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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: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on further possible actions necessary to improve internet protocol captioned telephone relay service (IP CTS), to ensure that it is used exclusively by eligible individuals, and to develop a better methodology for calculating the compensation rate paid to IP CTS providers. This action is necessary to ensure that persons with hearing disabilities have access to relay services that address their unique needs, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended (Act), to provide relay services in a manner that is functionally equivalent to conventional telephone voice services, while at the same time protecting the interstate telecommunications relay service (TRS) Fund for all forms of TRS.

DATES: Comments are due [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments are due [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by CG Docket Nos. 13-24 and 03-123, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **CG Docket Nos. 13-24 and 03-123**.

- Paper filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325,

Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com <<mailto:fcc@bcpiweb.com>>. For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

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, Further

Notice of Proposed Rulemaking (Further Notice), 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 adopted an accompanying Report and Order (IP CTS Order), 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 <<http://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 <<mailto:fcc504@fcc.gov>> or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with sec. 1.1206(b). In proceedings governed by sec. 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 13-118 seeks comment on potential new and revised information collection requirements or may result in new or revised

information collection requirements. If the Commission adopts any new and revised information collection requirement, the Commission

will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork

Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

the Commission seeks comment on how it might “further reduce the information collection burden for small business concerns with fewer

than 25 employees.

SYNOPSIS:

1. 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 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, published at 78 FR 8032, February 5, 2013, 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. The Commission's interim rules also included a requirement that providers set equipment to a default captions-off setting, and certain registration and certification requirements. On August 26, 2013, the Commission released the IP CTS Order that finalizes and modifies interim rules relating to marketing practices and registration, and makes permanent the default captions-off rule. 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, document FCC 13-118, adopted on August 26, 2013, and released on August 26, 2013, in CG Docket Nos. 13-24 and 03-123. The Further Notice seeks comment on a number of matters pertaining to the provision of and funding for IP CTS.

2. Rate Methodology Used for IP CTS. In the Further Notice, the Commission seeks comment on whether to change the methodology for calculating the compensation rate paid to providers for IP CTS. Currently, IP CTS rates are determined using the Multi-state Average Rate Structure Plan (MARS Plan). Under the MARS Plan, the Fund administrator calculates the compensation rates for IP CTS using a weighted average of competitively bid state rates for intrastate captioned telephone service (CTS). See 2007 TRS Rate Methodology Order, published at 73 FR 3197, January 17, 2008. At the time the Commission adopted the MARS Plan, IP CTS was a

nascent service and was provided by only a single entity that offered service through two subcontracting companies. As such, call volume for this service was small, with costs that necessarily reflected this low usage. Since December 2011, IP CTS has been experiencing unprecedented and unusually rapid growth that has signaled a sharp departure from the trend of declining rates of growth in usage of this service over three prior years. At the same time, provider projections for IP CTS growth have been called into question, as minutes of use have far exceeded their projections in recent months, and PSTN-based CTS minutes of use, upon which the MARS rate is largely based, have steadily fallen. Given this unusually rapid growth, the declining minutes of use of PSTN-based CTS upon which the MARS rate is based, concerns about the accuracy of provider forecasts of IP CTS demand, and the potential for a vastly larger market and thus even larger call volumes, the Commission asks whether use of the MARS plan as the rate methodology for IP CTS remains appropriate. The Commission also notes that the burgeoning IP CTS market and the proliferation of new prospective provider entrants may necessitate the adoption of additional mandatory minimum IP CTS standards, which in turn may increase the cost of providing the service. Accordingly, the Commission seeks comment on whether the original premise underlying the adoption of the MARS rate—that the reasonable costs of IP CTS would be reflected in an average of the PSTN version of this service competitively bid throughout the states—still supports use of this methodology for IP CTS. The Commission believes that there are currently significant differences in demand levels for PSTN-based CTS and IP CTS, such that tying rates for IP CTS to the rates set at the state level for PSTN-based CTS may no longer be appropriate. The Commission seeks comment on this point, and asks whether economies of scale have reduced the costs of IP CTS. In this regard, the

Commission notes that although the TRS Fund administrator has calculated a proposed rate of \$1.7877 for the 2013-14 Fund year based on the CTS MARS calculation, aggregated provider submitted cost data results in an actual cost per minute calculation of \$1.4826 for IP CTS.

