

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters 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 OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceedings on additional changes to the rules and compensation structure for the IP Captioned Telephone Service (IP CTS) program to enable the Commission to more effectively and efficiently administer and support the service.¹

I. INTRODUCTION AND SUMMARY

The members of ITTA provide a broad range of high-quality wireline and wireless voice, broadband, video, and other communications services on a wholesale and retail basis to residential and business customers in predominantly rural areas across nearly all 50 states. ITTA members contribute to the Telecommunications Relay Services (TRS) Fund based on a

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 18-79 (June 8, 2018) (*IP CTS Reform R&O and/or FNPRM*). See *Consumer and Governmental Affairs Bureau Announces Comment Deadlines for Internet Protocol Captioned Telephone Service Further Notice of Proposed Rulemaking and Notice of Inquiry*, Public Notice, DA 18-756 (CGB July 23, 2018) (comments on *FNPRM* portion of FCC 18-79 due September 17, 2018).

percentage of their interstate and international end-user revenues, as reported on FCC Forms 499-A and 499-Q. IP CTS and other forms of TRS are vital to millions of deaf and hard-of-hearing Americans and Americans with speech disabilities, and ITTA members take very seriously their responsibility to support access to such services for those who need them to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users.

Nearly five years ago, ITTA commented in these proceedings on the further notice of proposed rulemaking that finally has led to the *IP CTS Reform R&O*.² In those comments, ITTA shared the Commission's concern regarding the threat to the TRS Fund caused by the sudden, dramatic surge in growth of IP CTS, and urged the Commission to build on measures adopted in the report and order accompanying the *2013 IP CTS FNPRM*. Specifically, ITTA advocated that the Commission adopt a rate methodology for IP CTS that is designed to compensate providers for their actual reasonable costs of providing service, and also suggested that the Commission consider instituting a cap for IP CTS.

ITTA applauds the actions taken by the Commission in the *IP CTS Reform R&O* to bring much-needed reforms to IP CTS. There, the Commission adopted interim IP CTS compensation rates that will save the TRS Fund approximately \$399 million over two years while delivering more than reasonable compensation to IP CTS providers,³ adopted rules to limit unnecessary IP CTS use, and approved use of automatic speech recognition (ASR) to generate IP CTS captions,

² See ITTA Comments, CG Docket Nos. 13-24 and 03-123 (Oct. 18, 2013) (ITTA 2013 IP CTS FNPRM Comments) (addressing *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 (2013) (*2013 IP CTS FNPRM*)).

³ This does not necessarily mean that the TRS Fund size will decrease. Rather, it will not continue to increase to the degree it would have but for adoption of the interim IP CTS compensation rates. See *IP CTS Reform R&O and FNPRM* at 17, para. 26 n.92.

thereby taking advantage of technological advances to modernize IP CTS in a manner that will facilitate efficiencies as its usage increases.⁴

As discussed below, while these actions are a good start, much more is needed to bring IP CTS compensation rates and the impact of IP CTS on the size of the TRS Fund to a reasonable level. The Commission must continue its efforts to bring IP CTS compensation rates down to providers' actual reasonable costs. It also must adopt further safeguards to eliminate and prevent waste, fraud, and abuse in the IP CTS program. Furthermore, it should establish rates for use of ASR to generate IP CTS captions that incent providers to migrate to use of that much more efficient technology. The Commission also should consider imposition of an overall budget cap on IP CTS.

II. THE COMMISSION MUST BUILD UPON THE REFORMS IT ADOPTED IN THE *IP CTS REFORM R&O*

Fundamentally, ITTA reiterates what it advocated five years ago: in light of the continued exponential growth of IP CTS and the consequential threat it poses to sustainability of the TRS Fund, the Commission must adopt a rate methodology for IP CTS that compensates providers only for their actual reasonable costs of providing service. The Commission must also take other actions to temper the impact of IP CTS on the size of the TRS Fund, such as adopting measures to thwart waste, fraud and abuse associated with IP CTS, and promoting the use of ASR. All of these initiatives are necessary to comply with the statutory directive that the Commission ensure that TRS is available “in the most efficient manner.”⁵ Like Chairman Pai, ITTA is “aiming for an IP CTS framework that stretches scarce federal dollars as far as possible to meet the needs of Americans with hearing loss.”⁶

⁴ *See id.* at 3, para. 1.

⁵ 47 U.S.C. § 225(b)(1).

⁶ *Id.* at 96, Statement of Chairman Ajit Pai (Chairman Pai Statement).

The size of the TRS Fund is astonishing. Prior to adoption of the *IP CTS Reform R&O* and the interim IP CTS compensation rates for the next two fund years, Rolka Loube estimated that the net fund cash requirement for TRS Fund Year 2018-19 would exceed \$1.6 billion.⁷ This would have been a 23 percent increase in TRS Fund size over the 2017-18 TRS Fund Year. It also would have resulted in a 33 percent increase in the TRS Fund contribution factor in one year.⁸ Even after factoring in the interim IP CTS compensation rate for TRS Fund Year 2018-19, the funding requirement for this fund year is still approximately \$1.5 billion, representing a 14 percent increase in TRS Fund Size over the 2017-18 TRS Fund Year, and a corresponding 23 percent increase in the TRS Fund contribution factor in one year.⁹ Placed in additional context, the funding requirement for the 2011-12 TRS Fund Year was \$740 million,¹⁰ meaning the Fund size has more than doubled in six years.¹¹

IP CTS plays the leading role in these radical increases.¹² From 2011 to 2017, annual IP CTS minutes grew from 29 million to 363 million.¹³ As Commissioner Carr observed, the

⁷ Rolka Loube Associates, *Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51, at 6 (filed May 4, 2018) (2018 TRS Rate Report). Rolka Loube is the TRS Fund Administrator.

