



December 11, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 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

Dear Ms. Dortch:

On October 31, 2013, the undersigned submitted an ex parte letter on behalf of Sorenson Communications, Inc. and its wholly owned subsidiary CaptionCall, LLC (collectively “CaptionCall”).¹ In that letter, we indicated that some state Internet Protocol Captioned Telephone Service (“IP CTS”) equipment distribution programs may allow hearing-health professionals to earn a margin from IP CTS equipment distribution, and we sought clarification regarding whether such programs are permissible under the newly enacted IP CTS rules.² In this letter, we describe the Texas IP CTS equipment distribution as an example of the programs we seek to address. This is not the only state in which this is possible, however; Wisconsin may be another example. Based on our prior discussions with the Bureau (pre-dating the October 29 meeting with staff) and what we understand to be other providers’ practices, we presume that an IP CTS provider may participate in these programs without violating the recently adopted prohibitions on incentives for hearing-health providers to recommend IP CTS, so long as the provider complies with the rules, practices, and procedures established by each particular government-run program. Should the Commission disagree, CaptionCall requests that the Commission promptly provide express guidance so that providers and government-supported equipment distribution programs can adjust their practices accordingly. We would, of course, promptly adhere to any Commission-issued guidance.

¹ See Letter from John T. Nakahata, counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24; 03-123, (Oct. 31, 2013).

² See *id.* at 3.

The Texas Specialized Telecommunication Assistance Program (“STAP”) issues vouchers that allow disabled individuals to obtain assistive equipment necessary for use of the telephone.³ If, for example, the consumer is blind, he or she can receive vouchers for braille telecommunications equipment. If a consumer is hard-of-hearing, he or she can receive vouchers for amplified or captioned telephones. Deaf or hard-of-hearing consumers wishing to obtain a voucher must submit to the Department of Assistive and Rehabilitative Services (“DARS”) an application accompanied by a professional certification of disability, which can be issued by a (1) Hearing Aid Fitter and Dispense; (2) Audiologist, (3) Speech Pathologist; (4) Social Worker; (5) Physician; (6) Teacher of Blind and Visually Impaired, Deaf and Hard of Hearing, Speech Impaired, or Special Education; (7) DARS Rehabilitation Counselor; (8) DHHS-Approved Resource Specialist or STAP Specialist; (9) DHHS-Approved State or Federal Employee; or (10) DHHS-Approved State or Federal Contractor.⁴ If the consumer properly completes the application and provides the required proof of disability, he or she receives a voucher for the type of equipment requested.

The Texas program maintains a list of “allowable equipment” that consumers can obtain with their vouchers.⁵ In addition, the Texas program maintains a database of registered vendors who can distribute the “allowable equipment.”⁶ Thus, consumers must submit their vouchers only to approved vendors and can obtain only approved equipment. The program, however, does not appear to restrict who can be a vendor, which means that a hearing-health professional can become an approved vendor.

Each voucher has a maximum value, which ranges from \$50 for a ring signaler to \$6,395 for a braille telecommunication device.⁷ Vendors must invoice the consumer a price for equipment, and the invoiced price can be up to 125% of the equipment’s MSRP, but the price cannot exceed the price charged to the general public.⁸ If the invoiced price is below the voucher’s maximum value, then the consumer pays nothing for the equipment. If, however, the price exceeds the voucher’s maximum value, then the consumer is responsible for the difference. For example: the maximum voucher amount for a captioned telephone is \$107.⁹ If a vendor sells a captioned telephone for \$100, then the customer can submit a captioned-telephone voucher as payment in full. If, however, the vendor sells the captioned telephone for \$120, then the consumer must submit both the voucher and an additional \$13 as payment for the equipment.

³ See <http://www.dars.state.tx.us/dhhs/stap.shtml>.

⁴ See <http://www.dars.state.tx.us/dhhs/forms/dars3906.doc>.

⁵ See <https://www.staptexas.org/Login/equipmentlist.aspx>.

⁶ See <https://www.staptexas.org/Login/vendorsearchrpt.aspx>.

⁷ See <http://www.dars.state.tx.us/dhhs/vouval.shtml>.

⁸ See <http://www.dars.state.tx.us/dhhs/pucvendorguidelines.pdf> at § V. A.

⁹ See <http://www.dars.state.tx.us/dhhs/vouval.shtml>.

Once the vendor receives the voucher, he or she submits it to the STAP administrator along with a reimbursement request.¹⁰ The vendor does not automatically receive reimbursement for the voucher's maximum value. Rather, the vendor's reimbursement will equal the amount invoiced to the consumer, up to the voucher's maximum value. The vendor's reimbursement, however, does not appear to be limited by the vendor's cost of acquiring the commitment from the manufacturer. Thus, if the vendor's reimbursement is higher than its acquisition costs, the vendor will earn a margin on the distribution of the covered equipment.

As mentioned above, the STAP program does not appear to prohibit hearing-health professionals from participating as vendors. Thus, if a hearing-health professional participates as a vendor in this program, he or she could earn a margin from the distribution of IP CTS equipment. For example, STAP currently lists the Ultratec CapTel 800 captioned telephone as an approved piece of equipment, with an MSRP of \$99.¹¹ STAP also lists the maximum value of a captioned telephone voucher as \$107.¹² If a hearing-health professional invoices the phone for \$99 to a STAP participant and receives a voucher as payment, the professional will be eligible for reimbursement of the full \$99 price, while the consumer pays nothing. But if the hearing-health professional obtained the equipment from the IP CTS provider for \$75, the professional will net \$24, which could be viewed as an "indirect incentive" for the professional to recommend IP CTS equipment.

We understand from prior discussions that the Bureau intended for state-run equipment distribution programs to have a broad exemption from the new IP CTS rules. Accordingly, we seek clarification that CaptionCall may participate in a program structured like STAP, when providing IP CTS equipment to a distributor who is also a hearing health professional at a wholesale price below the voucher's maximum value and the vendor's invoiced price.

¹⁰ See <http://www.dars.state.tx.us/dhhs/pucvendorguidelines.pdf> at § VI.

¹¹ See <https://www.staptexas.org/Login/equipmentlist.aspx> at 11.

¹² See <http://www.dars.state.tx.us/dhhs/vouval.shtml>.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Nakahata
Counsel to CaptionCall, LLC

cc: Kris Monteith
Karen Peltz Strauss
Gregory Hlibok
Eliot Greenwald
Robert Aldrich
Elaine Gardner