



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13-24 and 03-123; FCC 13-118]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts permanent rules addressing marketing, labeling, registration and default equipment-setting requirements for internet protocol captioned telephone relay service (IP CTS). This action is necessary to ensure that persons with hearing disabilities have access to telecommunications relay services (TRS) that address their needs in an efficient manner, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended (Act), to provide relay services enabling communication that is functionally equivalent to conventional telephone voice services, while at the same time protecting the TRS Fund for all forms of TRS.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for §§ 64.604(c)(9), (c)(10)(iv), (c)(11)(iii) and (iv), and 64.606(a)(2)(ii)(F) of the Commission's rules, which contain information collection

requirements that have not been approved by the Office of Management and Budget (OMB).

The Commission will publish a separate document in the Federal Register announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2235 or e-mail Eliot.Greenwald@fcc.gov <<mailto:Eliot.Greenwald@fcc.gov>>.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's 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 (Order), document FCC 13-118, adopted on August 26, 2013 and released on August 26, 2013, in CG Docket Nos. 13-24 and 03-123. In document FCC 13-118, the Commission also seeks comment in an accompanying Further Notice of Proposed Rulemaking (FNPRM), which is summarized in a separate Federal Register Publication. The full text of document FCC 13-118 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: www.bcpweb.com. Document FCC 13-118 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs>. To request materials in accessible formats for people with disabilities (Braille, large

print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 13-118 contains new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 13-118 as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104-13, in a separate notice that will be published in the Federal Register.

SYNOPSIS

1. Title IV of the Americans with Disabilities Act (ADA) requires the Commission to ensure that TRS is available to the extent possible and in the most efficient manner, to people with hearing or speech disabilities. The Act defines TRS as services that enable an individual with a hearing or speech disability to communicate with other individuals “in a manner that is functionally equivalent” to a hearing individual’s ability to communicate using voice communications services. This requirement is currently accomplished through TRS facilities staffed by communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using end user telephone

equipment, such as a standard phone, smartphone, or computer.

2. Captioned Telephone Service (CTS) is one type of TRS that works by having a person who is hard of hearing dial the number she or he wishes to call. The CTS user's phone is automatically connected to a captioned telephone CA at the same time she or he reaches the called party. Once connected, the CA re-voices everything the called party says into a voice recognition program that automatically transcribes those words into captions. The captions then are transmitted directly to the caller and are displayed on a captioned telephone device, a computer, or a smartphone. The service also provides captions for incoming calls that are placed using designated phone numbers. The Commission approved compensation for CTS, which allows calls to be made over wireless or wireline devices using the public switched telecommunications network (PSTN) or voice over Internet protocol (VoIP), in Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, CC Docket No. 98-67, published at 68 FR 55898, September 29, 2003 (CTS Declaratory Ruling). IP CTS, by which the user utilizes an Internet Protocol-enabled device or Internet-enabled software to simultaneously listen to the other party and read captions of what that party is saying, was approved in 2007. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, published at 72 FR 6960, February 14, 2007 (IP CTS Declaratory Ruling).

3. In 2012, the Commission witnessed an unusually steep increase in the growth of IP CTS minutes. This sudden and unprecedented escalation raised serious concerns for the Commission that threatened to overwhelm and, therefore, jeopardize the Fund for all forms of TRS if not immediately addressed. In order to protect the Fund, on January 25, 2013, the Commission took

swift and immediate action, in 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 and 03-123, Order and Notice of Proposed Rulemaking, published at 78 FR 8032, February 5, 2013 (IP CTS Interim Order) to prohibit, on an interim basis, provider practices that appeared to be directly causing the sharp increase in IP CTS usage by individuals who did not need this service to communicate in a functionally equivalent manner. The interim rules also included a requirement that providers set equipment to a default captions-off setting, and certain registration and certification requirements. In an accompanying Notice of Proposed Rulemaking (NPRM), published at 78 FR 8090, February 5, 2013, the Commission sought comment on whether to make permanent, revise, or eliminate the interim rules. In addition, the NPRM sought comment on a range of additional matters pertaining to the provision of IP CTS, including whether to extend the self-certification requirements to existing users; whether to adopt quantitative threshold requirements for IP CTS eligibility; whether professional certification by individuals attesting to their eligibility in order to get a free IP CTS device should be made under penalty of perjury; whether to prohibit the free or significantly subsidized distribution of end user equipment by IP CTS providers; whether to adopt a labeling requirement for end user equipment restricting its use to eligible persons with hearing disabilities; whether the Commission should amend its speed of answer rules for IP CTS in light of the default-off rule; whether to require potential IP CTS providers to describe how they will ensure compliance with the self-certification rules as a pre-condition to receiving certification; and whether the Commission should link provider compensation to compliance with the Commission's new rules on certification and restrictions on rewards and free equipment.

4. Legal Authority. Section 225(b) of the Act directs the Commission to ensure that relay services are available to persons with hearing and speech disabilities “to the extent possible and in the most efficient manner.” 47 U.S.C. 225(b)(1) of the Act. Further, section 225(d) of the Act instructs the Commission to adopt regulations implementing section 225, including regulations “establish[ing] functional requirements, guidelines, and operations procedures for [TRS],” 47 U.S.C. 225(d)(1)(A), as well as mandatory “minimum standards” governing the provision of TRS, 47 U.S.C. 225(d)(1)(B). The Commission found that these provisions authorized the interim rules adopted for IP CTS, and the Commission now concludes that they likewise authorize the final rules adopted in this order.

5. In directing the Commission, “[i]n order to carry out the purposes established under section 151 of the Act,” to ensure the availability of TRS “to the extent possible and in the most efficient manner,” Congress qualified the objective of making TRS “available” by using the caveats “to the extent possible” and “in the most efficient manner,” granting the Commission discretion in implementing that provision. 47 U.S.C. 225(b)(1). Moreover, the Commission has authority to balance the goals of section 225 of the Act when implementing that provision. Likewise, in “establish[ing] functional requirements, guidelines, and operations procedures,” 47 U.S.C. 225(d)(1)(A), and mandatory “minimum standards,” for TRS, 47 U.S.C. 225(d)(1)(B), the Commission must act, consistent with its mandate, to ensure that TRS is made available “in the most efficient manner.” 47 U.S.C. 225(b)(1). In this regard, the Commission can take steps to ensure that federal funding for usage of a particular relay service is limited to users that genuinely need that relay service, and preclude federal funding for users that do not have such a need—whether because they can use ordinary voice telephone service or because an alternative (such as amplification) would meet their needs.