⁸ *See id.* at 7 n.7.

⁹ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 18-680, at 2, para. 4 (CGB June 29, 2018).

¹⁰ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 26 FCC Rcd 9972, 9973, para. 2 (2011).

¹¹ For further comparison, the funding requirement for the 2013-14 TRS Fund Year was \$996 million. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 28 FCC Rcd 9219, 9220, para. 4 (CGB 2013) (*2013 TRS Rates Order*).

¹² Prior to adoption of the *IP CTS Reform R&O* and the interim IP CTS compensation rates, IP CTS was set to account for almost 80 percent of the total minutes compensated by the TRS Fund, and \$1 billion in payments to IP CTS providers from the TRS Fund. *See IP CTS Reform R&O and FNPRM* at 2, 5-6, paras. 1, 8. As a result of adoption of the interim IP CTS compensation

(continued...)

projected IP CTS costs of nearly \$1 billion stood in contrast to \$400 million just two years earlier.¹⁴ Even after application of the interim IP CTS compensation rate reduction for TRS Fund Year 2018-19, IP CTS payments are predicted to more than double in just two years.

The result of these eye-popping figures is that “[a]s IP CTS usage continues to grow and the contribution base supporting the TRS Fund shrinks, potential waste in this program poses an ever-increasing threat to the sustainability of IP CTS and all forms of TRS.”¹⁵ This is why the very first sentence of the *IP CTS Reform R&O and FNPRM* emphasizes that this proceeding proposes measures to ensure that IP CTS “remains sustainable for those individuals who need it.”¹⁶ And the *IP CTS Reform R&O and FNPRM* clearly suggests that the entire TRS program hangs in the balance.¹⁷ The potential implications for millions of deaf and hard-of-hearing Americans and Americans with speech disabilities are critical.

The ramifications for contributors to the TRS Fund, such as ITTA’s members, are also quite significant. As Rolka Loubé found, “[b]ecause both industry profits and the profits of the highest cost provider are excessive, retaining the current [IP CTS ratemaking methodology] places an unreasonable burden on contributors to the fund.”¹⁸ As demonstrated above,

(Continued from previous page)—————
rates, projected TRS Fund Year 2018-19 IP CTS expenditures will be approximately \$875 million.

¹³ *See id.* at 5, para. 8.

¹⁴ *See id.* at 100, Statement of Commissioner Brendan Carr.

¹⁵ *Id.* at 2-3, para. 1.

¹⁶ *Id.* at 2.

¹⁷ *See id.* at 6, para. 8 (“the end-user telecommunication revenue base from which IP CTS and other forms of TRS are supported is steadily declining, raising the threat that over the long term, ever-increasing levels of contribution may not be sustainable”); 37, para. 68 (“payments to TP CTS providers from the TRS Fund . . . are putting ever increasing pressure on a declining TRS Fund contribution base—pressure that sooner or later, if unchecked, will threaten the viability of the TRS program itself”).

¹⁸ 2018 TRS Rate Report at 20. *See IP CTS Reform R&O and FNPRM* at 16, para. 24 (acknowledging “the need to . . . reduce the TRS Fund contribution burden”).

notwithstanding the interim IP CTS compensation rates for 2018-19, the contribution factor is still expanding at an alarming trajectory. Accounting for the continued projected growth in IP CTS minutes absent successful measures to substantially diminish waste, fraud, and abuse,¹⁹ the contribution factor will continue to inflate even in the face of the further interim IP CTS compensation rate reductions in TRS Fund Year 2019-20.

Fortunately, as it should in a proceeding captioned “Misuse of Internet Protocol (IP) Captioned Telephone Service,” the Commission appears to recognize that abatement of waste, fraud, and abuse, in conjunction with diminution of the compensation rates and other initiatives, is an essential component of addressing the TRS Fund’s heft. In the first sentence of the *IP CTS Reform FNPRM*, the Commission establishes that it is proposing further changes to the rules and compensation structure for IP CTS “to enable [the Commission] to more effectively and efficiently administer and support this service and prevent waste, fraud, and abuse.”²⁰ This builds upon actions taken in the *IP CTS Reform R&O*, whereby the Commission specifically sought to prevent providers engaging in fraudulent, abusive, and wasteful practices “before they occur.”²¹ The Commission also declares its goals to “eliminate provider practices that are designed to promote IP CTS by individuals who do not need this services” and to “reduce the underlying incentives contributing to such practices—so that they do not re-surface in other forms.”²² In order to effectuate these goals, among its proposals is to “reduce the risk of

¹⁹ See *IP CTS Reform R&O and FNPRM* at 17, para. 26 n.92.

