

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

In the Matter of)
)
Misuse of Internet Protocol (IP) Captioned) CG Docket No. 13-24
Telephone Service)
)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
)
Telecommunications Relay Services and Speech-) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)
and Speech Disabilities)
)
Miracom USA, Inc. (now InnoCaption, Inc.),)
Certification to Provide Internet Protocol)
Captioned Telephone Service (IP CTS))
)
Review of InnoCaption, Inc., Request for Review)
of Withholding of TRS Fund Compensation)
Payments)

ORDER

Adopted: April 7, 2015

Released: April 7, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau)1 of the Federal Communications Commission (FCC or Commission) suspends the conditional certification of InnoCaption, Inc. (InnoCaption), to provide Internet Protocol Captioned Telephone Service (IP CTS), effective April 7, 2015, at 10:00 p.m. eastern daylight time. We find that InnoCaption has failed to operate its IP CTS in compliance with this Commission’s TRS emergency calling requirements, from the commencement of service in 2014 through the date of this Order. We therefore suspend InnoCaption’s conditional certification to provide Fund-supported IP CTS commencing April 7, 2015. To lift the suspension and avoid revocation of its conditional certification, InnoCaption must implement compliant 911 calling arrangements, demonstrate that the Company is in compliance with the emergency calling requirements for telecommunications relay services (TRS), and fully comply with the other requirements of this Order within six (6) months of the effective date of this Order.

1 See generally 47 C.F.R. §§ 0.141, 0.361.

II. BACKGROUND

A. InnoCaption's Conditional Certification to Provide IP CTS

2. On November 23, 2011, InnoCaption applied to the Commission² for certification as a provider of IP CTS eligible for compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund).³ According to its application and supplemental filings, InnoCaption's relay service is accessed by users through mobile devices.⁴ On May 13, 2014, the Bureau granted conditional certification to InnoCaption to provide IP CTS.⁵ The Bureau based its decision on the assertions provided in InnoCaption's application and supplemental filings.⁶ The Bureau conditioned the certification on, among other things, InnoCaption's compliance with the Commission's TRS rules and orders.⁷ The Bureau stressed that InnoCaption must "report promptly any changes in the information previously provided to the Commission in its application and supplemental filings."⁸

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). After the grant of its application, InnoCaption changed its name from Miracom USA, Inc., to InnoCaption, Inc. Letter from George L. Lyon, Jr., Counsel, InnoCaption, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 (Aug. 11, 2014). Throughout this Order, except in citations to company filings and correspondence to or from the company under its former name, the company is referred to as "InnoCaption."

³ See 47 C.F.R. § 64.606. The Communications Act of 1934, as amended, 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, 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(a)(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).

⁴ *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*, Public Notice, 29 FCC Rcd 5105, 5106 (CGB 2014) (*InnoCaption Certification PN*).

⁵ *InnoCaption Certification PN*.

⁶ Application; Letter 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 (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).

⁷ *InnoCaption Certification PN*, 29 FCC Rcd at 5111. 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).

⁸ *InnoCaption Certification PN*, 29 FCC Rcd at 5110.

B. The Commission's 911 Call Handling Requirements

3. Congress has made emergency services a national priority, and the Commission repeatedly has emphasized the critical importance of access to 911 emergency services,⁹ including in the specific context of TRS.¹⁰ Under the Commission's rules, all TRS providers must be capable of handling any type of call normally provided by telecommunications carriers, including 911 calls, unless the Commission determines that it is not technologically feasible to do so.¹¹ Further, the Commission's TRS rules establish specific call handling requirements for the processing and routing of 911 calls by providers of certain Internet-based forms of TRS,¹² including forms of IP CTS that allow users to initiate calls by contacting providers over the Internet.¹³

⁹ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, 11 FCC Rcd 18676, 18679, ¶ 5 (1996) (*E911 First Report and Order*) ("E911 saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently"); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, CC Docket No. 94-102, IB Docket No. 99-67, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, 25340, ¶ 1 (2003) (*E911 Scope Order*) ("911 service is critical to our Nation's ability to respond to a host of crises."); *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, 10267, ¶ 37 (2005) (requiring that "within 120 days of the effective date of this Order, an interconnected VoIP provider must transmit all 911 calls, as well as a call back number and the caller's 'Registered Location' for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location"), *aff'd* *Nuvio Corp. v. FCC*, 473 F.3d 302 (2007).

