



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 22-311

Released: March 23, 2022

GRANT OF CONDITIONAL CERTIFICATION FOR CAPTIONCALL, LLC, TO PROVIDE INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE AFTER ITS ACQUISITION BY ARIEL GP HOLDCO, LLC

CG Docket No. 03-123

By the Chief, Consumer and Governmental Affairs Bureau:

Conditional certification is granted to CaptionCall, LLC (CaptionCall), to continue to provide Internet Protocol Captioned Telephone Service (IP CTS)¹ supported by the Interstate Telecommunications Relay Service Fund (TRS Fund)² following the acquisition of majority ownership of CaptionCall by Ariel GP Holdco, LLC (Ariel). By this action, CaptionCall, which currently holds a conditional certification to provide IP CTS,³ will remain eligible for compensation from the TRS Fund after the change in ownership, pending Commission action on an application for full certification of the post-merger entity. We find it to be in the public interest to grant such conditional certification to ensure the uninterrupted provision of service pending a full determination of CaptionCall's qualifications.

Background

On December 10, 2021, CaptionCall and Ariel (Applicants) filed an application for conditional certification to provide IP CTS.⁴ Applicants state that, pursuant to an agreement between Ariel's affiliate

¹ IP CTS is "[a] telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the internet, rather than the public switched telephone network." 47 C.F.R. § 64.601(a)(22).

² The TRS Fund compensates eligible providers of Internet-based and interstate TRS for their reasonable costs of providing these services. *See* 47 CFR § 64.604(c)(5)(iii).

³ *See* Letter from Diane Burstein, Deputy Chief, CGB, to John T. Nakahata, Counsel for Sorenson Communications, LLC (Sorenson), CG Docket Nos. 10-51 and 03-123 (Dec. 11, 2020), <https://docs.fcc.gov/public/attachments/DOC-368712A1.pdf> (acknowledging transfer of conditional certification to provide IP CTS from Sorenson (previously Sorenson Communications, Inc.) to CaptionCall); *see also Grant of Conditional Certification for Sorenson Communications, Inc., as Reorganized Pursuant to Chapter 11, to Provide Internet-Based Telecommunications Relay Services Pending Commission Action on Sorenson's Application for Certification*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 4111 (2014) (*Sorenson 2014 Public Notice*).

⁴ *See* Application of Ariel GP Holdco, LLC and CaptionCall, LLC for Conditional Certification to Provide Internet Protocol Captioned Telephone Service and Request for Confidential Treatment, CG Docket No. 03-123 (filed Dec. 10, 2021) (CaptionCall Application), [https://ecfsapi.fcc.gov/file/12100110222456/%5BRedacted%5D%20CaptionCall%20IPCTS%20CC%20Application%20\(12.10.21\)-c3.pdf](https://ecfsapi.fcc.gov/file/12100110222456/%5BRedacted%5D%20CaptionCall%20IPCTS%20CC%20Application%20(12.10.21)-c3.pdf) (redacted). A companion application was filed by Ariel and Sorenson for conditional certification to allow Sorenson to continue providing Video Relay Service (VRS) eligible for compensation from the TRS Fund following the acquisition of Sorenson by Ariel and its

(continued...)

Ariel Alternatives, LLC, and CaptionCall's indirect ultimate parent, Sorenson Holdings, LLC, Ariel and its affiliates will acquire a controlling (approximately 52.5 percent) voting interest in CaptionCall via merger.⁵ Ariel does not currently hold Commission certification as an IP CTS provider. Therefore, Applicants seek conditional certification to enable CaptionCall to maintain its eligibility, on an interim basis, to receive compensation from the TRS Fund following its acquisition by Ariel.⁶ Upon such grant and consummation of the acquisition, the Applicants state, the post-merger CaptionCall, which then will be majority owned and controlled by Ariel and its affiliates, will file an application for full certification to provide IP CTS under its changed ownership.⁷ A draft of that application, attached to the Ariel-CaptionCall Application, substitutes the post-transaction entity as the applicant, provides information about the new owners, and describes how the post-transaction entity will comply with the Commission's minimum TRS standards.⁸

CaptionCall and Ariel state that they are "committed to providing high quality, innovative IP CTS services, as well as to complying fully with all applicable Commission regulations."⁹ Further, the Applicants state that Ariel plans to install in CaptionCall a new management team and a new board of directors and will impose on the company new strategic priorities, including enhanced compliance expertise and controls.¹⁰ They assert that a conditional grant is in the public interest because, through its ownership and control of CaptionCall, Ariel plans to: (1) maintain an enhanced working relationship with the Commission so that the company can work as a partner to help maximize the benefits of TRS for those who need it while using the TRS Fund wisely; (2) reposition the company to pursue non-TRS business-to-business opportunities that will diversify the service offerings of Sorenson and CaptionCall to benefit the deaf and hard-of-hearing community; and (3) expand access to TRS and other disability access services for the deaf and hard-of-hearing community, especially in currently underserved areas.¹¹