3. The Commission also asks for comment on and proposals for alternative cost recovery methodologies for IP CTS. For example, should the Commission adopt a rate methodology similar to that for VRS and IP Relay, i.e., based on a weighted average of actual and/or projected costs for each provider? If the Commission adopts a methodology based on providers' submission of actual and/or projected costs, the Commission anticipates that it will specify which expenses may be included as part of the "reasonable" costs necessary for the provision of IP CTS. The Commission therefore seeks comment on what such allowable costs should be. Should the cost categories be different than those used in calculating rates for IP Relay and VRS? Alternatively, should the Commission adopt a rate methodology for IP CTS that calculates rates based on each individual provider's costs? In this regard, the Commission questions whether the cost elements that go into a determination of the IP Relay rate, now set at \$1.0391 per minute for the 2013-14 Fund year, are demonstrably different from the elements that go into an IP CTS minute. Prior to the adoption of the MARS rate for IP CTS, this service was compensated at the same rate as IP Relay. Are the labor and outreach costs of providing IP CTS similar to the costs of providing IP Relay, and if so, should the Commission return to the original method of reimbursing for IP CTS at the same rate as IP Relay? What cost categories should be permissible for inclusion in the costs for each provider? Should IP CTS costs be lower than IP Relay costs, given that an IP Relay CA must be trained to read aloud the words of the IP Relay user and transcribe the words of the hearing caller, whereas an IP CTS CA

need only transcribe the words of the hearing caller? To what extent are the cost differences due to marketing and outreach expenses? Should the Commission consider removing the outreach costs from the rate base for IP CTS as it recently did for VRS and IP Relay in the VRS Structural Reform Order published at 78 FR 40407, July 5, 2013? Should other expenses currently included in the rate calculations for VRS and IP Relay be excluded from rate calculations for IP CTS? Conversely, should any expense categories currently excluded from the rate calculations for VRS and IP Relay be included in rate calculations for IP CTS? The Commission specifically seeks input on the extent to which the rate should include an allowance for working capital. Commenters that maintain that the costs associated with providing these various forms of relay are not comparable should be specific in describing the differences that result in disparate costs for each service.

4. Additionally, if the Commission adopts a methodology based on an analysis of providers' actual and projected costs, the Commission seeks comment on whether it should require the same filings of cost and demand data by IP CTS providers as are currently required of VRS and IP Relay providers and on the degree of any administrative burden such filings would impose on the Commission and the providers. Would any burden be outweighed by the benefit of having a rate for IP CTS that more accurately reflects the true costs of providing the service?

5. To the extent that the Commission adopts a new rate methodology, it further seeks comment on the period that the IP CTS rate determined under this regime should remain in effect. What should the rate period be? Should the Commission establish the IP CTS rate for periods longer than one year to ensure predictability? Alternatively, should the rate be

established for periods shorter than one year, in order to provide an opportunity to adjust the rate to account for significant changes in costs or demand? If the rate period is one year or longer, how should rates be adjusted during such longer period? The Commission seeks comment on the advantages and disadvantages of using either a one-year rate period or some shorter or longer period of time for this service category.

6. The Commission also seeks comment on other alternatives to the current rate methodology. For example, should the Commission seek competitive bids for the provision of IP CTS, limiting the opportunity to provide this service in the future to one or more winning bidders? If the Commission were to transition to such a structure, in the interim, how should it set rates in order to ensure the continued viability of the service to those who need it most? Are there ways to utilize competitive bidding or auction-type processes to set rates for IP CTS without unduly limiting the number of ultimate providers?

7. The Commission also seeks comment on whether, under any rate methodology for IP CTS, there should be a “true-up” at the end of each Fund year based on actual reasonable costs of either individual providers or, to encourage providers to seek greater efficiencies, either a weighted average or the lowest cost among providers of the service. Under a true-up, providers would be required to reimburse the Fund for any amount by which their payments exceed actual reasonable costs, as determined by the Administrator in consultation with the Commission, based on filings by the providers. With such a true-up, providers’ ultimate compensation need not be contingent on estimates of costs or minutes of use. Providers would receive periodic payments of estimated reasonable costs based on a particular cost

methodology, and at the end of the Fund year, or other period as determined by the Commission, the true-up would reconcile the providers' actual reasonable costs for providing service in compliance with the Commission's rules and the payments received. The Commission seeks comment generally on any issues relating to the use of a true-up, including how a true-up could be implemented, what record keeping requirements might be required, and when and how often the true-up should occur.

