

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

In the Matter of)
Internet Protocol Captioned Telephone Service) CG Docket No. 22-408
Compensation)
Telecommunications Relay Services and Speech-) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)
and Speech Disabilities)
Misuse of Internet Protocol (IP) Captioned) CG Docket No. 13-24
Telephone Services)

ORDER

Adopted: December 20, 2023

Released: December 20, 2023

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) extends the current compensation formula for Internet Protocol Captioned Telephone Service (IP CTS). In a series of Commission and Bureau orders, the expiration of the current IP CTS compensation formula, originally scheduled for June 30, 2022, has been extended through December 31, 2023.1 On our own motion, to ensure uninterrupted service to consumers, we grant a temporary waiver to further extend the expiration date through June 30, 2024—or the effective date of Commission action revising the compensation formula, if earlier.

II. BACKGROUND

2. IP CTS, a telecommunications relay service (TRS)2 supported by the TRS Fund,3 “permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an [IP]-enabled device via the Internet to simultaneously listen to the other party and read captions of

1 See Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service, CG Docket Nos. 03-123 and 10-51, Order, 37 FCC Rcd 7667, 7670-71 paras. 11-14 (CGB 2022) (2022 TRS Funding Order); Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service, CG Docket Nos. 03-123 and 10-51, Order, DA 23-577, para. 17 (CGB June 30, 2023) (2023 TRS Funding Order); Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 22-408 and 03-123, Order, DA 23-1091 (CGB Nov. 17, 2023) (November 2023 Extension Order).

2 TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deafblind, 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 communication using voice communication services by wire or radio." 47 U.S.C. § 225(a)(3).

3 See 47 CFR § 64.604(c)(5)(iii)(A).

what the other party is saying.”⁴ IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.⁵

3. In 2018, the Commission authorized, for the first time, the provision of IP CTS on a fully automatic basis, using only automatic speech recognition (ASR) technology to generate captions, without the participation of a communications assistant (CA).⁶ Pursuant to certification by the Bureau, every IP CTS provider is now authorized to use the ASR-only mode to generate captions—either as an alternative to CA-assisted captioning or as its sole mode of providing IP CTS.⁷

4. In December 2022, the Commission adopted the *2022 IP CTS Compensation Notice*, in which it proposed to establish separate compensation rates for CA-assisted and ASR-only modes of providing IP CTS, and asked for comment on how to set revised compensation formulas for this service.⁸

5. The current compensation formula for IP CTS, \$1.30 per minute, was originally set to expire June 30, 2022.⁹ On June 30, 2022, the Bureau waived the expiration of that compensation plan, extending it through June 30, 2023.¹⁰ Subsequently, the Bureau extended the current compensation formula through November 30, 2023,¹¹ and later extended it further, through December 31, 2023.¹²

III. DISCUSSION

6. A Commission rule may be waived for good cause shown.¹³ In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.¹⁴ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver of a rule is appropriate if special

⁴ *Id.* § 64.601(a)(23).

⁵ *See id.* § 64.604(c)(5)(iii)(E). The TRS Fund administrator reviews monthly compensation requests and supporting information submitted by providers of IP CTS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable formula.

⁶ *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, 5827, para. 48 (2018) (*2018 IP CTS Order*).

⁷ *See Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97, para. 7 (Dec. 22, 2022) (*2022 IP CTS Compensation Notice*).

⁸ *Id.*, paras. 13-20.

⁹ *2022 TRS Funding Order*, 37 FCC Rcd at 7069, para. 7.

¹⁰ *Id.* at 7070-71, paras. 11-14.

¹¹ *See 2023 TRS Funding Order*, para. 17.

¹² *November 2023 Extension Order*, DA 23-1091.