¹⁰ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5456, ¶¶ 35-36 (2006); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order, 23 FCC Rcd 5255, 5271, ¶ 29 (2008) (*Emergency Call Handling Order*); see also *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, 5183-84, ¶¶ 100-01 (2000) (*2000 TRS Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, 18 FCC Rcd 12379, 12406-09, ¶¶ 40-46 (2003) (*2003 TRS Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12502, ¶ 54 (2004) (*2004 TRS Order*).

¹¹ 47 C.F.R. § 64.604(a)(3)(ii).

¹² 47 C.F.R. § 64.605(a); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123 and WC Docket No. 05-196, Report and Order, 23 FCC Rcd 5255 (2008) (*Interim Emergency Call Handling Order*) (adopting 47 C.F.R. § 64.605, which was later recodified as 47 C.F.R. § 64.605(a)).

¹³ *Interim Emergency Call Handling Order*, 23 FCC Rcd at 5263, ¶ 30 n.59; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Purple Communications, Inc., Request for Review of Withholding of TRS Payments*, CG Docket No. 03-123, Order, 29 FCC Rcd 13716, 13717-18, ¶ 4 (CGB 2014) (*Purple Withholding Order*), application for review pending; see also 47 U.S.C. § 64.605(a)(1). These rules do not apply to IP CTS calls utilizing the PSTN for the voice portion of the call because the telephone carrier or voice over the Internet (VoIP) provider completes the call to the 911 provider. See *Interim Emergency Call Handling Order*, 23 FCC Rcd at 5263, ¶ 30 n.59.

4. Specifically, providers of such web or wireless based forms of IP CTS must accept and handle 911 calls, give them priority over other calls, route them to an appropriate public safety answering point (PSAP) or other appropriate answering point or local emergency authority corresponding to the caller's location, and deliver specified name, location, and callback information to the PSAP.¹⁴ When an IP CTS provider handles a 911 call from an Internet-based TRS user, the provider must, among other things: (1) access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, statewide default answering point, or appropriate local emergency authority, and to relay the call to that entity; (2) request, at the beginning of the call, the user's name and the location of the emergency; and (3) deliver to the PSAP or other appropriate entity such name and location information, as well as the provider's name, the Communications Assistant's (CA) callback number, and the CA's identification number, at the outset of the outbound leg of an emergency call.¹⁵

C. Issues with InnoCaption's Handling of 911 Calls

5. In its certification application, InnoCaption represented that it would provide IP CTS in compliance with all minimum TRS standards, including the rules on handling 911 calls.¹⁶ On September 12 and 19, 2014, the Bureau conducted test calls to determine InnoCaption's compliance with the 911 emergency call handling requirements. When the Bureau's tester called 911 using InnoCaption's application, the application produced a pop-up that said that 911 was not supported. On September 25, the Commission notified InnoCaption that it had discovered in its testing that InnoCaption was not providing any 911 service and that the TRS Fund administrator was being directed to withhold compensation payments until further notice.¹⁷ The Commission also directed InnoCaption to provide a warning on its website and in its promotional materials stating that 911 calling was not available and "to immediately send a notification to all registered users warning them that the service does not currently allow 911 calling."¹⁸

6. InnoCaption responded on October 6, 2014.¹⁹ According to InnoCaption's response letter, InnoCaption had been assured by its VoIP service provider that 911 calls were supported and had successfully tested 911 from its headquarters at an unspecified time prior to the conditional grant of its certification application.²⁰ Before commencing service, however, InnoCaption learned that its VoIP provider and the 911 provider for its VoIP service could not route 911 calls to the appropriate PSAP.²¹ InnoCaption acknowledged that it launched its product nevertheless, stating that it "placed an advisory on its web site to advise that 911 was not currently supported[,] temporarily intercepted any 911 calls made to advise the consumer to place the call using the regular cellular network[,] and] proceeded to modify its backend operation to effect the routing of 911 calls to the appropriate public safety answering points

¹⁴ 47 C.F.R. § 64.605(a). Section 64.605(b) sets forth additional and alternative requirements applicable to providers of VRS and IP Relay when handling 911 calls placed by registered users. *Id.* § 64.605(b).

