

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

In the Matter of
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket No. 03-123

MEMORANDUM OPINION AND ORDER

Adopted: April 13, 2021

Released: April 13, 2021

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) conditionally grants certification to ClearCaptions, LLC (ClearCaptions) to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis.

1 See ClearCaptions, LLC, Eighth Amendment to Internet-Based TRS Certification Application, CG Docket No. 03-123 (filed Sept. 25, 2020) (ClearCaptions Amendment) (redacted), https://ecfsapi.fcc.gov/file/10925098207740/REDACTED\_ClearCaptions%20IP%20CTS%20Application%20Eighth%20Amendment\_FINAL.pdf.

2 See Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (2011 Internet-based TRS Certification Order) (authorizing conditional certification); 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, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5835, para. 64 (2018) (2018 ASR Declaratory Ruling) (noting that applications for certification to provide ASR-based IP CTS may be granted on a conditional basis).

3 See ClearCaptions Amendment at 7-8. While the Bureau ordinarily announces certification decisions by a document formally captioned as a Public Notice, we elect to caption this decision as a Memorandum Opinion and Order because we also are addressing the applicant's associated waiver requests. We deem this Memorandum Opinion and Order to constitute conditional certification that ClearCaptions is eligible for compensation from the

(continued....)

## II. BACKGROUND

2. ClearCaptions currently is conditionally certified to provide communications assistant (CA)-assisted IP CTS with support from the Interstate TRS Fund.<sup>4</sup> ClearCaptions' CAs use a form of ASR to produce captions for this service.<sup>5</sup> In June 2018, the Commission determined that an IP CTS provider may use ASR to generate captions without the assistance of a CA—in other words, to provide fully automatic IP CTS—if the Commission finds that the provider's service using this method will meet or exceed the Commission's minimum TRS standards.<sup>6</sup> On September 25, 2020, ClearCaptions amended its application for IP CTS certification to request approval to provide fully automatic IP CTS.

3. According to the amendment, ClearCaptions plans to introduce fully automatic IP CTS gradually, initially using it to supplement its use of CAs, in a "limited overflow role,"<sup>7</sup> allowing calls to be directed to its ASR platform rather than a queue when all CAs are occupied.<sup>8</sup> When a call is placed by or to a registered user and no CA is available, the audio of the other party will be routed to its speech-to-text vendor, which will return captioned text to ClearCaptions' system.<sup>9</sup> The amendment also states that "[a]s ClearCaptions becomes more comfortable with ASR and ASR quality, the Company will implement ASR for a higher percentage of its customers' calls."<sup>10</sup> The ASR platform supports the display of captions on ClearCaptions' display phones and its mobile application.<sup>11</sup> ClearCaptions states that it is not

(Continued from previous page) \_\_\_\_\_

Interstate TRS Fund in accordance with section 64.606(b)(2) of the Commission's rules for fully automatic IP CTS. 47 CFR § 64.606(b)(2).

<sup>4</sup> ClearCaptions' corporate predecessor received certification to provide IP CTS on November 14, 2008. *Notice of Certification of GoAmerica, Inc., as a Provider of Internet Protocol Captioning Telephone Service (IP CTS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 16656 (2008). On January 10, 2008, the company name changed from GoAmerica, Inc., to Purple Communications, Inc., pursuant to a merger arrangement. Its certification to provide IP CTS was conditionally renewed in 2014. *See Notice of Grant of Conditional Certification for Purple Communications, Inc., to Provide Internet Protocol Captioned Telephone Service*, CG Docket Nos. 03-123 and 10-51, Public Notice, 29 FCC Rcd 13728 (CGB 2014); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Purple Communications, Inc.; Application for Certification to Provide Internet Protocol Captioned Telephone Service*, CG Docket Nos. 03-123 and 10-51, Order, 29 FCC Rcd 14889 (CGB 2014) (Purple Reinstatement Order) (lifting one of the renewal conditions imposed by the earlier Public Notice). On December 29, 2016, Purple transferred the IP CTS certification to ClearCaptions, then a wholly owned subsidiary of Purple. *See Letter from Michael Strecker, Vice President Regulatory and Strategic Policy, Purple, to Marlene H. Dortch, Secretary, FCC*, CG Docket Nos. 03-123 and 10-51 (filed Dec. 29, 2016). On February 14, 2017, ClearCaptions became a separate entity from Purple. *See ClearCaptions, LLC, Amendment to Internet-Based TRS Certification Application*, CG Docket No. 03-123, Attach. A at 1 (filed Mar. 15, 2017).

<sup>5</sup> *See ClearCaptions, LLC, Internet-Based TRS Certification Application*, CG Docket No. 03-123, at 5 (filed April 18, 2016).

<sup>6</sup> *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5827-35, paras. 48-65.

<sup>7</sup> ClearCaptions Amendment at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 6; *see also Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, Secretary, FCC*, CG Docket No. 03-123, at 2-3 (filed Oct. 29, 2020) (ClearCaptions October 29 *Ex Parte*) (adding detail on ClearCaptions' future ASR plans, in response to inquiry from consumer groups).

<sup>11</sup> ClearCaptions Amendment at 7.

changing any IP CTS process or functionality unrelated to the use of CAs—such as customer registration and certification, 911 call routing, and complaint procedures.<sup>12</sup>

4. On October 6, 2020, the Bureau released a Public Notice seeking comment on ClearCaptions' amendment and waiver requests.<sup>13</sup> A coalition of consumer groups filed comments.<sup>14</sup> ClearCaptions filed reply comments.<sup>15</sup> ClearCaptions also submitted an *ex parte* letter responding to inquiries from consumer groups,<sup>16</sup> and a supplemental filing clarifying certain aspects of its ASR amendment.<sup>17</sup> Further, ClearCaptions submitted the results of its internal testing of its ASR platform and of testing by Cositics, LLC (Cositics), a customer-experience consulting firm that studies providers of captioning services.<sup>18</sup> In addition, ClearCaptions' platform was tested by the Commission's National Test Lab.<sup>19</sup>

### III. CERTIFICATION

5. We find that ClearCaptions' amendment facially meets the applicable certification requirements, and we conditionally modify ClearCaptions' certification to permit the provision of fully

---

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *See Comment Sought on Amendment to Application of ClearCaptions, LLC for Certification as a Provider of IP Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, 35 FCC Rcd 11251 (CGB 2020).