6. In the IP CTS Interim Order, the Commission described various marketing practices by which an IP CTS provider had been offering monetary rewards for the referral of customers who signed up for the installation of the provider's IP CTS equipment. These rewards were being given by the provider to its customers, members of the general public, and to hearing and health care professionals, such as audiologists. The Commission found in the IP CTS Interim Order that such incentive programs, the growth of which appears to have coincided with the sudden and unexpected spike in IP CTS usage, may well have been incenting consumers to use the service whether or not it was actually needed. More specifically, by enabling potential customers and third parties to earn money or any other reward either directly or for their friends or charitable organizations, these incentive programs would, if not prohibited, continue to encourage IP CTS use by individuals who do not need it to obtain functionally equivalent telephone service. The Commission found good cause to justify the immediate adoption of an interim rule prohibiting these referrals for rewards programs and any other form of direct or indirect inducements, to subscribe to or use, or encourage subscription to or use of, IP CTS. The rule is consistent with the types of actions the Commission previously has taken to restrict financial incentives determined to be impermissible, including those made in exchange for signing up for or using TRS. See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67 and CG Docket No. 03-123, Declaratory Ruling, published at 70 FR 9239, February 25, 2005 (2005 Financial Incentives Declaratory Ruling).

7. In document FCC 13-118, the Commission adopts on a permanent basis this interim rule prohibiting IP CTS providers from providing referrals for rewards programs, as well as any other provider programs that offer or provide payments or incentives to sign up or use this service,

although it revises the language of the interim rule in certain important respects. The Commission finds that registration incentives raise particular concerns for IP CTS due to the unique characteristics of this service. As IP CTS does not require special skills such as sign language, is generally automated and invisible to the calling parties, and allows a conversation to flow without interruption, and as IP CTS phones offer many, if not all, of the same features and functions of conventional phones, consumers can subscribe to and use IP CTS without sacrificing any ordinary voice communication functionality. As a result, consumers are less likely to “self-screen” in choosing whether to subscribe to IP CTS, than in choosing whether to subscribe to other forms of TRS. Ensuring that IP CTS is made available “in the most efficient manner” to those consumers who actually need it requires special attention to the manner in which this unusually transparent service is marketed to consumers. The rule also prohibits the offering or provision of incentives to third parties, such as audiologists and other hearing health professionals, to increase consumer registration for or use of IP CTS. These incentives are likely to waste the Fund’s resources on payments for services used by individuals who may not need the service and therefore are inconsistent with the goals and objectives of section 225 of the Act. The final rule is written, however, to ensure that the rule cannot be construed to prohibit advertising and noncommercial speech—something the Commission never intended to prohibit. The rule also adjusts the terminology to prohibit direct or indirect “incentives” ““register for” rather than rather than “inducements” for “subscription to” or use of IP CTS. The term “incentives” is more consistent with the 2005 Financial Incentives Declaratory Ruling and better captures the Commission’s intent to prohibit any kind of reward for signing up such users or getting them to use the service, rather than prohibit outreach and advertising conducted to educate potential users about this service. The term “register” more accurately describes the way

a consumer signs up to use IP CTS than does the term “subscription.” The final rule also clarifies that the incentives prohibition does not apply to the relationship between an IP CTS provider or equipment distributor and an equipment retailer, where the retailer is not a hearing health professional. Where the retailer is not a professional on whom a consumer may rely for objective advice on solutions for hearing loss, consumers are less likely to be unduly influenced to purchase equipment that they do not need.

8. The Commission also finds that joint marketing arrangements between IP CTS providers and professionals upon whom consumers potentially rely for advice in regard to their hearing loss violate the prohibition of referrals for rewards and other incentives. The Commission finds that joint marketing arrangements between IP CTS providers and such hearing health professionals are akin to a reward for a referral. Moreover, the joint marketing campaigns themselves could be perceived by the consumer as an endorsement of the IP CTS provider by his or her hearing health professional.

9. Finally, the Commission declines, in document FCC 13-118, to make a general determination regarding the scope of provider payments that will be denied when a provider fails to comply with the incentives prohibition. Instead, the Commission will make case-by-case determinations of the appropriate amount of withholdings. Moreover, the Commission will not allow third party certification to serve as a means of curing a provider’s failure to comply with its prohibition of referrals for rewards and other incentives. The Commission advises that such providers may also be subject to other remedies, including but not limited to forfeitures and revocation of their certification to provide IP CTS pursuant to § 64.606(e)(2) of its rules.

10. Document FCC 13-118 also adopts on a permanent basis, with some modification, the

interim rules relating to registration, certification, equipment and eligibility requirements. First, Commission amends the interim rule requiring that providers that give away, or sell at a cost of less than \$75, equipment to potential or existing IP CTS users must require such users to submit to the provider a certification from a professional that the user needs IP CTS in order to achieve functionally equivalent telephone service. The rule adopted in document FCC 13-118 prohibits TRS providers from receiving compensation from the Fund for any IP CTS minutes of use generated by IP CTS equipment that they distribute, directly or indirectly, for free or for less than \$75 to consumers after the effective date of the rule. The alternative of professional certification is thus eliminated. The prohibition also applies to any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity (collectively “affiliate”) of any TRS provider. Further, any type of arrangement by an IP CTS provider, directly or indirectly through any third party (other than through a state or local equipment distribution program), to distribute equipment at no charge or for less than \$75 to consumers is likewise prohibited. The Commission notes that many IP CTS devices are modern and attractive, and often provide enhanced sound amplification - features that are likely to entice consumers with or without hearing loss to seek their acquisition if they are given away for free or at low cost. Once the device is in a consumer’s possession, consumers may routinely use the device with captions - as might others in the consumer’s household - even if they do not actually need the service for effective communication. In fact, the unobtrusive nature of IP CTS is such that consumers may not even be aware that captions are turned on or that they have the ability to turn them off. In this manner, the free distribution of such devices is likely to contribute to IP CTS usage by persons who do not have a sufficient degree of hearing loss to require this service to understand conversation over the phone. Paying at least \$75 for IP CTS equipment, by contrast, provides a

concrete indication that the consumer has thought the transaction through sufficiently to have concluded that she or he needs IP CTS for effective communication.