8. Centralized Registration and Verification of IP CTS Users. In the Commission's VRS Structural Reform Order, the Commission directed the creation of a user registration database (TRS-URD) and implementation of centralized eligibility verification requirements to ensure that VRS registration is limited to those who have a hearing or speech disability. The Commission indicated that such database should have capabilities to allow the Fund administrator and the Commission to: (a) receive and process registration information provided by VRS providers sufficient to identify unique VRS users and ensure each has a single default provider; (b) assign each VRS user a unique identifier; (c) allow VRS providers and other authorized entities to query the database to determine if a prospective user already has a default provider; (d) allow VRS providers to indicate that a VRS user has used the service; and (e) maintain the confidentiality of proprietary data housed in the database by protecting it from theft, loss, or disclosure to unauthorized persons. In the Further Notice, the Commission proposes that a centralized registration and verification process will also reduce fraud, waste and abuse and ensure greater efficiency in the IP CTS program, and seeks comment on whether to apply the same centralized registration and verification process that it adopted for VRS to IP CTS. The Commission specifically asks whether to require each IP CTS provider to give users the capability to register

with that provider as the user's "default provider," (47 CFR 64.611(a) of the Commission's rules), to populate the TRS-URD with information about each user, and to query the database to ensure each user's eligibility for each call, as well as to generally comment on application of the centralized processes for registration and verification that the Commission adopted for VRS to IP CTS. Among other things, the Commission asks commenters to note any differences between VRS and IP CTS that might necessitate adjustment in the way that information is entered into the database, the database is utilized, and the confidentiality protections that will be needed to protect against the unauthorized disclosure of information housed in that database.

9. The Commission also proposes to direct the Managing Director to ensure that the centralized user registration database has the capability of performing an identification verification check when an IP CTS provider or other party submits a query to the database about an existing or potential user. It further proposes that the criteria for identification verification for IP CTS (e.g., information to be submitted, acceptable level of risk, etc.) be established by the Managing Director in consultation with the Commission's Chief Technology Officer and the Chief of the Office of Engineering and Technology. Finally, it proposes that IP CTS providers not be permitted to register individuals who do not pass the identification verification check conducted through the user registration database, and not be permitted to seek compensation for calls placed by such individuals. It seeks comment on each of these proposals.

10. Migration to State TRS Programs. The Commission seeks comment on whether it should

transfer the responsibilities for funding, administering and overseeing IP CTS to all state TRS programs. Specifically, the Commission seeks comment on whether the states should assume the responsibilities for operating and funding IP CTS (including user eligibility assessments overseeing self-certification, and registering uses with the TRS-URD); whether this arrangement would help address use by ineligible users; and whether the default caption-off requirement would still be necessary under such arrangement. The Commission asks whether it should prescribe other steps that states must make to ensure that IP CTS providers are not seeking compensation from the Fund for calls made by ineligible users. The Commission further asks to what extent each state program should be permitted to define its own eligibility criteria for IP CTS use. The Commission also asks, as an alternative, whether it should set minimum or maximum standards on eligibility by which all states must comply, or whether states should be permitted to establish their own eligibility criteria.

11. The Commission further asks whether the registration and verification functions of providing IP CTS could be easily integrated in the states' current CTS operations, and what the costs and benefits would be of requiring the state TRS programs to take on the responsibilities of administering the IP CTS service. The Commission clarifies that if the state TRS programs assume the responsibility of administering the IP CTS service, the distribution of IP CTS equipment would remain at the states' option. The Commission asks how the provision of CTS is currently handled by states that do not have an equipment distribution program and whether such states nevertheless conduct assessments for participation in their CTS program that could be used for determining IP CTS eligibility. The Commission asks what new or other responsibilities, in addition to conducting assessments of potential IP CTS users, the states

would have to take on if the transfer of responsibility is made. In addition, the Commission solicits comments on what length of time would be needed for such a transition, and what effect such a shift would have on functional equivalence for users.

12. Funding IP CTS and Mandating CTS and IP CTS. The Commission seeks comment on whether the original incentives for having the TRS Fund support the costs of all IP CTS calls still exist, given that there are now more providers and vendors offering the service, and that a primary reason for originally using Fund support was the difficulty in ascertaining the location of calls made using IP transmissions. Because the Commission believes that IP CTS providers are able to ascertain the origination and destination of IP CTS calls, like traditional CTS, in a manner that would allow for compensation for these calls to be billed to the states or the Fund, it proposes to treat IP CTS like traditional CTS, wherein state relay programs would be required to compensate providers for intrastate IP CTS calls, and seeks comment on this proposal. If the Commission's assumption is incorrect that IP CTS providers are able to discern the points of origination and destination of IP CTS calls in a manner that would allow them to determine which calls are intrastate versus interstate, it seeks input on other ways that it can allocate IP CTS compensation for intrastate and interstate calls between the states and the TRS Fund, and how the Commission might make such a transition in a way to best benefit consumers. For example, it asks whether it should establish a default proxy allocation between interstate and intrastate call jurisdiction that can be used if actual measurements are not possible, and if so, what that allocation should be. It also seeks comment on the proposed jurisdictional separation, and asks about the time period that would be needed by the states to effectuate this change. In addition, the Commission asks how it can achieve this transition in a way to best

