

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

ORDER

Adopted: January 4, 2024

Released: January 4, 2024

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) grants conditional certification to Nagish, Inc. (Nagish), to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis, pending verification that its actual provision of IP CTS meets or exceeds the Commission’s minimum TRS standards.1 This grant of conditional certification authorizes Nagish to provide TRS Fund-supported IP CTS through January 5, 2026, or the date of grant or denial of full certification, whichever occurs earlier. The Bureau also dismisses Nagish’s request for waiver of certain TRS rules.

II. BACKGROUND

2. Nagish requests certification to provide IP CTS on a fully automatic basis (i.e., using automatic speech recognition (ASR) only2 for captioning of all calls, without any reliance on communications assistants (CAs)).3 Nagish also requests waiver of certain mandatory minimum TRS

1 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). IP CTS is a form of Internet-based telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. See 47 CFR § 64.601(a)(23) (defining IP CTS). Captions may be displayed on a specialized IP CTS device or an off-the-shelf computer, tablet, or smartphone. Internet-based TRS providers obtain certification from the Commission to be eligible to receive compensation from the TRS Fund. Id. § 64.606.

2 The Commission has determined that the provision of IP CTS using only automatic speech recognition (ASR) to generate captions, without the involvement of a Communications Assistant (CA), is eligible for compensation from the TRS Fund if provided in compliance with applicable mandatory minimum TRS standards. See 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 ASR Declaratory Ruling).

3 Internet-based TRS Certification Application of Nagish, Inc., CG Docket No. 03-123 (filed June 23, 2022) https://www.fcc.gov/ecfs/document/106231030902855/1 (Application). Nagish has redacted portions of its application for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket. See Misuse of Internet Protocol (IP) Captioned Telephone Service; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services

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standards.<sup>4</sup> Nagish’s proposed ASR-only IP CTS will be delivered via an over-the-top (OTT) Android- or iOS-compatible application downloaded onto a customer’s existing mobile device.<sup>5</sup> Nagish states that it has contracts with various ASR providers and can incorporate new ASR vendors as needed.<sup>6</sup> According to the application, each ASR provider is subjected to extensive initial evaluation testing involving an array of call conditions<sup>7</sup> and is regularly tested “both manually and in an automated fashion.”<sup>8</sup>

3. On October 12, 2022, the Bureau released a Public Notice seeking comment on Nagish’s application and waiver request.<sup>9</sup> On November 14, 2022, ClearCaptions, LLC, and a coalition of accessibility advocacy and research organizations filed comments.<sup>10</sup> Although neither commenter expressly opposes Nagish’s application, AARO argues that all providers of ASR-only IP CTS should be required to offer a CA-assisted mode and to allow users to switch from ASR-only to CA-assisted mode during a call.<sup>11</sup> AARO also restates a general concern regarding the need to establish metrics for IP CTS service quality.<sup>12</sup> ClearCaptions agrees that ASR-only IP CTS does not provide adequate quality of service in all scenarios and should be offered in conjunction with CA-assisted IP CTS.<sup>13</sup> Nagish filed reply comments on November 29, 2022,<sup>14</sup> and a supplemental filing on August 16, 2023.<sup>15</sup>

4. Nagish’s platform was tested for caption delay and accuracy by the Commission’s National Test Lab (NTL).<sup>16</sup>

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*for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13024, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (2018). Although the application seeks certification to provide a dual IP CTS/IP Relay service, this Order addresses only the IP CTS aspect of the application. A subsequent order considering the merits of Nagish’s IP Relay offering will be issued at a later time.

<sup>4</sup> Application at 12-13, 16.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 6-7.

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

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

<sup>9</sup> *Comment Sought on Application of Nagish, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service and Internet Protocol Relay Service*, CG Docket No. 03-123, Public Notice, DA 22-1090 (CGB 2022).

<sup>10</sup> All comments and reply comments were filed in CG Docket No. 03-123. *See* Comments of ClearCaptions, LLC (ClearCaptions) (rec. Nov. 14, 2022) (ClearCaptions Comments); Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association for the Deaf (NAD), and Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) (collectively, AARO), Comments on the Application of Nagish, Inc. for Certification as a Provider of Internet Protocol Captioned Telephone Service and Internet Protocol Relay Service (rec. Nov. 14, 2022) (AARO Comments).

