



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU CLARIFIES APPLICATION OF INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE (IP CTS) RULES ON USER REGISTRATION AND CERTIFICATION

CG Docket Nos. 13-24 & 03-123

In this Public Notice, the Consumer and Governmental Affairs Bureau of the Federal Communications Commission clarifies the applicability of certain provisions of the Commission's telecommunications relay services (TRS) rules in light of the partial stay granted by the United States Court of Appeals for the District of Columbia Circuit on December 6, 2013.¹ In the *Stay Order*, the court granted in part a motion by Sorenson Communications, Inc., seeking a stay of certain rules on IP CTS that were adopted by the Commission in a Report and Order released on August 26, 2013.² 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."³

We clarify that interim rule 64.604(c)(9)(v), which requires that IP CTS providers obtain third-party professional certification from new IP CTS users who pay less than \$75 for equipment (other than equipment obtained from a governmental equipment distribution program),⁴ remains in effect at this time. In the *IP CTS R&O*, the Commission extended the effectiveness of interim rule 64.604(c)(9) until the Office of Management and Budget (OMB) approves the information collections contained in final rule 64.604(c)(9) and a notice of such approval is published in the Federal Register.⁵ As such OMB approval

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

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 R&O*), review pending sub nom. *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1246, filed Sept. 6, 2013).

³ *Stay Order* at 1-2, citing *IP CTS R&O*, 28 FCC Rcd at 13440-48, ¶¶ 41-59. For convenience, we refer to the requirement subject to the stay as "the \$75 equipment charge rule."

⁴ See *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).

⁵ See 78 FR 53684 (Aug. 30, 2013).

has not yet occurred, and thus no notice of such approval has been published in the Federal Register, interim rule 64.604(c)(9)(v) is currently in effect under the terms of the *IP CTS R&O*.

In addition, although the registration and self-certification requirements of the final IP CTS rule are not implicated by the court's stay, we take this opportunity to affirm that, upon OMB approval of the information collections contained therein, final rule 64.604(c)(9) will *not* require IP CTS providers to collect additional registration information or certifications from consumers who began receiving service after March 7, 2013, but who were registered prior to the effective date of the final rule in accordance with the currently applicable interim rules.

Background

IP CTS, a form of telecommunications relay service (TRS) approved in 2007,⁶ enables a telephone caller, by utilizing an Internet-enabled device or software, to simultaneously listen to the other party to the telephone call and read captions of what that party is saying.⁷ On January 25, 2013, the Commission adopted interim rules to address certain provider practices that appeared to encourage IP CTS usage by individuals who did not need this service to communicate in a functionally equivalent manner.⁸ Among other things, the interim rules required each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users, (i) to register each new IP CTS user, (ii) as part of the registration process, to obtain from each consumer a self-certification that the consumer has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (iii) where the consumer accepts IP CTS equipment free of charge or at a price below \$75 from any source other than a governmental program, to also obtain from the consumer a certification from an independent, third party professional attesting to the same.⁹ Those interim rules became effective on March 7, 2013, with a scheduled expiration date of September 3, 2013.¹⁰ The *IP CTS Interim Order* was accompanied by a Notice of Proposed Rulemaking (NPRM) in which the Commission sought comment on whether to make permanent, revise, or eliminate the interim rules.¹¹

On August 26, 2013, the Commission adopted final rules on IP CTS. Under the final rules adopted by the Commission, among other things, providers who provide IP CTS equipment, software, and applications to consumers after September 30, 2013, at no charge or for less than \$75, were

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007).

⁷ See 47 C.F.R. § 64.601(12). Generally, IP CTS uses a connection via the public switched telephone network (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. *Id.*

⁸ *IP CTS Interim Order*, 28 FCC Rcd at 706-09, ¶¶ 6-9.