benefit consumers. Finally, because the Commission proposes to shift some of the financial obligation to the state programs, it seeks comment on whether a mandate for CTS and IP CTS is needed to ensure that all states will participate in the provision of these services, as well as the consequences to consumers were states to discontinue service if the service is not mandated.

13. Mandatory Minimum Requirements. The Commission seeks comment on the need for and propriety of imposing certain mandatory minimum requirements for IP CTS. For example, the Commission inquires whether requirements for the speed and accuracy of captioning should be established, and if so, how such standards should be measured and enforced, including whether, if the Commission adopts a specified speed, this should be coupled with a specified error rate, and if so, what that rate should be. The Commission also seeks comment on whether it should institute recordkeeping and/or reporting requirements for effective Commission oversight. The Commission also seeks comment as to whether providers and/or users should be allowed to choose between speed and accuracy. For example, should a provider be given the option of having a shorter lag time between the time that the other party to the call speaks and the captions appear, even if there is an increased error rate as a result of maintaining such speed? Or should providers be permitted to opt for a longer lag time in favor of greater accuracy? In addition, the Commission seeks comment on whether there are other mandatory minimum requirements that are needed to ensure that IP CTS providers are offering services to the public that are functionally equivalent to voice telephone services. For example, the Commission asks about the need to address the lack of compatibility between browsers on CTS devices that use Java Script and external large print display screens or Braille readers often used by people who have severe vision loss along with their hearing loss.

14. Low Income Consumers. In the IP CTS Order, the Commission concluded that the availability of free or discounted equipment through state and local governmental equipment distribution programs would 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. Consumer Groups argue that there are a number of states that do not have equipment distribution programs, and that states that have these programs typically limit distribution to the phones offered by one provider only, thereby depriving low income consumers of the benefits of competition. The Commission notes that it is sensitive to the concerns expressed by the consumers and seeks comment on whether state equipment distribution programs are meeting the needs of low income consumers. If state equipment distribution programs are not meeting those needs, the Commission asks what should be done to address the needs of low income consumers in states without equipment distribution programs as well as in states that are not fully meeting the needs of low income consumers. It asks whether it should allow for a low-income exception to the prohibition of providing compensation for IP CTS minutes of use generated by equipment that is distributed for less than \$75, and if so, who should be permitted to distribute equipment for less than \$75. For example, it asks whether charitable organizations should be permitted to distribute such equipment, and if so, whether charitable organizations that receive funding from IP CTS providers should be permitted or prohibited from conducting such equipment distribution. If the Commission were to permit distribution of equipment for less than \$75, it asks how it can ensure that individuals receiving such equipment qualify as low income, as well as the income thresholds that should be used to determine whether a person has a low income. Specifically, the Commission asks whether this

should be four times the poverty level or some other amount, such as 135% of federal poverty guidelines or participation in a government assistance program. The Commission asks as well about the type of documentation it should require to demonstrate eligibility as a low income consumer, and whether it should require certification under penalty of perjury. For consumers who qualify for the low income exemption, the Commission also asks whether it should require that they submit third party certification under penalty of perjury of their hearing loss necessitating the use of IP CTS, and to whom consumers should submit all such documentation and certifications. Should the documentation and certifications be submitted to the newly created TRS-URD for processing and review? What other measures should the Commission adopt to ensure that individuals receiving such equipment qualify as low income and require the use of IP CTS? What are the costs and benefits of adopting a low income exception, as well as the costs and benefits of adopting measures to ensure that consumers qualify for the low income exception and require the use of IP CTS?