¹⁵ *Id.* §§ 64.605(a)(2)(i), (iii), (iv).

¹⁶ Application at 6 ("**Emergency Call Handling.** The Company's service supports E911 calls.") (emphasis in original).

¹⁷ See Letter from Gregory Hlibok, Chief, Disability Rights Office (DRO), CGB, FCC, to Chuck Owen, COO & Senior VP, Miracom USA, Inc. (DRO Sept. 25, 2014 Letter).

¹⁸ DRO Sept. 25, 2014 Letter at 2.

¹⁹ Letter from George L. Lyon, Jr., to Gregory Hlibok, Chief, DRO, CGB (Oct. 6, 2014) (InnoCaption Oct. 6, 2014 Letter).

²⁰ InnoCaption Oct. 6, 2014 Letter at 2.

²¹ *Id.*; E-mail from Chuck Owen, CEO, InnoCaption, to Darryl Cooper, Attorney for the Disability Rights Office of the Consumer and Governmental Affairs Bureau, FCC (February 22, 2015), Attachment entitled "InnoCaption 911 Service."

without reliance on its VOIP provider.”²² InnoCaption added that “911 service was restored on September 6, 2014,” and that it “confirmed the availability of 911 service through a series of test calls.”²³ Therefore, InnoCaption “respectfully suggested that (1) the need for any additional warning to subscribers is mooted, (2) would cause confusion, and (3) would mislead any consumer needing to use InnoCaption to place a 911 call.” Finally, InnoCaption “request[ed] the Commission or TRS Administrator to make additional test calls to verify that InnoCaption’s 911 service is restored.”²⁴

7. On October 8, 2014, pursuant to section 64.604(c)(5)(iii)(L)(2) of the Commission’s rules,²⁵ the TRS Fund administrator, Rolka Loube, notified InnoCaption of its decision to withhold compensation for InnoCaption’s August 2014 minutes based on information from the Commission regarding test calls made on September 12 and 19, 2014 showing that InnoCaption’s IP CTS services “were not working in compliance with 47 C.F.R. 65.605.”²⁶ In addition, Rolka Loube stated that it “will not continue to issue reimbursements for IP CTS service . . . until several matters have been adequately addressed to the satisfaction of the Administrator and the FCC.”²⁷ In this regard, Rolka Loube requested that InnoCaption provide information about its IP CTS service, including “all records of calls completed . . . using the web and wireless based applications that do not support calls to emergency 911 services,” and, if InnoCaption claimed that noncompliance “was the result of a temporary condition, identify the condition and its duration (start and end) as well as the measures implemented to correct the condition including the completion date.”²⁸ Rolka Loube informed InnoCaption that, in accordance with section 64.604(c)(5)(iii)(L) of the Commission’s rules, InnoCaption could submit additional justification for payments of the minutes of use in dispute within two months of Rolka Loube’s October 10, 2014 letter.²⁹

8. In response to the Rolka Loube letter and a subsequent notification,³⁰ InnoCaption submitted additional justification for its compensation request and provided additional information regarding its 911 service issues.³¹ InnoCaption acknowledged that it did not offer 911 service between June 11, 2014 and September 5, 2014, and InnoCaption stated that it would reimburse the TRS Fund for

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ 47 C.F.R. § 65.604(c)(5)(iii)(L)(2) (stating that “[i]f the Fund administrator in consultation with the Commission . . . determines that payments for certain minutes should be withheld, a TRS provider will be notified within two months from the date of the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part”).

²⁶ Letter from David Rolka, President, Rolka Loube, to Miracom at 1 (Oct. 8, 2014) (First RL Notification Letter).

