

SUPPORTING STATEMENT

NOTE: Extension of Information Collection Requirements

The Commission seeks the approval from the Office of Management and Budget (OMB) for the extension of OMB Control Number 3060-1182, first submitted to OMB on February 4, 2013, and concluded/approved by OMB on February 25, 2013, for a period of three years. The interim rules containing these collections, which were adopted in the *IP CTS Interim Order*,¹ will remain in effect until the corresponding final rules, adopted by the Commission in the *IP CTS Reform Order*,² take effect.³ On December 6, 2013, the United States Court of Appeals for the District of Columbia Circuit granted in part a motion by Sorenson Communications, Inc. (Sorenson) seeking a stay of certain of the final rules.⁴ Specifically, the Court stayed “the rule adopted by the Commission prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than \$75.”⁵ For the purpose of maintaining the *status quo* until the court issues a final ruling in court proceedings No. 13-1246 and consolidated No. 13-1122, the Commission therefore seeks to extend OMB approval of OMB Control Number 3060-1182 for a period of three years.

A. JUSTIFICATION

History

1. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 225, which was added pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA),⁶ requires the Commission to prescribe rules to, among other things, establish functional requirements, guidelines and operations procedures for the provision of telecommunications relay services (TRS).⁷ In enacting section 225, Congress generally required the Commission to ensure that

¹ *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, 28 FCC Rcd 703, 746, Appx. D, § 64.604(c)(9)(v) (2013) (*IP CTS Interim Order*), review pending sub nom. *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1122, filed Apr. 8, 2013).

² *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 (2013) (*IP CTS Reform Order*), review pending sub nom. *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1246, filed Sept. 6, 2013).

³ See *IP CTS Reform Order*, 28 FCC Rcd at 13492-93, ¶¶ 166-67.

⁴ See *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, D.C. Cir., No. 13-1246, December 6, 2013, at 1-2 (*Stay Order*).

⁵ See *Stay Order* at 1-2.

⁶ Public Law 101-336, 104 Stat. 327, 366-369, July 26, 1990.

⁷ TRS enable an individual with a hearing or speech disability or who is deaf-blind to communicate with other individuals “in a manner that is functionally equivalent” to a hearing individual’s ability to communicate using voice communications services. 47 U.S.C. § 225(a)(3). This is accomplished through TRS facilities that are staffed by communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using a standard telephone.

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TRS is available, to the extent possible and in the most efficient manner, to people with hearing or speech disabilities, and to people who are deaf-blind.

On July 26, 1991, the Commission issued a Report and Order adopting rules for the implementation of TRS, including mandatory minimum standards (operational, technical and functional) for the provision of TRS. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (*TRS First Report and Order*).

On February 25, 1993, the Commission issued an Order on Reconsideration and Second Report and Order establishing jurisdictional separation of costs between interstate and intrastate costs and establishing the Fund to collect contributions from providers of interstate telecommunications services and to disburse funds to providers of interstate TRS. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (1993) (*TRS Second Report and Order*).

On July 20, 1993, the Commission issued a Third Report and Order establishing the rules for TRS cost recovery. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993) (*TRS Third Report and Order*).

On March 6, 2000, the Commission issued a Report and Order amending the rules governing the delivery of TRS to expand the kinds of relay services available to consumers and to improve the quality of relay services. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 (2000) (*Improved TRS Order*).

On August 1, 2003, the Commission issued a Declaratory Ruling finding that eligible providers of the public switched telephone network (PSTN) version of captioned telephone service (CTS)⁸ are eligible to recover their costs in accordance with section 225 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 225. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (2003) (*CTS Declaratory Ruling*).

On January 11, 2007, the Commission issued a Declaratory Ruling clarifying that IP CTS⁹ is a type of TRS eligible for compensation from the Fund when offered in compliance with the

⁸ CTS 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.

⁹ Generally, IP CTS uses a connection via the PSTN or voice over Internet Protocol (VoIP) for the voice portion of the call, while the connection carrying the captions between the relay service provider and the relay service user is via the Internet.

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applicable TRS mandatory minimum standards. *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007) (*IP CTS Declaratory Ruling*).

On January 25, 2013, the Commission issued the *IP CTS Interim Order* to adopt emergency interim rules and seek comment on whether to adopt permanent rules to address certain practices related to the provision of IP CTS that appear to be contributing to a recent and dramatic spike in the reimbursement requests to the Fund, of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed.

