



PUBLIC NOTICE

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DA 14-644

Released: May 13, 2014

**NOTICE OF CONDITIONAL GRANT OF APPLICATION OF MIRACOM USA, INC., FOR
CERTIFICATION AS A PROVIDER OF INTERNET PROTOCOL CAPTIONED TELEPHONE
SERVICE ELIGIBLE FOR COMPENSATION FROM THE TELECOMMUNICATIONS
RELAY SERVICES FUND**

CG DOCKET NOS. 03-123, 10-51, & 13-24

By the Acting Chief, Consumer and Governmental Affairs Bureau:

Introduction

By this Public Notice, the Consumer and Governmental Affairs Bureau (Bureau) grants conditional certification to Miracom USA, Inc. (Miracom), to provide Internet Protocol Captioned Telephone Service (IP CTS) that is eligible for compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund).¹ This action is based on the Bureau's review of Miracom's application and supplemental filings.² Conditional certification permits Miracom to provide IP CTS as described in

¹ See 47 C.F.R. § 64.606. The Communications Act of 1934, as amended, defines telecommunications relay services (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, 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 by wire or radio.

47 U.S.C. § 225(a)(3). IP CTS is a telecommunications relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an Internet Protocol (IP) enabled device. 47 C.F.R. § 64.601(16). The TRS Fund compensates eligible providers of IP CTS and other forms of Internet-based and interstate TRS for their reasonable costs of providing these services. 47 C.F.R. § 64.604(c)(5)(iii).

² Miracom USA, Inc., Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket No. 03-123 (filed Nov. 23, 2011) (Application); Letters from George L. Lyon, Jr., Lukas, Nace, Gutierrez & Sachs, LLP, to Marlene H. Dortch, FCC Secretary, and attachments, CG Docket Nos. 03-123, 10-51 (filed May 7, 2012) (Miracom May 7, 2012 Submission); Miracom, Amendment to Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket Nos. 03-123, 10-51 (filed May 17, 2012) (Miracom May 17, 2012 Amendment); Miracom, Amendment to Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket Nos. 03-123, 10-51 (filed Aug. 6, 2013); Letter from George L. Lyon, Jr., Lukas, Nace, Gutierrez & Sachs, LLP, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123, 10-51, and attachments (filed Aug. 12, 2012); Miracom, Amendment to Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket Nos. 03-123, 10-51 (continued...)

its application, pending a final determination of Miracom's qualifications.³ To assist it in reaching a final determination, the Bureau may conduct one or more on-site inspections of Miracom's facilities and request additional documentation relating to Miracom's provision of IP CTS.⁴

Background

Miracom's proposed relay service⁵ is different from the services currently available from existing IP CTS providers. As a threshold matter, the service described in Miracom's application will be accessed by registered users through mobile devices.⁶ Miracom contends that this service to mobile users is superior to that offered by existing providers in at least two ways. First, Miracom states that its service will enable other parties to call and connect to a registered IP CTS user by dialing the user's mobile phone number directly.⁷ Second, Miracom proposes to use a captioning method that is substantially different from the automated speech recognition-based method used by current providers of IP CTS. Specifically, Miracom proposes to utilize stenography-based captioning, by which a human stenographer will produce the captions by typing the content communicated orally by the other party to the call.⁸

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(filed Sept. 12, 2013); Email from George Lyon, Lukas, Nace, Gutierrez & Sachs, LLP, to Robert Aldrich, CGB, and attachments (received Dec. 11, 2013) (Miracom December 11, 2013 Submission).

³ In the *iTRS Certification Order* the Commission amended its rules for certifying Internet-based TRS (iTRS) providers as eligible for compensation from the Fund to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules and to eliminate waste, fraud, and abuse through improved oversight of such providers. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898 (2011) (*iTRS Certification Order*); see also *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14895 (2011) (*iTRS Certification Clarification Order*). Each applicant for iTRS certification is required to submit specific types of documentary evidence demonstrating its compliance with Commission rules and orders. See, e.g., 47 C.F.R. § 64.606(a).