<sup>14</sup> *See* Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of Late-Deafened Adults (ALDA), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), National Cued Speech Association (NCSA), Cuesign, Inc., Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC), and Rehabilitation Engineering Research Center On Universal Interface & Information Technology Access (IT-RERC) (collectively Consumer Groups and Accessibility Researchers) Comments, CG Docket No. 03-123 (rec. Nov. 5, 2020); *see also* Letter from Blake Reid, Counsel to TDI, on behalf of HLAA, TDI, NAD, ALDA, CPADO, DSA, DHH-RERC, and IT-RERC, CG Docket Nos. 03-123, 10-51, and 13-24 (filed Mar. 26, 2021) (HLAA et al. March 26 *Ex Parte*). Although not specific to ClearCaptions, RAZ Mobility filed an *ex parte* letter recommending that the Commission not grant any additional applications for certification to provide ASR-based IP CTS. *See* Letter from Robert Felgar, CEO, RAZ Mobility, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123 (filed Nov. 20, 2020) (RAZ Mobility November 20 *Ex Parte*). ClearCaptions filed a response. *See* Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123 (filed Dec. 7, 2020) (ClearCaptions December 7 *Ex Parte*).

<sup>15</sup> *See* Reply Comments of ClearCaptions, LLC, CG Docket Nos. 13-24 and 03-123 (filed Nov. 20, 2020) (ClearCaptions Reply).

<sup>16</sup> *See* ClearCaptions October 29 *Ex Parte*.

<sup>17</sup> *See* ClearCaptions, Supplement to Eighth Amendment to Internet-Based TRS Certification Application, CG Docket No. 03-123 (filed Dec. 28, 2020) (ClearCaptions Supplement).

<sup>18</sup> *See* Letter with Attachment from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123, "Notice of Meeting with CGB and OMD Staff" (filed Nov. 18, 2020) (ClearCaptions November 18 *Ex Parte* or ClearCaptions Testing Report). ClearCaptions hired Cositics to perform the testing using the same processes that Cositics uses to test CA-based IP CTS. ClearCaptions Testing Report at 12.

<sup>19</sup> *See* FCC Telecommunications Relay Services Project, Captioning Device Performance Testing: ClearCaptions Automated Speech Recognition (ASR) Assessment, CG Docket No. 03-123, at 2 (filed Nov. 16, 2020) (NTL Test Report). The National Test Lab is operated by MITRE Corporation (MITRE) as part of the CMS Alliance to Modernize Healthcare, a Federally Funded Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). *See* CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase I Activities, at 1 (July 24, 2017), CG Docket Nos. 13-24 and 03-123 (filed Apr. 11, 2018).

automatic IP CTS. Conditional certification allows the Commission to verify—based on actual operating conditions—that ClearCaptions’ provision of fully automatic IP CTS will meet or exceed the minimum TRS standards.<sup>20</sup> By granting conditional certification, we eliminate unnecessary delay in the availability of TRS using improved technologies.<sup>21</sup>

6. *Sufficiency of the Amendment.* ClearCaptions’ amendment is facially sufficient to satisfy the Commission’s certification requirements. ClearCaptions is currently conditionally certified to provide CA-assisted IP CTS, and in this instance we find no reason to expand our review of its amendment beyond considering whether ClearCaptions will meet those minimum TRS standards potentially affected by its proposed introduction of ASR-only captioning as an alternative to CA-assisted captioning. The amendment and supporting information provide a detailed explanation as to how ClearCaptions will provide fully automatic IP CTS and meet all minimum standards relevant to consideration of its amendment.<sup>22</sup> In particular, ClearCaptions has sufficiently supported its claims regarding its use of ASR and the efficacy of such use in meeting the Commission’s minimum TRS standards relating to speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.<sup>23</sup>

7. *Speed of Answer and Service Continuity.* ClearCaptions has made a sufficient showing that with its chosen ASR technology, it will meet or exceed the minimum TRS standards relating to speed of answer and service continuity.<sup>24</sup> According to the application, when a call is placed by or to a registered user and no CA is available, the audio of the other party will be routed to its speech-to-text vendor, which will return captioned text to ClearCaptions’ system.<sup>25</sup> ClearCaptions states that its internal testing shows that the time an automatic call distribution request needs to connect to its ASR vendor’s platform is less than two seconds, and that it expects no queuing of ASR call connections.<sup>26</sup> Further, ClearCaptions reports that its ASR vendor has committed to use commercially reasonable efforts to maintain a monthly uptime of 99.99%, and that the vendor has not had a full outage of ClearCaptions chosen platform in the last twelve months.<sup>27</sup> In addition, ClearCaptions’ “ASR vendor provides its ASR captioning service via physically separated and isolated zones, which are connected with low-latency, high-throughput, and highly redundant networking. In the event of a failure, the ASR platform automatically fails over to alternative infrastructure without interruption, significantly reducing the

---

<sup>20</sup> See 2011 *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

<sup>21</sup> See 47 U.S.C. § 225(d)(2) (requiring the Commission to ensure that its regulations do not discourage or impair the development of improved technologies for TRS); see also 2018 *ASR Declaratory Ruling*, 33 FCC Rcd at 5807, para. 13 (noting that, due to recent advances, ASR “holds great promise for a telephone communication experience that may be superior to and more efficient than existing IP CTS”); *id.* at 5829-30, para. 52 (allowing the introduction of ASR without delay will enable the Commission to “gather data that can inform our adoption of further measures to improve its utility”).

