

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 20, 2022

Released: April 20, 2022

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) conditionally grants certification to Hamilton Relay, Inc. (Hamilton), to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis.1 With this form of IP CTS, automatic speech recognition (ASR) technology is used to produce captions for telephone calls without the participation of a communications assistant (CA).2 Conditional certification permits Hamilton to receive support from the TRS Fund for such fully automatic, or ASR-only, IP CTS pending verification that its actual provision of service to registered users meets or exceeds the Commission’s TRS minimum standards.3 The Bureau also finds good cause to grant Hamilton’s request for waiver of the TRS rule regarding the language of consumer self-certifications.4

1 See Sixth Amendment to Application of Hamilton Relay, Inc. for Certification as a Provider of Internet Protocol Captioned Telephone Services, CG Docket Nos. 10-51 and 03-123 (filed July 9, 2021) (6th Amendment), https://www.fcc.gov/ecfs/file/download/DOC-5ea328d572c00000-A.pdf?file\_name=Hamilton%20ASR-only%20(Sixth)%20Amendment%20-%20Redacted%20version.pdf (redacted); Seventh Amendment to Application of Hamilton Relay, Inc. for Certification as a Provider of Internet Protocol Captioned Telephone Services, CG Docket Nos. 10-51 and 03-123 (filed Mar. 24, 2022) (7th Amendment), https://www.fcc.gov/ecfs/file/download/DOC-5fef9732a0400000-A.pdf?file\_name=Hamilton%20Seventh%20Amendment%20to%20IP%20CTS%20certification%20application.pdf. IP CTS, a form of Internet-based telecommunications relay service (TRS), 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)(22) (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 in order to be eligible to receive compensation for minutes of use from the Interstate TRS Fund. Id. § 64.606(a)(2).

2 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 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); 2018 ASR Declaratory Ruling, 33 FCC Rcd at 5835, para. 64 (noting that applications for certification to provide ASR-based IP CTS may be granted on a conditional basis).

## II. BACKGROUND

2. Hamilton currently provides TRS Fund-supported IP CTS by relying on CAs to produce telephone captions with the help of voice recognition technology.<sup>5</sup> An IP CTS provider may be conditionally authorized to use ASR to generate captions without CA assistance—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 July 9, 2021, Hamilton requested Commission approval to provide fully automatic IP CTS.<sup>7</sup>

3. Hamilton proposes to deploy ASR-only captioning in conjunction with its existing CA-assisted IP CTS. Hamilton intends to use ASR-only captioning “as it deems appropriate . . . based on the needs of its users,” and “will provide customers the ability to express their preference for ASR-only or CA-based IP CTS.”<sup>8</sup> When ASR-only captioning is provided for a call, the user will be able to switch from ASR-only to CA-assisted captioning during the call.<sup>9</sup> In the initial implementation, users will not have the reverse option—to switch from CA-assisted to ASR-only mode in the middle of a call.<sup>10</sup> Hamilton also states it will continue to use primarily CA-assisted IP CTS to generate captions for 911 calls.<sup>11</sup> Hamilton clarifies, however, that it will “use ASR-only to respond to emergency calls in the first instance if no CAs are available, in order to maximize the speed with which such calls are answered. In such instances, in order to help ensure accuracy in captioning, Hamilton intends to introduce a CA to ASR-answered emergency calls as soon as one is available.”<sup>12</sup>

4. On July 16, 2021, the Bureau released a Public Notice seeking comment on Hamilton’s request.<sup>13</sup> On August 16, 2021, a coalition of consumer groups and accessibility research organizations

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<sup>4</sup> See 6th Amendment at 5-6. 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 request. We deem this Memorandum Opinion and Order to constitute conditional certification that Hamilton is eligible for compensation from the 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>5</sup> See Application of Hamilton Relay, Inc. for Certification as a Provider of Internet Relay Services and Internet Protocol Captioned Telephone Services, CG Docket Nos. 10-51 and 03-123, at 20 (filed Dec. 5, 2011) (Hamilton IP CTS Application); 6th Amendment at 2. Hamilton has interim eligibility to receive TRS Fund compensation for the provision of IP CTS pursuant to the Commission’s 2011 *Internet-based TRS Certification Order*. The Commission granted interim eligibility, pending action on timely applications for certification, to TRS providers that were then providing Internet-based TRS under contract with a certified state program. 2011 *Internet-based TRS Certification Order*, 26 FCC Rcd at 10921-22, paras. 57-59. Hamilton has a pending application for IP CTS certification. See Hamilton IP CTS Application.