11. In adopting this rule, the Commission also concludes that overall, as a practical matter, consumer self-screening based on having to make a significant investment in equipment is likely to be a more effective approach to screening than is third-party certification. The Commission's interim rule, requiring certification by an independent professional when equipment is provided for free or for less than \$75, had been designed to prevent the distribution of IP CTS equipment to individuals who do not actually need IP CTS. However, experience with this approach suggests that it may not be very effective in achieving adequate screening of such individuals. Under the interim rule, determining whether a person qualifies for free or low-cost distribution of IP CTS necessarily involves the exercise of professional judgment by numerous individuals about whom the Commission has little information. The Commission cannot effectively oversee the performance of this important gatekeeping function by hundreds or thousands of hearing health and other professionals. Further, where free IP CTS phones have been offered directly or indirectly by a provider under the interim rules, the advertising for such phones continues to focus on the availability of a "free" IP CTS phone, with the need for third-party certification alluded to only vaguely, if at all. Thus, the professional's role is likely to change from helping the consumer select on their merits from a number of alternative assistive technologies, to accepting or vetoing a choice already made by the consumer, based on exposure to ads promoting the free availability of an IP CTS phone. Moreover, contrary to the Commission's clearly stated intent that the screening third party professional be independent of any provider, the Commission is aware of numerous instances in which sessions are arranged by a provider, to which consumers are invited to obtain a free hearing analysis and a free IP CTS phone at the

same time and location. Professionals who participate in such sessions, whether for compensation, the prospect of meeting potential new clients, or for other reasons, are linked to the sponsoring provider (or are so perceived by potential customers and clients), and thus are not “independent” as contemplated by the interim rules.

12. Setting \$75 as the minimum price threshold represents a reasonable balancing of interests. There is record support for this amount, and it is high enough to deter a consumer from purchasing an item if he or she does not need it for communication, but not so high as to make the purchase of equipment overly burdensome. It is below the listed retail prices for the captioned telephones used with several IP CTS offerings. In addition, \$75 may be roughly comparable to the price of a good-quality “specialty” phone such as an enhanced amplification phone. The \$75 minimum price is also low enough to take into account the different financial circumstances of those who need IP CTS.

13. To ensure that information supporting provider compliance with this requirement is maintained and available for Commission review, providers must maintain, with each consumer’s registration records, records describing any IP CTS equipment provided, directly or indirectly, to such consumer and the amount paid for such equipment. Such records shall be maintained for a minimum of five years after the consumer ceases to obtain service from the provider.

14. The Commission finds this rule to be consistent with functional equivalence and the statutory goal to achieve full communications access by people with disabilities. The Commission has consistently distinguished between the provision of relay service, which is explicitly mandated under 47 U.S.C. 225, and the provision of equipment, which is not.

Moreover, since users of voice communications services pay for equipment, there is no plausible basis for reading into the statute a restriction against requiring users of TRS to also pay for equipment. The Commission, however, places no restriction on the free distribution of equipment by state or local governmental programs, which are relatively neutral parties that can objectively screen consumers for their eligibility in the program. The availability of such free or discounted equipment in most states will help to fulfill Congress's and the Commission's goals of ensuring the widespread availability of IP CTS to individuals who can benefit from the service.

15. The Commission also applies this restriction to software and applications, e.g., for mobile phone or computer users of IP CTS. As with hardware, because of the ease and convenience of using IP CTS, persons who do not have a sufficient degree of hearing loss to require this service to understand conversation over the phone (or who do not have any hearing loss at all) could find this service desirable for reasons such as creating a transcript or making calls in noisy locations. Absent the restriction, free or de minimis cost IP CTS software would be widely promoted by IP CTS providers in the same way as free IP CTS equipment has been. From the providers' perspective, the more users that sign up to acquire IP CTS software and applications, the more compensation the provider may seek to collect from the Fund, at no cost to the user. The Commission thus disagrees with commenters who argue that consumers would not download and use applications and software that they do not need, and that because software, updates, and applications are generally free or available at a low cost, the incentive for a consumer to accept a valuable phone for free generally does not apply to software. Offering such software for free or for less than \$75 has the potential effect of attracting customers who might not need to use the service, which is inconsistent with the purpose of the TRS program. The Commission does not,

however, consider it necessary to proscribe the provider practice of permitting consumers who are already registered users of their service to download mobile applications or other software for free. Once the user has made the initial investment in an IP CTS device, or has been deemed eligible for the provision of a device by a state EDP, the Commission believes that the risk that such a user is ineligible for IP CTS is substantially reduced. New users without IP CTS telephones will be required, however, to make a one-time payment of at least \$75 for the initial software or application in order for IP CTS service to that user to be compensable from the Fund.

16. The rules adopted in document FCC 13-118 also require each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users, to register each new IP CTS user. Specifically, the rule requires, as part of a registration process required for both new and existing consumers, that each provider secure from each consumer the consumer's name, address and telephone number and a self-certification form, signed under penalty of perjury, stating that the consumer (1) has a hearing loss that necessitates use of captioned telephone service, (2) understands that the captions on captioned telephone service are provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone, (3) understands that the cost of captioning each IP CTS call is funded through a federal program, and (4) will not permit, to the best of the consumer's ability, persons who have not registered to use IP CTS to make captioned telephone calls on the consumer's registered IP captioned telephone service or device. Document FCC 13-118 amends slightly the language needed for self-certification from that in the interim rule, to ensure that IP CTS consumers fully understand the certification, and to have the consumer certify that he or she will not permit individuals who are not registered to use the service. The Commission further makes permanent the requirements that such self-certification be made on a form separate from

any other user agreement (such as on a separate page); that it bear a separate signature specific to the self-certification; and that the signature be made under penalty of perjury. The interim rule's requirements for self-certification are also modified to permit a user's spouse or person with legal custody or power of attorney for the user to sign the certificate, for users who are not competent to sign a legal document. The Commission finds that the registration required in the IP CTS Interim Order for new users, together with the mandate that consumers self-certify under penalty of perjury their eligibility to use IP CTS, will help prevent the registration of individuals who do not need captions to obtain functionally equivalent telephone service. Such registration is already required of other IP-enabled forms of TRS, and is a logical and useful means to ensure that only those individuals who are truly eligible for different forms of TRS are allowed to use these services.