²⁷ First RL Notification Letter at 1. Before it learned that InnoCaption was not in compliance, the TRS Fund administrator already had paid InnoCaption for the months of June and July, 2014.

²⁸ First RL Notification Letter at 2.

²⁹ First Notification Letter at 2. *See* 47 C.F.R. § 65.604(c)(5)(iii)(L)(2) (stating that TRS providers are given “two additional months from the date of notification [of withholding] to provide additional justification for payment of such minutes of use”).

³⁰ Letter from David Rolka, President, Rolka Loube Associates, to InnoCaption at 1 (Oct. 28, 2014) (Second Notification Letter) (requesting that InnoCaption “identify the programs, policies, and procedures that [it] has had in place . . . to confirm ongoing compliance with the emergency call handling rules of the FCC” as well as the date those policies and procedures were established and the dates of any modifications to those policies and procedures).

³¹ Letter from George L. Lyon, Jr., Counsel for InnoCaption, to David W. Rolka, President, Rolka Loube (Oct. 16, 2014) (InnoCaption Oct. 16, 2014 Letter); Letter from George L. Lyon, Jr., Counsel for InnoCaption, to David W. Rolka, President, Rolka Loube (Nov. 11, 2014) (InnoCaption Nov. 11, 2014 Letter); InnoCaption Dec. 9, 2014 Letter; Email from Chuck Owen, CEO, InnoCaption, to Darryl Cooper, Attorney Advisor, FCC’s Disability Rights Office, and attachment (Feb. 22, 2015) (InnoCaption Feb. 22, 2015 Email).

monies paid during this period.³² InnoCaption asserted that it is entitled to receive compensation, however, for service provided on or after September 6, 2014.³³ By that date, InnoCaption stated, it had developed a solution “which allowed InnoCaption itself to route 911 calls to the appropriate PSAP.”³⁴ InnoCaption explained that it arranged to route 911 calls using a database purchased from a third party and that, after a patch was downloaded to users’ IP CTS applications, InnoCaption was able to route 911 calls “to the correct PSAP based off of the . . . numbers listed in [the] database for each PSAP.”³⁵ InnoCaption stated that it directed its users to download the patch on September 12 and 13, 2014.³⁶ InnoCaption asserted that the Bureau’s test calls conducted on September 12 and 19, 2014 must have been “conducted by a tester that had not updated his or her InnoCaption application as directed by the provider.”³⁷ According to InnoCaption, after deploying the patch it learned that some users had failed to download the patch and “repeatedly messaged its subscribers . . . through text and email” between October 24, 2014 and October 27, 2014, to inform them that “their service would be suspended if they did not update their InnoCaption application.”³⁸ Additionally, InnoCaption “placed calls to all subscribers who had not updated by October 27, 2014, to urge them to update their application to avoid suspension of service.”³⁹ Finally, InnoCaption stated that it suspended the service of users who had not updated their application by close of business on October 27, 2014 and that since that date “every subscriber has had a version of the app that supports 911 calling.”⁴⁰ Additionally, InnoCaption submitted a spreadsheet showing what it claimed were results of successful test calls to 911 by InnoCaption from September 2014 to November 2014.⁴¹

9. CGB conducted additional testing of InnoCaption’s handling of 911 calls in January and March 2015. On January 29 2014 a tester tried to call 911 using InnoCaption’s wireless service.⁴² The tester reached a disconnected line on three consecutive tries. At no time did an InnoCaption representative attempt to help the tester connect to a PSAP. On March 16, 2015, the Commission again tested InnoCaption’s ability to handle 911 calls. In these tests, InnoCaption calls disconnected from the PSAP about 50 percent of the time. Only in a few instances did InnoCaption provide the PSAP with a callback number. In addition, none of the InnoCaption calls provided the PSAP with the caller’s name, location, provider name, or CA identification number. During the testing, InnoCaption’s CEO, who was present, stated that PSAP operators could obtain the caller’s location and personal cell phone number by pressing a key on their phones. During the test calls, none of the PSAP operators received this information unless prompted by the test caller to press a key on their phone.

