4, 2013).

[15] Consumer Groups at 4.

simply be lowered. And among the key benefits of price cap regulation that the Commission has long recognized is that it provides incentives both to reduce costs and to innovate.

Claims by ITTA that MARS is inaccurate and incentivizes providers to "overestimate costs and underestimate minutes of use to ensure that the compensation rate is as high as possible so they will turn a profit"[16] makes absolutely no sense. Under a per-minute alternative regulatory mechanism, whether MARS or CaptionCall's state competitive awards-initialized price cap, providers cannot affect the compensation level through estimates of costs or demand. Indeed, the sole reason to collect demand information is so that the TRS Administrator can project fund size. In that context, a provider has no incentive to underestimate demand. In fact, the types of concerns that ITTA raises were reasons why the Commission moved away from cost-of-service regulation to price caps for telephone companies—not the reverse.[17]

Other IP CTS providers acknowledge that MARS could be even more effective were the Commission to lock that rate for a five-year period.[18] Of course, this is precisely what a price cap calls for, with the addition of an inflation factor, to ensure that compensation keeps up with inflation, and an "X factor" to incentivize providers to reduce costs so that they may increase profits.

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[16] ITTA at 3.

[17] *See, e.g.*, *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, FCC 90-314, 5 FCC Rcd. 6786 (1990) ("*Second R&O on Rates for Dominant Carriers*") (abandoning rate-of-return regulation for large incumbent local telephone companies); *Price Cap Performance Review for Local Exchange Carriers* (1995) (affirming a commitment to the policy objectives that led the Commission to adopt price cap regulation); *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663 (2011) ("*USF/ICC Transformation Order*") (functionally ending rate-of-return for small telephone companies by adopting interstate terminating access rates and revenues based on formulas no longer tied to current costs or revenue requirements).

[18] Purple at 3.

The reality is that the MARS rate, or a price cap initialized based on state competitive award data, will better ensure the health of the IP CTS ecosystem than will a cost-of-service methodology that will dramatically reduce the compensation to providers, and likely result in loss of competition, outsourcing (and the likely attendant reduction in quality of service), and reduced availability of service to those who need it. A state competitive awards-based price cap method, in particular, creates the best economic incentives for providers, for consumers, and for the Fund—it establishes an initial rate based on historic competitive rate information, and then incentivizes providers to improve and innovate in order to retain more profit precisely because of the requirement to manage "within constrained reimbursement limits."[19]

III. IP CTS REGULATION MUST ADHERE TO THE PRINCIPLES AND LANGUAGE OF THE ADA.

The record is clear that the Commission must avoid taking any steps that threaten the ability of IP CTS providers to offer functionally equivalent service to eligible consumers. The ADA requires the Commission to ensure that consumers with disabilities have access to functionally equivalent service; restrictions such as a cap on IP CTS, unnecessary limitations on the availability of captions, and minimum payment requirements with no exceptions make it impossible for the Commission to meet that mandate.

A. Nothing in the ADA Permits a Cap on TRS Services, Including IP CTS.

Nothing in the ADA permits the Commission to cap TRS services, as ITTA suggests. The ADA does not permit the Commission to restrict the availability of functionally equivalent services in order to keep the Fund "within a defined budget."[20] The Fund exists to ensure that providers of functionally equivalent services are adequately compensated. It does not exist to

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[19] Consumer Groups at 7.

[20] ITTA at 4.

provide a hard limit for the provision of those services. And, indeed, such a cap would be unworkable: would IP CTS (or other TRS) services simply cease being available if the cap were reached? The Commission cannot impose an artificial limit on how many minutes of IP CTS service can be provided without running afoul of its statutory mandate to ensure that functionally equivalent "relay services are available, to the extent possible."[21]

B. Exceptions to the Default-Off Requirement Must Be Expanded if the Rule Survives Appellate Review.

Nearly all commenters support expanding exceptions to the default-off requirement, and many support abolishing the requirement altogether. The Consumer Groups advocate for additional exemptions, including for people who live alone or in private offices, for answering machines, and for 911 calls.[22] Hamilton likewise encourages the Commission to explore other means of relieving consumers of this burdensome requirement, noting that the record is not clear that permitting default-on captions will cause an increase in minutes of use that are ineligible for compensation.[23] Purple also believes that, where the likelihood of misuse is remote, the default-off requirement should be relaxed.[24] In short, it is clear that stakeholders from all corners believe that the Commission should relieve the burden of the default-off requirement where it is greatest, allowing those who live alone, work in private offices, or use IP CTS equipment in locations where a traditional telephone is placed alongside the IP CTS phone. The Commission should therefore permit an exception to the default-off requirement, permitting these individuals

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[21] 47 U.S.C. § 225(b)(1).