⁴ In the *iTRS Certification Order* the Commission reserved the right, after initial review of an application, to conditionally grant certification to an applicant, subject to one or more subsequent on-site inspections of the applicant's facilities, where, as here, the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but the Commission needs to verify some of the information contained in the application. *iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37. The Commission noted that such visits would "better enable the Commission to verify the information provided in a certification application, and help us to better assess an applicant's ability to provide service in compliance with our rules." *Id.*, ¶ 36. See also 47 C.F.R. § 64.606(a)(3).

⁵ Miracom refers to its proposed service as "Innocaptions."

⁶ Miracom states it may offer IP CTS for use with other technologies and devices, but it does not provide a specific description of such offerings in its application. In the event that Miracom decides to offer IP CTS in a manner that differs from that which is specifically described in its application, e.g., to enable access to its service by wireline or desktop computer users, it must notify the Commission of such substantive change within 60 days after this change occurs and must certify that it is continuing to meet the Commission's mandatory minimum standards after implementing the substantive change. *Id.* § 64.606(f)(2).

⁷ See Miracom May 7, 2012 Submission, Presentation to Kris Monteith. At present, other IP CTS offerings require persons who call IP CTS users utilizing mobile devices either to dial a specific telephone number assigned for IP CTS use or to first connect with a call center and then dial the IP CTS user's mobile number. See, e.g., Emergency Petition of Sprint Nextel for Limited Waiver and Clarification, CG Docket Nos. 13-24, 03-123, at 4 (filed Mar. 5, 2013) (referring to a user "receiving a call to the 10-digit number assigned to his Wireless Cap Tel").

⁸ Under the method used by current providers, the content communicated orally by the other party to a call is revoiced by the communications assistant (CA) into a speech recognition computer program, which produces (continued...)

Miracom asserts that this method will allow it to achieve a “court report” level of accuracy, which it states is at least 95 percent, and unprecedented captioning speed for IP CTS calls, *i.e.*, captions that will appear within one to two seconds of the spoken words.⁹

Discussion

The Bureau commends Miracom for seeking to provide a service that will purportedly enhance functional equivalence for TRS users, while remaining mindful of the Commission’s obligation to ensure that relay services are provided in an efficient manner.¹⁰ Although we conclude at this time that Miracom’s application facially meets the certification requirements,¹¹ we grant conditional certification so that we can validate, based on actual operating experience, Miracom’s assertions in its application and supplements that its novel form of IP CTS will meet or exceed the minimum standards for TRS in practice over time,¹² and, if necessary, conduct one or more site inspections of Miracom’s facilities when its service is active and operational. In addition, the Bureau imposes the following conditions to this grant of certification.

Meeting TRS Standards. As noted, Miracom will be using a method for the provision of IP CTS that differs from the method used by current IP CTS providers. Because this is a new method for the provision of this service, we require more information about its effectiveness, and specifically the extent to which it is capable of providing relay services that meet or exceed the Commission’s minimum TRS standards and are functionally equivalent to voice telecommunications services. Accordingly, to assist in our final determination of Miracom’s qualifications, we require that, while providing IP CTS pursuant to this conditional certification, Miracom conduct testing, at least quarterly, of the speed and accuracy of its captioned text¹³ and submit to the Bureau quarterly reports on the protocols for and results of all tests and other measurements to assess these indicia.¹⁴

The information contained in Miracom’s application and supplemental materials also indicates that the use of human stenographers as CAs will result in significantly higher captioning costs than those

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caption text automatically. *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, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13423, ¶ 6 n. 7 (2013), *review pending sub nom. Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1246, filed Sept. 6, 2013) (“*IP CTS Reform Order*”).

⁹ Miracom May 7, 2012 Submission, Presentation to Kris Monteith at 3, 4; *see also* Application at 6, 7-9, 19-20; Miracom May 17, 2012 Amendment, Exh. 2.