15. IP CTS Software and Applications. The Commission, in document FCC 13-118, prohibits compensation from the TRS Fund for IP CTS minutes of use generated by IP CTS equipment provided free of charge or at a price below \$75, other than through a state or local government equipment distribution program. The Commission applies the same restriction to the provision of IP CTS software and applications to IP CTS users who had not already paid \$75 for IP CTS equipment, software or applications. The Further Notice seeks comment on whether the purchase of IP CTS software and applications raises considerations that make it appropriate to set a different price threshold for software and applications. It also asks whether, if commenters believe that the \$75 price threshold should not be made applicable to the context

of software and applications, why it should not be made applicable, what would be an appropriate alternative price threshold, and why would such an alternative be sufficient to deter individuals who do not need IP CTS from using the service. The Further Notice also asks commenters to also address the costs and benefits of any minimum price they propose.

16. Default Captions-Off Requirement. Although the Commission believes that the rules adopted in the IP CTS Order adequately address concerns about emergency calls, it seeks comment for further improvements on whether it is technically feasible, and desirable, for all IP CTS equipment be defaulted to “captions turned on” for 911 emergency calls and 911 callbacks. In particular, the Commission seeks input on whether an override to “captions on” for 911 calls is necessary and technically feasible. Would such an override confuse or assist IP CTS users in an emergency? Would it be technically feasible to program an override for incoming call backs from 911 call centers? Would all IP CTS device manufacturers be capable of defaulting their devices to captions on solely for the purpose of receiving calls from 911 call centers? Could this also be done to receive specified emergency alerts from official authorities such as local, state and federal governmental entities? Should consumers be able to override an automatic default-on setting for incoming emergency calls, and if so, would such override be technologically possible? What other requirements relating to the captioning of outgoing or incoming 911 calls are feasible and appropriate?

17. Volume Control. The Commission asks for comment on whether to require the disassociation of volume control from the use of captions, and whether it should prohibit providers from linking the ability to manipulate volume or preset the volume to the setting for

captions. The Commission also asks for comment on the costs and benefits of having the volume control and captions functions act independently of one another.

18. Answering Machines and Other Incoming Calls. The Commission seeks comment on whether a rule is needed to address the retrieval of messages from IP CTS equipment when the captions are defaulted off, and asks for input on how answering machines or other IP CTS devices capture captions, and the need for a rule to address the retrieval of messages from such machines. Specifically, the Commission seeks comment on how answering machines or other IP CTS devices capture captions, and whether it should amend its rules to address the retrieval of messages from such machines. Are all IP CTS devices equipped with built-in answering machines? If so, can such IP CTS devices be programmed to a captions default on setting for their answering machine functions? How would this work for the retrieval of voice mail that is captured in a telephone service provider's network or an off-the-shelf answering machine that is not integrated into the IP CTS device? Are there other incoming call situations that the Commission needs to consider? For example, some commenters claim that a captions-off default requirement can result in a delay of captioning. How does the captions-off default requirement affect the ability of a consumer to communicate on incoming calls in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services? The Commission seeks additional information about whether delays at the start of incoming calls caused by this feature may result in consumers missing critical information which could result in telephone service that is not functionally equivalent. Ultratec notes that having the captions defaulted to "on" for incoming calls and to "off" for outgoing calls "could be very confusing to consumers. If

this is the case, the Commission asks whether it should either require captions default off for all calls, both incoming and outgoing (other than calls that fit within one of the exceptions), or permit captions to default on for all calls. Finally, the Commission seeks comment on the costs and benefits of requiring that all IP CTS phones defaulted to captions on enable consumers to turn off the captioning with a single step.

19. IP CTS Phones Available Only to Registered Users. As noted in the IP CTS Order, Consumer Groups and some providers have suggested that there is no need to require a default setting of captions off when an IP CTS user is living alone, living only with other individuals who are registered users, or is in an office setting where no one else has access to that person's IP CTS phone. The Commission remains concerned about the unintentional user of IP CTS phones in any setting where others are present, such as a household that includes individuals who are not registered IP CTS users or a workplace station that is available to more than one employee, as well as a consumer living alone or with a private phone in a workplace who may not need captioning for every call. The Commission is also concerned that consumers who live alone or have a private phone in a workplace may not receive functionally equivalent service. The Commission therefore seeks comment on whether an exception could be implemented, above and beyond the hardship exception already granted, and consistent with our goal of eliminating unnecessary usage, for individuals who live alone (or only with other registered IP CTS users) or work in a situation, such as a private office, where no one else can use the individual's phone. The Commission asks commenters to provide information on the type of documentation that should be required to authenticate their living or working situation. In addition, if this exception were to be adopted, the Commission seeks comment on how to ensure that

recipients of the exemption not use captioning when it is not needed. The Commission also asks commenters to address the costs and benefits of adopting such an exception. In addition, the Commission asks whether it could safely adopt any other exceptions to the captions default off requirement, and if so, what are the costs and benefits of adopting such exceptions.