²⁰ *Id.* at 37, para. 67. See also *id.* at 70, para. 157 (identifying that one of the “primary goals for the IP CTS program should be . . . to improve the efficiency of IP CTS, and reduce the incidence of waste, fraud, and abuse”).

²¹ *Id.* at 26-27, para. 44. See also *id.* at 27, para. 45 (describing the actions taken).

²² *Id.* at 7, para. 11.

providers signing up ineligible customers and encouraging IP CTS usage regardless of a consumer's need for the service.”²³ ITTA wholeheartedly supports these proposals.

Consistent with its prior advocacy, ITTA also enthusiastically supports the Commission's companion proposals to effectuate these goals of replacing the prior IP CTS rate methodology with a fair and efficient compensation approach, and moving the IP CTS provider compensation rate to a cost-based level.²⁴ These proposals acknowledge that addressing the IP CTS compensation rate structure beyond the actions the Commission already has taken in the *IP CTS Reform R&O* is the other critical component of IP CTS reform.²⁵ ITTA reiterates its request that the Commission adopt a rate methodology for IP CTS that compensates IP CTS providers for their actual reasonable costs of providing such service.²⁶

ITTA observes with chagrin that the current state of TRS Fund bloat due to IP CTS is déjà vu, with the Commission having been forced to address highly similar problems in the context of Video Relay Services (VRS) earlier this decade. While it would have been preferable for the Commission to have taken and proposed further actions earlier to safeguard the welfare of the TRS Fund, TRS consumers, and TRS Fund contributors, ITTA is heartened, however, that the Commission recognizes the analogy to the trials and tribulations it experienced with VRS,

²³ *Id.* See also, e.g., *id.* at 64, para. 139 (seeking comment on measures to ensure that accurate information about IP CTS is being imparted by providers to consumers, the importance of which is heightened by use of IP CTS predominantly by seniors, “as they may be particularly vulnerable to schemes that could result in fraud and abuse”); 66, para. 145 (seeking comment on components of an IP CTS provider's public relations, marketing, media planning, product pricing and distribution, or sales strategy that could lead to waste, fraud, and abuse in the IP CTS program, and what rules the Commission should adopt to halt such practices).

²⁴ See *id.* at 7, 15, paras. 11, 24.

²⁵ See *id.* at 37, para. 69 (“we seek comment on how to set IP CTS compensation rates following this interim period, to allow recovery of reasonable provider costs and ensure that IP CTS is provided in the most efficient manner”).

²⁶ See, e.g., ITTA 2013 IP CTS FNPRM Comments at 3.

and is viewing the need for initiatives in that context.²⁷ As part and parcel of such recognition, the Commission properly draws numerous comparisons between the two services.²⁸

Notably, in 2013, Rolka Loube projected a fund requirement for TRS Fund Year 2013-14 of over \$1.5 billion.²⁹ During the two-month interim between Rolka Loube's submission of its projections and the deadline for establishing rates for TRS Fund Year 2013-14, the Commission released an order adopting significant further reforms to VRS practices and rate structures.³⁰ As a result, the modified fund requirement for TRS Fund Year 2013-14 plummeted to just under \$1 billion.³¹ The Commission should be emboldened by this precedent, and take similarly aggressive further action in this docket to rein in IP CTS.

III. THE COMMISSION SHOULD FURTHER LOWER IP CTS COMPENSATION RATES

As Rolka Loube stated, the IP CTS compensation rate prior to adoption of the *IP CTS Reform R&O* “provide[d] excessive industry profits.”³² Recognizing that the IP CTS compensation rate for TRS Fund Year 2017-18 exceeded average 2017 IP CTS expenses by approximately 58 percent, the Commission concluded that it was “therefore necessary to realign

²⁷ See, e.g., *IP CTS Reform R&O and FNPRM* at 15, para. 24 (referencing “the analogous context of VRS”); 5, para. 7 (“As the Commission has done for other forms of Internet-based TRS, this item takes initial steps and asks about others needed to transform the structure and support of IP CTS to make this service more efficient and effective.”) (citing several orders addressing VRS).

²⁸ See, e.g., *id.* at 15, para. 23 (referencing “the service sector similarities between VRS and IP CTS”); 16, para. 24 n.86 (“there are also significant similarities . . . that justify looking to the VRS context for guidance. And for both services, the compensation rates have trended above provider costs over time in similar ways.”).

²⁹ See *2013 TRS Rates Order*, 28 FCC Rcd at 9220, para. 4.

³⁰ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure, Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 8618 (2013).

³¹ See *2013 TRS Rates Order*, 28 FCC Rcd at 9220, para. 4.