³² See InnoCaption Oct. 16, 2014 Letter. InnoCaption Quarterly Report (Dec. 31, 2014).

³³ See InnoCaption Oct. 16, 2014 Letter at 2; InnoCaption Nov. 11, 2014 Letter at 2.

³⁴ InnoCaption Oct. 16, 2014 Letter at 2.

³⁵ InnoCaption Feb. 22, 2015 Email at 1.

³⁶ InnoCaption Nov. 11, 2014 Letter at 2; *see also* InnoCaption Feb. 22, 2015 Email, Attachment at 1-2 (stating that InnoCaption’s application was “updated to support 911 calling and made available to all [of InnoCaption’s] subscribers” as of September 12, 2014).

³⁷ InnoCaption Nov. 11, 2014 Letter at 2.

³⁸ InnoCaption Nov. 11, 2014 Letter at 2.

³⁹ InnoCaption Nov. 11, 2014 Letter at 2.

⁴⁰ InnoCaption Nov. 11, 2014 Letter at 2; InnoCaption Dec. 9, 2014 Letter at 1; InnoCaption Feb. 22, 2015 Email, Attachment at 1-2.

⁴¹ InnoCaption Dec. 9, 2014 Letter, Attachment.

⁴² Bureau staff who observed the tests prepared documentation reporting on the test results that the Bureau will share with InnoCaption.

10. On April 2, 2015, following discussions with Commission staff, InnoCaption notified its users that “it has come to our attention there is an issue with our 911 call handling.” InnoCaption added that “[a]fter careful investigation we have concluded temporary suspension of service is necessary to ensure the safety of our users while we implement a solution,” and that such suspension would be effective on April 7, 2015 at 9:00 p.m. central daylight time. InnoCaption noted further that “[i]n order for the suspension of service to be as temporary as possible, the InnoCaption team has been working closely with the Federal Communications Commission (FCC) and a third party company who specializes in emergency call handling.”⁴³

III. DISCUSSION

A. InnoCaption’s Noncompliance with 911 Call Handling Requirements

11. As a provider of IP CTS that allows users to initiate calls by contacting the provider over the Internet, InnoCaption is required to handle 911 calls in accordance with the specific requirements of section 64.605(a) of the rules.⁴⁴ As discussed below, InnoCaption has been out of compliance with those requirements since the inception of its service.

12. First, by its own admission, InnoCaption launched its service on June 11, 2014, without offering access to 911 service. Further, InnoCaption did not inform the Commission of this fact until October 6, 2014, after being contacted by the Commission regarding the failure of 911 test calls.⁴⁵ InnoCaption’s inability to accept emergency calls continued until September 12, 2014, the date when InnoCaption states it began directing users to download a patch that it claimed would enable them to make 911 calls.⁴⁶ However, InnoCaption acknowledges that some of its users did not learn about the patch when initially implemented and that even as late as October 27, 2014, not all of its users had downloaded the patch.

13. Even after users obtained the patch, InnoCaption’s handling of 911 calls remained inadequate in numerous respects. Commission tests of the patched application in January and March 2015 showed that InnoCaption’s service still consistently failed to handle 911 calls in compliance with the Commission’s rules. Specifically:

- In tests conducted in January 2015, three 911 calls were routed to disconnected lines. These test calls indicated failure to comply with section 64.605(a)(2)(i) of the rules, which requires the provider to “accept and handle emergency calls and access . . . a commercially available database that will allow the provider to determine an appropriate PSAP . . . that corresponds to the caller’s location, and to relay the call to that entity.”⁴⁷
- In tests conducted in March 2015, the tester was disconnected from the PSAP on about 50 percent of the calls, and InnoCaption did not reestablish contact with the TRS user or PSAP for any of the disconnected calls. These test results indicated failure to comply with section 64.605(a)(2)(i), which requires the provider to “accept and handle emergency calls,” and section 64.605(a)(2)(v), which requires the provider, in the event of a disconnection, to

⁴³ Cristina Duarte, Regulatory Affairs Manager, InnoCaption, *Urgent Message Regarding Suspension of Service from InnoCaption* (April 2, 2015), available at <http://innocaption.com/> (last visited Apr. 3, 2015) (InnoCaption Notice to Subscribers).