[22] Consumer Groups at 28-31.

[23] Hamilton also encourages the Commission to create an exception for answering machine messages, noting the inefficiencies created when messages must be recaptioned over and over again, increasing minutes of use unnecessarily. Hamilton at 17-18.

[24] Purple at 9.

to certify eligibility for default-on captions, without undermining its purpose in adopting the requirement in the first place.

Even if the Commission expands the exceptions to the requirement, though, it is clear from the record that some problems will persist. For instance, Hamilton notes, as did CaptionCall, that signaling information for 911 callbacks is not available to it as an IP CTS provider, and it cannot automatically caption such callbacks (for which, under default-off, the captioning user would have to activate captions).[25] The Commission should continue to refine its IP CTS rules to ensure that eligible users are not burdened with restrictions that undermine the availability of functionally equivalent service.

C. The Commission Should Adopt Exceptions and Limits to the $75 Minimum Payment Requirement.

The record is also overwhelmingly in favor of limiting the $75 minimum payment requirement to hardware only, and expanding the exceptions for that requirement, should the requirement survive appellate review. Thus Consumer Groups support general adoption of a low-income exception for hardware and software;[26] Purple argues that the question whether a low-income exception should be adopted is simply the wrong question where software is concerned.[27] But commenters also support additional limitations on the rule to ensure that consumers are not unduly burdened by requirements to pay more than once.

Consumer Groups, in particular, note that there is no evidence supporting adoption of the minimum payment threshold for software and applications. [28] As noted in their comments, the Commission's concerns that ineligible consumers will use IP CTS software to create a transcript

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[25] Hamilton at 15-16.

[26] Consumer Groups at 24-25.

[27] Purple at 6-7.

[28] Consumer Groups at 26-27.

can be addressed by disallowing transcripts on mobile devices; concerns that ineligible consumers will use IP CTS to make calls in noisy locations are speculative and suggest that those individuals may actually be eligible and need only to be educated.[29] Purple, for its part, generally agrees with Professor Samuel Bagenstos that the minimum payment rule in general abdicates the Commission's obligations under the ADA, while noting that it is particularly inappropriate as applied to non-hardware IP CTS equipment.[30]

Though Hamilton did not discuss the minimum payment requirement in its comments, it has since sought clarification from the Commission regarding whether consumers who have already paid $75 for an IP CTS phone may receive a mobile or web IP CTS account without additional payment. Staff confirmed to Hamilton that "Section 64.604(c)(11)(i) authorizes an IP CTS provider to provide two web or mobile accounts to a user in situations where the user has paid $75" and that "Section 64.604(c)(11)(i) is intended to be reciprocal, in that if a user pays $75 for a web or mobile account, the user can receive one free IP CTS phone."[31] This clarification logically suggests that consumers should also be able to obtain a second IP CTS phone after making a single $75 payment. The single payment serves the Commission's purpose of ensuring that the consumer genuinely needs the IP CTS equipment; according to the Commission's logic, as conveyed to Hamilton, once that need has been demonstrated, the consumer should not need to demonstrate that need again. The Commission should clarify this understanding for all providers.

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[29] *Id.*

[30] Purple at 6-7.

[31] Letter from David A. O'Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123 (Nov. 14, 2013).