17. The Commission also adopts a new rule requiring providers to register all existing IP CTS consumers within 180 days. Although the Commission proposed in the IP CTS Interim Order that all existing IP CTS users must be registered within a 90-day period, the rule adopted in document FCC 13-118 requires providers to register and obtain certification from their existing users within 180 days of the rule's effective date. A 180-day deadline will strike the appropriate balance between removing ineligible individuals from this service and allowing eligible individuals to continue using it. The longer registration period of 180 days will allow providers the time necessary to complete the registration process and prevent the loss of eligible users because of an inability to register on time. IP CTS providers that fail to register existing users within this period will not be compensated for service to any unregistered users, or to any users who fail to provide the required self-certification, immediately upon expiration of this period. For existing consumers who received their equipment for free or at a price below \$75

directly from an IP CTS provider, prior to the effective date of the interim rules, the Commission also requires that the provider obtain from the consumer either a payment of \$75 or a certification from an independent, third party professional, made under penalty of perjury, that (1) the consumer has a hearing loss that necessitates use of captioned telephone service, and (2) the third party professional understands that the captioning on captioned telephone service is performed by a live CA and is funded through a federal program. In addition, providers must require consumers to obtain and provide the professional's name, title, address, telephone number, and e-mail address. If the equipment was obtained from a source other than a provider or an equipment distribution program administered by a state or local government) for free or at a price below \$75, prior to the effective date of the interim rules, the provider must obtain the above third party professional certification and related information about the third party professional. Third party professionals must be qualified to evaluate hearing loss. The third party professional may not have been referred to the IP CTS user directly or indirectly by any TRS provider or affiliate. The third party professional also may have no relationship with a TRS provider, and the TRS provider may play no role in acquisition of the third party professional certificate.

18. Registration and certification must be obtained from existing users within 180 days of the effective date. Providers that do not meet these deadlines will not be compensated for services to unregistered users. To ensure that information supporting the eligibility of users continues to be available for Commission review, the rule requires that records of all new and existing consumers' registration and self-certification, with all the information required to be included in such certifications, be maintained for a minimum of five years after the consumer ceases to obtain service from the provider. The Commission also makes permanent its interim rule

requiring each IP CTS provider to maintain the confidentiality of registration and certification information that it acquires, and to not disclose such registration and certification information except as required by law. Finally, the Commission rule requires that applicants seeking certification as IP CTS providers must submit to the Commission a description of how they will ensure that they do not request or collect payment from the TRS Fund for service to users who do not satisfy the registration and certification requirements, and establish that they have adequate measures and procedures in place to ensure that they will seek payment for serving only eligible users who satisfy the registration and certification requirements.

19. The Commission declines to adopt a specific quantitative threshold to determine eligibility to use IP CTS. The majority of commenters, including providers, consumers, and telecommunications carriers contributing to the Fund, express opposition to quantitative threshold eligibility requirements based on decibel levels to determine IP CTS eligibility. The Commission is persuaded by the commenters' concerns that the use of a specified decibel level of hearing loss does not take into account all other factors that may contribute to an individual's difficulty in understanding speech on a telephone. Thus, at this time, the Commission is not persuaded that it can readily identify bright-line eligibility thresholds for which the benefits in protecting the Fund outweigh the costs, including the potential for excluding users for whom use of IP CTS otherwise would be consistent with section 225 of the Act and Commission policy. Nevertheless, the Commission will continue to monitor IP CTS provider practices and usage.

20. The Commission concludes in Document FCC 13-118 that a printed label to be adhered to the IP CTS device itself is the best approach for supplementing other information made available to IP CTS users on the need to limit use of the device only to registered IP CTS users, and is appropriate to further prevent casual or inadvertent use of IP CTS. However, for software-

based IP CTS on mobile phones, laptops, tablets, computers or other similar devices, the Commission concludes that a printed label is impractical. Instead, IP CTS providers must ensure that, each time the consumer logs into the application, the notification language shown above appears in a conspicuous location on the device screen immediately after log-in. The Commission rule adopts a shorter notice than that proposed in the NPRM, and requires that IP CTS providers ensure that any newly distributed IP CTS equipment has affixed to its face and in a conspicuous location, and in a clearly legible font, a label that contains the following brief statement:

FEDERAL LAW FORBIDS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING THIS PHONE WITH THE CAPTIONS ON.

The rule also requires any IP CTS provider that already has distributed IP CTS equipment to users as of the effective date of the final rule, to distribute the above equipment labels to such users within thirty (30) days after the effective date of the final rule, along with clear and specific instructions directing the users to place such labels on the face of their IP CTS equipment in a conspicuous location. Each IP CTS provider shall maintain, with each consumer's registration records, records stating whether the required label was affixed to such equipment prior to its provision to the consumer. Such records shall be maintained for a minimum period of five years after the consumer ceases to obtain service from the provider.

21. In the IP CTS Interim Order, the Commission expressed concerns that IP CTS equipment with a default of automatically displaying captions ("default captions-on") presented the risk that individuals who do not need CTS to communicate in a functionally equivalent manner might inadvertently use IP CTS when using the IP CTS telephone of an eligible IP CTS user, resulting

in improper billing of the TRS Fund. To avoid such misuse and to safeguard the Fund, the Commission required, on an interim basis, that all providers ensure that equipment and software used in conjunction with their IP CTS have captions turned off as the default setting, and that users be required to affirmatively turn on the captions for each call. The Commission sought comment on whether it should make this interim rule permanent, and if so, whether it should be changed in any way. Despite opposition to the captions default off requirement, the Commission finds that, given the unusual characteristics of IP CTS relative to other relay services, it is reasonable and prudent to protect the viability of the Fund by requiring that equipment, software, and mobile applications used in conjunction with IP CTS have a default setting of “captions off” at the beginning of each call. Especially in light of the history of this service prior to the adoption of the interim rules, it may be that some currently registered IP CTS users do not actually need IP CTS for effective communication. Others may need captions in some circumstances, but not others. Accordingly, and because IP CTS is provided without interruption in the normal conversational flow and the captions do not interfere in any way with the consumer’s ability to conduct a telephone call by voice in the ordinary manner, defaulting captions to “on” would mean that IP CTS may be provided to individuals who do not need it and the TRS Fund is inappropriately billed for the cost. The Commission concludes that a requirement to push one additional button when dialing or when receiving a call will become habit and will not interfere with the functional equivalence of the IP CTS experience for most users. The Commission recognizes, however, that the certain modifications to the interim rule are appropriate, as supported by extensive comments. The Commission is sensitive to comments that highlight the difficulties that some users, especially users with a cognitive or mobility disability, are reportedly having with the default captions off requirement, and the concern that

the rule might undermine the functional equivalence requirement of the ADA for these users.

