

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	
Telephone Service)	CG Docket No. 13-24
)	
Telecommunications Relay Services and Speech-)	
to-Speech Services for Individuals with Hearing)	CG Docket No. 03-123
and Speech Disabilities)	
)	

ORDER

Adopted: June 27, 2014

Released: June 27, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant a request made by Hamilton Relay, Inc. (Hamilton), and Sprint Corporation (Sprint) (collectively, Petitioners) for additional time to comply with the Internet Protocol Captioned Telephone Service (IP CTS) equipment labeling requirements for: (1) equipment distributed to consumers prior to the effective date of the labeling rule; (2) equipment manufactured, packaged, and shipped to distributors prior to November 11, 2013; and (3) computer software and mobile applications.

2. Specifically, the Consumer and Governmental Affairs Bureau (CGB)¹ of the Federal Communications Commission (Commission) grants in part the Joint Petition for Limited Waiver (Joint Petition) filed by Hamilton and Sprint on September 30, 2013, and amended on November 13, 2013, and March 24, 2014.² Petitioners seek limited waiver of the implementation of the labeling requirements for IP CTS equipment and applications set forth in the Commission’s *IP CTS Reform Order*.³

¹ See 47 C.F.R. §§ 0.141, 0.361.

² Hamilton Relay, Inc., and Sprint Corporation, Joint Petition for Limited Waiver, CG Docket Nos. 13-24, 03-123 (filed September 30, 2013); Amendment to Joint Petition for Limited Waiver (filed November 13, 2013) (First Joint Amendment); Second Amendment to Joint Petition for Limited Waiver (filed March 24, 2014) (Second Joint Amendment) (collectively, the Joint Amended Petition).

³ *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, Report and Order and Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13461, ¶ 90 (2013) (*IP CTS Reform Order*), *vacated in part on other grounds sub nom. Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1246, June 20, 2014). See also 47 C.F.R. § 64.604(c)(11)(iii) (Labeling Rule). CTS is a type of telecommunications relay service (TRS) that permits people who can speak, but who have difficulty hearing over the telephone, to simultaneously listen to the other party and read captions of what that party is saying. 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 occurs via the Internet. See 47 C.F.R. § 64.601(a)(16); *Telecommunications Relay Services and* (continued...)

3. For the reasons explained below, we grant the following limited and temporary relief requested in the Joint Amended Petition:

- For equipment distributed to consumers prior to the effective date of the Labeling Rule in instances where the consumer has not registered to use IP CTS before that date, Petitioners must distribute labels with accompanying instructions to those consumers within 30 days of the date of the consumer's IP CTS registration.
- For equipment manufactured and packaged prior to November 11, 2013,⁴ and already shipped to equipment vendors, off-site warehouses, and state equipment distribution programs (EDPs), Petitioners must distribute labels with accompanying instructions to those consumers within 30 days of the date of the consumer's IP CTS registration.
- Lastly, for software and mobile applications used on computers or mobile devices, within 90 days after the effective date of the Labeling Rule, Petitioners must modify the software needed to display the requisite notifications on screens associated with these devices immediately after log-in.

II. BACKGROUND

4. On August 26, 2013, the Commission adopted a report and order to address certain practices related to the provision and marketing of IP CTS that the Commission found were likely to encourage misuse of the service.⁵ The *IP CTS Reform Order* established prohibitions against financial incentive programs designed to induce IP CTS registration, placed limitations on provider distribution of IP CTS equipment and software below a certain cost, and established requirements for the registration and certification of IP CTS users, along with a mandate that captions be defaulted to "off" on IP CTS devices.⁶ Relevant to this waiver order, the Commission also established a rule requiring IP CTS

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Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 385, ¶ 14 (2007) (*2007 IP CTS Order*).

⁴ As noted below, Petitioners report that on a voluntary basis, they began affixing the requisite labels to equipment that were manufactured and shipped to equipment vendors, off-site warehouses, and equipment distribution programs (EDPs) as of November 11, 2013, prior to this rule going into effect. First Joint Amendment at 2; Second Joint Amendment at 2.