<sup>22</sup> See ClearCaptions Amendment at 9-11; see also ClearCaptions October 29 *Ex Parte*; ClearCaptions Testing Report.

<sup>23</sup> See 2018 *ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (noting that applicants to provide ASR-based IP CTS must support all claims regarding their use of ASR and its efficacy).

<sup>24</sup> See 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily); *id.* § 64.604(b)(4)(ii) (“TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.”).

<sup>25</sup> ClearCaptions Amendment at 7.

<sup>26</sup> ClearCaptions Supplement at 1-2.

<sup>27</sup> *Id.* at 2.

possibility of a full outage.”<sup>28</sup> ClearCaptions adds that its service is connected to its ASR vendor by redundant paths and is not limited by capacity or scalability constraints.<sup>29</sup> Based on these statements, the applicant’s explanation of its service architecture,<sup>30</sup> and its reported results of performance testing, we conclude that ClearCaptions has sufficiently supported its claim that it will meet the applicable speed-of-answer and service continuity standards.

8. *Caption Speed/Delay.* ClearCaptions has also sufficiently supported its claim that its ASR platform will transcribe captions in real time and in compliance with the minimum TRS standards relating to captioning speed and delay.<sup>31</sup> ClearCaptions reports that it has tested its ASR platform with audio files used for stenographer tests and has consistently achieved the minimum standard of 60 words per minute.<sup>32</sup> In addition, in performance testing of CA-assisted and ASR-only IP CTS technologies by the Commission’s National Test Lab, ClearCaptions’ median caption delays for various call scenarios ranged from 2.8 to 6.1 seconds, while CA-assisted providers’ median caption delays were significantly longer, averaging from 5.2 to 17.8 seconds.<sup>33</sup> ClearCaptions also reports the results of ASR testing conducted on its behalf by Cositics. According to test results from Cositics, the average caption segment delay for ClearCaptions ASR was 4 seconds, while the industry average for CA-assisted service was just over 5 seconds.<sup>34</sup> These test results show that ClearCaptions will satisfy the Commission’s minimum standards for caption speed and delay.

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

<sup>30</sup> See ClearCaptions Amendment, Exh. 1 (confidential version); *id.* at 10 (“The ASR solution also connects 99% of calls within less than 2 seconds.”).

<sup>31</sup> Currently, there is no quantitative standard for IP CTS captioning delay. However, the Commission has stated that captions must be delivered “fast enough so that they keep up with the speed of the other party’s speech,” and “if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable.” *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, 22 FCC Rcd 379, 388-89, para. 22 & n.69 (2007) (*2007 IP CTS Declaratory Ruling*). In addition, the typing speed standard for text-based TRS is applicable. See *id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii) (requiring TRS CAs to have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed in the text, ClearCaptions has shown not only that it will meet this standard but also that it will “keep up with the speed of the other party’s speech.” *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388, para. 22. On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking seeking comment on adopting metrics for IP CTS accuracy and caption delay. *Misuse of Internet Protocol (IP) Captioned Telephone Service; 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. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10896-903, paras. 62-81 (2020) (*IP CTS Metrics FNPRM*).

<sup>32</sup> ClearCaptions Amendment at 9.

<sup>33</sup> See NTL Test Report at 4.

<sup>34</sup> ClearCaptions Testing Report at 13. “Segment delay” is a metric that measures caption delay in terms of “segments,” i.e., phrases, or “chunks” of words, rather than on a word-for-word basis. See ClearCaptions Reply at 2. The delay for a given segment is determined by averaging (1) the first-word delay—the number of seconds between when the first word in the segment is stated and when it appears in captions—and (2) the last-word delay—the number of seconds between when the last word in the segment is stated and when it appears in captions. ClearCaptions Testing Report at 13. Average segment delay is computed by averaging all the segment delays in the sample. The industry average segment delay was obtained from Cositics National CTS Performance Index Device Based Results. *Id.*

9. *Accuracy and Readability.* Although the TRS rules do not currently provide metrics for accuracy and readability, the typing, grammar, and spelling of captions must be “competent,” and conversations must be transcribed “verbatim” with no intentional alteration of content unless the user specifically requests summarization.<sup>35</sup> We find sufficient record evidence that ClearCaptions’ fully automatic IP CTS will meet or exceed the Commission’s competence and “verbatim” requirements. ClearCaptions states that it chose its initial ASR vendor after a long period of evaluation and testing, including rigorous assessment of the platform’s ability to transcribe conversations with minimal incorrect insertions, substitutions, and deletions.<sup>36</sup> Further, ClearCaptions’ ASR solution can support multiple speech-to-text vendors,<sup>37</sup> and ClearCaptions plans to continually test “manually and algorithmically” the quality of each enabled vendor solution to maximize accuracy.<sup>38</sup>

10. In recent testing by the National Test Lab, ClearCaptions’ median Word Error Rate in various call scenarios ranged from 3.5% to 14.8%, while CA-assisted providers’ median Word Error Rate averaged from 8.9% to 19.5%.<sup>39</sup> Further, ClearCaptions reports that it internally tested the accuracy of its ASR-only and CA-assisted captioning on 600 test calls using 10 call scripts, which included a mix of call types, caller accents, and audio quality classifications designed to replicate the characteristics of more than 80% of the calls encountered by ClearCaptions users.<sup>40</sup> Finding that for 9 of the 10 scripts, the ASR-only platform’s mean accuracy score was higher than the CAs’, and that for all scripts, ASR-only captioning was more consistently accurate, ClearCaptions estimates that 95% of the time, ASR-only captioning tested better than CA-assisted captioning.<sup>41</sup> ClearCaptions also concludes that its test results show that “[a]n individual call has a 73.65% likelihood of accuracy improvement with a ClearCaptions

---

<sup>35</sup> 47 CFR §§ 64.604(a)(1)(ii), (2)(ii). These standards apply to captions developed with ASR. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16134-35, paras. 37-39 (2003) (*2003 Captioned Telephone Declaratory Ruling*); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60.