- (a) In the *IP CTS Interim Order*, the Commission adopted 47 C.F.R. § 64.604(c)(9), which requires 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. As part of the registration process, each provider must obtain from each user a self-certification that (A) 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; (B) the user understands that the captioning service is provided by a live communications assistant; and (C) the user understands that the cost of the IP CTS calls is funded by the TRS Fund.
- (b) The *Interim Order* also required, where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a governmental program, that the IP CTS provider must also obtain from the user a certification from an independent, third party professional attesting to the user's need for the service.¹⁰

On August 26, 2013, the Commission issued the *IP CTS Reform Order* to address on an ongoing basis certain practices of IP CTS providers that encouraged IP CTS usage by individuals who may not need the service, in relation to the recent dramatic spike in IP CTS usage that necessitated the *IP CTS Interim Order*, and that if left unaddressed on an ongoing basis, would constitute a serious threat to the Fund. The *IP CTS Reform Order* regulates practices relating to the marketing of IP CTS, imposes certain requirements for the provision of this service, mandates registration and certification of IP CTS users, and seeks comment on certain proposed rules.

- (a) In the *IP CTS Reform Order*, the Commission adopted 47 C.F.R. § 64.604(c)(9), which requires, on a permanent basis, registration and certification of IP CTS users, similar to those required by the *Interim Order*. In order to be eligible for compensation from the Fund for providing service to new IP CTS users, the *IP CTS Reform Order* requires providers to register each new IP CTS user. As part of the registration process, each provider must obtain from each user a self-certification regarding the user's need to use IP CTS.

¹⁰ The *Interim Order* also (1) prohibited, 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) required, 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) clarified 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.

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- (b) In addition, in the *IP CTS Reform Order*, the Commission prohibits all providers from receiving compensation from the Interstate TRS Fund for minutes of use generated by consumers using IP CTS equipment, software or applications that consumers received at no charge or purchased for less than \$75 on or after the effective date of the rule.
- (c) The *IP CTS Reform Order* also extends each rule adopted in the *IP CTS Interim Order* until the final rule replacing the interim rule takes effect.¹¹

On December 6, 2013, the United States Court of Appeals for the District of Columbia Circuit granted in part a motion by Sorenson Communications, Inc. (Sorenson) seeking a stay of certain rules on IP CTS that were adopted by the Commission in the *IP CTS Reform Order* released on August 26, 2013.¹² Specifically, the Court stayed “the rule adopted by the Commission prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than \$75.”¹³

EXTENSION OF INTERIM INFORMATION COLLECTION REQUIREMENTS

The Commission seeks to extend OMB approval of OMB Control Number 3060-1182, submitted to OMB on February __, 2013, for a period of three years. The interim rules containing these collections, which were adopted in the *IP CTS Interim Order*,¹⁴ will remain in effect until the corresponding final rules, adopted by the Commission in the *IP CTS Reform Order*, take effect.¹⁵ As noted above, the United States Court of Appeals for the District of Columbia Circuit stayed one of the final rules, specifically “the rule adopted by the Commission prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than \$75.”¹⁶ For the purpose of maintaining the status quo until the court issues a final ruling in No. 13-1246 and consolidated No. 13-1122, the Commission therefore seeks to extend OMB approval of OMB Control Number 3060-1182 for a period of three years.

Registration of New IP CTS Users

Pursuant to 47 C.F.R. § 64.604(c)(9) as adopted in the *IP CTS Interim Order*, an IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users must register each new IP CTS user for service by obtaining the following registration information from each user: (1) the user’s name, address and telephone number, (2) a self-certification that (A) the

¹¹ The *IP CTS Reform Order* also (1) requires registration and certification of existing users; (2) prohibits 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; (3) requires labels on equipment informing consumers that only registered users may use the equipment with captions turned on; and (4) requires 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.

¹² *Stay Order* at 1-2.

¹³ *Stay Order* at 1-2.

¹⁴ *IP CTS Interim Order*, 28 FCC Rcd at 746, Appx. D, § 64.604(c)(9)(v) (2013).

¹⁵ See *IP CTS Reform Order*, 28 FCC Rcd at 13492-93, ¶¶ 166-67.

¹⁶ See *Stay Order* at 1-2, citing *IP CTS Reform Order*, 28 FCC Rcd at 13440-48, ¶¶ 41-59.

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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, (B) the user understands that the captioning service is provided by a live communications assistant, and (C) the user understands that the cost of IP CTS calls is funded by the TRS Fund, and (3) where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the same. In instances where certification from a third-party professional is required, such third-party professional must provide his or her name, title, and contact information, including address, telephone number, and e-mail address. In cases where new users have obtained IP CTS equipment for free or at a low cost through a governmental program, the provider will be permitted to rely on documentation demonstrating that the equipment was obtained through such a program, in lieu of providing an independent, third-party certification. IP CTS providers are required to maintain the confidentiality of the registration and certification information that they obtain, as well as the content of such information, except as required by law.

These information collections do not involve the collection of information by the government from individuals or households, and thus, there are no impacts under the Privacy Act. However:

- (a) Information that is related to individuals is collected by third parties—IP CTS providers; and
- (b) The Commission has no direct involvement in the collection of this information on individuals.¹⁷

The statutory authority for this information collection is found in Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101-336, 104 Stat. 327, 366-69, enacted on July 26, 1990.

2. The parties who are involved in these information collections, why they are involved, and how the information that they provide is to be collected and used, is as follows:
 - (a) The requirements set forth in 47 C.F.R. § 64.604(c)(9) are to ensure that IP CTS providers are providing new service only to individuals who have a hearing disability that necessitates use of the service pursuant to section 225 of the Act. In particular, section 225(a)(3) defines TRS as “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals. . . .” 47 U.S.C. § 225(a)(3). Further, section 225(b)(1) requires the Commission to ensure that TRS are available “in the most efficient manner. . . .” 47 U.S.C. § 225(b)(1).
 - (b) As part of the section 64.604(c)(9) requirements, providers will be required to obtain from new IP CTS applicants certification of hearing loss necessitating the use of IP CTS. As a result, consumers will need to respond to certification and documentation requests from their IP CTS providers. This is necessary to ensure that Fund expenditures are made only on behalf of individuals who have a hearing disability that necessitates use of the service, thereby preventing waste and abuse of the Fund that add costs to the Fund, which are

¹⁷ Although the FCC has no direct involvement in the collection of this information on individuals or households, section 64.604(c)(9) requires that IP CTS providers maintain the confidentiality of the documentation of hearing loss that they obtain.

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ultimately borne by the general public using interstate telecommunications and voice over Internet protocol (VoIP) services.

3. Section 64.604(c)(9) does not prescribe how IP CTS providers are to register and obtain certification of hearing loss from new users. IP CTS providers are therefore permitted to explore use of information technologies to meet these requirements.
4. There are no comparable information collection requirements regarding IP CTS provider registration and certification of hearing loss of new IP CTS users.
5. There are currently only four entities providing IP CTS, and only one of them is a small entity. The Commission concludes, therefore, that a “substantial number” of small entities will not be affected by Section 64.604(c)(9), and the Commission has certified that the requirements of Section 64.604(c)(9) will not have a significant economic impact on a substantial number of small entities.
6. If the Commission did not require these information collections, the prior dramatic increase in IP CTS usage would likely resume, resulting in a need to increase the contribution factor to the Fund required from interstate telecommunications and VoIP providers. It would be contrary to the public interest for interstate telecommunications and VoIP providers to pay additional amounts into the Fund as a result of the rapid growth potentially caused by users who may not need IP CTS and therefore may not be eligible to use IP CTS in order to have functionally equivalent telephone service.
7. The collection is not being conducted in any manner inconsistent with the guideline of 5 C.F.R. § 1320.
8. Pursuant to 5.C.F.R. § 1320.8, the Commission placed a notice in the *Federal Register* on February 24, 2014, seeking comment from the public on the extension of the information collection requirement contained in this supporting statement (79 FR 10146). The public was provided sixty days to comment on the information collections contained in this collection. No comments were received from the public.
9. The Commission does not anticipate providing any payment or gift to any respondents.
10. Confidential information that is related to individuals is collected by third parties—IP CTS providers, and the Commission has no direct involvement in the collection of this information on individuals. Moreover, section 64.604(c)(9) requires that IP CTS providers maintain the confidentiality of the registration and certification information that they obtain, as well as the content of such information, except as required by law.
11. There are no questions of a sensitive nature with respect to the information collected.
12. Estimates of the burden hours for the collection of information are as follows:

The Commission estimates that there are approximately 36 million Americans with some degree of hearing loss. However, interim rule section 64.609(c)(9) requires that to be eligible to receive IP CTS, a new user must self-certify that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional

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voice telephone users, and where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a governmental program, the consumer must also obtain a certification from an independent, third party professional attesting to the same. Although the Commission estimates the potential market for IP CTS to be approximately 3 million users, at this time, there are approximately only 40,000 IP CTS users. The Commission estimates that approximately 1,000 new users will be added per month.

There are a total of four IP CTS providers, which the Commission estimates are registering and collecting documentation of hearing loss from approximately 12,000 individuals collectively (annualized). Although all 12,000 individuals are required to self-certify to the IP CTS providers as to their hearing loss, the Commission estimates that only half of them, or approximately 6,000 individuals (annualized), are also providing third party certification to the IP CTS providers.

The Commission estimates that each IP CTS provider spends approximately 30 minutes (.50 hour) collecting and filing the registration and certification information from each new IP CTS applicant. This is an on-going requirement.

Annual Number of Respondents: 4 IP CTS Providers

Annual Number of Responses: 12,000 (3,000 responses per respondent on average)

Annual Burden Hours: 12,000 responses x .50 hour = 6,000 burden hours for all 4 IP CTS providers

Annual “In-House” Cost: The Commission further estimates that each provider utilizes personnel whose pay is comparable to mid-level federal employees—GS-9/Step 5 level (\$28.32/hour) to collect such information.

6,000 hours x \$28.32 = \$169,920 total cost to all 4 IP CTS providers

Annual Number of Respondents: 4 Respondents

Annual Number of Responses: 12,000

Annual Burden Hours: 6,000 hours

Annual “In-House” Cost: \$169,920

The Commission estimates that each consumer (applicant) spends on average approximately 1 hour obtaining the information and registering for service. This is a one-time requirement.

Annual Number of Respondents: 12,000 consumers

Annual Number of Responses: 12,000

Annual Burden Hours:

12,000 respondents x 1 hour/respondent = 12,000 hours

Annual “In-House” Cost: No cost is attributed to such consumer burden hours.

IP CTS Registration and Certification of Hearing Loss Totals are as follows:

Total Number of IP CTS Providers: 4 respondents + **Total Number of Consumer Respondents:** 12,000 = 12,004 respondents

Total Number of Responses Collected by IP CTS Providers: 12,000 + **Total Number of Consumer Responses:** 12,000 responses = 24,000 responses

Total burden hours for IP CTS Providers: 6,000 hours + **Total burden hours for Consumers:** 12,000 = 18,000 hours

Total “In House” Costs for IP CTS Providers: \$169,920 + **Total “In-House” Costs for Consumers:** \$0 = \$169,920

13. The following represents the Commission’s estimate of cost burdens to respondents resulting from respondents’ professional fees associated when the emergency interim rules will be in effect.

The Commission does not anticipate any capital and start-up costs associated with the information collection.

Total Annualized Capital and Start-up Costs: None

The Commission anticipates that the four IP CTS providers use in house employees to collect the registration information and certification of hearing loss from consumers, so no outside costs are borne by the providers.

Total Costs to IP CTS Providers: None

The Commission estimates that approximately 12,000 consumers (annualized) register for service, amounting to a total of 12,000 respondents. Approximately half of those respondents, 6,000 consumers (annualized) spend approximately \$100 each on professional fees for obtaining certification of hearing loss necessitating use of IP CTS.

6,000 respondents x \$100/respondent = **\$600,000 total cost to consumers**

Total Costs to Consumers: \$600,000

Total Costs to IP CTS Providers and Consumers are as follows:

Total Capital and Start-up Costs: None

Total Costs to IP CTS Providers: None

Total Costs to Consumers: \$600,000

Combined Total Costs to IP CTS Providers and Consumers: \$600,000

14. Estimates of annualized costs to the Federal government are as follows:

Since no information is being collected by the Federal Government, there will be no cost to the Federal Government for the information collection.

Total cost to the Federal Government: None

15. There are no adjustments or program changes to this information collection.
16. The results of this information collection will not be published.
17. The Commission is not seeking approval not to display the expiration date for OMB approval of this collection of information.
18. There are no exceptions to the Certification Statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The Commission does not anticipate that the collection of information will employ statistical methods.