⁵ *IP CTS Reform Order*, 28 FCC Rcd at 13421-25, ¶¶ 1-10. The Commission took this action to prevent claims to the Interstate TRS Fund for calls placed by individuals who did not need IP CTS. The Fund compensates providers for the costs of providing interstate TRS and, in the case of Internet-based TRS (iTRS), both interstate and intrastate relay services. There are two aspects to this cost recovery scheme: (1) the collection of money from various telecommunications and related services to create a Fund from which TRS providers may be compensated; and (2) the payment of money from the Fund to providers to compensate them for their reasonable costs of providing service. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order, and Declaratory Ruling, 22 FCC Rcd 20140 (2007) (*2007 TRS Rate Methodology Order*); *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532 (2011) (*VoIP Contribution Order*).

⁶ *IP CTS Reform Order*, 28 FCC Rcd at 13421-22, ¶¶ 2-3. More specifically, in this Order, the Commission (1) prohibited referrals-for-rewards programs and other forms of direct or indirect inducements, financial or otherwise, to register for or use IP CTS or for referral of IP CTS consumers; (2) required each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to IP CTS consumers, (i) to register each IP CTS consumer and (ii) as part of the registration process, to obtain from each consumer a self-certification regarding the consumer's need to use IP CTS and the consumer's understanding that the captioning services are provided by a live communications assistant (CA) and that these services are supported by a federal fund; (3) prohibited providers from (continued...)

providers to ensure that equipment and software used in conjunction with their service have notification labels informing consumers that IP CTS may be used only by registered IP CTS consumers. This Labeling Rule states:

IP CTS providers shall ensure that any newly distributed IP CTS equipment has a label on its face in a conspicuous location with the following language in a clearly legible font: “FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING THIS DEVICE WITH THE CAPTIONS ON.” For IP CTS equipment already distributed to consumers by any IP CTS provider as of the effective date of this paragraph, such provider shall, within 30 days of the effective date of this paragraph, distribute to consumers equipment labels with the same language as mandated by this paragraph for newly distributed equipment, along with clear and specific instructions directing the consumer to attach such labels to the face of their IP CTS equipment in a conspicuous location. For software applications on mobile phones, laptops, tablets, computers or other similar devices, IP CTS providers shall ensure that, each time the consumer logs into the application, the notification language required by this paragraph appears in a conspicuous location on the device screen immediately after log-in.⁷

Also of relevance to this waiver order, the *IP CTS Reform Order* established requirements for the registration and certification of both new and existing IP CTS users⁸ and gave providers up to 180 days from the effective date of the rules governing registration and certification to register their existing users.⁹

5. On September 30, 2013, Hamilton and Sprint jointly requested several limited and temporary waivers of the Labeling Rule adopted in the *IP CTS Reform Order*.¹⁰ Petitioners assert that additional time and flexibility are needed for IP CTS providers to come into compliance with the Labeling Rule requirements, depending in part on when certain equipment or software applications have been developed, manufactured, packaged, and distributed or deployed. On November 13, 2013, Petitioners

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receiving compensation for minutes of use generated by consumers using IP CTS equipment, software and applications that consumers received for less than \$75 from any source other than a governmental program on or after the effective date of the rule; and (4) required IP CTS providers to 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 the captions each time the consumer wishes to use IP CTS, while allowing IP CTS users to obtain an exemption from this provision upon a showing of hardship. *Id.*

⁷ 47 C.F.R. § 64.604(c)(11)(iii); *IP CTS Reform Order*, 28 FCC Rcd at 13496, App. B. This labeling requirement becomes effective after approval by the Office of Management and Budget (OMB) and public notice of such approval and an effective date of the rule. *See id.* at 13461, ¶ 90.

⁸ *IP CTS Reform Order*, 28 FCC Rcd at 13448-55, ¶¶ 60-73; 47 C.F.R. § 64.604(c)(9). The term “existing users,” in this order, refers to IP CTS users who commenced service with their current provider before March 7, 2013, the effective date of the interim rule requiring registration of IP CTS users. The interim registration and certification requirements were previously established in the *IP CTS Interim Order. 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 (2013) (*IP CTS Interim Order*), vacated sub nom. *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC* (D.C. Cir., No. 13-1122, June 20, 2014).

⁹ *IP CTS Reform Order*, 28 FCC Rcd at 13452, ¶ 70; 47 C.F.R. § 64.604(c)(9)(xi). The term “registration period” refers to the 180-day period allowed for registering such users.