³² 2018 TRS Rate Report at 20.

the IP CTS compensation rate to correlate to actual reasonable costs for this service.”³³ As a result, the Commission imposed lowered interim IP CTS compensation rates for TRS Fund Years 2018-19 and 2019-20. In so doing, it noted that the successive 10 percent annual reductions it adopted for those two Fund Years is comparable to analogous reductions made in the VRS context.³⁴ It also recounted that the Commission’s 2010 VRS rate reductions moving toward, but not all the way to, cost-based levels were upheld on judicial review, as were its 2013 VRS “glide path” rate reductions.³⁵ Further, it indicated that the interim IP compensation rate reductions adopted in the *IP CTS Reform R&O* are more gradual than the “mid-point”-based VRS rate adjustments that the court of appeals found reasonable in *Sorenson 2011*.³⁶

Another rationale proffered in the *IP CTS Reform R&O* for the successive 10 percent annual compensation rate reductions it adopted for TRS Fund Years 2018-19 and 2019-20 was that they would allow IP CTS providers’ operating margins to be in the same “zone of reasonableness” that applies to VRS providers, and that this zone of reasonableness is also appropriate for setting interim IP CTS rates given the service sector similarities between VRS and IP CTS.³⁷ This zone of reasonableness encompasses operating margins between 7.6 percent and 12.35 percent.³⁸ Yet, by the Commission’s admission, the interim compensation rates it adopted for IP CTS allow recovery of average expenses plus operating margins that are well

³³ *IP CTS Reform R&O* at 11, para. 18.

³⁴ *See id.* at 16, para. 24.

³⁵ *See id.* at n.86 (citing *Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (10th Cir. 2011) (*Sorenson 2011*) and *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014)). Subsequent to release of the *IP CTS Reform R&O and FNPRM*, the Court of Appeals for the District of Columbia Circuit denied Sorenson’s appeal of a 2017 Commission order extending the VRS rate structure for four more years. *Sorenson Communications, LLC v. FCC*, No. 17-1198 (D.C. Cir. July 24, 2018) (*Sorenson 2018*).

³⁶ *IP CTS Reform R&O* at 16, para. 24 n.86.

³⁷ *See id.* at 14-15, para. 23.

³⁸ *See id.* at 14.

above the high end of the zone reasonableness.³⁹ At the same time, the continued growth in demand for IP CTS generates economies of scale for providers.⁴⁰

Against this backdrop, ITTA's rate-of-return members were subject to a longstanding rate of return on investment of 11.25 percent, which has been reprised to 9.75 percent.⁴¹ In reprising the rate of return – which, in order to be reasonable, could not produce excessive rates at the expense of the ratepayer -- the Commission first defined the zone of reasonableness within which reasonable rates could fall, and then selected a rate of return from within that zone.⁴² The Commission expanded the upper end of the zone of reasonableness to 9.75 percent to “provide an additional cushion for rate-of-return incumbent [local exchange carriers] that may have a relatively high cost of capital.”⁴³ In other words, the 9.75 percent rate of return to which rate-of-return carriers will be subject has a cushion built in to accommodate carriers with relatively high cost of capital; in contrast, the interim compensation rate for TRS Fund Year 2019-20 has a cushion of nearly double the top end of the IP CTS zone of reasonableness, which is already 25 percent higher than the rate of return, layered on top of it.⁴⁴

³⁹ *See id.* at 15, para. 24 n.83. Specifically, “the interim rates allow a substantial cushion for recovery of average operating margins (23.4% for the [TRS Fund Year 2019-20] interim rate of \$1.58) that are much higher than the top end of the VRS zone of reasonableness.” *Id.* at para. 23 n.81.

⁴⁰ *See* 2018 TRS Rate Report at 22.

⁴¹ *See Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3212, para. 326 (2016) (*2016 Rate-of-Return Reform Order*). As of July 1, 2018, the authorized rate-of-return is 10.5 percent. *See id.*

⁴² *See id.* at 3208-09, para. 319.

⁴³ *Id.* at 3209, para. 321.

⁴⁴ *See supra* note 39.

The *IP CTS Reform R&O* distinguishes the operating margin approach, on which the IP CTS (and VRS) zone of reasonableness is based,⁴⁵ from a rate of return on the grounds that “an operating margin approach addresses providers’ concerns that, because substantial plant investment is not necessary to provide TRS, an allowed profit margin based on the telephone industry model of return on investment may generate insufficient profits to attract significant long-term investment in TRS companies.”⁴⁶ Regardless, however, of how the telephone industry rate of return and TRS operating margins are derived, conceptually, both are addressing profit margins.⁴⁷ Therefore, ITTA finds it difficult to follow any logic that requires drawing out the transition of IP CTS provider operating margins to 12.35 percent or anything within a couple of percentage points of that.

In that regard, ITTA responds in the negative to the *IP CTS Reform FNPRM*’s query of whether the Commission should extend the interim rate “glide path” to actual reasonable cost-based rates in order to limit the short-term potential for disruption of service to consumers.⁴⁸ As an initial matter, avoiding disruption to consumers through potential upheaval in the IP CTS market was the primary rationale for the Commission’s adoption of a glide path to begin with.⁴⁹ Perpetuating that rationale would lead to Zeno’s Paradox, where the compensation rates would never actually reach cost-based rates.

⁴⁵ The *IP CTS Reform FNPRM* solicits comment on whether there are any material differences between VRS and IP CTS that would justify a different zone of reasonableness for IP CTS than the one previously established for VRS. See *IP CTS Reform R&O and FNPRM* at 42-43, para. 82. ITTA cannot conjure any.