The Commission therefore amends the interim rule, to adopt a process for this unique group of users to obtain an exemption from the default-off requirement if the user has a cognitive or physical disability that significantly impairs the ability of the user to turn on captioning at the start of each call. To prevent abuse of this exception, the rule requires applicants seeking this exception to submit to their provider (1) a self-certification, dated and made under penalty of perjury, that the requirement to activate captioning at the start of each call significantly impedes the user's ability to make use of the captioned telephone service; and (2) a certification from an independent, third party licensed physician in good standing, dated and made under penalty of perjury, that the consumer has a physical or mental disability or functional limitation that significantly impedes the consumer's ability to activate captioning at the start of each call, including a brief description of the basis for such statement. In the event that the user is not competent to provide the required self-certification, such certification shall be made by the user's consumer's spouse or legal guardian or a person with power of attorney.. A third-party, independent physician certification must include the physician's name, title, area of specialty or expertise, address, telephone number, and e-mail address. In addition, the rule prohibits providers from accepting a certification from any physician who has been referred to the IP CTS user, either directly or indirectly, by any provider of TRS or any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity of any TRS provider. In addition, the physician making such certification shall not have any relationship with and shall not have received any payment or other thing of value from the TRS provider or any affiliate of the TRS provider, with whom the individual seeking the exemption is requesting service. Additionally, the rule prohibits any provider from facilitating or otherwise playing a role, in any

way, in the acquisition of such physician certifications. If any IP CTS provider facilitates certification by a third party physician, such IP CTS provider shall be subject to the potential array of consequences that arise from violations of TRS rules, including revocation of its certification to provide IP CTS or other enforcement actions. IP CTS providers must maintain detailed records of all consumers who have submitted such certifications for five years, and report to the Commission on a monthly basis subject to confidentiality requirements, and such records shall include a list of all newly exempted consumers (with names redacted), the dates on which each consumer registered for IP CTS with the provider and was provided with IP CTS equipment with a default setting of captions on, the area of specialty or expertise of the certifying physician accompanying each hardship certification, and the basis for granting each hardship exception. The Commission requires each IP CTS provider to maintain the confidentiality of such exemption certification information, and shall also maintain the confidentiality of such information itself, and shall carefully review it to ensure that this exception to the rule is not abused.

22. For the purpose of limiting as much as possible the delay between when a user answers an incoming call and pushes the button to initiate captioning, the Commission modifies the interim rule by requiring that providers ensure that each IP CTS telephone they distribute includes a button, icon, or other comparable feature that is easily operable and requires only one step for the user to turn on captioning.

23. The Commission concludes that IP CTS software applications when used on mobile phones, laptops, tablets, and computers meet the underlying purpose of the captions off requirement because of the way these software products operate and how they are likely to be used. The Commission therefore rules that the captions off requirement is met by IP CTS

software applications when used on mobile phones, laptops, tablets, and computers, provided that the following two conditions are satisfied: (1) consumers must actively set up the IP CTS software feature by individually logging in with a unique ID and password that is provided only to the registered user; and (2) the default setting switches to “captions on” only for the limited session during which the user is logged on, rather than remaining on indefinitely. The Commission reserves the right to reconsider the manner in which it will apply the captions off requirement to these devices.

24. Several commenters raise concerns that in an emergency situation, individuals may not remember to activate the caption functionality when calling 911 services. The Commission finds that the record does not provide sufficient data to enable it to evaluate the extent of this hazard or the technical feasibility of configuring equipment so that captions are defaulted to “on” solely for 911 calls. The Commission will continue to monitor and seek comment on this issue. In order to address immediate concerns about 911 calling, the Commission permits, in document FCC 13-118, providers to turn on captions automatically for 911 calls if it is technically feasible to do so while maintaining captions defaulted to off for other calls. In the Notice accompanying document FCC 13-118, the Commission seeks comment on other issues related to its default caption-off rule, including whether the rule should apply to answering machines and similar devices. The Notice also asks whether an exemption should be provided for consumers with IP CTS phones that are available only to registered IP CTS users, or whether there should be any other exemptions to the captions default off rule. The Commission declines, at this time to create any further exemption to the default caption-off rule, such as for IP CTS users who live alone, live only with other individuals who are hard of hearing, or who are in an office setting with sole access to the IP CTS phone. The Commission remains concerned that even a consumer living

alone may not need captioning for every call, and that a default off setting may be needed to prevent unneeded use of the captioning. The Commission remains open, however, to revisiting this conclusion in the future, and for this reason solicits comments on the issue.

25. The interim rules adopted in the IP CTS Interim Order are set to expire on September 3, 2013, which will be less than 30 days after these rule extensions will be published in the Federal Register. The Commission therefore extends the effectiveness of each interim rule until the final rule replacing it becomes effective.

FINAL REGULATORY FLEXIBILITY CERTIFICATION

26. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

27. Internet protocol captioned telephone relay service (IP CTS) is a form of telecommunications relay service (TRS) that permits people who can speak, but who have difficulty hearing over the telephone, to speak directly to another party on a telephone call and to

use an Internet Protocol-enabled device to simultaneously listen to the other party and read captions of what that party is saying. During the spring and fall of 2012, the Commission witnessed an unusually steep increase in the growth of IP CTS minutes. This sudden and unprecedented escalation raised serious concerns for the Interstate Telecommunications Relay Services (TRS) Fund (Fund) that, if not immediately addressed, threatened to overwhelm and, therefore, jeopardize the Fund for all forms of TRS. In order to protect the Fund, on January 25, 2013, the Commission took swift and immediate action, in the IP CTS Interim Order, to terminate, on an interim basis, provider practices that appeared to be resulting in the use of IP CTS by individuals who did not need this service to communicate in a functionally equivalent manner.