<sup>36</sup> ClearCaptions Amendment at 10-11.

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.*

<sup>39</sup> NTL Test Report at 3. ClearCaptions’ NTL test results are comparable to those of previous applicants granted conditional certification to provide fully automatic IP CTS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568, 4571-72, para. 7 (CGB 2020) (*MachineGenius ASR Order*) (Word Error Rate range of 2.7-8.2%); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635, 5637-40, paras. 4-11 (CGB 2020) (*Clarity ASR Order*) (6.3-35.9%); *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, Memorandum Opinion and Order, 35 FCC Rcd 14193, 14196-202, paras. 7-20 (CGB 2020) (*InnoCaption ASR Order*) (4.2-12.0%); *see also* HLAA et al. March 26 *Ex Parte* at 2 (stating that the groups will not specifically oppose certification of pending ASR-based applications that the Commission concludes will deliver a similar level of quality to those already certified).

<sup>40</sup> ClearCaptions Testing Report at 5. For each script, ClearCaptions ran 30 tests using its ASR platform and 30 tests using its CAs. *Id.* at 3. Included in the test scripts were three call types (two-person personal, two-person business, and interactive voice response), four call accents, and three call situations (clear audio, injected static, and background noise). *Id.* at 10. For these internal tests, ClearCaptions measures accuracy by subtracting the Word Error Rate from 100%. “An error is a word added, a word changed, or a word omitted.” ClearCaptions Supplement at 5.

<sup>41</sup> ClearCaptions Testing Report at 11.

ASR implementation vs a live CA.”<sup>42</sup>

11. ClearCaptions also reports the results of accuracy testing conducted by Cositics. ClearCaptions states that it asked Cositics to test its ASR platform using the same method it uses to test CA-assisted IP CTS providers, with the following results:<sup>43</sup>

	ClearCaptions ASR	Industry Average CA-Assisted
Average Vital Details Missing	0.32	1.69
Average Vital Details Changed	2.69	3.56
Average Total Words Missing	0.51	2.82
Overall % Accuracy	98.3%	97.5%

Thus, ClearCaptions’ accuracy claims are supported by the results of accuracy testing by multiple organizations using two different methodologies.<sup>44</sup>

12. *Privacy.* IP CTS providers are subject to the Commission’s confidentiality requirements for TRS call content, which prohibit the retention of call content for any purpose, either locally or in the cloud,<sup>45</sup> as well as obligations to protect customer information.<sup>46</sup> Our rules obligate a provider to protect call content and customer information regardless of the specific persons or entities (e.g., communications assistants, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.<sup>47</sup> ClearCaptions sufficiently describes how its ASR-based service will comply with these

<sup>42</sup> *Id.* at 5. ClearCaptions also states that, in an earlier exercise, it tested its ASR platform using four test call scripts developed by the National Test Lab. *See* ClearCaptions Amendment at 9; ClearCaptions October 29 *Ex Parte* at 1. ClearCaptions did not include quantitative results of these earlier tests in a public filing. The National Test Lab results, using the same scripts and one additional script, are described above.

<sup>43</sup> ClearCaptions Testing Report at 12, 14-17. “Vital details missing” are words missing that change the meaning of a sentence. *Id.* at 14. “Vital details changed” are word substitutions, i.e., when another or different word is substituted for the spoken word and the substitution changes the meaning of the sentence. *Id.* at 15. “Average total words missing” is the sum of the vital details missing plus non-vital details missing. *Id.* at 16. Non-vital details missing are missing words that do not change the meaning of the sentence. ClearCaptions Supplement at 7. “Overall accuracy” is “vital details changed” plus “vital details missing” minus “Vital Details Corrected” minus “Speaker Unclear.” ClearCaptions Testing Report at 17. “Speaker Unclear” is the total number of times “speaker unclear” is inserted by the ASR platform “even though the speaking auditor could easily be understood, and a word or phrase was missing but not manually corrected or inserted later.” ClearCaptions Supplement at 7.

<sup>44</sup> The Consumer Groups and Accessibility Researchers expressed concern that the testing for accuracy of ASR should not rely on Word Error Rate alone and should consider the types of errors and omissions that affect quality. Consumer Groups and Accessibility Researchers Comments at 5-6. ClearCaptions’ supplementary submissions regarding these multiple tests, including one that used an alternative to Word Error Rate, sufficiently address the Consumer Groups and Accessibility Researchers’ stated concern about the Word Error Rate metric and their request for detailed information about ClearCaptions’ accuracy testing.

<sup>45</sup> *See* 47 CFR § 64.604(a)(2)(i) (TRS call content confidentiality requirements); *see also* 2018 ASR Declaratory Ruling, 33 FCC Rcd at 5832-33, para. 60 (clarifying that rules prohibiting TRS CAs from disclosing the content of a relayed conversation or keeping records of the content beyond the duration of a call apply to ASR-based IP CTS).

<sup>46</sup> *See* 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); 47 CFR §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information).