⁴⁶ *Id.* at 14, para. 23 n.77.

⁴⁷ Compare *id.* (likening the IP CTS and VRS operating margin approach to “an allowed profit margin”) with *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3171, para. 226 (“A rate of return higher than necessary to attract capital to investment results in excessive profit for rate-of-return carriers”).

⁴⁸ See *IP CTS Reform R&O and FNPRM* at 44, para. 87.

⁴⁹ See *id.* at 15-16, para. 24.

Furthermore, although avoiding disruption to consumers is certainly a worthwhile goal, it is difficult to envision circumstances where IP CTS providers, having until two months ago enjoyed a profit margin as high as 58 percent and at least significantly upward of 12.35 percent, could be reasonably in jeopardy of going out of business. And with the service being available nationwide, combined with the fact that there are five nationwide IP CTS providers,⁵⁰ the prospect of consumers experiencing a service disruption of any meaningful duration even in the unlikely event of their service provider ceasing or curtailing operations when forced to accept an operating margin within the zone of reasonableness is even more incredible.⁵¹ Therefore, rather than continuing to lavish IP CTS providers with windfall profits at the expense of ratepayers, the only reasonable approach is for the Commission to bring compensation rates down to cost-based levels plus a return within the IP CTS zone of reasonableness by TRS Fund Year 2020-21. Concomitantly, “the fact that costs have been substantially lower than previously thought”⁵² --

⁵⁰ *See id.* at 49, para. 103 (“the goal of nationwide availability has been fully achieved, IP CTS is offered by five competing providers . . . and the service is used extensively nationwide”).

⁵¹ The *IP CTS Reform FNPRM* suggests that it is cognizant of “ensur[ing] a reasonable level of certainty and predictability for IP CTS providers.” *See id.* at 44, para. 87. ITTA notes that, in contrast to administration of the federal universal service program, certainty and predictability are not values embedded within the ambit of Section 225 of the Communications Act of 1934, as amended. *But see* 47 U.S.C. § 254(b)(5) (universal service support mechanisms should be “specific” and “predictable”). Although safeguarding such values for IP CTS providers is certainly understandable as a matter of policy, and arguably could be extrapolated as tangential to Section 225’s requirement that the Commission ensure that TRS is “available, to the extent possible,” 47 U.S.C. § 225(b)(1), Section 225 does explicitly provide, however, that the Commission must ensure that TRS is available “in the most efficient manner.” *Id.* In ITTA’s view, it strains credulity to the claim that the current cost structure for IP CTS, even as modified on an interim basis in the *IP CTS Reform R&O*, satisfies that standard, with average operating margins still exceeding 23 percent in TRS Fund Year 2019-20. *Accord 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3171, para. 226 (a higher than necessary rate of return “inefficiently distorts carrier operations, resulting in waste”).

⁵² *IP CTS Reform R&O and FNPRM* at 44, para. 87.

i.e., IP CTS providers have been enjoying significantly larger profit margins than previously thought – unequivocally militates towards making the remaining glide path as short as possible.⁵³

ITTA would not object to the Commission setting IP CTS compensation rates based on average costs. As the *IP CTS Reform FNPRM* appropriately depicts, the weight of Commission precedent in TRS rate structuring strongly favors applying to IP CTS the paradigm of a single rate based on average costs.⁵⁴ Any “resulting pressure on less efficient providers”⁵⁵ is fully in accord with the statutory directive that TRS be provided in the most efficient manner.⁵⁶

Relatedly, the *IP CTS Reform FNPRM* relays how the Commission has found numerous times in the past in various contexts that the use of a single rate based on average costs “creates strong incentives for TRS providers to offer high quality innovative services at reasonable cost.”⁵⁷ Recognizing the benefits of an incentives component to this method of establishing a single rate is in accord with the Commission’s promotion of incentive regulation. For instance, “[t]he Commission has consistently acknowledged that incentive regulation can foster

⁵³ Similarly, if the Commission determines, based on the record on *IP CTS Reform FNPRM*, that some costs have been incorrectly reported or are otherwise not “reasonable” for TRS Fund recovery, ITTA supports the Commission adjusting the interim compensation rates to take account of such determinations. *See id.* at 43, para. 84 (seeking comment on this scenario). As ITTA asserts above, fundamentally, the Commission must bring IP CTS compensation rates down to providers’ actual reasonable costs of providing the service. *See supra* at 3.

⁵⁴ *See id.* at 44, para. 88.

⁵⁵ *Id.*

⁵⁶ In *Sorenson 2018*, the court described how the Commission had rejected Sorenson’s proposal of setting a single, uniform rate for all providers, because it would lead to a choice between two inefficient options: either force all of the smaller VRS providers out of the market, or provide windfall profits to Sorenson. *See Sorenson 2018* at 11. As ITTA maintains above, however, *see supra* at 12, in the case of IP CTS, setting a lower uniform rate correlating with average actual reasonable costs, and having already done so on a glide path, should not lead to the elimination of any provider.