The Bureau placed the application on Public Notice.¹² No comments or reply comments were received. Subsequently, the Applicants met with Commission staff and submitted additional information related to financial aspects of the acquisition.¹³

(Continued from previous page) _____

affiliates. *See* Application of Ariel GP Holdco, LLC, and Sorenson for Conditional Certification to Provide Video Relay Service and Request for Confidential Treatment, CG Docket No. 03-123 and 10-51 (filed Dec. 10, 2021), [https://ecfsapi.fcc.gov/file/1210104894515/Redacted%20Sorenson%20VRS%20CC%20Application%20\(12.10.21\)-c3.pdf](https://ecfsapi.fcc.gov/file/1210104894515/Redacted%20Sorenson%20VRS%20CC%20Application%20(12.10.21)-c3.pdf) (redacted). The Ariel-Sorenson application is addressed separately.

⁵ Ariel-CaptionCall Application at 1-2, 8-9; *see also id.*, Exh. A (describing post-transaction ownership structure for CaptionCall). Counsel for Ariel has stated that the agreement was signed on February 25, 2022. Email from Suzanne M. Tetreault, Wilkinson Barker Knauer, LLP, to Robert Aldrich, FCC (Mar. 16, 2022).

⁶ Ariel-CaptionCall Application at 2-4.

⁷ *Id.* at 3-4.

⁸ *See id.*, Exh. C, "[Draft] Application of CaptionCall, LLC, as Majority-Owned and Controlled by Ariel GP Holdco, LLC, for Certification to Provide Internet Protocol Captioned Telephone Service."

⁹ *Id.* at 15.

¹⁰ *Id.* at 12-13.

¹¹ *Id.* at 13.

¹² *See Comment Sought on Application of Ariel GP Holdco, LLC and Sorenson Communications, LLC for Conditional Certification as a Provider of Video Relay Service; Comment Sought on Application of Ariel GP Holdco, LLC and CaptionCall, LLC for Conditional Certification as a Provider of Internet Protocol Captioned Telephone Service*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 21-1604 (CGB Dec. 17, 2021).

¹³ *See Letter from Suzanne M. Tetreault, Wilkinson Barker Knauer, LLP, to Marlene H. Dortch, FCC, Secretary*, CG Docket Nos. 03-123 and 10-51, Attach. B (filed Feb. 18, 2022) (Ariel-CaptionCall Feb. 18 *Ex Parte*) (redacted).

(continued...)

Discussion

Commission certification to provide TRS Fund-supported relay service is not transferable to a non-certified entity.¹⁴ To be granted certification, a provider must establish that its provision of TRS will meet the Commission's minimum TRS standards¹⁵—a determination that turns on the actions of its owners, who are ultimately responsible for compliance with the Commission's rules.¹⁶ Therefore, “the certification of a provider does not automatically transfer to new owners.”¹⁷ Because Ariel, which will acquire a controlling interest in CaptionCall, does not currently hold Commission certification as an IP CTS provider, the post-acquisition entity, while retaining its corporate identity, must be granted certification on its own account under the new owners.

However, the Commission may grant conditional certification, without prejudice to its final determination of the applicant's qualifications, if additional time is needed for the Commission to complete its evaluation.¹⁸ Such conditional certifications are also granted to allow continuity of service after a change in ownership while preserving the Commission's ability to fully review an application for certification on the merits.¹⁹

Compliance with minimum standards. As noted above, the Application includes as an exhibit a draft application for full certification, which substitutes the post-transaction entity as the applicant, provides information about the new owners, and addresses how the post-transaction entity will comply with the Commission's minimum TRS standards.²⁰ The Application and the attached draft application for full certification represent that, upon consummation of the acquisition, CaptionCall will continue to have systems, policies, and procedures in place that enable it to comply with the minimum TRS standards. While no party has demonstrated any basis for challenging this representation, our conditional certification will permit the Commission to evaluate over the next 24 months the extent of CaptionCall's compliance with such standards following the acquisition. Because CaptionCall will continue in

(Continued from previous page) _____

A complete version of this submission was also filed with a request for confidential treatment. Ariel-CaptionCall Feb. 18 *Ex Parte*, Attach. A (confidential).

¹⁴ See *Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 10438, 10438 (CGB 2008) (*Certification Transfer PN*); see also *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10918, para. 47 (2011) (*Internet-based TRS Certification Order*) (confirming the ruling in the *Certification Transfer PN*).

¹⁵ 47 CFR § 64.606(b)(2)(i).

¹⁶ *Certification Transfer PN*, 23 FCC Rcd at 10439.

¹⁷ *Id.*

¹⁸ *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37; 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, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5835, para. 64 (2018).

¹⁹ *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37; *Sorenson 2014 Public Notice*, 29 FCC Rcd at 4114. The ability to issue conditional grants of certification “balances the need for continuity of service with the need to ensure that only qualified applicants for [Internet-based TRS] service are eligible to receive compensation from the TRS Fund for their provision of [Internet-based TRS] services.” *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15 para. 37; see also *Sorenson 2014 Public Notice*, 29 FCC Rcd at 4111.