<sup>47</sup> *See, e.g.,* 2018 ASR Declaratory Ruling, 33 FCC Rcd at 5832-33, para. 60.

rules. For example, ClearCaptions states that it is implementing multiple data protection measures with its vendors to ensure the privacy of its customers' data, including multi-factor authentication, encryption, and policies to prevent storage or use of customer content.<sup>48</sup> In addition, ClearCaptions states that its ASR platform will not retain any of the captions, call audio, or call content from a call after the call terminates.<sup>49</sup> When a call terminates, the session is dropped and any personally identifying information and session data is removed from the systems of ClearCaptions and its captioning partner.<sup>50</sup> In addition, ClearCaptions explains that its contracts with ASR vendors will prohibit them from maintaining captions, call audio, or call content after the call terminates and will require them to maintain the confidentiality of every call.<sup>51</sup> Vendors also will be prohibited by contract from collecting, storing, or otherwise caching personally identifiable user data related to ASR-based calls.<sup>52</sup>

13. The Consumer Groups and Accessibility Researchers raise privacy concerns about various privacy-related statements in the "Terms of Service" section of ClearCaptions' website, which indicate that, among other things, ClearCaptions will collect and use various kinds of personal information about a registrant's use of the service and other matters and may disclose such information to law enforcement officials in certain circumstances.<sup>53</sup> We do not detect any conflict between the cited provisions of ClearCaptions' Terms of Service and the Commission's TRS privacy requirements. The TRS rules prohibit ClearCaptions from retaining call content, but they do not otherwise prohibit TRS providers' collection, use, and disclosure of personal information about TRS users as long as such collection, use, and disclosure is consistent with applicable rules.<sup>54</sup> For example, we do not interpret section 15(c) of the Terms of Service as compelling users to waive any of the Commission's privacy rules.<sup>55</sup> On the other hand, questions about whether an applicant's privacy policies might be interpreted to conflict with, or to require waiver of, other unspecified federal and state laws lie beyond the limited scope of our application review here.

14. *Emergency Call Handling.* ClearCaptions has established that, with the addition of its ASR platform, it remains capable of handling emergency calls in accordance with applicable Commission rules. Under the Commission's TRS standard for emergency call handling, an IP CTS provider covered by the rule must ensure that 911 calls and required caller information are delivered to the appropriate

---

<sup>48</sup> ClearCaptions October 29 *Ex Parte* at 3.

<sup>49</sup> ClearCaptions Amendment at 10.

<sup>50</sup> *Id.* at 7.

<sup>51</sup> *Id.* at 6-7, 10.

<sup>52</sup> ClearCaptions October 29 *Ex Parte* at 3. To the extent that ClearCaptions collects non-personally identifiable information (other than call content) regarding captioned calls, such as call duration or whether a foreign language is used, such information collection is not restricted by the TRS rules and is not relevant to this certification proceeding. *Cf.* Consumer Groups and Accessibility Researchers Comments at 8-9 (questioning whether ClearCaptions provided an exhaustive list of the non-personally identifiable information collected).

<sup>53</sup> Consumer Groups and Accessibility Researchers Comments at 7-9 (citing ClearCaptions Terms of Service (July 29, 2020), <https://my.clearcaptions.com/content/terms>).

<sup>54</sup> *See* 47 CFR §§ 64.611(j)(1)(xii), 64.5101-64.5111.

<sup>55</sup> *See* Consumer Groups and Accessibility Researchers Comments at 8. Rather, section 15(c)'s request to "waive all privacy laws governing telephone communications and monitoring" of the telephone call audio that is to be captioned appears to be intended simply to ensure that ClearCaptions can process the call content to the extent necessary to provide its captioning service pursuant to the Commission's rules, without inadvertently subjecting itself to possible claims under other laws. *See* ClearCaptions Reply at 9-10. We agree with the Consumer Groups and Accessibility Researchers that if a TRS provider were to require, as a condition of providing service, that a consumer waive Commission rules that were expressly adopted to protect TRS users, such a waiver would be invalid.



public safety answering point (PSAP) as specified in the rule.<sup>56</sup> IP CTS providers also must ensure that 911 calls are given priority over non-911 calls.<sup>57</sup> To ensure compliance with these provisions, ClearCaptions explains that its existing procedures for 911 call routing will not change as it deploys ASR.<sup>58</sup> Further, according to the amendment, 911 calls will be captioned by a CA if available, and if not available, by the ASR platform. Given the commitment of its ASR vendor to use commercially reasonable efforts to maintain a monthly uptime of 99.99% and the vendor's redundant infrastructure,<sup>59</sup> ClearCaptions states that only in the extremely unlikely event of the ASR vendor experiencing a full outage would the ASR platform be unavailable—causing the 911 call to be placed in a queue for the next CA with priority over other calls.<sup>60</sup> We find that ClearCaptions' reliance on its existing 911 call-routing procedures and the service commitments provided by its ASR vendor will ensure that emergency calls are handled by its ASR platform in accordance with the Commission's requirements.

15. *Other Certification Criteria.* As noted above, because ClearCaptions is conditionally certified to provide IP CTS, the Commission has previously found it meets those certification criteria that are unaffected by the means of captioning, e.g., the requirements to file complaint logs and annual reports.<sup>61</sup> Its President and Chief Executive Officer certified to the accuracy of the amendment.<sup>62</sup>

16. In sum, ClearCaptions' amendment, the additional information submitted in support of the amendment, and the National Test Lab's test results facially establish that ClearCaptions will meet or exceed the mandatory minimum standards applicable to its provision of fully automatic IP CTS and that the company has in place sufficient procedures and remedies for ensuring compliance with the applicable TRS rules.<sup>63</sup>

17. *Conditional Certification.* We grant certification for its provision of fully automatic IP CTS on a conditional basis, for a period not to exceed two years, pending further verification that its ASR-based service complies with the Commission's mandatory minimum TRS standards. Because fully automatic IP CTS is a relatively new method for providing this service, we believe the best course is to collect additional information through observing ClearCaptions' service in operation to confirm that this service will meet or exceed the minimum TRS standards.<sup>64</sup>

---

<sup>56</sup> See 47 CFR § 9.14(b)(2), (e); see also *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, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 691, 711-15, paras. 44-53 (2019) (partially waiving certain provisions of the emergency call-handling rule for IP CTS providers).

<sup>57</sup> 47 CFR § 9.14(b)(2).