⁵⁷ *IP CTS Reform R&O and FNPRM* at 44, para. 88 (citations omitted).

appropriate incentives for carriers to be efficient and to innovate.”⁵⁸ As the Commission elaborated, “incentive regulation encourages carriers to be efficient by granting them at least a share of profits obtained from cost reductions.”⁵⁹ Notwithstanding precedent involving average costs, in order to hew even closer to Section 225’s call that IP CTS be provided in the most efficient manner, the Commission should consider setting the compensation rate equal to the costs of the lowest-cost provider or, at most, the second-lowest-cost provider.⁶⁰

ITTA supports the Commission continuing to use a weighted average of historical and projected costs in setting compensation rates for IP CTS, as it did with the interim rates.⁶¹ Given the analogies between IP CTS and VRS,⁶² the Commission’s assessment that this blended approach is a reasonably accurate predictor of actual VRS costs is persuasive.⁶³ ITTA also shares the Commission’s concerns regarding the extent to which projected costs constitute a reliable basis for setting TRS compensation rates.⁶⁴ The Commission should heed its empirical observations about the oft-dubious reliability of only evaluating projected costs,⁶⁵ and utilize the blended approach of historical and projected costs. Moreover, as a matter of fairness, the Commission should allow adjustment of the compensation rate based on exogenous costs.⁶⁶ This provides the proper balance between equitably accommodating unforeseeable cost increases and,

⁵⁸ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Notice of Proposed Rulemaking, FCC 18-46, at 7, para. 10 (Apr. 18, 2018).

⁵⁹ *Id.* at 3, para. 2.

⁶⁰ *See IP CTS Reform R&O and FNPRM* at 46, para. 94 (seeking comment on these alternative approaches).

⁶¹ *See id.* at 43, para. 83.

⁶² *See supra* at 7-8.

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *See id.* at 44, para. 86 n.261.

⁶⁶ *See id.* at 46, para. 93.

to the extent the Commission proposes to cabin the eligibility of such costs,⁶⁷ ensuring that they do not become the exception that swallows the rule.

Finally, the Commission should eliminate outreach and marketing expense recovery, and cap licensing fees. Eliminating outreach and marketing expense recovery dovetails appropriately with the Commission's companion efforts to eliminate, or at least significantly reduce, waste and abuse.

In the past, "outreach" expenses have been used by certain TRS providers to justify ratepayers funding junkets that had little to nothing to do with promoting the relay service.⁶⁸ While that may be a rational or wise business decision, it should not come out of the pockets of ratepayers. The *IP CTS Reform FNPRM* similarly recounts the Commission's prior experience with TRS providers attributing consumer winback efforts to "outreach,"⁶⁹ which has nothing to do with the intended purpose of TRS outreach expenses to increase public and potential eligible user awareness of TRS. Just as it did with putative VRS and IP Relay "outreach" expenses, the Commission should eliminate them for IP CTS.⁷⁰ Not only would doing so save the TRS Fund approximately \$25 million per year,⁷¹ but the exponential increase in IP CTS minutes over the past six years and projected continued increases are compelling indications that awareness of the service is burgeoning.⁷²

⁶⁷ *See id.*

⁶⁸ *Accord Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29, at 12-13, para. 26 (excluding entertainment expenses from universal service high-cost support, because they are not used for the purposes for which high-cost support is intended).

⁶⁹ *See IP CTS Reform R&O and FNPRM* at 41, para. 78.

⁷⁰ *See id.*

⁷¹ *See id.* at 39, Tbl. 2 (2018 outreach expenses projected to exceed \$.05 per minute), 17, para. 26 n.92 (estimating approximately 526 million IP CTS minutes of use for TRS Fund Year 2018-19).

⁷² *See id.* at 41-42, para. 79.

For similar reasons, the Commission should abolish recovery of marketing expenses. Much of the same mischief described above gets attributed to “marketing,” and the fact that projected per minute costs for marketing for 2018 approaches \$.09 per minute⁷³ may be evidence that the waste and abuse associated with marketing is even more pronounced than it is with outreach. Furthermore, unlike with outreach, marketing need not even present the façade of promoting public awareness of relay services or the benefits of relay services as a whole to deaf and hard-of-hearing Americans and Americans with speech disabilities. ITTA notes that providers of Lifeline service, who receive universal service subsidies to provide affordable broadband and voice services to low-income consumers, do not receive separate stipends for marketing their services. And especially in light of the Commission’s experience with inappropriate IP CTS marketing,⁷⁴ ITTA cannot conjure why the TRS Fund should continue to support this endeavor. Eliminating recovery of marketing expenses should save approximately \$45 million per year.⁷⁵

For the reasons suggested by the Commission, it should cap “reasonable” licensing fees for technology used to provide IP CTS. As the Commission recognized when it first approved IP CTS as a compensable service, without such a cap, any one IP CTS provider could hold all others hostage to its fee demands.⁷⁶ Either that could drive all other providers from the market, or it could cause further strain on the TRS Fund through exorbitant licensing expenses that are

⁷³ *See id.* at 39, Tbl. 2.

⁷⁴ *See id.* at 42, para. 80; *see also id.* at 5, para. 8 n.24 (observing that the accelerated growth pattern in IP CTS minutes earlier this decade was temporarily interrupted when the Commission adopted interim restrictions on IP CTS provider marketing practices, but resumed when some of those restrictions were reversed on appeal).

