



Federal Communications Commission
Washington, D.C. 20554

January 29, 2013

Alexander Hunt
Chief, Information Policy Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Hunt:

In accordance with OMB's emergency processing rules, 5 C.F.R. § 1320(13), the Federal Communications Commission (FCC or Commission) requests expedited review and approval under the Paperwork Reduction Act (PRA) of 1995, of the new information collection requirements contained in paragraphs 33-35 of the attached Misuse of Internet Protocol (IP) Captioned Telephone Service Order and Notice of Proposed Rulemaking (IP CTS Interim Order), adopted by the Commission on January 24, 2013. We make this request for emergency approval to address certain practices related to the provision and marketing of Internet protocol captioned telephone service (IP CTS) that appear to be contributing to a recent and dramatic spike in reimbursement requests to the Interstate Telecommunications Relay Service (TRS) Fund (Fund), of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed.

IP CTS is a form of TRS that enables an individual with hearing loss to communicate with other individuals. This is currently accomplished through TRS facilities that are staffed by communications assistants (CAs) who relay conversations between persons using a specially designed telephone and persons using a standard telephone. It works by having the hard of hearing user dial the number she or he wishes to call. The 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, and uses voice recognition technology to automatically transcribe those words into captions. The captions then are transmitted directly to the user and are displayed, shortly after the called party speaks, on the display of a captioned telephone device, a computer, or a smartphone. When this service was first established in 2007, the Commission set the minimum standards that apply to all TRS, but did not establish any eligibility criteria specifically for use of this service.

Although this service benefits eligible hard of hearing consumers, in recent months, this service has been experiencing unprecedented and unusually rapid growth. For example, the total number of minutes for which compensation was requested by providers increased by an average of 11% per month from June to October 2012. In October 2012 alone, requested minutes exceeded the minutes budgeted for this service by the Fund Administrator by 38%. As a consequence, the total requested payout also exceeded the budgeted amount by 38%, almost \$4

million. From January to June 2012, the number of minutes increased by 30% and the average monthly rate of growth doubled for the period June to October 2012.

It is only within recent months that the Commission learned about the extraordinary escalation in this service's usage, as well as the effect that the lack of specific eligibility criteria for new users may be having on such growth. Although there was a temporary leveling off of usage in September 2012, it was followed by a steep incline in usage in October 2012, confirming our expectation that the program's sudden acceleration of growth will continue in the immediate months ahead – growth that, if left unchecked, could exacerbate the potential for harm to both the Fund and legitimate users of TRS.

The Commission has reason to believe that the accelerated growth is being caused in part by usage of this service by people without a hearing loss requiring the assistance of IP CTS to have functionally equivalent telephone service, and that, if unchecked, in the very near term this growth will threaten to overwhelm the Fund. Because all forms of TRS are supported through one Fund, this puts all forms of TRS in jeopardy.

To prevent the unnecessary subscription to and use of the service by consumers without a hearing loss that necessitates the assistance of IP CTS to obtain functionally equivalent telephone service, the Commission adopts interim rules to require 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 user, (ii) as part of the registration process, to obtain from the 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, and (iii) where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a government program, to also obtain from the user a certification from an independent, third party professional attesting to the same.¹

The Commission believes the most appropriate immediate action is to adopt these interim rules – which address practices that the Commission believes are causing such unprecedented growth – rather than simply allow the Fund to grow unchecked while we solicit public comment. Such action will enable the Commission to better control the level of TRS disbursements and protect the programmatic, legal, and financial integrity of the TRS program. Conversely, failing

¹ The Order also (1) prohibits, on an interim basis, all referrals for rewards programs and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, IP CTS; (2) requires, on an interim basis, that IP CTS providers 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 captions each time the consumer wishes to use IP CTS; and (3) clarifies the Commission's TRS payment rule, 47 C.F.R. § 64.604(c)(5)(iii)(E), in an interpretive rule modification not subject to notice and comment, to explicitly provide that the Fund administrator shall not be obligated to pay any request for compensation until it has been established as compensable. However, no information collection is associated with these rule changes.

to take immediate action to stem such practices could well threaten the availability of this and other relay services that are supported by the Fund for the benefit of legitimate users. Moreover, because the Commission believes that a substantial portion of this growth is arising from practices that may be inconsistent with the policies underlying section 225 of the Act and the Commission's implementing regulations, the Commission is concerned that if interim rules are not adopted immediately, the use of questionable practices would continue and even accelerate, adding further to the strain on the Fund. We believe that the actions described above are necessary to prevent imminent public harms from occurring and to bring Fund expenditures for this service under control.

The Commission therefore submits a request for an immediate approval of the information collection contained in the interim order that requires IP CTS providers to first obtain from the user registration and certification information. Without swift approval of this information collection, the Fund is at risk of being depleted as result of the unnecessary subscription to and use of the service by consumers without a hearing loss who do not need IP CTS to receive functionally equivalent telephone service. As noted above, if the Commission does not act immediately, these practices will continue to drain the Fund, potentially wasting millions of subscriber dollars and putting all other TRS services in jeopardy. We anticipate that the four existing IP CTS providers will not be substantially burdened by this interim requirement and the burden on the public will be minimal.

The Commission will publish a notice in the *Federal Register* seeking 15 days of public comment on the information collection requirements. The Commission is requesting that OMB approve the information collection requirements 30 days after the collection is received at the OMB. Please have your PRA Desk Officer contact Cathy Williams, if he has any questions or requires any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mindy J. Ginsburg', with a long horizontal flourish extending to the right.

Mindy J. Ginsburg
Deputy Managing Director
Office of the Managing Director