<sup>11</sup> AARO Comments at 2, 4.

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

<sup>13</sup> ClearCaptions Comments at 4. ClearCaptions also raised a number of questions regarding the interaction between Nagish’s proposed IP Relay service and its IP CTS service. We do not address those questions here because we are not addressing Nagish’s application for certification to provide IP Relay in this Order.

<sup>14</sup> Nagish, Inc., Reply Comments (rec. Nov. 29, 2022) (Nagish Reply Comments).

<sup>15</sup> Amendment to Internet-Based TRS Certification Application of Nagish, Inc., CG Docket No. 03-123 (filed Aug. 16, 2023).

<sup>16</sup> *See* FCC TRS National Test Lab, Internet Protocol Captioned Telephone Service Testing – Nagish, Version 1.1, CG Docket No. 03-123 (posted by CGB, Oct. 27, 2023) (NTL Test Report). The National Test Lab (NTL) is operated by MITRE Corporation as part of the CMS Alliance to Modernize Healthcare, a Federally Funded

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### III. CERTIFICATION

5. We conditionally grant the application subject to verification—based on actual operating experience—that Nagish’s provision of IP CTS will meet or exceed the minimum TRS standards.<sup>17</sup>

6. *Sufficiency of the Application.* Nagish’s application is facially sufficient to satisfy the Commission’s certification requirements. The application and supporting information provide a sufficient explanation, with documentary and other evidence, as to how the applicant will provide IP CTS and meet all minimum standards relevant to consideration of its application.<sup>18</sup> Nagish also provides a description of its complaint procedures, confirmation that it will file annual compliance reports demonstrating continued compliance with the TRS rules, and a verification statement from a senior executive as to the accuracy and completeness of the information provided.<sup>19</sup> Further, as discussed below, the application and supporting information, including the results of independent testing of caption delay and accuracy,<sup>20</sup> sufficiently support Nagish’s specific claims regarding its use of ASR and the efficacy of such use in meeting the Commission’s minimum TRS standards for speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.<sup>21</sup>

7. *Speed of Answer.* Nagish 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.<sup>22</sup> According to the application, all calls are answered within one second.<sup>23</sup> When the call is connected, the ASR system will immediately begin generating and transmitting captions in real-time.<sup>24</sup> Additionally, Nagish states that the probability of a busy response is functionally equivalent to what a voice caller would experience in attempting to reach a party through the public switched telephone network.<sup>25</sup> It further maintains that there is adequate staffing and network facilities to ensure it can maintain appropriate speed-of-answer times under projected calling volume.<sup>26</sup>

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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) – Summary of Phase 2 Usability Testing Results (2016), CG Docket Nos. 03-123 and 13-24, at i-ii (posted by CGB, Apr. 11, 2018); CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase 1 Activities (2017), CG Docket Nos.03-123 and 13-24, at 10 (posted by CGB, Apr. 11, 2018) (NTL Phase 1 Summary).

<sup>17</sup> See *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

<sup>18</sup> See Application at 12-20; 47 CFR § 64.606(a)(2)(ii).

<sup>19</sup> See Application at 33-34 (complaint procedures); *id.* at 34 (annual filing); 2023 Amendment (verification).

<sup>20</sup> NTL Test Report.

<sup>21</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). In its comments, ClearCaptions recommends that the Commission review carefully the adequacy of Nagish’s ASR platform, the use of artificial intelligence, and quality assurance practices. ClearCaptions Comments at 2-5. AARO similarly recommend that the Commission review carefully the adequacy of Nagish’s ability to ensure privacy and quality of service, including with respect to any vendor services. AARO Comments at 2-5. As discussed below, Nagish’s application and supporting materials adequately address these issues.

<sup>22</sup> See 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily).

<sup>23</sup> Application at 17.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 17.