<sup>6</sup> 2018 *ASR Declaratory Ruling*, 33 FCC Rcd at 5827-35, paras. 48-64.

<sup>7</sup> 6th Amendment.

<sup>8</sup> 7th Amendment at 2. Hamilton states that users requesting ASR-only captioning as the primary method for captioning will receive “additional educational training . . . about the benefits and potential limitations of ASR-only captioning,” and will need to sign an acknowledgment of such potential limitations. *Id.*

<sup>9</sup> 6th Amendment at 3.

<sup>10</sup> *Id.* at 3 n.9. Hamilton states, however, that it “ultimately intends to provide user equipment with a button or icon to allow users to voluntarily switch [from CA-assisted] to ASR-only IP CTS, if they wish.” *Id.*

<sup>11</sup> *Id.* at 9.

<sup>12</sup> 7th Amendment at 3.

<sup>13</sup> See *Comment Sought on Amendment to Application of Hamilton Relay, Inc., for Certification as a Provider of IP Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, 36 FCC Rcd 11194 (CGB 2021).

filed comments. While not opposing Hamilton's request, Consumer Groups and Accessibility Researchers argued that the Commission should require Hamilton to adhere to its stated practice of allowing consumers to switch from ASR-only to CA-assisted mode during a call.<sup>14</sup> In addition, the coalition restated a general concern about the need to establish metrics for IP CTS service quality.<sup>15</sup> On August 31, 2021, Hamilton filed reply comments.<sup>16</sup>

### III. CERTIFICATION

5. We find that Hamilton's amendments facially meet the applicable certification requirements, and we grant conditional certification for Hamilton to provide fully automatic IP CTS.<sup>17</sup> Conditional certification allows the Commission to verify—based on actual operating conditions—that Hamilton's provision of fully automatic IP CTS will meet or exceed the minimum TRS standards. By granting conditional certification, we eliminate unnecessary delay in the availability of TRS using improved technologies.<sup>18</sup>

6. *Sufficiency of the Application.* Hamilton's amendments are facially sufficient to demonstrate that Hamilton's proposed use of fully automatic IP CTS will improve its compliance with those minimum TRS standards for which compliance is likely to be affected by the introduction of this additional captioning mode. Hamilton provides a detailed explanation as to how Hamilton will provide fully automatic IP CTS and meet all minimum standards relevant to consideration of its application.<sup>19</sup> In particular, Hamilton 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>20</sup>

7. *Speed of Answer and Service Continuity.* Hamilton has made a sufficient showing that using its chosen ASR technology without CAs for a portion of IP CTS calls will not adversely affect—

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<sup>14</sup> See Comments on Applications of Hamilton Relay and T-Mobile for Certification as a Provider of IP Captioned Telephone Service of Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults (ALDA), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), National Cued Speech Association (NCSA), Deaf/Hard of Hearing Technology Rehabilitation Engineering Center (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) (collectively Consumer Groups and Accessibility Researchers), CG Docket No. 03-123, at 2 (filed Aug. 16, 2021).

<sup>15</sup> *Id.* at 1-2. However, the Consumer Groups and Accessibility Researchers reaffirmed that they “will not specifically oppose ASR-based applications that the Commission concludes will deliver a similar level of quality to those already certified.” *Id.* at 2.

<sup>16</sup> See Reply Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 and 10-51 (filed Aug. 31, 2021) (Hamilton Reply).

<sup>17</sup> See 47 CFR § 64.606(a)-(b).

<sup>18</sup> *Cf.* 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); see also *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5807, para. 13 (noting that, due to recent advances, ASR-only “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 fully automatic IP CTS without delay will enable the Commission to “gather data that can inform our adoption of further measures to improve its utility”).