IV. THE COMMISSION SHOULD AVOID IMPOSING MANDATORY MINIMUM ACCURACY REQUIREMENTS.

The record continues to reflect uncertainty regarding implementation of mandatory minimum quality standards. No one provides a description of technically feasible standards; more critically, no one proposes a reasonable means of enforcing such standards. Indeed, only one commenter makes any concrete proposal regarding enforcement at all, and that proposal would tie compensation to quality.[32] Notwithstanding the fact that such a mechanism would not reimburse providers for "reasonable costs," even that proposal acknowledges that enforcement would be burdensome—and in fact proposes that the said burden would fall to the Fund Administrator, which would "conduct[] test calls to gauge adherence to the quality standards."[33]

The record is entirely silent as to how mandatory minimum standards would work in practice, given the necessary tradeoffs between accuracy and latency. More to the point, no commenter articulates why the market cannot sufficiently address these service quality issues. In other communications markets, providers compete with respect to quality. This is true for wireless services, a market with multiple competitors where quality of service is critically important to consumers. The same should be true with respect to IP CTS.[34]

As the Commission continues to explore issues related to quality of service, it should take care not to let the comments of those concerned that consumers are receiving summarization of

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[32] *See* Comments of Miracom USA, Inc. on Notice of Proposed Rulemaking at 4, CG Docket Nos. 13-24 & 03-123 (filed Oct. 22, 2013) ("Miracom"). Miracom, of course, has not yet received approval to begin providing IP CTS service. *Id.*

[33] *Id.*

[34] Hamilton, in advocating for adoption of minimum accuracy requirements, cites a Paisley Group report as showing that its performance was better relative to another IP CTS provider with respect to quality of service. Hamilton at 13. The Paisley Group report, however, is not in the record, and, thus, cannot be evaluated for truth or used as a basis for a decision by the Commission.

calls rather than verbatim captioning take on undue weight. Summarization is already prohibited unless specifically requested, and CaptionCall does not summarize calls. Providers that summarize calls where summarization was not requested should be subject to enforcement action by the Commission, of course. But the extent to which any provider has made that a practice should have no bearing on the question whether the Commission should impose minimum standards or leave such standards to the market. Quality standards should be established by the market, not by regulatory fiat.

V. THE RECORD IS CLEAR THAT CENTRALIZED REGISTRATION FOR IP CTS IS UNWORKABLE AND UNNECESSARY.

No one has yet explained how a centralized database will actually reduce alleged (or assumed) waste, fraud and abuse. When a call is set up, a database will not verify the eligibility of the user, unless the Commission is going to require IP CTS users to input a PIN code for every call, which would be a horrendous violation of functional equivalency. In fact, because the IP CTS provider is not in the signaling stream for the call, it may not even verify the user's phone number.[35] The Commission has not even come close to justifying the information collection under the Paperwork Reduction Act ("PRA")—with or without the collection of a portion of the user's social security number.

It is notable that almost no commenter supports adoption of a centralized database. Hamilton and Purple both oppose the proposal, with Hamilton noting that the proposal is an attempt to create a "one-size-fits-all approach to the various forms of relay services [that are] neither practical nor beneficial."[36] The Consumer Groups do not oppose a centralized database, but express concerns—similar to those of CaptionCall—that such data collection could create

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[35] *See* Hamilton at 11.

[36] *Id.*

security and privacy risk for consumers. Thus, it asks that the Commission make sure any centralized database excludes registrants' SSNs.[37] That exclusion, however, ignores that the risks to registrants of hacking are nearly as great when names, addresses, and phone numbers are obtained, even without other sensitive information like SSNs. Moreover, the Consumer Groups point out that the Commission's allegations of "fraud, waste, and abuse" meant to be addressed by a centralized database are unsubstantiated.[38] The Commission has now belatedly recognized that the IP CTS rules require collection of personally identifying information,[39] but while it has reminded providers of the need to safeguard this information, the Commission itself has failed to articulate how this information should be used, including why it is necessary to be collected in order to carry out the Commission's requirements. Without such an explanation, these requirements cannot meet the requirements of the PRA.

Finally, as CaptionCall noted in its comments on the PRA burdens proposed in the FNPRM, the Commission has entirely ignored the burden on providers and consumers that centralized registration would represent. As it stated in those comments, "[t]he mere incantation of hypothetical and speculative 'waste, fraud and abuse' cannot outweigh the significant privacy risks, given that users already demonstrate eligibility by self-certifying about their hearing loss and need for IP CTS."[40]

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[37] Consumer Groups at 8.