<sup>26</sup> *Id.*

8. *Service Continuity.* We also find that Nagish has demonstrated that it will be able to maintain service continuity in the provision of ASR-only captioning. IP CTS providers must have redundancy features functionally equivalent to the equipment in telephone company central offices.<sup>27</sup> Nagish's application states that the company will operate its service 24 hours per day, every day, and employs an uninterruptible power source for emergency use.<sup>28</sup> The applicant's reliance on multiple ASR vendors<sup>29</sup> provides additional assurance of service continuity.

9. *Caption Speed/Delay.* Nagish sufficiently supports its claim that its ASR platform will transcribe captions in real time and in compliance with the current TRS standards relating to captioning speed or delay.<sup>30</sup> In performance testing by the Commission's National Test Lab (NTL), Nagish's median caption delay for two call scenarios was 1.0 seconds, compared to an aggregate average of 1.8-2.4 seconds for other IP CTS providers.<sup>31</sup> Additionally, NTL testing supports Nagish's assertion that captions will be transcribed in real time and in compliance with the typing speed standard of 60 words per minute.<sup>32</sup>

10. *Accuracy and Readability.* Although the TRS rules do not currently provide quantitative standards 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 a user specifically requests summarization.<sup>33</sup> We find sufficient record evidence that Nagish's fully automatic IP CTS will meet or exceed the Commission's competence and "verbatim" requirements.

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<sup>27</sup> See 47 CFR § 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>28</sup> Application at 17.

<sup>29</sup> *Id.* at 6-7.

<sup>30</sup> Caption speed is typically measured based on the time that elapses, i.e., the delay, between transmission of speech and transmission of the associated caption(s). See NTL Phase I Summary at 6. Currently, there is no quantitative standard for IP CTS caption speed or delay *per se*. However, 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, Declaratory Ruling 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 applies to ASR-based IP CTS. 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, Nagish 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 Notice*).

<sup>31</sup> NTL Test Report at 2.

<sup>32</sup> Nagish has redacted its claimed words-per-minute upper limit. See Application at 13 (confidential version). However, the test calls used in NTL's assessment featured overall speech rates between 89 and 118 words per minute and active speech rates between 156 and 168 words per minute. NTL Test Report, Appx. B at 11, Appx. D at 15. Nagish's performance in these tests confirms that its transcription speed well exceeds 60 words per minute.

<sup>33</sup> 47 CFR § 64.604(a)(1)(ii), (2)(ii). These standards apply to captions generated with the help of 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); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832, para. 60.

In testing by NTL, Nagish's Word Error Rate for three call scenarios ranged from 2.1% to 9.6%, comparable to other IP CTS providers' aggregated Word Error Rate results, which averaged from 2.0% to 7.4% in the same call scenarios.<sup>34</sup>

11. *Privacy.* The Commission's confidentiality requirements for TRS call content prohibit the disclosure or retention of call content for any purpose, either locally or in the cloud.<sup>35</sup> In addition, providers must protect the privacy of customer information.<sup>36</sup> Our rules obligate a provider to protect call content and customer information regardless of the specific persons or entities (e.g., CAs, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.<sup>37</sup> Nagish's application adequately describes how it assesses its vendors and how it protects user call data and other sensitive information.<sup>38</sup>

12. *Emergency Call Handling.* Under the Commission's TRS standard for emergency call handling, an IP CTS provider must ensure that 911 calls are given priority over non-911 calls.<sup>39</sup> In addition, when responsible for placing or routing voice calls to the public switched telephone network, an IP CTS provider must ensure that the call is routed, and required caller information delivered to the appropriate public safety answering point (PSAP).<sup>40</sup> Nagish sufficiently establishes that it will handle emergency calls in accordance with these rules.<sup>41</sup> According to Nagish, its product routes emergency calls to the appropriate PSAP based on the user's Registered Location information.<sup>42</sup> As a mobile phone app, Nagish's software may also have access to the user's geolocation, if the user grants such permission.<sup>43</sup> Nagish also states that it will prioritize incoming emergency calls over non-emergency calls and will only share information obtained via such calls with emergency call handlers, emergency response or law enforcement personnel, as required.<sup>44</sup>

13. *Response to Additional Concerns Raised in Comments.* Consistent with the Bureau's prior orders granting conditional certification to IP CTS applicants that did not propose to employ any CAs,<sup>45</sup> we decline ClearCaptions' suggestion that we require Nagish to offer CA-assisted IP CTS in

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<sup>34</sup> NTL Test Report at 2.