¹⁰ *See* 47 U.S.C. § 225(b)(1).

¹¹ *See iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37.

¹² *See* 47 C.F.R. § 64.606(b)(2)(i).

¹³ For example, Miracom notes in its application that “trained quality assurance specialists will place *non-billed* scripted test calls to randomly selected CAs each month, using scripts designed to reflect realistic conversations, including personal and business calls,” and “CAs will be observed by managers regularly during which time they must achieve performance metrics in both quality and accuracy.” Application at 8 (emphasis original).

¹⁴ For example, to the extent that Miracom’s testing utilizes prepared scripts and transcripts of conversations to assess error rates, we would expect submission of such documents and copies of the resulting captions, along with the protocols used to evaluate accuracy of such communications, to the Commission. Such test calls, of course, should not be included in the minutes of service submitted for Fund compensation.

associated with current IP CTS captioning methods.¹⁵ This raises a question as to whether such higher costs may hinder Miracom's ability to provide service in accordance with the Commission's minimum standards¹⁶ while being compensated at the applicable Fund compensation rate.¹⁷ In response to a Bureau inquiry regarding the higher cost of its service, Miracom has asserted that it can meet the Commission's minimum standards while being compensated at the current rate and has submitted cost projections in support of this position.¹⁸ Such projections, however, are difficult to evaluate in the absence of actual operating experience. Moreover, to the extent that IP CTS compensation rates ultimately are insufficient for Miracom to recover its higher costs, it is not clear from the information provided by Miracom about the unique manner in which it proposes to provide service that Miracom could respond in ways that would allow it to continue in operation and to meet the mandatory minimum standards. We believe that actual experience may provide a more solid foundation for a full and accurate assessment of Miracom's qualifications in this regard.¹⁹

Therefore, to assist in our final determination of Miracom's qualifications, we require that, while providing IP CTS pursuant to this conditional certification, Miracom submit to the Commission's Office of Managing Director (OMD) quarterly reports on its actual costs, usage, and CA activity. Such quarterly reports shall provide the following information:

- (1) Miracom's actual operating costs and minutes of usage for the preceding quarter,²⁰ reported in the same format and with the same degree of detail required by the TRS Fund administrator for providers' annual reporting of the costs of providing Internet Protocol relay service and video relay service; and
- (2) For each month of the preceding quarter,

¹⁵ See Miracom May 17, 2012 Amendment, Exh. 2. These costs could increase further to the extent that Miracom's operations or other developments affect the available supply of stenographers with relevant training.

¹⁶ The certification rules require the Commission to find that an applicant's service "will meet or exceed" the minimum TRS standards. 47 C.F.R. §§ 64.606(b)(2)(i) (emphasis added). If a provider's method of providing service is so costly that it cannot reasonably expect to recover its costs even after a reasonable start-up period, it would be difficult to justify a finding that the applicant will consistently meet the minimum TRS standards in its provision of service.

¹⁷ The current compensation rate for IP CTS is \$1.7877 per minute for the 2013-14 Fund Year. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Order, 28 FCC Rcd 9219 (CGB 2013). Having noted that the current methodology for setting the IP CTS compensation rate may not reflect actual costs, the Commission is considering whether to adopt a more cost-based methodology that could result in changed compensation rates. See *IP CTS Reform Order*, 28 FCC Rcd at 13472-79, ¶¶ 111-127.

¹⁸ See Miracom December 11, 2013 Submission.

¹⁹ Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service. See *Structure and Practices of the Video Relay Services Program: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8626, ¶ 13 & n.38 (2013) (*VRS Reform Order*).

²⁰ Thus, the report filed August 1, 2014, should provide costs and minutes of use for the second quarter of 2014, *i.e.*, for the period April 1 – June 30, 2014.

- (a) The number of registered users of Miracom’s service as of the last day of the month,
- (b) The number of registered users who actually made use of the service during that month,
- (c) The number of CAs who provided captioning for Miracom during that month,
- (d) The total number of hours worked by CAs during that month and the average hourly rate paid by Miracom, and
- (e) The number of CAs who provided captioning during the previous month but not during the current month.

