

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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| In the Matter of |) | |
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| 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 OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) issued by the Federal Communications Commission (“Commission”) in the above-referenced proceedings.¹ In the *FNPRM*, the Commission seeks comment on whether it should adopt changes to the current rate methodology for Internet Protocol Captioned Telephone Service (“IP CTS”) in light of the “unprecedented and unusually rapid growth” of IP CTS over the past year,² growth that “is expected to continue and even accelerate.”³

¹ *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 03-123, Report and Order and Further Notice of Proposed Rulemaking (rel. Aug. 26, 2013) (“*R&O*” or “*FNPRM*,” as appropriate).

² *FNPRM* at ¶ 118.

³ See *id.* (referencing Rolka Loube Saltzer Associates, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed May 1, 2013)).

ITTA commends the Commission for its efforts to stem the growth of IP CTS costs, including its recent adoption of permanent reforms to address questionable IP CTS marketing practices and ensure that only eligible consumers use the service.⁴ The Commission should continue to build on these efforts by adopting a rate methodology for IP CTS that is “designed to fairly compensate providers for their ‘reasonable’ actual costs of providing service, and that will result in predictability” for IP CTS providers.⁵ In addition, the Commission should consider instituting a cap to constrain the growth of IP CTS and the overall Telecommunications Relay Services (“TRS”) Fund.

IP CTS and other forms of TRS are vital to many Americans with disabilities and ITTA’s members take very seriously their responsibility to support communications access for those who need such services to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. However, we share the Commission’s concern regarding the threat to the TRS Fund caused by the dramatic growth of IP CTS, which “puts all forms of TRS in jeopardy and threatens to deprive people who are deaf or hard of hearing of the benefits of the program.”⁶

ITTA and its members applaud the Commission for adopting permanent mechanisms to address improper practices related to the provision and marketing of IP CTS. These measures,

⁴ Among other things, these measures: (1) prohibit all referrals for rewards programs to induce consumers to use IP CTS; (2) require each IP CTS provider to register and certify the eligibility of all new IP CTS users in order to receive compensation from the Fund; and (3) require IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. *See R&O* at ¶ 3.

⁵ *FNPRM* at ¶ 120.

⁶ *In the Matter of 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, Order and Notice of Proposed Rulemaking, ¶ 6 (rel. Jan. 25, 2013) (“*IP CTS Order*”).

which include a prohibition on referrals-for-rewards programs in connection with IP CTS use and establishment of certain eligibility requirements for IP CTS users, have already resulted in substantial reductions in the growth of IP CTS subscriptions.⁷ While these measures should address a significant portion of growth in the TRS Fund and reduce TRS disbursements while protecting the “programmatic, legal, and financial integrity of the TRS program,”⁸ the Commission must take additional steps consistent with its duty to ensure that TRS services like IP CTS “are provided efficiently and that providers are compensated for their reasonable actual costs.”⁹

ITTA urges the Commission to adopt a rate methodology for IP CTS that compensates IP CTS providers for their actual, reasonable costs of providing such service. Currently, the FCC uses the Multi-state Average Rate Structure Plan (“MARS Plan”) to establish IP CTS rates, which calculates compensation rates for IP CTS using a weighted average of competitively bid state rates for intrastate PSTN-based CTS.¹⁰ Unfortunately, this approach produces rates that are only as accurate as providers’ projected minutes of use and costs.¹¹ This system also creates incentives for 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.¹²

⁷ Letter from John T. Nakahata, Counsel for Sorenson Communications, Inc., to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, 3 (filed May 10, 2013).

⁸ *IP CTS Order* at ¶ 8.

⁹ *FNPRM* at ¶ 117 (quoting *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 21 (2007) (“*2007 TRS Rate Methodology Order*”)).

¹⁰ *See id.* at ¶ 113.

¹¹ *See id.* at ¶ 114.

¹² *See id.*

The current IP CTS rate methodology also does not take into account recent and dramatic changes in the IP CTS marketplace. When the Commission adopted the MARS Plan in 2007, IP CTS was a nascent service provided by a single company.¹³ Over the past several years, IP CTS has experienced unprecedented and unusually rapid growth while PSTN-based CTS use has declined.¹⁴ The competitive landscape for IP CTS also has changed significantly as various new entrants have joined the IP CTS market.¹⁵ In addition, the consumer market for IP CTS services is essentially limitless.¹⁶ Virtually anyone who has hearing loss can utilize IP CTS services to obtain functionally equivalent telephone communication.¹⁷ All of these factors call into question the Commission’s continued reliance on a methodology that uses PSTN-based CTS rates to determine IP CTS compensation rates.

Given that the Commission’s “mandate in determining [IP CTS] rates is to ensure that the rates correlate to actual reasonable costs and that the *process* of determining the rates is fair, efficient, and predictable,”¹⁸ the Commission should adopt a rate methodology for IP CTS that calculates rates based on providers’ actual, reasonable costs.¹⁹ The Commission also should consider implementing a cap with respect to IP CTS to keep the TRS Fund within a defined budget. Taking these steps to build on the Commission’s previous reforms would provide

¹³ *Id.* at ¶ 118.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *2007 TRS Rate Methodology Order* at ¶ 21 (emphasis in original).

¹⁹ The Commission also should adopt a “true-up” mechanism as part of the new IP CTS rate methodology to further ensure that TRS disbursements reflect providers’ actual, reasonable costs of providing IP CTS service. *See FNPRM* at ¶ 127.

additional stability and predictability and support the continued availability of IP CTS while protecting the programmatic, legal, and financial integrity of the TRS Fund.

Respectfully submitted,

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