[38] *Id.* at 8-9.

[39] *Personal Information Required for Consumers to Register for Internet Protocol Captioned Telephone Service and Applicable Confidentiality Safeguards*, Public Notice, DA 13-2300, CG Docket Nos. 13-24 & 03-123 (rel. Dec. 2, 2013).

[40] Paperwork Reduction Act Comments of Sorenson Communications, Inc. & CaptionCall, LLC at 8, CG Docket Nos. 13-24 & 03-123, OMB Control No. 3060-1053 (filed Nov. 25, 2013).

VI. TRANSFERRING IP CTS TO THE STATES IS IMPRACTICAL.

There is widespread opposition to the Commission's proposal to transfer responsibility for IP CTS to the states.[41] Such a transfer is impractical, as many commenters point out.[42] Moreover, doing so just to shift responsibility for supporting the service would create an unfunded mandate on the states—and would threaten the availability of functionally equivalent services. The Consumer Groups, for instance, strongly oppose the transfer of IP CTS to states, particularly insofar as such a proposal would afford the states significant discretion to establish more stringent eligibility criteria.[43] Consumer Groups also reiterate the other problems with state management (*e.g.*, limited competition, limited funding, and limited support).[44] Purple likewise believes "states do not have sufficient time, resources or experience to effectively take over the responsibility of registering and certifying the eligibility of new IP CTS users, in addition to administering IP CTS operations."[45]

More importantly, the states themselves generally oppose the proposed transfer. As pointed out by most of the state commenters, the question of whether the states can even assume

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[41] *See* Comments of the California Public Utilities Commission and the People of the State of California at 2, CG Docket Nos. 13-24 & 03-123 (filed Nov.4, 2013) ("California"); Comments of the Kentucky Public Service Commission at 3-4, CG Docket Nos. 13-24 & 03-123 (filed Oct. 18, 2013) ("Kentucky"); Comments of the National Association of Regulatory Utility Commissioners at 7-8, CG Docket Nos. 13-24 & 03-123 (filed Nov. 4, 2013) ("NARUC"); Comments of the Nebraska Public Service Commission at 2-3, CG Docket Nos. 13-24 & 03-123 (filed Nov.1, 2013) ("Nebraska"); Comments of the Public Service Commission of the District of Columbia at 1, CG Docket Nos. 13-24 & 03-123 (filed Nov. 1, 2013) ("District of Columbia"); Purple at 4; Consumer Groups at 9-20.

[42] *See* Purple at 4; Consumer Groups at 10-11.

[43] Consumer Groups at 10.

[44] *Id.* at 10-20.

[45] Purple at 4.

authority over IP CTS is uncertain.[46] Those states that do not outright oppose the proposal note that the Commission cannot act until it resolves jurisdictional separation issues.[47]

Notwithstanding the jurisdictional issues, many state commenters advocate additional study and consideration regarding funding, administration, and determination of eligibility. For instance, California opposes transfer 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."[48] California and D.C. also ask that the Commission ensure that the states have greater latitude to administer IP CTS programs than they might otherwise.[49] But as noted by the Consumer Groups, doing so could result in some states having significantly more stringent eligibility criteria, thus reducing availability of the service to those who need it.[50] It is clear from the record that the Commission cannot undertake any additional consideration of this proposal until it has devoted additional time to studying the legal and administrative issues involved

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[46] *See, e.g.*, California at 4.

[47] Kentucky at 3; Nebraska at 2.

[48] California at 2 (emphasis omitted).

[49] *See id.* at 2-4; District of Columbia at 5-6.

[50] Consumer Groups at 10.

VII. CONCLUSION

CaptionCall encourages the Commission to recognize the broad consensus in the record that cost-of-service regulation is entirely unsuited for the labor-intensive IP CTS market. The Commission should not abandon the useful information available to it from six years of competitive bidding information underlying the MARS rates. The Commission should also ensure that any additional changes it makes to the IP CTS rules do not contravene its mandate under the ADA to ensure that consumers have access to functionally equivalent service. Finally, the Commission should recognize that transferring IP CTS administration to the states is impractical—if even permissible—and should refrain from adopting that proposal.

Respectfully submitted,

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