In addition, we require that Miracom submit to OMD an audited financial statement one year from the date of this public notice.

Preventing Misuse. As noted above, Miracom asserts that the use of human stenography-based captioning will significantly improve the speed and accuracy of the text conveyed to IP CTS users. The ability to provide communications access at a swifter speed with higher accuracy, if proven, will contribute to the functional equivalence of IP CTS for consumers. At the same time, however, the Commission is concerned that the method Miracom will be using could lend itself to improper use of IP CTS.²¹ Specifically, there may be increased opportunity and incentive for users to substitute Miracom’s Innocaptions for in-person transcription services, such as Communication Access Realtime Translation (CART).²² CART is often used to generate captions for live meetings, speeches, and other in-person situations where the provision of TRS Fund-supported relay services is not permitted. Although Miracom has provided information regarding steps it will take to prevent such abuse, we continue to have concerns about the susceptibility of its proposed service – particularly because it will be offered for use with mobile devices – to fall prey to such misuse.²³

As an initial matter, we reiterate that neither Miracom nor any other TRS provider may provide transcripts of calls to IP CTS users, as the Commission’s TRS rules expressly prohibit CAs from keeping records of the content of any relayed conversation beyond the duration of a call.²⁴ Written transcripts are commonly associated with in-person CART services, and it would be inappropriate for any relay provider to offer these as a service to IP CTS users who communicate by phone. Additionally, to ensure that we can evaluate Miracom’s ability to prevent misuse of its services, we will require Miracom to provide the Bureau with a quarterly report on its measures for detecting and preventing misuse, and in particular measures taken to prevent the unauthorized use of in-person transcription services.

In addition, we note that Miracom’s service will be accessed from a user’s own mobile device using a downloaded software application, rather than from IP CTS equipment. Because it utilizes software rather than dedicated equipment, Miracom will not be subject to the Commission’s interim rule requiring that IP CTS providers obtain third party professional certification from new IP CTS users who

²¹ The Commission previously has had to address other kinds of misuse in the IP CTS program. *See generally IP CTS Reform Order*, 28 FCC Rcd at 13446-47, ¶ 58.

²² In many such situations, a third party may have an obligation to provide CART services. *See, e.g.*, 28 C.F.R. § 36.303, implementing Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182 *et seq.*

²³ We base these concerns on the Commission’s experiences with past misuse of TRS. *See, e.g., IP CTS Reform Order* (taking various actions to address practices that encourage IP CTS usage by individuals who do not need the service to communicate in a functionally equivalent manner); *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5549-51, ¶ 4 & n. 14 (2011) (discussing fraud and abuse in the video relay service (VRS) program and noting the indictments of 26 individuals charged in a nationwide scheme to defraud that program).

²⁴ 47 C.F.R. § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

pay less than \$75 for IP CTS equipment (other than equipment obtained from a governmental equipment distribution program).²⁵ Miracom would, however, be subject to the currently-stayed final rule, if upheld, which applies to both equipment and software. As the Commission noted in the *IP CTS Reform Order*, the availability of free IP CTS software raises the same risk posed by the provision of free or below-\$75 equipment, *i.e.*, the risk of encouraging registration by consumers who do not need the service for effective communication.²⁶ This risk is of particular concern given the purported superiority of Miracom's proposed service to the services offered by other IP CTS providers that are accessed by downloaded mobile software applications. Under these circumstances, we find that additional safeguards, beyond the measures described in Miracom's application, are necessary to ensure that Miracom's service is not subject to misuse. Therefore, to guard against this risk, we will require that, where the consumer registers for Miracom's service and accepts IP CTS software free of charge or at a price below \$75 from any source other than a governmental program, Miracom must obtain from the consumer a certification from an independent, third party professional, meeting the requirements of interim rule 64.604(c)(9), 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. This condition, which applies to Miracom's initial download of software to a customer and is the same requirement currently applicable to other providers' IP CTS equipment, will place Miracom on a similar footing with providers who offer IP CTS for use with dedicated IP CTS equipment. Miracom will make these certification records available to the Commission upon request.