¹⁰ *See* Joint Petition.

amended the Joint Petition by clarifying certain waiver requests and withdrawing one.¹¹ On March 24, 2014, Petitioners filed a second amendment to further clarify their waiver requests and to withdraw a second of their requests.¹²

6. Three remaining requests for waivers in the Joint Amended Petition are before us as follows: First, for IP CTS equipment distributed to existing users on or before the effective date of the Labeling Rule, Petitioners ask the Commission to grant a waiver that would allow IP CTS providers up 30 days after the end of the 180-day registration period to send labels to such consumers.¹³ Second, with respect to IP CTS equipment that left a manufacturing plant prior to November 11, 2013 (when each of the Petitioners began shipping all new IP CTS equipment with labels affixed), and is in the possession of equipment vendors, warehouses, and equipment distribution programs as of the effective date of the Labeling Rule, Petitioners seek a waiver that would allow them up to 30 days after they register each consumer who receives such equipment to ship the label to that consumer.¹⁴ Third, for mobile applications, Petitioners seek a waiver allowing an additional 90 days after the effective date of the Labeling Rule for compliance with the rule.¹⁵ Although Petitioners seek all three waivers for all IP CTS providers,¹⁶ no other IP CTS provider requested a waiver or commented on the Petitioners' waiver requests. Thus, the action taken in this order is limited to the Petitioners.

III. DISCUSSION

A. Waiver Standard

7. The Commission's rules may be waived for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²⁰ Moreover, in demonstrating whether a

¹¹ Petitioners withdrew their request for waiver with respect to equipment manufactured subsequent to the effective date of the Labeling Rule, because as of November 11, 2013, all new IP CTS equipment manufactured by the Petitioners' supplier is being packaged with the label affixed to the equipment. First Joint Amendment at 2.

¹² Petitioners withdrew their request for waiver with respect to equipment that was manufactured and packaged prior to the effective date of the Labeling Rule, but was still in possession of the provider's manufacturer, explaining that that aspect of the waiver request was no longer necessary because all on-site equipment inventory now includes a label. Second Joint Amendment at 2.

¹³ Joint Petition at 5-6; *see also IP CTS Reform Order*, 28 FCC Rcd at 13452, ¶ 70 (establishing 180-day period for IP CTS registration).

¹⁴ Joint Petition at 4-5; First Joint Amendment at 2; Second Joint Amendment at 2.

¹⁵ Joint Petition at 6; First Joint Amendment at 3-4; Second Joint Amendment at 2-3. The Labeling Rule sets the effective date as the date of compliance for mobile applications. 47 C.F.R. §64.604(c)(11)(iii).

¹⁶ Joint Petition at 1.

¹⁷ 47 C.F.R. § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *Id.*

waiver is warranted, the burden of proof rests with the petitioner.²¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²²

B. Application of Waiver Standard to Joint Petition

8. *Equipment Already Distributed to Consumers.* The *IP CTS Reform Order* requires each IP CTS provider to distribute equipment labels with the requisite language (and instructions on how to affix those labels) to consumers within 30 days after the effective date of the Labeling Rule for all equipment that the provider distributed to consumers on or before that effective date.²³ According to the Petitioners, until such 180 days are completed, “providers may lack the current contact information for those users,” which renders compliance with the Labeling Rule’s 30-day deadline after the rule’s effective date “impractical or even impossible.”²⁴ They explain that IP CTS providers often lack even the phone number for an existing user,²⁵ and that it is appropriate to give providers additional time, until 30 days after the end of the 180-day registration period, to distribute labels to existing users.²⁶

9. We agree that the circumstances described by Petitioners will make it difficult to comply with the 30-day time frame required by the Labeling Rule. Until the registration requirements obligating consumers to provide current contact information go into effect, Petitioners may not have the essential information that they need to send labels to their existing users’ correct addresses. However, while we are persuaded of the need to allow for the mailing of equipment labels to existing users *after* registration takes place – *i.e.*, after Petitioners are able to obtain accurate address information from their users through the user registration process – we believe that the amount of time Petitioners have requested for this waiver – 30 days following the end of the 180-day registration period – is both excessive and unnecessary to meet their stated objective, *i.e.*, to obtain current contact information. Specifically, Petitioners have not put forth a reason why it is necessary to wait until the 180-day registration period has ended before sending equipment labels to *any* existing users. The problem presented by the Joint Petition is that Petitioners cannot mail the label without first acquiring a user’s current address through the registration process. Such registration may occur at any time during (or even prior to) the 180-day registration period. Therefore, it would appear that Petitioners’ problem can be addressed just as effectively by allowing a cushion of 30 days after each individual existing user registers for service. Accordingly, for equipment distributed to existing users on or before the effective date of the Labeling Rule, we find good cause to grant a limited waiver of this Rule, allowing Petitioners additional time for compliance until 30 days after

²¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²² *WAIT Radio*, 418 F.2d at 1157 (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

²³ 47 C.F.R. §64.604(c)(11)(iii). As noted above, the Labeling Rule will become effective upon publication in the Federal Register of a notice announcing the approval of the requirements by the Office of Management and Budget under the Paperwork Reduction Act of 1995 and an effective date of the rule. Pub. L. No. 104-13, 109 Stat. 163 (May 22, 1995), *codified at* 44 U.S.C. § 3501 *et seq.* See also *IP CTS Reform Order*, 28 FCC Rcd at 13493, ¶ 172.

²⁴ Joint Petition at 5.

²⁵ *Id.* at n.12. See also *Ex Parte* Submission of Captel, Inc., Ultratec, Inc., Weitbrecht Communications, Sprint Corporation, and Hamilton Relay, Inc., CG Docket Nos. 13-24 and 03-123, September 18, 2013, at 2 (“Captel/Ultratec/Sprint/Hamilton September 18, 2013 *Ex Parte*”). Petitioners explain that “[b]ecause IP CTS providers receive IP signaling, rather than signaling from the Public Switched Telephone Network, IP CTS providers often lack a phone number for users that obtained IP CTS equipment from a third party.” Joint Petition at n.12.

²⁶ *Id.* at 5-6.

each existing user has registered, so that Petitioners can acquire mailing information where needed to send equipment labels and accompanying instructions to such users. Because no other IP CTS provider has either requested a similar waiver or commented on this aspect of the waiver request, we have no basis to determine whether any other provider has similar concerns or whether any such concerns would be justified. We therefore grant this limited waiver to Petitioners only, and not to all providers of IP CTS.

10. *Already Manufactured, Off-Site Equipment.* The *IP CTS Reform Order* requires that, as of the effective date of the Labeling Rule, newly distributed equipment must have the requisite labels affixed.²⁷ Petitioners report that on a voluntary basis, on November 11, 2013, prior to this rule going into effect, they began affixing the requisite labels to equipment that was manufactured and shipped to equipment vendors, off-site warehouses, and EDPs.²⁸ However, Petitioners claim that compliance with this rule would be burdensome for a significant backlog of equipment that was manufactured, packaged, and distributed without labels to equipment vendors, off-site warehouses, and EDPs, prior to November 11, 2013 (collectively, “pre-distributed off-site equipment”). Petitioners seek a waiver that would permit the shipment of labels and instructions for such pre-distributed off-site equipment within 30 days of each consumer’s IP CTS registration, so that Petitioners do not have to recall this off-site equipment from locations all over the country.²⁹

11. We are persuaded that the circumstances brought to our attention by Petitioners would make it unduly burdensome for Petitioners to comply with the Labeling Rule as written. As Petitioners explain, without a waiver of this requirement, their pre-distributed off-site equipment that does not have labels “would need to be recalled to the manufacturing plant so that the labels could be affixed to each individual phone, and then re-shipped to the various vendors, warehouses, and EDPs” scattered throughout the country.³⁰ We agree that flexibility should be afforded Petitioners to alleviate the burdens that would be associated with such recall and re-distribution efforts.³¹ We therefore find that Petitioners have shown good cause to justify limited relief from strict compliance with the requirement that all equipment given to consumers following the effective date of the Labeling Rule be provided to such users with the requisite labels affixed. Accordingly, for Petitioners’ IP CTS equipment that left the manufacturing plant prior to November 11, 2013, and is already in the hands of off-site locations, Petitioners may satisfy the Labeling Rule by distributing equipment labels and instructions to any consumer in receipt of such equipment within 30 days of such consumer registering to use IP CTS.³² As with equipment already distributed to consumers, no other IP CTS provider has presented similar justifiable concerns about compliance with this aspect of the Labeling Rule to the Commission. We therefore grant this limited waiver to Petitioners only.