<sup>58</sup> ClearCaptions Amendment at 4. Information on ClearCaptions' corporate predecessor's 911 call handling and routing procedures for its web-based and wireless platform were submitted in 2014. See Letter from Monica S. Desai, Counsel to Purple, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Nov. 19, 2014) (redacted); see also Letter from Monica S. Desai, Counsel to Purple, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Nov. 25, 2014) (redacted); *Purple Reinstatement Order*, 29 FCC Rcd 14889.

<sup>59</sup> ClearCaptions Supplement at 2.

<sup>60</sup> See ClearCaptions Amendment at 5; ClearCaptions Supplement at 3.

<sup>61</sup> See 47 CFR § 64.604(c)(1) (complaint logs); *id.* § 64.606(g) (annual reports).

<sup>62</sup> ClearCaptions Amendment, Attach.

<sup>63</sup> See 47 CFR § 64.606(b)(2).

<sup>64</sup> See *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37 (reserving the right to grant conditional certification "where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application"); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (stating

(continued....)

18. To assist the Bureau in a final determination of ClearCaptions' qualifications to provide fully automatic IP CTS, we apply the same reporting requirements adopted in three previous orders conditionally certifying applicants to provide fully automatic IP CTS.<sup>65</sup> We require quarterly reports of consumer complaints during the initial year of service, to be filed with the Commission in the same format and with the same degree of detail required in the log of consumer complaints that providers must file annually with the Commission.<sup>66</sup> The first report shall be due August 1, 2021, and shall cover the period from the commencement of TRS-funded ASR service through June 30, 2021.<sup>67</sup> Each subsequent report shall be filed on the first day of the second month of each calendar quarter and shall cover the preceding calendar quarter. For example, the second report shall be due November 1, 2021, and shall cover the calendar quarter from July 1 through September 30, 2021. ClearCaptions shall continue to file reports on a quarterly schedule until two years from the date of this Order or until the Commission acts on granting or denying full certification, whichever occurs earlier.

19. Further, for this "hybrid" service, which includes both CA-assisted and fully automatic captioning, we impose additional conditions to ensure effective review of requests for TRS Fund compensation and speed-of-answer reports, to prevent waste, fraud, and abuse, and to enable the Commission to assess usage levels for fully automatic and CA-assisted IP CTS, respectively. Specifically, ClearCaptions shall identify, in its monthly call detail reports, those calls and minutes handled by ASR without CA assistance. In addition, to enable the TRS Fund Administrator and the Commission to assess the impact of fully automatic IP CTS on speed-of-answer performance, ClearCaptions shall report its daily speed of answer statistics separately for ASR and CA-based IP CTS calls, as well as the aggregate daily statistics for the two modes together.<sup>68</sup>

20. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of ClearCaptions' amendment, such as the results and protocols for performance tests conducted by ClearCaptions or independent third parties.<sup>69</sup> We also require

(Continued from previous page) \_\_\_\_\_

that "no application to provide ASR will be approved unless the applicant demonstrates that the specific ASR technology described in the application meets applicable FCC requirements"; *id.* at 5835, para. 64 (noting that certification of an ASR-only provider may be granted on a conditional basis to enable assessment of an applicant's actual performance).

<sup>65</sup> See *MachineGenius ASR Order*, 35 FCC Rcd at 4574, paras. 13-; *Clarity ASR Order*, 35 FCC Rcd at 5640-41, paras. 13-14; *InnoCaption ASR Order*, 35 FCC Rcd 14193, 14202-03, paras. 22-24.

<sup>66</sup> See 47 CFR § 64.604(c)(1); see also *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5835, para. 64 (noting that to the extent deemed necessary certification of a provider may be conditioned on the submission of periodic data to help confirm whether fully automatic IP CTS is providing functionally equivalent service); ClearCaptions Reply at 6-7 (agreeing to submit quarterly reports of complaints).

<sup>67</sup> The first report shall specify the date of ClearCaptions' first TRS Fund-supported call using ASR as its commencement of service date for fully automatic IP CTS.

<sup>68</sup> See 47 CFR § 64.604(b)(2). In requiring separate reporting of speed-of-answer for each mode of service, we do not alter the current rule or the conditions of the pandemic-related waiver of that rule. See *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 and 10-51, Order, DA 21-195 (CGB Feb. 18, 2021) (extending through August 31, 2021, a partial waiver of the speed-of-answer rule, such that all TRS providers' compliance with speed-of-answer requirements is measured on a monthly, not daily, basis). Thus, speed-of-answer compliance will continue to be determined based on a provider's overall performance in each daily or monthly measuring period, regardless of the captioning mode used.

<sup>69</sup> See *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (citing test results as an example of supporting information an ASR applicant might provide). With some exceptions, such as speed of answer, the Commission's minimum TRS standards do not currently include quantitative metrics. However, testing with respect to various performance criteria, such as caption delay and accuracy, may be helpful in the overall evaluation of this

(continued....)

ClearCaptions to report promptly any changes in the information previously provided to the Commission in its amendment and supplemental filings, including, for example, any changes in service agreements and suppliers or in the manner in which ClearCaptions provides fully automatic IP CTS.