<sup>35</sup> See 47 CFR § 64.604(a)(2)(i) (prohibiting CAs from disclosing or retaining call content except as authorized by 47 U.S.C. § 605); 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>36</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); see also 47 CFR § 9.14(b)(2)(vi) (limiting disclosure and use of information obtained while handling 911 calls).

<sup>37</sup> See, e.g., *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60. As the Commission has noted previously, the use of ASR-only IP CTS can enhance call privacy by eliminating the need for a human CA to listen to a call. *Id.* at 5828, para. 50.

<sup>38</sup> Application at 14-15 (confidential version).

<sup>39</sup> 47 CFR § 9.14(b)(2)(ii).

<sup>40</sup> *Id.* § 9.14(b)(2)(i), (e).

<sup>41</sup> Application at 17-18.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 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 (CGB 2020) (*MachineGenius Certification Order*); *Telecommunications Relay Services and Speech-to-Speech Services for*

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addition to ASR-only IP CTS.<sup>46</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>47</sup> For similar reasons, and consistent with prior orders,<sup>48</sup> we also decline AARO’s request to require Nagish to provide a means for consumers to choose between CA and ASR modes.<sup>49</sup> Whether to impose such a requirement is a policy determination for the Commission to make.

14. *Conditional Certification.* We grant Nagish certification on a conditional basis, to provide IP CTS for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance that its service complies with the Commission’s minimum TRS standards. Because Nagish is a new applicant with no previous experience in the provision of TRS, and will rely solely on fully automatic captioning, we believe the best course is to collect additional information, through observing Nagish’s service in operation, to confirm that this service will meet or exceed the minimum TRS standards.<sup>50</sup>

15. To assist the Bureau in its final determination of Nagish’s qualifications to provide IP CTS, we require Nagish to provide quarterly reports of consumer complaints, 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>51</sup> The first report shall be due May 1, 2024, and shall cover the period from the commencement of service through March 30, 2024.<sup>52</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 August 1, 2024, and shall cover the period

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*Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020) (granting Clarity, LLC conditional certification to provide ASR-only IP CTS) (*Clarity Certification Order*).

<sup>46</sup> ClearCaptions Comments at 4.

<sup>47</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>48</sup> 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, 37 FCC Rcd 5228, para. 3 (CGB 2022) (*Hamilton ASR Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 13241, 13248, para. 18 (CGB 2021) (*CaptionCall ASR Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 7246, 7258, para. 24 (CGB 2021) (*ClearCaptions ASR Order*).

<sup>49</sup> See ARRO Comments at 5.

<sup>50</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 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>51</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 ASR-only IP CTS is providing functionally equivalent service).

<sup>52</sup> Nagish’s first report shall specify the date of commencement of service.

from April 1 through June 30, 2024. Nagish shall continue to file reports on a quarterly schedule until the expiration of this conditional certification, or until Commission action granting or denying full certification, whichever occurs earlier.

16. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of Nagish's application, such as the results and protocols for performance tests conducted by Nagish or independent third parties.<sup>53</sup> We also require Nagish to report promptly any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in service agreements and suppliers, procedures for registering and screening prospective users, or the manner in which Nagish provides service.