20. State Commission Authority. The Commission asks for comment on how a transfer of IP CTS administrative responsibilities to state TRS programs would affect the default-off rule.

Specifically, should state programs be authorized to decide whether and under what circumstances to allow captions to be defaulted to on, or should that decision be made by the Commission? Would a transfer of responsibilities render the default-off rule unnecessary?

21. Web Site, Advertising, and Educational Information Notification. The Commission tentatively proposes to adopt a requirement to prominently display the following language on all IP CTS provider web sites, advertising brochures and other advertising and consumer education and informational materials, including provider-supplied literature and user manuals: "FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING IP CAPTIONED TELEPHONES WITH THE CAPTIONS TURNED ON." The Commission seeks comment on this proposal. In the case of IP CTS provider web sites, the Commission proposes that the language be prominently displayed on the home page, each page that provides consumer information about IP CTS, and each page that provides information on how to order IP CTS or IP CTS equipment. In addition, the Commission proposes that all IP CTS provider web sites, advertising brochures and other advertising and consumer education and informational materials, including provider-supplied literature and user manuals, contain clear and

prominently located statements and information (1) 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, and (2) that the cost of captioning each Internet protocol captioned telephone call is funded through a federal program. The Commission seeks comment on these proposals and any alternative proposals to inform consumers about the way that IP CTS works and how it is funded.

22. General Prohibition of Providing Service to Users Who Do Not Need the Service. In the VRS Structural Reform Order, the Commission adopted a general prohibition on VRS providers engaging in fraudulent, abusive, and wasteful practices. The Commission seeks comment on whether it should adopt a general prohibition on IP CTS providers from providing service to consumers who do not genuinely need the service, that is, consumers who can understand a telephone conversation with or without assistive technology, such as an amplified phone, that does not entail the expenditure of money from the Interstate TRS Fund. The Commission also seeks comment on any other general prohibitions that should be adopted to ensure that only those who need IP CTS actually use the service. The Commission further seeks comment how else should it ensure that only those who need IP CTS actually use the service.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

23. As required by the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 et seq., as amended), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice. Written public comments are requested on this IRFA. Comments must be identified as

responses to the IRFA and must be filed by the deadlines for comments in the Further Notice.

The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

1. IP CTS is a form of 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. See 47 CFR 64.601(a)(16) of the Commission's rules. In the Further Notice, the Commission seeks comment on six main issues. First, the Commission seeks comment on whether to change the methodology for calculating the compensation rate paid to providers for IP CTS. Second, the Commission seeks comment on whether the centralized registration and verification processes that it recently adopted for video relay service (VRS) should also apply to IP CTS. Third, the Further Notice asks whether the Commission should transfer the responsibilities for funding, administering and overseeing IP CTS to state TRS programs. Fourth, the Commission asks whether there is need for mandatory minimum standards specific to IP CTS, including standards on accuracy and speed, and if so, how such standards should be measured and enforced. Fifth, the Commission also seeks comment on application of its default captions off rule with regard to other situations raised in the comments to this proceeding. Finally, the Commission solicits input on a proposal that language be prominently displayed on all IP CTS provider web sites, advertising brochures and other advertising and consumer education and informational materials, including provider-

supplied literature and user manuals, warning readers that federal law forbids anyone but registered IP CTS users from using IP CTS equipment with captioning turned on. The Commission tentatively concludes that these proposed rule changes may be necessary to ensure that persons with hearing disabilities have access to relay services that address their unique needs, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended, to provide relay services in a manner that is functionally equivalent to conventional telephone voice services, while at the same time protecting the interstate TRS Fund for all forms of TRS.

B. Legal Basis

1. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules May Apply

1. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules. The RFA generally defines the term “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 SBA.

2. The Commission believes that the entities that may be affected by the proposed rules are IP CTS providers. Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward STS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 31,996 firms in the Wired Telecommunications Carrier category which operated for the entire year. Of this total, 30,178 firms had employment of 99 or fewer employees, and an additional 1,818 firms had employment of 100 employees or more. Thus, under this size standard, the vast majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 100 employees or more”). 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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Certain rule changes, if adopted by the Commission, would modify rules or add

requirements governing reporting, recordkeeping and other compliance obligations.