21. Pursuant to this grant of conditional certification, ClearCaptions may provide Fund-supported IP CTS in the manner described in its amendment, for a period not to exceed two years, pending a final determination of its qualifications to provide fully automatic IP CTS. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in ClearCaptions' amendment and supplemental filings, as well as 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. To assist in reaching a final determination, the Bureau may conduct one or more unannounced site visits of ClearCaptions' premises and may request additional documentation relating to ClearCaptions' provision of fully automatic IP CTS. Conversion to full certification will be granted if, based on a review of the applicant's documentation and other relevant information, the Commission finds that ClearCaptions is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of fully automatic IP CTS. If, at any time during the period in which ClearCaptions is operating pursuant to this conditional certification, the Commission determines that ClearCaptions has failed to provide sufficient supporting documentation for any of the assertions in its 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 ClearCaptions' amended application. In the event of such denial, ClearCaptions' conditional certification for its fully automatic IP CTS will automatically terminate thirty-five (35) days after such denial.<sup>70</sup>

22. *Preventing Misuse.* We remind ClearCaptions and all other TRS providers that IP CTS is intended to provide a service functionally equivalent to voice telephone service, and must not be provided as a substitute for non-TRS in-person transcription services.<sup>71</sup> Further, although our rules do not prohibit ClearCaptions from enabling its registered users to save the captions as they appear on a device, they do prohibit an IP CTS provider itself from retaining call transcripts or subsequently providing transcripts to IP CTS users beyond the duration of the call.<sup>72</sup> We also remind ClearCaptions that its marketing of this service must conform with the Commission's rules.<sup>73</sup>

(Continued from previous page) \_\_\_\_\_

application for the purpose of deciding whether to grant full certification. Further, the Commission recently proposed adopting metrics for accuracy and caption delay. *See IP CTS Metrics FNPRM*, 35 FCC Rcd at 10896-906, paras. 62-92 (proposing to adopt metrics and testing regime for IP CTS).

<sup>70</sup> *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

<sup>71</sup> For example, 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. *See 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 Service Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5109 (CGB 2014); *see also Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 & n.465 (2013) (explaining that the use of TRS Fund-supported VRS to substitute for video remote interpreting—a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location—is not permitted).

<sup>72</sup> *See* 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

<sup>73</sup> *See, e.g., id.* §§ 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating use of the service by people with hearing loss who need it for effective communication,

(continued...)

23. *Response to Other Commenter Concerns.* No party opposes conditional certification of ClearCaptions' proposed service. Although the Consumer Groups and Accessibility Researchers repeat previously stated concerns about granting certification to ASR-only applicants "without first creating technology-neutral minimum standards" for IP CTS,<sup>74</sup> they also acknowledge that, given the previous grants of conditional certification to several ASR-only applicants, they do not believe that "consumers are likely to be well-served by denying certification to applicants that are similarly situated to those that have already been certified by the Commission."<sup>75</sup> Therefore, the groups affirm they will not specifically oppose certification of pending ASR-based applications that the Commission concludes will deliver a similar level of quality to those already certified.<sup>76</sup> As noted above, ClearCaptions' test results for caption quality are comparable to those of prior ASR-only grantees.<sup>77</sup>

24. Consistent with the Bureau's prior ASR-only conditional certification orders, which include grants of conditional certification to applicants that did not propose to employ any CAs,<sup>78</sup> we decline the Consumer Groups' suggestion that we require ClearCaptions to provide a more specific timeline and criteria for when it intends to transition to increased reliance on fully automatic IP CTS.<sup>79</sup> We are bound by the Commission's determination that the capabilities of ASR are sufficient to warrant its recognition as a TRS Fund-supported alternative to CA-assisted IP CTS.<sup>80</sup> For similar reasons, we also decline to require ClearCaptions to provide a means for consumers to choose between CA and ASR modes<sup>81</sup>—an option that is offered by only one of the three providers of fully automatic IP CTS certified to date. Whether to impose such a requirement is a policy determination for the Commission to make, especially in light of the prior Commission rulings favoring competition among TRS providers to offer consumers different versions of TRS using various technologies and features.<sup>82</sup>

(Continued from previous page) \_\_\_\_\_

also creates a risk that IP CTS will be used even when it is not needed. *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

<sup>74</sup> Consumer Groups and Accessibility Researchers Comments at 1. These commenters raise a number of questions about ClearCaptions' proposed service, to which ClearCaptions has submitted detailed responses. *See* Consumer Groups and Accessibility Researchers Comments at 5-9; ClearCaptions October 29 *Ex Parte*; ClearCaptions Reply; ClearCaptions Supplement; *see also supra* notes 44, 52 & para. 13 (discussing specific questions raised in the Consumer Groups and Accessibility Researchers Comments).

<sup>75</sup> HLAA et al. March 26 *Ex Parte* at 2.

<sup>76</sup> *Id.*

<sup>77</sup> *See supra* note 39.

<sup>78</sup> *See MachineGenius ASR Order*, 35 FCC Rcd 4568; *Clarity ASR Order*, 35 FCC Rcd 5635.

<sup>79</sup> Consumer Groups and Accessibility Researchers Comments at 6-7. We also note that, in response to a related query about the criteria that would trigger an acceleration of the use of ASR without CA assistance, ClearCaptions has explained that it will consider "[i]f the probability of a better experience is greater than 50% or 50/50 that a user experience will improve on each call, then ASR will be considered to have achieved parity or better vs CA based captioning." ClearCaptions Testing Report at 2.

<sup>80</sup> *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5828-29, para. 51 (finding that "improvements in accuracy, coupled with ASR's advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for [Captioned Telephone Service (CTS)] and IP CTS"); *see also id.* at 5834-35, para. 63 ("Furthermore, while we are seeking more information about ASR technology in the FNPRM portion of this item, we do not agree that an ASR provider cannot be certified until we conduct 'further study' of such data.").

<sup>81</sup> *See* Consumer Groups and Accessibility Researchers Comments at 7.

<sup>82</sup> *See, e.g., 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5829-30, para. 52 (finding that functional equivalence would not be harmed by the introduction of fully automatic IP CTS, because consumers are unrestricted in their choice of service providers and "will continue to be able to select an IP CTS provider based on the overall quality of (continued....)