Reporting Deadlines. The quarterly reports required in this Public Notice – *i.e.*, the report on Miracom's periodic testing of the quality, speed and accuracy of its captioned text; the report on Miracom's actual costs, usage, and CA activity; and the report on detecting and preventing misuse – will be due on the following dates, beginning with the first date that occurs after the release of this order: August 1, November 1, February 1, May 1. Each report should cover the last calendar quarter completed before its due date.

Other Information. Pending a decision on full certification, Miracom may be required to submit additional or different information from that described above, in order to complete our review of Miracom's eligibility to provide IP CTS that is compensable from the Interstate TRS Fund. Further, we stress that Miracom must report promptly any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in CA performance criteria, service agreements and suppliers, procedures for registering and screening prospective users, or the manner in which Miracom provides service.²⁷

²⁵ 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, 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). Because the court of appeals has stayed the Commission's final rule prohibiting compensated providers from providing IP CTS equipment or software to consumers for less than \$75, and because the final rule governing registration and certification of IP CTS users has not yet been approved by the Office of Management and Budget, the interim rule described above remains in effect. See *Consumer and Governmental Affairs Bureau Clarifies Application of the Internet Protocol Captioned Telephone Service (IP CTS) Rules on User Registration and Certification*, CG Docket Nos. 13-24, 03-123, Public Notice, DA 14-251 (rel. Feb. 24, 2014).

²⁶ *IP CTS Reform Order*, 28 FCC Rcd at 13446-47, ¶ 58.

²⁷ See 47 C.F.R. §§ 64.606(a)(2)(i) (requiring applicants to provide “[a] description of the forms of Internet-based TRS to be provided (*i.e.*, VRS, IP Relay, and/or IP captioned telephone relay service)”), (ii) (requiring “[a] detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered”).

Conclusion

This grant of conditional certification is without prejudice to the Commission's final determination of Miracom's qualifications and is dependent on the Commission verifying the information provided in Miracom's application, including its supplemental filings and the additional information provided pursuant to this order, and on the veracity of the applicant's representations that it will provide service in compliance with all pertinent Commission requirements.²⁸

Ultimate conversion to full certification will be granted if, based on on-site inspections and our review of such additional documentation, the Commission finds that Miracom is in compliance with the Commission's rules and orders, including the requirements of this order, and that Miracom is qualified to receive compensation from the Fund for the provision of IP CTS.²⁹ If, at any time during the period in which Miracom is operating pursuant to this conditional certification, the Commission determines that Miracom has failed to provide sufficient supporting documentation for any of the assertions in Miracom's application, determines that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, which may include the denial of Miracom's application. In the event of such denial, Miracom's conditional certification will automatically terminate thirty-five (35) days after such denial.³⁰ If, however, the Commission grants full certification, Miracom, like all iTRS providers, must continue to operate in compliance with all relevant Commission rules and orders.

Redacted copies of the Miracom's application and supplemental filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Suite CY-A257, Washington, DC 20554, (202) 418-0270. The full text of this *Public Notice* is similarly available for public inspection or copying. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its web site: www.bcpweb.com, or by calling 1-800-378-3160. Redacted copies of Miracom's application and supplemental filings may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 10-51 into the Proceeding block).

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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Public Notice* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

For further information, please contact Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559-5158 (voice/videophone), (202) 418-0431 (TTY), or e-mail at Gregory.Hlibok@fcc.gov.

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²⁸ See *iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37.

²⁹ See *id.*; 47 C.F.R. §§ 64.606(b)(2), (c)(2).

³⁰ *iTRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37. If the Commission terminates a conditional certification, the provider must give at least 30 days' notice to its customers that it will no longer offer service. *Id.*