2. If the Commission were to adopt the changes to the methodology for calculating the compensation rate paid to IP CTS providers as proposed in the Further Notice, the compensation rate may be lower than it is now, and IP CTS providers may be required to submit to the Fund administrator cost data that they are not now required to provide. However, interstate TRS, including IP CTS, is funded through a federal program in which interstate telecommunications and voice over Internet protocol (VoIP) providers, including small entities contribute to the Fund, and the monies contributed to the Fund are used to compensate TRS providers, including IP CTS providers. Section 225(b)(1) of the Act, requires that TRS is made available “in the most efficient manner” to individuals with hearing and speech disabilities. The Commission therefore has a statutory obligation to ensure that TRS providers, including IP CTS providers, are compensated fairly and are not overcompensated. The purpose of any change in rate methodology, if adopted by the Commission, would be to satisfy this statutory obligation.

3. If the Commission were to adopt centralized registration and verification processes as it recently did for VRS, and thereby extend the use of the TRS-URD to IP CTS, providers of these services, including small entities, would be required to collect certain information from consumers and enter that information in the TRS-URD. However, the TRS-URD would actually reduce the regulatory and recordkeeping burden on IP CTS providers, including small entities, because (1) the providers would no longer be required to verify user information, which would be accomplished centrally by a single entity contracted by the Commission, and (2) the providers would have reduced burdens when collecting information from users who switch

providers, because the user information of those consumers would already be in the database.

4. If the Commission were to adopt the proposal to transfer the responsibilities for funding, administering and overseeing IP CTS to state TRS programs, IP CTS providers, including small entities, would need to submit compensation requests to each state and comply with the regulatory obligations, including recordkeeping and reporting, of each state. However, the Commission is concerned about misuse of IP CTS that may be costly to the interstate telecommunications and VoIP providers, including small entities, that contribute to the Fund. One of the reasons for shifting regulatory oversight of IP CTS to the states would be to provide for greater regulatory oversight to prevent such misuse. The Further Notice seeks comment on the costs and benefits of shifting regulatory responsibility to the states.

5. If the Commission were to adopt changes to the mandatory minimum standards specific to IP CTS, IP CTS providers, including small entities, would be required to comply with the changed standards. The Commission initially believes that the costs associated with these standards would be reasonable for the IP CTS providers, because in many cases the providers support the changes, and have indicated that they meet some of the new standards already. The Further Notice seeks comment on the recordkeeping that would be required to demonstrate compliance with the proposed standards, and initially believes that the recordkeeping cost to providers, including small entities, would be reasonable and in line with what is required of providers for the other forms of TRS, including many of the same providers who offer IP CTS. The Further Notice seeks comment on the costs and benefits of modifying the proposed mandatory minimum standards for IP CTS.

6. If the Commission modifies the application of the default captions-off rule with regard to situations raised in the comments to this proceeding, such as to 911 calls, there may be costs to IP CTS providers, including small providers, in implementing such a change. The Commission initially believes that such costs would be reasonable, and the public interest in ensuring access to 911 would outweigh this minimal burden. The Further Notice seeks comment on the costs and benefits of the proposal to require that captions be turned on for all 911 calls as well as the other modifications proposed in the Further Notice, including whether to require the disassociation of volume control from the use of captions, whether to permit that captions be defaulted on for answering machines, and whether to permit captions to be defaulted on for IP CTS phones that are available only to registered users.

7. Finally, a requirement to provide a warning on all IP CTS provider web sites, advertising brochures and other advertising and consumer education and informational materials, including provider-supplied literature and user manuals, that federal law forbids anyone but registered IP CTS users from using IP CTS equipment with captioning turned on, would impose only minimal burden on providers, including small providers. The changes required by this rule would be one time in nature, and the benefits of the proposal, in terms of public education, would outweigh this small economic impact.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

1. The RFA requires an agency to describe any significant alternatives, specific to small entities, that it has considered in developing its approach, which may include the following four

alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

2. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, one of the proposed rules would confer benefits as explained below, and the others do not impose significant adverse economic impact.