⁴⁴ See *Purple Withholding Order*, 29 FCC Rcd at 13717-18, ¶ 4, 13720, ¶¶ 9-10.

⁴⁵ InnoCaption Oct. 6, 2014 Letter; InnoCaption Quarterly Report (Dec. 31, 2014).

⁴⁶ See InnoCaption Nov. 11, 2014 Letter at 2.

⁴⁷ 47 C.F.R. § 64.605(a)(2)(i).

“immediately reestablish contact with the TRS user and/or the appropriate PSAP . . . and resume handling the call.”⁴⁸

- In the March 2015 tests, InnoCaption provided the PSAP with a callback number in only a few instances. In addition, on every call InnoCaption failed to effectively deliver to the PSAP the caller’s name and location, the name of the provider, and the CA’s identification number.⁴⁹ These test results indicated failure to comply with section 64.605(a)(2)(iv), which requires the provider to “[d]eliver to the PSAP . . . at the outset of the outbound leg of an emergency call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA’s callback number, and the CA’s identification number,” to enable the PSAP “to re-establish contact with the CA in the event the call is disconnected.”⁵⁰
- Various InnoCaption representatives appear to acknowledge that difficulties remain with respect to the way that it handles 911 calls, and for this reason, the company currently is working to address these problems.
- As of the date of this order, InnoCaption remains noncompliant with the Commission’s emergency call handling requirements.

B. Compensation for InnoCaption Minutes

14. We affirm Rolka Loube’s withholding of compensation payments for the period from September 6, 2014, to January 31, 2015 (the last date for which Rolka Loube has withheld payment as of the date of this Order). The evidence detailed above is sufficient to show that InnoCaption failed to comply, in numerous critical respects, with the Commission’s 911 call handling rules throughout this period, as well as for all periods during which InnoCaption service was provided to the public. Therefore, we find that InnoCaption is not entitled to payment of any of the compensation withheld, as well as any compensation for any other minutes of service since the Commission granted conditional certification to InnoCaption to provide IP CTS on May 13, 2014. This determination constitutes a permanent denial of payment.⁵¹

⁴⁸ 47 C.F.R. §§ 64.605(a)(2)(i), (v).

⁴⁹ During the testing, InnoCaption’s CEO indicated that the caller’s location and personal cell phone number, which was supposed to be delivered to the PSAP operator via a voice recording played when the PSAP operator answered the call, could be obtained by the PSAP operator by pressing any key on the operator’s equipment; however, none of the PSAP operators indicated that they had received this information upon answering the call, and none of them pressed a key on their phone without being prompted to do so by the test caller. This press-a-key method does not satisfy the rule’s requirement that the caller’s location be provided, because, among other reasons, PSAP operators have no way to know that pressing a key on their phones will enable them to obtain an InnoCaption caller’s location.

⁵⁰ 47 C.F.R. § 64.605(a)(2)(iv). Although InnoCaption submitted information regarding 911 tests that it claimed to have conducted on its own (InnoCaption Dec. 9, 2014 Letter & Attachment), we do not find that this information is sufficiently reliable to call into question the clear, contrary evidence of noncompliance resulting from numerous independent tests conducted under Commission staff supervision, including tests at which a representative of the provider was present.

⁵¹ See 47 C.F.R. § 65.604(c)(5)(iii)(L)(5) (“If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission’s rules, payment will be permanently denied.”).