28. In document FCC 13-118, the Commission modifies and makes permanent certain of those interim rules. The Commission therefore permanently prohibits all referrals for rewards programs and any other form of direct or indirect incentives, financial or otherwise, to register for or use IP CTS or for referral of IP CTS customers. The Commission also adopts as a final rule its interim requirement that each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users, (i) to register each new IP CTS user, and, (ii) as part of the registration process, to obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. The Commission further makes permanent its interim rule requiring 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, while allowing IP CTS users to apply for an

exception to this provision upon a showing of hardship. Document FCC 13-118 also adopts rules: (1) requiring each IP CTS provider, as a condition of continuing to offer service to existing IP CTS users, (a) to register each such user with the IP CTS provider and (b) as part of the registration process, to obtain from each user self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users and that the user understands the nature and restrictions of IP CTS; (2) requiring IP CTS equipment to have labels informing consumers that IP CTS may be used only by the person(s) registered to use the equipment; (3) prohibiting all providers from receiving compensation from the Fund for minutes of use generated from IP CTS users receiving IP CTS equipment, at no cost or below \$75 on or after the effective date of this rule; and (4) making provider compensation contingent on compliance with the requirements for user self-certification.

29. The Commission believes that none of these requirements would impose a significant economic impact on providers, including small businesses. Specifically, each of the new requirements is either already in place, or entails only minor operational changes that can be accomplished at minimal cost to each provider of IP CTS, including small businesses, and each requirement is necessary to help to ensure that IP CTS is as immune as possible from waste, fraud and abuse that could otherwise threaten the long-term viability of this program. In particular, the hardship exemption adopted in document FCC 13-118 will impose new reporting and recordkeeping obligations on all IP CTS providers, including small entities. However, the reporting and recordkeeping requirements will not be substantial, because each IP CTS provider will have a one-time requirement for each consumer who qualifies for the hardship exemption. Moreover, the hardship exemption was supported by all commenters, including all IP CTS

providers. Because the exemption will allow the impacted consumers to be able to make use of the service, the hardship exemption should result in additional legitimate compensable minutes for IP CTS providers, and thereby benefit such providers, including small entities. The Commission thus finds that the hardship exemption will not cause any significant economic impact on providers, including those which are small entities. Additionally, although the 911 exception will require a one-time software change on the part of providers, it is only required if technically feasible, and the requirement to implement such software change is outweighed by the public safety benefit of better access to 911 service. Therefore, the Commission finds that the 911 exception will not cause any significant economic impact on providers, including those which are small entities.

30. Therefore, the Commission concludes that there will be no significant economic impact on the small entities affected by the changes adopted in document FCC 13-118.

31. In analyzing whether a substantial number of small entities will be affected by the requirements adopted in document FCC 13-118, the Commission notes that the SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Four providers currently receive compensation from the Interstate TRS Fund for providing IP CTS: Hamilton Relay, Inc.; Purple Communications, Inc.; Sorenson Communications, Inc. and its wholly-owned subsidiary CaptionCall; and Sprint Nextel Corporation. In addition, Miracom USA, Inc. has applied to the Commission for certification to be authorized to receive compensation from the Interstate TRS Fund (Fund) to provide IP CTS. The Commission concludes that two of the five IP CTS providers and applicants that would be affected by the proposed rules are deemed to be small entities under the SBA's small business size standard. Because each of the new requirements

adopted in the in document FCC 13-118 is either already in place or has no, or minimal, economic impact upon small entities, the Commission concludes that there will be no significant economic impact on the small entities affected by the changes adopted in document FCC 13-118, and adopts these rules as necessary to help to ensure that IP CTS is as immune as possible from waste, fraud and abuse that could otherwise threaten the long-term viability of this program.

32. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of document FCC 13-118 will not have a significant economic impact on a substantial number of small entities.

33. The Commission will send a copy of document FCC 13-118, including a copy of the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

CONGRESSIONAL REVIEW ACT

34. The Commission will send a copy of document FCC 13-118 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

ORDERING CLAUSES

Pursuant to the authority contained in sections 1, 2, 4(i), (4)(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j) and 225, document FCC 13-118 Report and Order is hereby ADOPTED.

The final rules on referrals for rewards, 47 CFR 64.604(c)(8) of the Commission's rules, SHALL BE effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE**

FEDERAL REGISTER], pursuant to 5 U.S.C. 553(d) and § 1.427(a) of the Commission's rules, 47 CFR 1.427(a).

The interim rules on referrals for rewards, 47 CFR 64.604(c)(8) of the Commission's rules, adopted in the Commission's IP CTS Interim Order, document FCC 13-13, SHALL CONTINUE TO BE EFFECTIVE until the final rules on referrals for rewards adopted herein become effective.

The interim rules on new user registration and certification, 47 CFR 64.604(c)(9) of the Commission's rules, adopted in the Commission's IP CTS Interim Order, document FCC 13-13, SHALL CONTINUE TO BE EFFECTIVE until the final rules on user registration and certification adopted herein become effective.

The final rules requiring a default setting of captions off, 47 CFR 64.604(c)(10)(i), (c)(10)(ii), (c)(10)(iii) and (c)(10)(v) of the Commission's rules, SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, pursuant to 5 U.S.C. 553(d) and § 1.427(a) of the Commission's rules, 47 CFR 1.427(a).

The interim rules requiring a default setting of captions off, 47 CFR 64.604(c)(10) of the Commission's rules, adopted in the Commission's IP CTS Interim Order, document FCC 13-118, SHALL CONTINUE TO BE EFFECTIVE until the final rules requiring a default setting of captions off adopted herein become effective.

The final rules regarding compensation of IP CTS providers in regard to minutes of use generated by consumers receiving certain IP CTS equipment and the final rules prohibiting persons who have not registered for IP CTS from using IP CTS equipment with captions turned

on, 47 CFR 64.604(c)(11)(i) and (ii) of the Commission's rules, SHALL BE EFFECTIVE [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to 5 U.S.C. 553(d) and § 1.427(a) of the Commission's rules, 47 CFR 1.427(a).

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 13-118 Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation to part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend § 64.604 by revising paragraphs (c)(8), (9), and (10), and by adding paragraph (c)(11) as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(8) Incentives for use of IP CTS. (i) An IP CTS provider shall not offer or provide to any person or entity that registers to use IP CTS any form of direct or indirect incentives, financial or otherwise, to register for or use IP CTS.