3. If the Commission were to adopt the changes to the methodology for calculating the compensation rate paid to IP CTS providers as proposed in the Further Notice, the compensation rate may be lower than it is now, and IP CTS providers may be required to submit to the Fund administrator cost data that they are not now required to provide. However, interstate TRS, including IP CTS, is funded through a federal program in which interstate telecommunications and voice over Internet protocol (VoIP) providers, including small entities contribute to the Fund, and the monies contributed to the Fund are used to compensate TRS providers, including IP CTS providers. Section 225(b)(1) of the Act requires that TRS is made available “in the most efficient manner” to individuals with hearing and speech disabilities. The Commission therefore has a statutory obligation to ensure that TRS providers, including IP CTS providers, are compensated fairly and are not overcompensated. Because the purpose of any change in rate methodology, if adopted by the Commission, would be to satisfy this statutory

obligation, the Commission is not proposing other alternatives for small entities.

4. If the Commission were to adopt centralized registration and verification processes, and require IP CTS providers to transfer information to the TRS URD, IP CTS providers would transfer information which they are already obliged to collect to the central database manager, and the TRS Fund would compensate the database manager. Providers, including small entities, would thereby be relieved of the obligation to maintain registration information, and would not be responsible for the cost of maintenance of a registration database. There would be no additional reporting or recordkeeping obligations associated with the proposed rule change, and the effect of the rule would be to reduce recordkeeping obligations on providers, including small entities. The Commission is not proposing other alternatives for small entities because these requirements may be needed to limit waste, fraud and abuse, and an ineligible user can potentially defraud the TRS Fund by obtaining service from large and small entities alike. Therefore, if the Commission were to adopt centralized registration and verification procedures, the same requirements would need to apply to users of small entities as well as large entities.

5. If the Commission were to adopt the proposal to transfer the responsibilities for funding, administering and overseeing IP CTS to state TRS programs, some current IP CTS providers, including possible small entities, would need to submit compensation requests to each state and comply with the regulatory obligations, including recordkeeping and reporting, of each state. However, the Commission is concerned about misuse of IP CTS that may be costly to the interstate telecommunications and VoIP providers, including small entities, that contribute to

the Fund. One of the reasons for shifting regulatory oversight of IP CTS to the states would be to provide for greater regulatory oversight to prevent such misuse. The Further Notice seeks comment on the costs and benefits of shifting regulatory responsibility to the states. If regulatory responsibility were shifted to the states, it would be up to the states to consider whether to adopt significant regulatory alternatives specific to small entities. If the Commission were to adopt changes to the mandatory minimum standards specific to IP CTS, IP CTS providers, including small entities, would be required to comply with the changed standards. The Commission initially believes that the costs associated with these standards would be reasonable for the IP CTS providers, because in many cases the providers support the changes, and have indicated that they meet some of the new standards already. The Further Notice seeks comment on the recordkeeping that would be required to demonstrate compliance with the proposed standards, and initially believes that the recordkeeping cost to providers, including small entities, would be reasonable and in line with what is required of providers for the other forms of TRS, including many of the same providers who offer IP CTS. The Further Notice seeks comment on the costs and benefits of modifying the proposed mandatory minimum standards for IP CTS. Moreover, the Commission is not proposing other alternatives for small entities because this proposal applies to the mandatory minimum standards for the entire IP CTS program. Section 225(d)(1)(B) of the Act requires that the Commission establish mandatory minimum standards, 47 U.S.C. 225(d)(1)(B), and section 225 (a)(3) of the Act requires that TRS be provided “in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services. . . .” 47 U.S.C. 225(a)(3). In order to ensure functional equivalency, the

same mandatory minimum standards need to apply to small entities as well as large entities.

6. If the Commission changes the application of the captions default-off rule with regard to situations raised in the comments to this proceeding, such as to 911 calls, there may be costs to IP CTS providers, including small providers, in implementing such a change. As noted above, the Commission initially believes that such costs would be reasonable, and the public interest in ensuring access to 911 would outweigh this minimal burden, and therefore no alternatives are proposed for small entities. The Further Notice seeks comment on the costs and benefits of the proposal to require that captions be turned on for all 911 calls as well as the other modifications proposed in the Further Notice, including whether to require the disassociation of volume control from the use of captions, whether to permit that captions be defaulted on for answering machines, and whether to permit captions to be defaulted on for IP CTS phones that are available only to registered users. The Commission will consider any comments received that propose alternatives that would reduce the burden of any regulation on IP CTS providers, including specific proposals to reduce the regulatory burden on small entities

F. Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules

1. None.

ORDERING CLAUSES

2. Pursuant to sections 1, 4(i), (j), and (o), 225, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), and (o), 225, and 403, document FCC 13-118 Further Notice of Proposed Rulemaking IS HEREBY ADOPTED.

3. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 13-118 Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison,

Office of the Secretary,

Office of Managing Director.

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