25. Although not specific to ClearCaptions' amendment, we address briefly here a letter filed by RAZ Mobility objecting to further Commission grants of certification for fully automatic IP CTS, absent a showing that such approval is in the public interest.<sup>83</sup> According to RAZ Mobility, Google's recently introduced Live Caption Service for Android will caption voice and video calls on Pixel smartphones, at no additional charge to consumers—and at no cost to the TRS Fund.<sup>84</sup> RAZ Mobility contends that, given the availability of Live Caption Service, Fund support of what it characterizes as inferior captioning services is wasteful. While the introduction of potentially self-sustaining telephone captioning services is a welcome development, general policy concerns such as those raised by RAZ Mobility must be addressed, as appropriate, in a Commission rulemaking or other proceeding of general applicability.<sup>85</sup> The Commission has previously determined that fully automatic IP CTS is eligible for Fund compensation and has authorized the Bureau "to review and approve applications for certification to provide [such service] when the Bureau determines that an applicant is able to provide IP CTS in accordance with the Commission's mandatory minimum TRS standards designed to ensure functional equivalency."<sup>86</sup> Thus, the Bureau lacks authority to refrain from granting certification to a qualified applicant based on policy concerns about the impact on competing service providers or the comparative value of each service.<sup>87</sup>

#### IV. REQUESTS FOR WAIVER

26. To the extent described below, the Bureau grants ClearCaptions' requests for waivers of certain TRS rules.<sup>88</sup>

27. *Waiver standard.* A Commission rule may be waived for "good cause shown."<sup>89</sup> In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>90</sup> In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>91</sup> Such a waiver is appropriate if special

(Continued from previous page) —————  
service each provider offers by means of the available methods"); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 389, para. 24 (IP CTS should not be under the control of a single company); *see also* ClearCaptions Reply at 7-8 (arguing that in-call switching is a competitive service factor that IP CTS providers should choose whether to offer); HLLA et al. March 26 *Ex Parte* at 2 (urging the Commission "to ensure that diverse modes of delivering IP CTS, including switched, hybrid human-ASR, and other humans-in-the-loop models, remain viable until the Commission ultimately adopts metrics").

<sup>83</sup> *See* RAZ Mobility November 20 *Ex Parte*.

<sup>84</sup> *See id.*; *see also* Letter from Robert Felgar, CEO, RAZ Mobility, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 13-24 (filed Sept. 14, 2020).

<sup>85</sup> *See* ClearCaptions December 7 *Ex Parte* at 3. ClearCaptions also points out that RAZ Mobility's recommendation is essentially a late-filed request for reconsideration of the Commission's *2018 ASR Declaratory Ruling*. *Id.* at 1.

<sup>86</sup> *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60.

<sup>87</sup> *See* 47 CFR § 64.606(b)(2) ("[T]he Commission shall certify . . . that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation: (i) Establishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in §64.604; (ii) Establishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section . . .").

<sup>88</sup> ClearCaptions Amendment at 7-8.

<sup>89</sup> 47 CFR § 1.3.

<sup>90</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>91</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>92</sup>

28. *Consumer Certifications.* To the extent necessary, we grant ClearCaptions' request for waiver of the requirement for a consumer's written self-certification to state that "[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone."<sup>93</sup> ClearCaptions states that at some point it may implement ASR "in whole,"<sup>94</sup> i.e., may no longer use CAs to generate captions for any call. After that, this statement would not be true. As we noted in the *MachineGenius ASR Order*, the required statement is incorrect as applied to fully automatic IP CTS and would misinform consumers if they never actually connect to a live CA.<sup>95</sup> As the Commission has observed in the context of potentially analogous professional attestations, that "portion of the attestation is only required to the extent that captions are produced [with CA assistance] and not exclusively through a non-CA assisted automatic speech recognition engine."<sup>96</sup>

29. *URL Submissions.* ClearCaptions also seeks a waiver of the requirement for TRS providers to submit "the URL address through which the call is placed" to receive compensation from the TRS Fund.<sup>97</sup> As we noted in the *Clarity ASR Order*,<sup>98</sup> there is a difference between the rule as codified,<sup>99</sup> which states that the specified call data is required from all TRS providers, and the Report and Order adopting the rule, which states that the rule applies to VRS providers.<sup>100</sup> Accordingly, the Bureau does not interpret the rule as requiring IP CTS providers to submit a URL address for each call. However, to the extent a waiver is required, we grant it, because the Report and Order indicates that the URL address requirement was intended to apply only to VRS providers.

## V. PROCEDURAL MATTERS

30. *People with Disabilities:* 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

31. *Additional Information.* For further information regarding this item, please contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716 or by e-mail to [William.Wallace@fcc.gov](mailto:William.Wallace@fcc.gov).

## VI. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, sections 0.141, 0.361, 1.3, and 64.606(b)(2) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.606(b)(2), and the authority delegated by paragraph 60 of the Commission's *2018 ASR Declaratory Ruling*, the application of ClearCaptions, LLC, for certification to provide IP CTS is GRANTED as conditioned in

---

<sup>92</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>93</sup> ClearCaptions Amendment at 7-8 (citing 47 CFR § 64.611(j)(1)(v)).

<sup>94</sup> *Id.* at 7.

<sup>95</sup> *MachineGenius ASR Order*, 35 FCC Rcd at 4580-81, para. 30.

<sup>96</sup> *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5861-62, para. 133 n.366.

<sup>97</sup> ClearCaptions Amendment at 8 (citing 47 CFR § 64.604(c)(5)(iii)(D)(2)(x)).

<sup>98</sup> *Clarity ASR Order*, 35 FCC Rcd at 5647, para. 31.

<sup>99</sup> 47 CFR § 64.604(c)(5)(iii)(D)(2)(x).

<sup>100</sup> *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, 5579-80, para. 73 (2011).

this Memorandum Opinion and Order.

33. IT IS FURTHER ORDERED, that ClearCaptions, LLC, is conditionally certified to provide IP CTS, as conditioned in this Memorandum Opinion and Order.

34. IT IS FURTHER ORDERED, that ClearCaptions' requests for waivers are GRANTED, as described herein.

35. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission rules, 47 CFR § 1.102(b)(1), this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief,  
Consumer and Governmental Affairs Bureau