²⁰ Ariel-CaptionCall Application, Exh. C.

existence, albeit with new majority ownership, we find that it will be bound by all of the terms and conditions of the consent decree, dated December 3, 2021, between Sorenson, CaptionCall, and the Enforcement Bureau.²¹ Further, for the avoidance of doubt, we condition our approval on both CaptionCall and Ariel continuing to adhere to the terms and conditions of that decree.

The Bureau notes that Moody's Investors Service recently announced it had downgraded Sorenson's Corporate Family Rating (CFR) from B2 to B3, in response to the company's plans "to issue approximately \$589 million Holdco [payment-in-kind] notes (unrated) to help fund the sale of majority ownership of the company."²² This new debt would be added to existing first-lien obligations, with the result that "Sorenson's leverage as measured by Debt/EBITDA will increase to approximately 4.7x from an estimated 2.5x at the end of FY2021."²³ Such developments raise particular concern in light of the significant roles played by Sorenson in the provision of VRS²⁴ and by CaptionCall in the provision of IP CTS.²⁵

Based on review of the information made available by the Applicants regarding these new financial obligations,²⁶ however, we do not find that, at this time, there is a substantial risk of CaptionCall becoming unable to meet the Commission's minimum standards.²⁷ We again emphasize, as prior Commission orders make clear, that TRS providers are *not* entitled to TRS Fund reimbursement for "all capital costs they have chosen to incur—such as high levels of debt—where there is no reason to believe

²¹ *Sorenson Communications, LLC/CaptionCall, LLC*, File Nos. EB-TCD-17-00024119, EB-TCD-19-00030262, and EB-TCD-21-00032604, Order, DA 21-1488, Consent Decree at paras. 3(a), 35 (EB Dec. 3, 2021).

²² Moody's Investors Service, *Rating Action: Moody's downgrades Sorenson's CFR to B3, affirms credit facility at B2; outlook stable* (Jan. 13, 2022), https://www.moodys.com/research/Moodys-downgrades-Sorensons-CFR-to-B3-affirms-credit-facility-at--PR_461292 (*Moody's Rating*). CFRs are "long-term ratings that reflect the relative likelihood of a default on a corporate family's debt and debt-like obligations and the expected financial loss suffered in the event of default. A CFR is assigned to a corporate family as if it had a single class of debt and a single consolidated legal entity structure." Moody's Investors Service, *Rating Symbols and Definitions* at 8 (Nov. 2, 2021), https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004. "Obligations rated B are considered speculative and are subject to high credit risk," and a B3 rating "indicates a ranking in the lower end of that generic rating category." *Id.* at 6.

²³ *Id.* Moody's explained that the lower rating reflects the company's "narrow business focus, reliance on compensation rates set by the FCC, uncertainty around future rates and the prospect for further rate decreases that pose meaningful risk to the credit profile," while acknowledging that "[t]hese credit challenges are counterbalanced by the Sorenson's strong market position within its niche business and steady demand for the company's services." *Id.*

²⁴ See, e.g., *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, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802, 8803-04, para. 3 n.8 (2021);

²⁵ See, e.g., Rolka Loube, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51, Exh. 1-3.1 (filed May 1, 2020) (confidential version).

²⁶ See Ariel-CaptionCall Feb. 18 *Ex Parte*.

²⁷ Cf. *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) ("[T]o the extent that IP CTS compensation rates ultimately are insufficient for Miracom to recover its higher costs, it is not clear from the information provided . . . that Miracom could respond in ways that would allow it to continue in operation and to meet the mandatory minimum standards").

that those costs are necessary to the provision of reimbursable services.”²⁸ Therefore, to the extent that any losses or required payments attributable to these debt obligations exceed the reasonable costs of TRS, responsibility for addressing them would appropriately be borne by the companies’ owners and creditors, not the TRS Fund or its contributors.

Accordingly, we find that the public interest and the objectives of section 225 are served by authorizing CaptionCall to provide TRS under the proposed new ownership, pending a determination as to full certification.

For these reasons, the Bureau grants CaptionCall conditional certification to provide IP CTS after completion of the merger transaction, for a period not to exceed 24 months from the date of this Public Notice, pending the Commission’s review of a forthcoming full certification application. This grant is subject to the condition that CaptionCall must file an application for full certification, under the new ownership, within 15 days after the date the merger transaction is consummated.²⁹ This grant of conditional certification, which is without prejudice to the Commission’s final determination on the anticipated full certification application, is dependent on the Commission verifying the information provided in that application and confirming the company’s compliance with the Commission’s minimum standards, a process that may include, but not be limited to, conducting one or more site inspections of CaptionCall call centers and facilities.

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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

Additional Information: For additional information on this proceeding, contact William Wallace at 202-418-2716, or William.Wallace@fcc.gov, of the Consumer and Governmental Affairs Bureau, Disability Rights Office.

-FCC-

²⁸ *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, 8697, para. 195 (2013), *aff’d in relevant part*, *Sorenson v. FCC*, 765 F.3d 37, 48-49 (D.C. Cir. 2014).

²⁹ See Ariel-CaptionCall Application at 3-4.