C. Review of InnoCaption's Certification Status

15. In the *InnoCaption Certification PN*, the Bureau stated that full certification will be granted “if the Commission finds that [InnoCaption] is in compliance with the Commission’s rules and orders.”⁵² The *InnoCaption Certification PN* also provides that:

If, at any time during the period in which [InnoCaption] is operating pursuant to this conditional certification, the Commission determines that [InnoCaption] has failed to provide sufficient supporting documentation for any of the assertions in [InnoCaption]’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 [InnoCaption]’s application.⁵³

As noted above, the evidence shows that InnoCaption knowingly launched its service with no 911 service whatsoever, failed to even accept 911 calls for at least two months after commencing service, and, for more than six additional months, InnoCaption failed to comply with the 911 rules in numerous critical respects.

16. Further, the *InnoCaption Certification PN* expressly required InnoCaption to “report promptly any changes in the information previously provided to the Commission, in its application and supplemental filings, including . . . changes in . . . the manner in which [InnoCaption] provides service.”⁵⁴ InnoCaption’s failure – until evidence was brought to its attention by Commission staff – to report to the Commission its inability to handle 911 calls as represented in its application also constitutes a significant breach of duty.

17. In light of the requirements of the *InnoCaption Certification PN* quoted above, InnoCaption’s noncompliance with those requirements, and its noncompliance with the 911 rules, the Bureau could be justified in denying InnoCaption’s application for certification to receive compensation from the TRS Fund as a provider of IP CTS. Such noncompliance does not provide a basis for a determination that InnoCaption “will meet or exceed all . . . minimum standards” for TRS, as the TRS certification rules require.⁵⁵ The Bureau recognizes the potential value to consumers of InnoCaption’s innovative form of IP CTS,⁵⁶ however, and notes InnoCaption’s recent efforts to address its compliance problems, including its April 2, 2014, announcement of a voluntary suspension of service.⁵⁷ Accordingly, we believe the public interest would be served by suspending InnoCaption’s conditional certification, subject to certain conditions, rather than immediately denying its application for certification.⁵⁸ InnoCaption’s service is suspended for up to six months, beginning April 7, 2015, at 10:00 p.m. eastern daylight time. To lift the suspension and avoid receiving a denial of its application for certification to receive compensation from the TRS Fund as a provider of IP CTS, InnoCaption must meet specific conditions before the expiration of the suspension period.

⁵² *InnoCaption Certification PN*, 29 FCC Rcd at 5111.

⁵³ *InnoCaption Certification PN*, 29 FCC Rcd at 5111.

⁵⁴ *InnoCaption Certification PN*, 29 FCC Rcd at 5110.

⁵⁵ Such an option is expressly provided for in the case of a full certification and while that does not directly govern our action with respect to a conditional certification, it informs the action we take here. 47 C.F.R. § 64.606(b)(2)(i).

⁵⁶ *InnoCaption Certification PN*, 29 FCC Rcd at 5106-07.

⁵⁷ See InnoCaption Notice to Subscribers.

⁵⁸ See 47 C.F.R. § 64.606(e)(2).

18. First, InnoCaption shall implement 911 calling arrangements that comply with the Commission's rules and submit a detailed description of such arrangements, including test results showing that 911 calls consistently were successfully completed and that the handling of such calls consistently complied in all respects with section 64.605(a) of the Commission's rules. Such information shall be submitted within 90 days of the date of this Order. Subsequently, the Commission will review this submission and conduct its own testing to verify such compliance and to determine whether InnoCaption will provide 911 pursuant to the Commission's rules and orders.

19. Second, InnoCaption will be required to establish a comprehensive compliance plan and reporting requirements to demonstrate measures taken to ensure future compliance with the Commission's emergency call handling rule and other TRS rules, as well as the Commission's orders and directives related to these rules.

20. Third, until InnoCaption satisfies these conditions, it shall submit a report to the Chief, Disability Rights Office, on the first day of each month, providing details on the status and progress of its efforts to comply with the 911 rules.

21. Upon satisfactory completion of these conditions, and in the absence of other noncompliance, the Bureau will lift the suspension of InnoCaption's conditional certification. If these conditions are not satisfied by October 7, 2015 (six months from April 7, 2015, the date when the suspension commences), the Bureau will take appropriate action, which may include denial of certification to InnoCaption.

IV. ORDERING CLAUSES

22. 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.

23. 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