¹³ 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

¹⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *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 and will not undermine the policy underlying the rule.¹⁶

7. We find good cause to waive the expiration date of the current compensation formula for IP CTS, extending it through June 30, 2024, or the effective date of Commission action revising the compensation formula, whichever is earlier. Establishing a methodology and compensation level for this service is inherently complex.¹⁷ While the Commission has made significant progress, it has not yet completed consideration and adoption of a revised plan. Extending the current compensation plan for IP CTS will provide certainty and stability to providers pending final Commission action. If we were to let the current compensation plans expire without providing for interim payments, these services would cease to be available to consumers with disabilities who rely on them for functionally equivalent communication. Under such circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas, pending resolution of Commission action.¹⁸

8. In addition, multiple parties have requested that the Commission await cost and demand data to be submitted in February 2024¹⁹ before adopting a revised compensation plan.²⁰ Noting that the current record includes historical cost and demand for 2021 and 2022 and projected cost and demand for 2023 and 2024,²¹ providers argue, among other things, that the cost data are stale²² and of limited use in allocating costs between ASR-only and CA-assisted service, given that some providers only recently began offering ASR-only IP CTS.²³

9. While we do not address here commenters' assertions regarding the adequacy of the current record, we do recognize that the updated annual cost data to be filed in February 2024 could provide useful additional information relevant to determining the reasonable cost of IP CTS, including ASR-only service. For example, the data submitted in February 2024 will provide the Commission with a second full year (2023) of historical data from most IP CTS providers that currently use ASR-only captioning (and a first full year of cost data from one such provider), as well as updated cost and demand projections reflecting recent changes in each provider's mix of CA-assisted and ASR-only minutes.

¹⁶ *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

¹⁷ *2022 TRS Funding Order*, 37 FCC Rcd at 7071, para. 13.

¹⁸ *See, e.g., 2023 TRS Funding Order*, para. 17; *2022 TRS Funding Order*, 37 FCC Rcd at 7070-71, paras. 11-14.

¹⁹ In February of each year, all TRS providers of interstate services must submit data to the TRS Fund administrator on their costs of providing the service and the demand for the service in the preceding calendar year and their cost and demand projections for the next calendar year. 47 CFR § 64.604(c)(5)(iii)(D)(I); *see, e.g., Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formulas and Fund Size Estimate*, CG Docket No. 03-123 and 10-51, Appx.: *Interstate TRS Fund Annual Provider Data Request* (filed May 1, 2023) (TRS Provider Data Request).

²⁰ *See, e.g., Letter from David A. O'Connor, Hamilton Relay, Inc., to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2-3* (filed Dec. 8, 2023) (Hamilton December 8 *Ex Parte*); *Letter from Scott D. Delacourt, CaptionMate LLC, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2-4* (filed Dec. 6, 2023) (CaptionMate December 6 *Ex Parte*); *Letter from John T. Nakahata, CaptionCall, LLC, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2* (filed Nov. 21, 2023) (CaptionCall November 21 *Ex Parte*); *Letter from Karen Peltz Strauss, Ultratec, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2* (filed Nov. 15, 2023) (Ultratec November 15 *Ex Parte*).

²¹ *See Letter from Michael Scott, CGB, to Marlene Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (confidential)* (filed Nov. 6, 2023) (2023 IP CTS Cost and Demand Data).

²² Hamilton December 8 *Ex Parte* at 2-3; CaptionMate December 6 *Ex Parte* at 2; CaptionCall November 21 *Ex Parte* at 2; Ultratec November 15 *Ex Parte* at 3-4.

²³ *See, e.g., Hamilton December 8 Ex Parte* at 2-3; *CaptionMate December 6 Ex Parte* at 2; *CaptionCall November 21 Ex Parte* at 2; *Ultratec November 15 Ex Parte* at 2.

10. However, we remind IP CTS providers that they are required to submit, on the date specified by the Fund administrator in February 2024, *all* information reasonably requested by the Fund administrator.²⁴ In addition to identifying allowable expenses for ASR-only and CA-assisted service,²⁵ providers must report *non-allowable* expenses actually incurred or projected to be incurred in certain cost categories. As indicated in the *2022 IP CTS Compensation Notice*, the Commission is considering modifications to certain allowable cost criteria for this service.²⁶ The administrator’s instructions specifically direct providers to submit data on currently non-allowable expenses in these categories.²⁷

11. Further, IP CTS providers that contract for the supply of services used in the provision of TRS must report information on payment under such contracts, classified according to the substantive cost categories specified by the administrator.²⁸ The administrator’s instructions for annual reports state that providers are responsible for “reporting and allocating subcontractor costs to the appropriate categories and subcategories,” and that “[s]ubcontractor costs not properly allocated shall be treated as non-allowable costs.”²⁹

12. To the extent that providers have any questions about how to allocate costs, whether for subcontractor costs or for CA-assisted versus ASR-only costs, they should ask the Fund administrator for guidance well before the February 2024 due date for submission of data. Meeting the submission deadline and providing the requested data in a complete and detailed manner will ensure that a provider’s cost and demand data can be given due consideration.

13. *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.

²⁴ 47 CFR § 64.604(c)(5)(iii)(D)(I) (TRS providers are required to submit, *inter alia*, “total TRS minutes of use, total interstate TRS minutes of use, total operating expenses and total TRS investment in general in accordance with [the Commission’s cost-accounting rules] and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.”) (emphasis added).

²⁵ Some commenters have raised concerns about inconsistencies among providers in the attribution of costs to each service mode. See Hamilton December 8 *Ex Parte* at 2-3; CaptionMate December 6 *Ex Parte* at 3. Pending further clarification (see *2022 IP CTS Compensation Notice*, paras. 24-25), and in accordance with well-established principles of regulatory accounting, providers should, where possible, directly assign costs to either ASR-only or CA-assisted IP CTS, and where that is not possible, reasonably allocate such costs based on direct analysis of the origin of the costs themselves. *2022 IP CTS Compensation Notice*, para. 25.

²⁶ See *2022 IP CTS Compensation NPRM*, FCC 22-97, paras. 26-35.

²⁷ See TRS Provider Data Request at 16-19. To be clear, these instructions were issued prior to the February 2023 cost submissions. Thus, all IP CTS providers were required to, and presumably did, identify any non-allowable costs in these categories in their February 2023 reports.

²⁸ 47 CFR § 64.604(c)(5)(iii)(D)(I). To the extent that a third party's provision of services covers more than one cost category, the cost report must provide an explanation of how the provider determined or calculated the portion of contractual payments attributable to each cost category. *Id.*

²⁹ TRS Provider Data Request at 10. In this regard, we note that, while Ultratec emphasizes the need for “complete” IP CTS cost data (Ultratec November 15 *Ex Parte* at 1, 2, 3-4), Ultratec itself has not provided to the Commission (nor, as far as the record discloses, to its certificated IP CTS provider customer), *any* cost analysis regarding the substantial fees it earns as an IP CTS subcontractor. Absent such information, it is not possible to determine the extent to which, for example, Ultratec’s contract fees are used to (i) provide IP CTS, (ii) develop and distribute IP CTS user devices (the cost of which is not allowable or proposed to be allowable), or (iii) support activities unrelated to IP CTS. To the extent that Ultratec believes it is important for the Commission to set IP CTS compensation based on complete cost data, that objective would be advanced by Ultratec’s provision of a complete analysis of the specific operations or functions supported by its contract fees and the specific amounts attributable to each such activity.

14. *Additional Information.* For further information regarding this item, please contact Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-1264, or Michael.Scott@fcc.gov.

IV. ORDERING CLAUSES

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

16. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP CTS through June 30, 2024 (or the effective date of Commission action revising the compensation formula, if earlier), in accordance with the formulas applicable on June 30, 2022.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief Consumer and Governmental
Affairs Bureau