(ii) An IP CTS provider shall not offer or provide to a hearing health professional any direct or indirect incentives, financial or otherwise, that are tied to a consumer's decision to register for or use IP CTS. Where an IP CTS provider offers or provides IP CTS equipment, directly or indirectly, to a hearing health professional, and such professional makes or has the opportunity to make a profit on the sale of the equipment to consumers, such IP CTS provider shall be deemed to be offering or providing a form of incentive tied to a consumer's decision to register for or use IP CTS.

(iii) Joint marketing arrangements between IP CTS providers and hearing health professionals shall be prohibited.

(iv) For the purpose of this paragraph (c)(8), a hearing health professional is any medical or non-medical professional who advises consumers with regard to hearing disabilities.

(v) Any IP CTS provider that does not comply with this paragraph (c)(8) shall be ineligible for compensation for such IP CTS from the TRS Fund.

(9) IP CTS registration and certification requirements. (i) IP CTS providers must first obtain the following registration information from each consumer prior to requesting compensation from the TRS Fund for service provided to the consumer. The consumer's full name, date of birth, last four digits of the consumer's social security number, address and telephone number.

(ii) Self-certification prior to demarcation date. IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS, also must first obtain a written certification from the consumer, and if obtained prior to the demarcation date, such written certification shall attest that the consumer needs IP CTS to communicate in a manner that is functionally equivalent to the ability of a hearing individual to communicate using voice communication services. The certification must include the consumer's certification that:

(A) The consumer has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users;

(B) The consumer understands that the captioning service is provided by a live communications assistant; and

(C) The consumer understands that the cost of IP CTS is funded by the TRS Fund.

(iii) Self-certification on or after demarcation date. IP CTS providers must also first obtain from each consumer prior to requesting compensation from the TRS Fund for the consumer, a written certification from the consumer, and if obtained on or after the demarcation date, such certification shall state that:

(A) The consumer has a hearing loss that necessitates use of captioned telephone service;

(B) The consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone;

(C) The consumer understands that the cost of captioning each Internet protocol captioned telephone call is funded through a federal program; and

(D) The consumer will not permit, to the best of the consumer's ability, persons who have not registered to use Internet protocol captioned telephone service to make captioned telephone calls on the consumer's registered IP captioned telephone service or device.

(iv) The certification required by paragraphs (c)(9)(ii) and (iii) of this section must be made on a form separate from any other agreement or form, and must include a separate consumer signature specific to the certification. Beginning on the demarcation date, such certification shall be made under penalty of perjury. For purposes of this section, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(v) Third-party certification prior to demarcation date. Where IP CTS equipment is or has been obtained by a consumer from an IP CTS provider, directly or indirectly, at no charge or for less than \$75 and the consumer was registered in accordance with the requirements of paragraph (c)(9) of this section prior to the demarcation date, the IP CTS provider must also obtain from each consumer prior to requesting compensation from the TRS Fund for the consumer, written

certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(xi) of this section.

(vi) To comply with paragraph (c)(9)(v) of this section, the independent professional providing certification must:

(A) Be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and may include, but are not limited to, community-based social service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses and other medical or health professionals;

(B) Provide his or her name, title, and contact information, including address, telephone number, and e-mail address; and

(C) Certify in writing that the IP CTS user is an individual with hearing loss who needs IP CTS to communicate in a manner that is functionally equivalent to telephone service experienced by individuals without hearing disabilities.

(vii) Third-party certification on or after demarcation date. Where IP CTS equipment is or has been obtained by a consumer from an IP CTS provider, directly or indirectly, at no charge or for less than \$75, the consumer (in cases where the equipment was obtained directly from the IP CTS provider) has not subsequently paid \$75 to the IP CTS provider for the equipment prior to the date the consumer is registered to use IP CTS, and the consumer is registered in accordance with the requirements of this paragraph (c)(9) on or after the demarcation date, the IP CTS provider must also, prior to requesting compensation from the TRS Fund for service to the

consumer, obtain from each consumer written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(xi) of this section.

Note to paragraphs (c)(9)(ii), (iii), (iv), (v) and (vii): The date demarking which certification obligations apply to which consumers shall be the date when notice of OMB approval of the amendments to the registration and certification requirements is published. The FCC will publish a notice of the effective date along with a corrective amendment to specify the demarcation date.

(viii) To comply with paragraph (c)(9)(vii) of this section, the independent third-party professional providing certification must:

(A) Be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and must be either a physician, audiologist, or other hearing related professional. Such professional shall not have been referred to the IP CTS user, either directly or indirectly, by any provider of TRS or any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity (collectively "affiliate") of any TRS provider. Nor shall the third party professional making such certification have any business, family or social relationship with the TRS provider or any affiliate of the TRS provider from which the consumer is receiving or will receive service.

(B) Provide his or her name, title, and contact information, including address, telephone number, and e-mail address.

(C) Certify in writing, under penalty of perjury, that the IP CTS user is an individual with hearing loss that necessitates use of captioned telephone service and that the third party

professional understands that the captioning on captioned telephone service is provided by a live communications assistant and is funded through a federal program.

(ix) In instances where the consumer has obtained IP CTS equipment from a local, state, or federal governmental program, the consumer may present documentation to the IP CTS provider demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third-party certification under paragraphs (c)(9)(v) and (vii) of this section.

(x) Each IP CTS provider shall maintain records of any registration and certification information for a period of at least five years after the consumer ceases to obtain service from the provider and shall maintain the confidentiality of such registration and certification information, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(xi) IP CTS providers must obtain registration information and certification of hearing loss from all IP CTS users who began receiving service prior to March 7, 2013. Notwithstanding any other provision of paragraph (c)(9) of this section, IP CTS providers shall be compensated for compensable minutes of use generated prior to the registration deadline by any such users, but shall not receive compensation for minutes of IP CTS use generated on or after the registration deadline by any IP CTS user who has not been registered.

Note to paragraph (c)(9)(xi): The deadline for compliance with the requirement for IP CTS providers to register consumers who began service prior to March 7, 2013 shall be 180 days after OMB approval has been obtained, and IP CTS providers shall be permitted to receive compensation for minutes of use generated by such consumers prior to the registration deadline.

The FCC will publish a notice of the effective date along with a corrective amendment to specify the deadline for compliance.

(10) IP CTS default settings. (i) IP CTS providers must ensure that their equipment and software applications used in conjunction with their service have a default setting of captions off, so that all IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.