⁷⁵ *See id.* at 39, Tbl. 2 (2018 marketing expenses projected to approach \$.09 per minute), 17, para. 26 n.92 (estimating approximately 526 million IP CTS minutes of use for TRS Fund Year 2018-19).

⁷⁶ *See id.* at 40, para. 74.

submitted by providers as part of their costs. The *IP CTS Reform FNPRM* asks whether the Commission should consider that the subject technology is used for a service paid for through an FCC fund, and for which there is no bargaining by users as to its price.⁷⁷ ITTA believes these factors militate towards a “reasonable” licensing fees cap.

IV. THE COMMISSION ALSO SHOULD TAKE OTHER ACTIONS TO CURB WASTE, FRAUD, AND ABUSE, PROMOTE EFFICIENCY, AND DISCIPLINE THE TRS FUND SIZE

A. The Commission Should Take Aggressive Measures to Reduce and Stem Waste, Fraud, and Abuse

In the *IP CTS Reform R&O and FNPRM*, the Commission expressed concern that “a large portion of the recent growth in IP CTS may be attributable to perverse incentives for providers to market this service to individuals who do not need it and the consequent wasteful use of IP CTS by individuals who could derive equal or greater benefit from less costly alternatives,” such as high-amplification phones.⁷⁸ ITTA believes that Commission adoption of the rate reduction measures it urges as well as elimination of recovery of marketing and outreach expenses could combine towards significant strides towards addressing the Commission’s concerns. At the same time, ITTA is well aware that, often in the past, the operation of relay services, which have “increase[d] the utility of the telephone system of the Nation”⁷⁹ for people who are deaf, hard-of-hearing, and hearing alike, regrettably have also been commandeered for ignoble purposes. Having learned some lessons from unfortunate experience, the Commission

⁷⁷ See *id.* at para. 75.

⁷⁸ *Id.* at 6, para. 10; see *id.* at para. 9 (observing that the ease and convenience of IP CTS facilitate its use by people with hearing loss who need it for effective communication, but also create a risk that it will be used even when it is not needed).

⁷⁹ 47 U.S.C. § 225(b)(1).

also evinces such awareness, for instance, expressing its goal that the perverse incentives described above “do not re-surface in other forms” after having been addressed.⁸⁰

As noted above, in the *IP CTS Reform R&O*, the Commission took some actions to prevent providers engaging in fraudulent, abusive, and wasteful practices “before they occur.”⁸¹ ITTA enthusiastically supports this approach towards protecting the TRS Fund’s flank. As matters both of diligent stewardship and the public interest in its truest sense, the unfortunately prominent history of exploitation of the TRS Fund – to the potential detriment of TRS users and the general public who benefit so greatly from the communication it facilitates – simply cannot be ignored. In this regard, ITTA generally endorses the proposals in the *IP CTS Reform FNPRM* that endeavor to address waste, fraud, and abuse actively and proactively. For instance, ITTA generally supports the use of independent third-party hearing health professionals to perform IP CTS user eligibility assessments.⁸²

B. The Commission Should Promote Efficiency by Incenting Migration of IP CTS to ASR

In the *IP CTS Reform R&O and FNPRM*, the Commission reflected that reliance on third-party operators and equipment tied to a particular provider imposes limits on accuracy, privacy, interoperability, and speed of service of TRS.⁸³ However, “evolving technological innovations raise new questions about how Commission policy should address the communication access needs of people with hearing and speech disabilities in the future.”⁸⁴ In the IP CTS context, the answer to those questions is that the Commission should incent providers to implement ASR.

⁸⁰ *IP CTS Reform R&O and FNPRM* at 7, para. 11.

⁸¹ *Id.* at 26-27, para. 44.

⁸² *See id.* at 3, 55-64, para. 2, Sec. V.D.

⁸³ *See id.* at 7, para. 12.

⁸⁴ *Id.*

The *IP CTS Reform R&O and FNPRM* proclaims that ASR “holds great promise for a telephone communication experience that may be superior to and more efficient than existing IP CTS.”⁸⁵ Rolka Loube reports that two entities that have requested certification as authorized providers using ASR claim that, due in large part to the lack of a human communications assistant (CA) interposed in the call, ASR entails substantially lower costs in service than existing IP CTS.⁸⁶ And Commissioner O’Rielly observes that ASR “holds the promise of faster and more accurate call transcription for a fraction of the cost, allowing [the Commission] to target valuable TRS funding to those who need it most.”⁸⁷

The Commission should hasten arrival of the ASR future via establishing an ASR compensation scheme that incents IP CTS providers to migrate to use of the technology. ITTA suggests that the Commission initially institute separate rates for ASR-only IP CTS and CA-assisted IP CTS.⁸⁸ After bringing CA-assisted IP CTS to cost-based compensation rate levels, which should occur no later than TRS Fund Year 2020-21, the Commission could establish a new glide path for CA-assisted IP CTS, designed to bring CA-assisted IP CTS rates to parity with the far lesser ASR-only IP CTS compensation rate over a given time period, for instance, in equal intervals over six years. This approach will either motivate CA-assisted IP CTS providers to become much more efficient using that form of IP CTS, or eventually incent them to migrate to use of ASR. The Commission could allow a higher operating margin for ASR during the glide path period, with the extra margin correspondingly diminishing over the duration of the glide

⁸⁵ *Id.* at 8, para. 13.

