

August 4, 2014

Ex Parte

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 July 31, 2014, on behalf of Sorenson Communications, Inc. and CaptionCall, LLC (collectively “CaptionCall”), Walter Anderson of Harris, Wiltshire & Grannis LLP and I spoke by telephone with Eliot Greenwald, Attorney Advisor in the Disability Rights Office of the Consumer and Government Affairs Bureau. We discussed the Commission’s approach to IP CTS caption settings in the wake of the D.C. Circuit’s opinion vacating the default-off rule. We agree that the court did not vacate the requirement for a provider to permit a user to turn captions on during a call.<sup>1</sup> We emphasized that is also essential that, at minimum, IP CTS providers be required to allow consumers to turn captions on and off during a call. It is a logical extension of the current rules to require that consumers be able to captions off during a call as well.

Such a requirement both benefits consumers and protects the integrity of the TRS Fund. Consumers will benefit because, if a call begins with captions turned off, the hard-of-hearing consumer can activate the captions if they need to in order to understand the other party to the

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<sup>1</sup> See 47 C.F.R. § 64.604(c)(10)(ii) (“Each IP CTS provider shall ensure that each IP CTS telephone they distribute, directly or indirectly, shall include a button, icon, or other comparable feature that is easily operable and requires only one step for the consumer to turn on captioning.”). This rule was part of the recently vacated default-off rule, which required that captions be set to off at the beginning of each call. (The D.C. Circuit, however, did not vacate this particular provision.) Thus, to comply with this rule, consumers had to be able to activate captions *during* the call—otherwise, captions would be set to “on” at the beginning of the call, which would violate the rule. Turning captions on during the call is also essential to the Commission’s intent that captions be used only when needed—which a user may determine during the call. See *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118, 28 FCC Rcd. 13,420, 13,468 ¶ 101 n.326 (2013) (“Because a critical component of a rule requiring captions to be defaulted to off is the ability to turn them on when needed, the Commission is adopting a regulation to ensure that is the case.”).

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call. On the other hand, the requirement will protect the integrity of the TRS Fund because, if a hard-of-hearing consumer decides that he or she does not need captions during a particular call, he or she can turn captions off, which would eliminate Fund expenditures for unnecessary IP CTS minutes of use.

We also informed Mr. Greenwald that, in a litigation currently pending in the United States District Court for the Western District of Wisconsin, Ultratec has asserted that its patents exclude other providers from providing any function that allows consumers to enable or disable captions during a call. Though we believe these patents are invalid, we emphasized that, Ultratec's litigation position notwithstanding, it is critical both for consumers and the TRS Fund that the FCC require IP CTS telephones to allow consumers to turn captions on and off during a call.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", written in a cursive style.

John T. Nakahata  
*Counsel to CaptionCall, LLC*

cc: Eliot Greenwald