17. Pursuant to this grant of conditional certification, Nagish may provide Fund-supported IP CTS in the manner described in its application, for a period not to exceed two years, pending a final determination of Nagish's qualifications. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in Nagish's application 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 to Nagish's premises and may request additional documentation relating to Nagish's provision of 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 Nagish is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of IP CTS. If, at any time during the period in which Nagish is operating pursuant to this conditional certification, the Commission determines that Nagish 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 Nagish's application. In the event of such denial, Nagish's conditional certification will automatically terminate thirty-five (35) days after such denial.<sup>54</sup>

18. *Preventing Misuse.* We remind Nagish 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 transcription of in-person meetings or conversations.<sup>55</sup> Further, although our rules do

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<sup>53</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); *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Services Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106-10 (CGB 2014) (conditioning a provider's certification on submission of additional information, including quarterly testing and reports) (*Miracom Certification*). 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 latency and accuracy of captions, may be helpful in the overall evaluation of this application for the purpose of deciding whether to grant full certification. Further, the Commission has proposed to adopt quantified standards for caption delay and accuracy, which, if adopted, would be applicable to all IP CTS providers, including those applying for certification or authorized under conditional certification. See *IP CTS Metrics Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

<sup>54</sup> See *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

<sup>55</sup> For example, Communication Access Realtime Translation (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 *Miracom Certification*, 29 FCC Rcd at 5110; 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

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not prohibit Nagish 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>56</sup> We also remind Nagish that its marketing of this service must conform with the Commission's rules.<sup>57</sup>

19. *Compensation.* Providers of IP CTS are currently compensated under a single formula, in the amount of \$1.30 per minute. The Commission has sought comment on modifying this formula and is expected to adopt a revised compensation plan by June 30, 2024.<sup>58</sup> Newly certified IP CTS providers should not assume or expect that the current compensation formula will remain applicable or that any revised formula(s) will necessarily allow them to recover their cost of service, even if they serve a special population or use a new, more expensive method of providing service.<sup>59</sup>

#### IV. REQUEST FOR WAIVERS

20. For the reasons stated below, the Bureau dismisses Nagish's requests for waiver of certain TRS rules, to the extent that such requests relate to Nagish's provision of IP CTS.<sup>60</sup>

21. *Waiver standard.* A Commission rule may be waived for "good cause shown."<sup>61</sup> In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>62</sup> In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>63</sup> Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>64</sup>

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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>56</sup> See 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

<sup>57</sup> See, e.g., 47 CFR § 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating its use by people who need it for effective communication, also creates a risk that IP CTS will be used when it is not needed. See *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

<sup>58</sup> *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 (Dec. 22, 2022) (proposing revised compensation plan for IP CTS); *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 Services*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (CGB Dec. 20, 2023) (extending the current compensation plan through June 30, 2024, or the effective date of Commission action revising the compensation formula, if earlier).

<sup>59</sup> See *Miracom Certification*, 29 FCC Rcd at 5108 n.19 ("Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service.").

<sup>60</sup> Application at 12-13, 16.

<sup>61</sup> 47 CFR § 1.3.

<sup>62</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>63</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.

<sup>64</sup> *Northeast Cellular*, 897 F.2d at 1166.



22. *Discussion.* Nagish seeks waiver of 47 CFR § 64.604(a)(i)-(iii), which addresses CA qualifications, “to the extent that the rules apply to CAs only.”<sup>65</sup> The Bureau has previously held that ASR-only systems are capable of complying with these rules, making waiver unnecessary.<sup>66</sup> Further, as noted above, Nagish has sufficiently shown that its ASR-only service will meet or exceed these standards.

23. Nagish also requests waiver of any technical standards “applicable to CAs that do not apply to fully ASR-based” service offerings.<sup>67</sup> We are not aware of any provisions in section 64.604(b) of the Commission’s rules that are applicable to IP CTS and that meet this description.

## V. PROCEDURAL MATTERS

24. *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 & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

25. *Additional Information.* For further information regarding this item, please contact Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1028 or by e-mail to [Ike.Ofobike@fcc.gov](mailto:Ike.Ofobike@fcc.gov).

## VI. ORDERING CLAUSES

26. 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 Nagish, Inc., for certification to provide IP CTS is GRANTED as conditioned in this Order.

27. IT IS FURTHER ORDERED, that the Request for Waiver of Nagish, Inc. is DISMISSED.

28. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission 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

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<sup>65</sup> Application at 13.

<sup>66</sup> See, e.g., *MachineGenius Certification Order*, 35 FCC Rcd at 4579, para. 26.

<sup>67</sup> Application at 16. Technical standards are contained in 47 CFR § 64.604(b).