⁸⁶ *See* 2018 TRS Rate Report at 24.

⁸⁷ *IP CTS Reform R&O and FNPRM* at 98, Statement of Commissioner Michael O’Rielly Approving in Part and Concurring in Part (Commissioner O’Rielly Statement).

⁸⁸ *See id.* at 47, para. 96 (seeking comment on whether to set separate rates or a single rate).

path, as more providers migrate to ASR and the need for special incentives is diluted.⁸⁹ Because the end result will be a single IP CTS compensation rate at actual reasonable costs plus reasonable operating margin for ASR, this scheme would not create an undesirable incentive for providers to overuse ASR where it is not the best choice for a particular call⁹⁰ -- a concern which also will minimize over time as the technology improves.

IP CTS calls that use both ASR and a human CA should only be compensated on the basis of the CA-assisted IP CTS rate.⁹¹ Any version of compensation that rewards inefficiencies, such as using both forms of IP CTS, is bound to quickly devolve into waste and abuse. The Commission can preclude that by removing any financial incentive to engage in such gaming. In addition, as the CA-assisted compensation rate declines during the glide path, the incentive to use as a CA for the call will also decline. In addition, just as ITTA supports, as a matter of equity, accommodation of exogenous cost adjustments for CA-assisted calls where appropriate,⁹² the Commission, as another measure to incent migration to ASR, should treat specifically enumerated categories of ASR costs not captured in the ASR compensation rate as exogenous costs.⁹³

C. The Commission Should Consider an IP CTS Budget Cap

While the *IP CTS Reform FNPRM* does not seek comment on it, ITTA reiterates its prior advocacy suggesting that the Commission consider implementing a cap with respect to IP CTS to

⁸⁹ *See id.* at 47-48, para. 99.

⁹⁰ *See id.* at 47, para. 96 (seeking comment on potential to foster this undesirable incentive).

⁹¹ *See id.* at para. 97 (seeking comment on how the Commission should compensate IP CTS calls that use both ASR and a CA).

⁹² *See supra* at 14.

⁹³ *See IP CTS Reform R&O and FNPRM* at 48, para. 100 (seeking comment on allowance of ASR-related exogenous costs).

keep the TRS Fund within a defined budget.⁹⁴ The Commission imposes budget caps on the universal service distribution mechanisms which, like TRS, are statutorily mandated. This would be especially important as a budgetary safeguard if the Commission does not adopt ITTA's proposal to establish a glide path for IP CTS down to ASR compensation rates.

Although ITTA is confident that the Commission will adopt proposals that result in diminishing the IP CTS compensation rate as well as reducing waste, fraud, and abuse, with IP CTS still hovering within reach of the \$1 billion annually threshold even after the interim rate reductions adopted in the *IP CTS Reform R&O*, discipline on the budgetary impact of IP CTS would be important to safeguard the viability of the TRS Fund as a whole.

In this regard, an IP CTS budget cap would be consistent with Chairman Pai's invocation of Stein's Law. Chairman Pai explained that Stein's Law suggests that an unsustainable trend would end of its own accord. However, in the context of federally sponsored programs, "an agency may be compelled by circumstance to make the trend stop. This is such a case. We must act to ensure the sustainability of IP CTS for the millions of Americans with hearing loss who depend on it."⁹⁵ Similarly, Commissioner O'Rielly concluded that the Commission "simply cannot expect consumers to keep funding at the levels needed to cover the growth rate of this program, especially when there are alternative options available that do not require funding from the TRS program." An IP CTS budget cap, imposing discipline on TRS funding levels and ensuring sustainability of IP CTS, would be an appropriate backstop and one that may lead to incentives to more affirmatively pursue lesser-cost or no-cost, but still functionally equivalent, modes of communication for people who are hard-of-hearing.

⁹⁴ See ITTA 2013 IP CTS FNPRM Comments at 4.

⁹⁵ Chairman Pai Statement at 96.

V. CONCLUSION

IP CTS is a vital service to millions of hard-of-hearing Americans, a true realization of the functional equivalence statutory dictate underlying the TRS program. But it will only remain so if the Commission takes further actions to safeguard its sustainability and, by virtue of it being far and away the most utilized and compensated form of TRS, the sustainability of the TRS program as a whole. The measures adopted by the Commission in the *IP CTS Reform R&O* were a good start, but much more is needed. In that regard, the Commission must not delay in bringing IP CTS compensation rates to actual reasonable costs plus an operating margin within the zone of reasonableness. It also must take initiatives to eliminate, or at least substantially reduce, IP CTS waste, fraud, and abuse. And to poise IP CTS for the future and hew to the statutory directive of ensuring that IP CTS is provided in the most efficient manner, the Commission should adopt a compensation rate methodology that incents providers to migrate to use of the much more cost-effective nascent technology.

Respectfully submitted,

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