(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.

(iii) For software applications on mobile phones, laptops, tablets, computers or other similar devices, the requirements of this paragraph (c)(10) are satisfied so long as:

(A) Consumers must log in to access the IP CTS software feature with a unique ID and password, and

(B) The default setting switches to captions on only while the consumer is logged in, and does not remain on indefinitely.

(iv) Hardship exception. If a consumer has a cognitive or physical disability that significantly impedes the ability of the consumer to turn on captioning at the start of each call, the IP CTS provider may set that consumer's IP CTS telephone to have a default of captions on, provided that the consumer submits, in addition to the self-certification required under paragraphs (c)(9)(ii) or (iii) of this section, the following to the IP CTS provider:

(A) A self-certification, dated and made under penalty of perjury, that the requirement to turn on captioning at the start of each call significantly impedes the consumer's ability to make use of captioned telephone service, provided that such certification shall be made by the consumer's spouse or legal guardian or a person with power of attorney where the consumer is not competent to provide the required self-certification; and

(B) A certification from a licensed, independent, third party physician in good standing, dated and made under penalty of perjury, that the consumer has a physical or mental disability or functional limitation that significantly impedes the consumer's ability to activate captioning at the start of each call, including a brief description of the basis for such statement. Such physician shall be the consumer's primary care physician or a physician whose specialty is such that the physician is qualified to make such certification and shall provide his or her name, title, area of specialty or expertise, and contact information, including address, telephone number, and e-mail address on such certification. Providers shall not accept a certification from any physician referred to the IP CTS user, either directly or indirectly, by any provider of TRS or any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity (collectively "affiliate") of any TRS provider. Nor shall the physician making such certification have any business, family or social relationship with and shall not have received any payment, referral, or other thing of value from the TRS provider or any affiliate of the TRS provider from which the consumer is receiving service.

(C) Each IP CTS provider shall maintain detailed records of all consumers, who, because of a showing of hardship under this section, have been permitted to receive IP CTS equipment with a setting of default captions on, including the dated and signed consumer and physician certifications submitted by each such consumer pursuant to this paragraph (c)(10)(iv), for a

period of at least five years after the consumer ceases to obtain service from the provider. Each IP CTS provider shall maintain the confidentiality of such certification information, and may not disclose such certification information or the content of such certification information except as required by law or regulation.

(D) Each IP CTS provider shall submit, on a monthly basis and subject to confidentiality requirements, a report to the Commission on the consumers who have received a hardship exception pursuant to this paragraph (c)(10)(iv), which shall include a list of such newly excepted individuals (with names redacted), including the dates on which each individual registered for IP CTS with the provider and was provided with IP CTS equipment with a default setting of captions on, the area of specialty or expertise of the certifying physician accompanying each hardship certification, and the basis for granting each hardship exception.

(v) 911 Calling. Each IP CTS provider may turn captions on automatically for 911 calls so long as the provider remains in compliance with the provisions of this paragraph (c)(10) for all other types of calls.

(11) IP CTS Equipment. (i) Any IP CTS provider, including its officers, directors, partners, employees, agents, subcontractors, and sponsoring organizations and entities, that provides equipment, software or applications to consumers, directly or indirectly, at no charge or for less than \$75, whether through giveaway, sale, loan, or otherwise, on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** shall be ineligible to receive compensation for minutes of IP CTS use generated by consumers using such equipment. An IP CTS provider may provide software or applications at no charge or for less than \$75 to a consumer who has already paid a minimum of \$75 for equipment, software or

applications to that IP CTS provider without affecting the IP CTS provider's eligibility to receive compensation for minutes of IP CTS use generated by that consumer. This paragraph (c)(11)(i) of this section shall not apply in instances where the consumer has obtained IP CTS equipment from a local, state, or federal governmental program.

(ii) No person shall use IP CTS equipment or software with the captioning on, unless:

(A) Such person is registered to use IP CTS pursuant to paragraph (c)(9) of this section; or

(B) Such person was an existing IP CTS user as of March 7, 2013, and either paragraph (c)(9)(xi) of this section is not yet in effect or the registration deadline in paragraph (c)(9)(xi) of this section has not yet passed.

(iii) IP CTS providers shall ensure that any newly distributed IP CTS equipment has a label on its face in a conspicuous location with the following language in a clearly legible font:

“FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING THIS DEVICE WITH THE CAPTIONS ON.” For IP CTS equipment already distributed to consumers by any IP CTS provider as of the effective date of this paragraph, such provider shall distribute to consumers equipment labels with the same language as mandated by this paragraph for newly distributed equipment, along with clear and specific instructions directing the consumer to attach such labels to the face of their IP CTS equipment in a conspicuous location. For software applications on mobile phones, laptops, tablets, computers or other similar devices, IP CTS providers shall ensure that, each time the consumer logs into the application, the notification language required by this paragraph appears in a conspicuous location on the device screen immediately after log-in.

Note to paragraph (c)(11)(iii): The deadline for compliance with the requirement for IP CTS providers to distribute to consumers equipment labels along with instructions for applying the labels to equipment already distributed to consumers shall be thirty days after OMB approval has been obtained. The FCC will publish a notice of the effective date along with a corrective amendment to specify the deadline for compliance.

(iv) IP CTS providers shall maintain, with each consumer's registration records, records describing any IP CTS equipment provided, directly or indirectly, to such consumer, stating the amount paid for such equipment, and stating whether the label required by paragraph (c)(11)(iii) of this section was affixed to such equipment prior to its provision to the consumer. For consumers to whom IP CTS equipment was provided directly or indirectly prior to the effective date of this paragraph (c)(11), such records shall state whether and when the label required by paragraph (c)(11)(iii) of this section was distributed to such consumer. Such records shall be maintained for a minimum period of five years after the consumer ceases to obtain service from the provider.

* * * * *

3. Section 64.606 is amended by adding paragraph (a)(2)(ii)(F) as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(2) * * *

(ii) * * *

(F) In the case of applicants to provide IP CTS or IP CTS providers, a description of measures taken by such applicants or providers to ensure that they do not and will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the registration and certification requirements in § 64.604(c)(9), and an explanation of how these measures provide such assurance.

* * * * *

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison,

Office of the Secretary,

Office of Managing Director.

BILLING CODE 6712-01-P