⁹ *Id.* at 743-44, Appx. D, § 64.604(c)(9). In addition, providers must obtain consumers' self-certification regarding their understanding that captioning services are provided by a live communications assistant (CA) and that these services are supported by a federal fund. *Id.*

¹⁰ 78 FR 14701, 14702 (2013) (announcing an effective date of March 7, 2013 and an expiration date of September 3, 2013 for section 64.604(c)(9), the rule on registration and certification).

¹¹ *IP CTS Interim Order*, 28 FCC Rcd at 704, ¶ 3.

prohibited from receiving compensation from the Fund for minutes of use generated by consumers using such equipment, software, or applications.¹²

The final rules maintain, with modifications, the requirements that IP CTS providers register each new IP CTS user and obtain a self-certification regarding the consumer's understanding of and need to use IP CTS.¹³ In addition, providers must register and obtain certifications from all consumers who commenced service prior to adoption of the interim rules.¹⁴ Because the registration and certification requirements of the final rule contain information collections, however, those requirements will not take effect until after OMB has approved them.¹⁵

The \$75 equipment charge rule took effect on September 30, 2013.¹⁶ As noted, however, on December 6, 2013, the court of appeals stayed this rule. After issuance of the stay, CGB received a number of inquiries from providers seeking guidance on their obligations on a going forward basis.

Application of the Stay

As an initial matter, we remind parties that the only rule that has been stayed by the court of appeals is the \$75 equipment charge rule.¹⁷ Thus, the court's order does not stay any of the interim IP CTS rules (to the extent not superseded by final rules already in effect), nor does it stay any of the final rule provisions pertaining to registration and certification of IP CTS users.

Continued Effectiveness of the Interim Third Party Professional Certification Rule

At present, the interim rule on IP CTS user registration and certification remains in effect, including the requirement that, where the consumer accepts IP CTS equipment free of charge or at a price below \$75 from any source other than a governmental program, the provider must obtain from the consumer a certification from an independent, third party professional attesting to the consumer's need for IP CTS. In the *IP CTS Final Order*, the Commission noted that the interim rules were then set to expire on September 3, 2013, and that the final rules adopted in the order would not take effect immediately. Therefore, "in order to prevent a gap in these rules, and, consequently, open the door to practices that we have already determined could permit consumers who do not need IP CTS to use this

¹² *IP CTS R&O*, 28 FCC Rcd at 13440-48, ¶¶ 41-59.

¹³ *See id.* at 13421, ¶ 2, 13496-97, Appx. B, §§ 64.604(c)(9)(i), (iii). In addition to the information required by the interim rules, the final rules require providers, for example, to obtain from registrants the last four digits of the consumer's social security number and the consumer's self-certification that, to the best of the consumer's ability, persons who have not been registered to use Internet protocol captioned telephone service will not be permitted to make captioned telephone calls on the consumer's registered IP captioned telephone service or device. *Id.* ¹⁴ *Id.* at 13450-55, ¶¶ 66-73, Appx. B, § 64.604(c)(9)(xi).

¹⁵ *Id.* at 13492-93, ¶¶ 166-67.

¹⁶ 78 FR at 53691 (announcing that final rule 64.606(c)(11)(i) shall be effective September 30, 2013).

¹⁷ As noted above, the *Stay Order* stays enforcement of "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" and cites paragraphs 36-59 of the *IP CTS R&O*. *Stay Order* at 2.

service,” the Commission expressly extended the effectiveness of each interim rule until the corresponding final rule took effect.¹⁸

In the case of registration and certification requirements, final rule 64.604(c)(9) does not take effect until OMB approves the information collections contained in the final rule and such approval is published in the Federal Register. Therefore, interim rule 64.604(c)(9) remains in effect until those steps are completed.¹⁹ Interim rule 64.604(c)(9) includes a requirement that IP CTS providers must obtain third party professional certification of those new users who pay less than \$75 for IP CTS equipment.²⁰ Like the interim rule requirements for registration and self-certification of new users, this third party professional certification requirement thus remains in effect until OMB approves the information collections contained in the final rule on registration and certification and notice of such approval is published in the Federal Register.²¹ Because OMB has not yet approved those collections, and thus no notice of such approval has been published in the Federal Register, the third party professional certification requirement contained in interim rule 64.604(c)(9)(v) is currently in effect. Interim rule 64.604(c)(9)(v) provides:

(v) In instances where IP CTS equipment is obtained by a new consumer for less than \$75, the IP CTS provider must also, in order to be eligible to receive compensation from the TRS Fund, obtain written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(v)(D) of this section.

(A) In instances where certification from an independent third-party professional is required, such professionals must be qualified to evaluate an individual’s hearing loss in accordance with applicable professional standards, and may include, but are not limited to, community-based social service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses, and other medical or health professionals.

(B) In instances where certification from an independent third-party professional is required, such third party professionals must certify in writing that the IP CTS consumer is an individual with hearing loss who needs IP CTS to communicate in a manner that is functionally equivalent to telephone service experienced by individuals without hearing disabilities.

(C) In instances where certification from an independent third-party professional is required, such third party professional must provide his or her name, title, and contact information, including address, telephone number, and email address.

(D) In instances where the new consumer has obtained equipment from a governmental program, the new consumer may present documentation to the IP CTS provider

¹⁸ *IP CTS R&O*, 28 FCC Rcd at 13492-93, ¶¶ 166-67.

¹⁹ 78 FR at 53684 (final rule 64.604(c)(9), containing “the final rules on user registration and certification,” shall be effective upon Federal Register publication of a notice announcing OMB approval, and interim rule 64.604(c)(9) shall continue to be effective “until the final rules on user registration and certification become effective”).

²⁰ *IP CTS Interim Order*, 28 FCC Rcd at 744, Appx. D, § 64.604(c)(9)(v).

²¹ See 78 FR at 53684, 53691.

demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third party certification.²²

Application of the Registration and Self-Certification Requirements to Certain Existing Users

Finally, although the following point is not implicated by the court's stay, the application of the registration and self-certification requirements of the final IP CTS rule to certain existing IP CTS users has also been the subject of inquiries by providers.²³ Therefore, we take this opportunity to clarify that, upon OMB approval of the information collections contained therein, final rule 64.604(c)(9) will *not* require IP CTS providers to collect additional registration information or certifications from consumers who began receiving service after March 7, 2013, and who have been registered prior to the effective date of the final rule in accordance with the currently applicable interim rules. Final rule 64.604(c)(9) has application only to consumers who began receiving service prior to March 7, 2013, and to consumers who began receiving service on or after the effective date of the final rule.²⁴ It does not apply to consumers who commenced service on or after March 7, 2013, but before the effective date of the final rule.²⁵

Additional Information

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For further information regarding this *Public Notice*, please contact Robert Aldrich, Consumer and Governmental Affairs Bureau, at (202) 418-0996 (voice) or e-mail at Robert.Aldrich@fcc.gov.

²² *IP CTS Interim Order*, 28 FCC Rcd at 744, Appx. D, § 64.604(c)(9)(v).

²³ See Letter from John T. Nakahata, Wiltshire & Grannis, LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123, at 3-5 (filed Dec. 27, 2013); Letter from David A. O'Connor, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 & 03-123 (filed Jan. 2, 2014).

²⁴ The public notice issued December 2, 2013, regarding the information required for IP CTS registration addressed only the requirements applicable to "consumers who are registering for IP CTS" after the final rule takes effect. See *Personal Information Required for Consumers to Register for Internet Protocol Captioned Telephone Service and Applicable Confidentiality Safeguards*, CG Docket Nos. 13-24 & 03-123, Public Notice, DA 13-2300 (rel. Dec. 2, 2013).

²⁵ We note, however, that the Commission may adopt additional requirements providing for collection of information regarding registrants after its integrated registration database for all users of IP-based services is established. See, e.g., *IP CTS R&O*, 28 FCC Rcd at 13492-93, ¶¶ 166-67.