12. *Mobile Applications and Software.* The *IP CTS Reform Order* requires IP CTS Providers to ensure that each time a consumer logs into an IP CTS software application on a mobile phone, laptop, tablet, computer or other similar device, the requisite notification language appears in a conspicuous

²⁷ 47 C.F.R. §64.604(c)(11)(iii).

²⁸ First Joint Amendment at 2; Second Joint Amendment at 2.

²⁹ Joint Petition at 4-5; First Joint Amendment at 2; Second Joint Amendment at 2.

³⁰ First Joint Amendment at 2; Second Joint Amendment at 2.

³¹ Joint Petition at 4-5; Joint Amendment at 2; Second Joint Amendment at 2.

³² This waiver assumes that the instructions included with the distributed labels for this pre-distributed off-site equipment will comply with the requirements set forth in the Labeling Rule for distribution of labels and instructions for already deployed equipment. 47 C.F.R. §64.604(c)(11)(iii).

location on the device screen immediately after log-in.³³ This requirement goes into effect as of the effective date of the Labeling Rule, which, as noted above, will occur upon public notice of approval by OMB and of an effective date of the rule.³⁴ Petitioners have requested that this requirement of the Labeling Rule be waived until 90 days after the effective date due to the time it takes to make software changes to such applications.³⁵ Specifically, Petitioners discuss the complexities and amount of time needed to develop and test new versions of the mobile application for each operating system. They further explain that the approval process for such revisions to mobile applications is in the hands of the developers of the operating system, and thus beyond Petitioners' control.³⁶

13. We find that Petitioners have provided good cause for the requested extension. Petitioners explain that in order to make the necessary software changes, they must develop and test a new version of an application, after which the new version must go through a "cumbersome" approval process on the part of vendors and application managers before the vendors and application managers will allow Petitioners to push out the new application to consumers.³⁷ We are persuaded that the process described by Petitioners to roll out the requisite notification language on software applications is time-consuming, and that because of the various levels of approval that such changes must go through, the "timing of the approval process is beyond Petitioners' control."³⁸ We also recognize Petitioners' concern that the software changes needed to effectuate the requisite labeling can have a ripple effect, requiring other software changes that are not discovered until the labeling software is tested, and that these additional software modifications will themselves require additional rigorous testing.³⁹ We therefore agree with Petitioners that an additional 90 days, beyond the effective date of the Labeling Rule as it applies to software applications on mobile phones, laptops, tablets, computers or other similar devices, is reasonably needed to develop, prepare, test, and acquire approval for the software modifications required for the software labeling. As with the other two aspects of the waiver request, no other IP CTS provider has presented similar justifiable concerns about compliance with this aspect of the Labeling Rule to the Commission. We therefore grant to Petitioners only a 90-day waiver beyond the effective date of the Labeling Rule to implement the rule as it applies to software applications on mobile phones, laptops, tablets, computers or other similar devices.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 4(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 225, and sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 1.3, this Order IS ADOPTED.

15. IT IS FURTHER ORDERED that the Petition for Limited Waiver filed by Hamilton Relay, Inc. and Sprint Corporation, on September 30, 2013, and amended on November 13, 2013 and

³³ 47 C.F.R. §64.604(c)(11)(iii); *IP CTS Reform Order*, 28 FCC Red at 13496.

³⁴ *See id.* at 13461, ¶ 90; *see also* 47 C.F.R. § 64.604(c)(11)(iii).

³⁵ Joint Petition at 6.

³⁶ *Id.* at 6; First Joint Amendment at 3-4; Second Joint Amendment at 2-3; *Ex Parte* Submission of Sprint Corporation, November 7, 2013, at 2 (Sprint November 7, 2013 *Ex Parte*).

³⁷ First Joint Amendment at 3-4; Second Joint Amendment at 2-3.

³⁸ First Joint Amendment at 3; Second Joint Amendment at 3. *See also* Sprint November 7, 2013 *Ex Parte* at 2.

³⁹ First Joint Amendment at 4; Second Joint Amendment at 3 (the testing phase can take at least a month).

March 24, 2014, IS GRANTED, to the extent and subject to the conditions set forth above, and is otherwise DENIED.

16. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau