



Federal Communications Commission
Washington, D.C. 20554

July 2, 2014

Mr. Alexander Hunt
Chief, Information Policy Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
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 pertaining to consumer registration and certification requirements contained in paragraphs 64-65 and 69-75 of the attached *Misuse of Internet Protocol (IP) Captioned Telephone Service Report and Order and Further Notice of Proposed Rulemaking (IP CTS Reform Order)*, adopted by the Commission on August 26, 2013. We make this request for emergency approval because the United States Court of Appeals for the District of Columbia Circuit recently vacated an earlier version of the rules. Emergency action for the information collections associated with the revised rules is requested so as to avoid a lapse in registration and certification requirements which would result if OMB approval is not received prior to the issuance of the court's mandate, which is expected on or after August 4, 2014. These requirements are necessary to help prevent people from using Internet Protocol captioned telephone service (IP CTS) who do not have hearing loss and do not need IP CTS to have functionally equivalent telephone service. Limiting use of IP CTS to those with hearing loss who need IP CTS to have functionally equivalent telephone service helps protect the Telecommunications Relay Service (TRS) Fund which is funded by telecommunications and Voice over Internet Protocol (VoIP) providers, who include TRS funding as part of their expenses when determining what to charge consumers. In other words, all telecommunications and VoIP consumers indirectly pay for IP CTS.

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.

The current situation began in early 2013, when the FCC, in response to a then recent dramatic and substantial increase in IP CTS usage, issued an interim order adopting a series of measures to limit abuse of IP CTS by those who do not need the service. The interim rules called for basic consumer registration information, self-certification of hearing loss and the need for IP CTS, and a choice of either paying \$75 or more for equipment or obtaining third party certification from an independent professional qualified to evaluate hearing loss of the individual's need to use IP CTS to have functionally equivalent service. Consumers were required to provide their IP CTS registration and certification information to their providers. The interim rules also included a requirement that captions be defaulted off. Sorenson filed objections, the FCC responded to those objections, and OMB approval of emergency information collection 3060-1182 was published at 78 FR 14701, March 7, 2013. This collection was later extended, and ultimately extended by OMB for a 3-year period on June 4, 2014.

On August 26, 2013, the Commission issued the *IP CTS Reform Order* to adopt final rules to regulate practices relating to the marketing of IP CTS, impose certain requirements for the provision of this service, and mandate registration and certification of IP CTS users. As a result of the comments filed by various parties, as well as experience in implementing the interim rules, the FCC improved the language used for self-certification to make sure the consumer fully understood the service they would be using. Consumers were also required as part of the registration process to give to their providers the last four digits of their social security numbers. Third party certification was no longer an option for *new users*—they must pay \$75 for equipment. In addition, providers were given 180 days to register all *existing users* who did not register under the interim rules. Existing users needed to self-certify using the improved language, and existing users that did not pay their provider \$75 or more for equipment were required to obtain third party certification. In response to abusive practices under the interim order, the Commission improved the language for third party certification to ensure that the third party understood IP CTS, that the third party was in a profession relating to hearing health, and that the third party did not have relationships with the IP CTS provider. Although extending the captions default off requirement, the final rules also included a hardship exemption that called for consumer self-certification of having difficulty turning on captions plus third party certification by a physician that did not have relationships with the IP CTS provider. The final rules also included an equipment labeling requirement and a provider certification requirement.

The Commission published a notice in the *Federal Register* pursuant to 5 CFR 1320.8(d) on September 25, 2013 (78 FR 59025), seeking comments from the public on the information collection requirements contained in the initial supporting statement. Sorenson Communications, Inc., and its subsidiary CaptionCall, LLC (together, CaptionCall), filed comments on November 25, 2013, regarding the user registration and certification requirements adopted in the *IP CTS Reform Order* as well as the certification, recordkeeping, and reporting requirements for hardship exemptions to the captions-off default setting requirement, also adopted in the *IP CTS Reform Order*. CaptionCall did not comment on the other collections adopted in the *IP CTS Reform Order*.

Subsequently, on December 6, 2013, the United States Court of Appeals for the District of Columbia Circuit stayed “the rule adopted by the Commission [in the *IP CTS Reform Order*] prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than \$75.” *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, Order, D.C. Cir., No. 13-1246, December 6, 2013, at 1-2. (For convenience, this letter refers to the requirement subject to the stay as “the \$75 equipment charge rule.”) In the revised supporting statement, the Commission sought OMB approval of the following requirements adopted in the *IP CTS Reform Order*: (1) the requirements regarding the

labeling of equipment, software and mobile applications; (2) the certification, recordkeeping, and reporting requirements for the hardship exemption to the captions default-off requirement; and (3) an additional information reporting requirement for IP CTS applicants that seek Commission certification to provide IP CTS and for IP CTS providers, requiring applicants to provide assurance that they will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the Commission's IP CTS registration and certification requirements. Because the registration and certification requirements adopted in the *IP CTS Reform Order* are related to the \$75 equipment charge rule that was stayed by the court of appeals, the Commission did not seek OMB approval of those requirements at that time. *See* 79 FR 23354, April 28, 2014.

On June 18, 2014, OMB approved, for a period of three years, the information collection requirements specified above that are contained in the Commission's *IP CTS Reform Order*, FCC 11-118, published at 78 FR 53684, August 30, 2013. The OMB Control Number is 3060-1053. On June 20, 2014, the DC Circuit vacated the \$75 equipment charge rule and the rule requiring providers to maintain captions-off as the default setting for IP CTS equipment. *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., Nos. 13-1122 and 13-1246, June 20, 2014). Because the court had not yet issued its mandate, the captions-off default requirement, 47 CFR 64.604(c)(10)(i), (ii), (iii), and (v), remained in effect, and the certification, recordkeeping, and reporting requirements for the hardship exemption to the captions default-off requirement, 47 CFR 64.604(c)(10)(iv), became effective at that time.

This request for emergency action pertains to the user registration and certification requirements adopted in the *IP CTS Reform Order*. Specifically, IP CTS providers are required to obtain from new and existing IP CTS consumers self-certification of hearing loss necessitating the use of IP CTS and their understanding of the IP CTS program. In addition, existing IP CTS consumers with free or *de minimis* cost equipment must further submit professional certification. Due to the court's vacating the \$75 equipment charge rule, new IP CTS consumers will not need to pay \$75 for equipment or obtain professional certification once the court issues its mandate. 47 CFR 64.604(c)(9).

The Commission therefore submits a request for an immediate approval of the information collections contained in the *IP CTS Reform Order* that requires IP CTS providers to first obtain from the consumer registration and certification information. As mentioned above, emergency action for the information collections is requested so as to avoid a lapse in registration and certification requirements which would result if OMB approval is not received prior to the issuance of the court's mandate, which is expected on or after August 4, 2014. Because the five existing IP CTS providers are already required to obtain registration and certification from consumers pursuant to the interim IP CTS rules, we anticipate that these providers will not be substantially burdened by the rules adopted in the *IP CTS Reform Order*, and that 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 within 20 days after the collection is received at the OMB. Please have your PRA Desk Officer contact Cathy Williams at 202-418-2918 or cathy.williams@fcc.gov, if there are any questions or requires any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "M J G".

Mindy J. Ginsburg
Deputy Managing Director
Federal Communications Commission