<sup>19</sup> See 6th Amendment at 2-11; 47 CFR § 64.604(a) (operational standards); *id.* § 64.604(b) (technical standards); *id.* § 9.14 (emergency call handling).

<sup>20</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).

and in fact will improve—its ability to meet or exceed the minimum TRS standards for speed of answer and service continuity. The speed-of-answer rule requires that calls be answered within 10 seconds for 85% of the calls handled each day.<sup>21</sup> Hamilton states that its testing has confirmed that its ASR-only captioning mode “can consistently answer calls in less than one second.”<sup>22</sup>

8. We also find that Hamilton has sufficiently demonstrated its ability 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>23</sup> According to Hamilton’s 7th Amendment, its “ASR architecture is vendor-agnostic, with multiple agreements in place with ASR vendors, which ensures that Hamilton’s ASR-only service is available around the clock, using multiple points of access in geographically diverse regions, such that if any one ASR vendor or network goes down for any reason, other ASR vendors and networks are able to handle the additional traffic.”<sup>24</sup> We also note that the availability of an ASR-only mode provides additional assurance of service continuity, e.g., in the event that an outage or disaster shuts down a call center.

9. *Captioning Speed / Delay.* Based on testing by the Commission’s National Test Lab (NTL), we find that Hamilton’s ASR-only mode will meet the minimum standards for caption speed, or delay.<sup>25</sup> In performance testing of Hamilton’s ASR-only platform,<sup>26</sup> its average caption delay for various call scenarios ranged from 1.0 to 1.6 seconds, while CA-assisted providers’ average caption delay for

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<sup>21</sup> See 47 CFR § 64.604(b)(2)(ii).

<sup>22</sup> 7th Amendment at 4.

<sup>23</sup> 47 CFR § 64.604(b)(4)(ii).

<sup>24</sup> 7th Amendment at 3.

<sup>25</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). CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase I Activities, at 6 (July 24, 2017), CG Docket Nos. 13-24 and 03-123 (filed by CGB Apr. 11, 2018) (NTL Phase I Summary). 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 is applicable. See *id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii) (requiring that TRS CAs have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed herein, Hamilton has shown that its fully automatic IP CTS not only will meet this standard but also will “keep up with the speed of the other party’s speech.” On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking that proposed quantitative standards for IP CTS 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 Further Notice*).

<sup>26</sup> The National Test Lab assessed both Hamilton’s ASR-only platform and its “hybrid” ASR, a variant of CA-assisted IP CTS that uses an ASR platform augmented with corrections from CAs. See FCC Telecommunications Relay Services Project, Captioning Quality Testing: Hamilton’s ASR Scenario, CG Docket No. 03-123, at 2 (Jan. 11, 2022) (posted by CGB on March 16, 2022) (NTL Test Report). The relevant test results for the purpose of this Order are those for Hamilton’s ASR-only platform. The National Test Lab is operated by MITRE Corporation (MITRE) as part of the CMS Alliance to Modernize Healthcare Services, a Federally Funded Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). See NTL Phase I Summary at 1.

each scenario was significantly longer, ranging from 4.0 to 4.8 seconds.<sup>27</sup> Hamilton's ASR-only platform also scored better than other IP CTS providers using ASR-only, whose average caption delay over the same scenarios ranged from 2.0 to 2.6 seconds.<sup>28</sup>

10. *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>29</sup> We find sufficient record evidence that Hamilton's fully automatic IP CTS will meet or exceed the Commission's competence and "verbatim" requirements.

11. The National Test Lab's testing indicates that, in terms of accuracy, Hamilton's ASR-only platform can outperform CA-assisted IP CTS. In repeated tests of five call scenarios, Hamilton's ASR-only platform achieved average Word Error Rates ranging from 0.9 to 7.7, while CA-assisted providers' average Word Error Rates ranged from 10.7 to 23.3, depending on the scenario.<sup>30</sup> Hamilton's ASR-only scores are also generally better than those of other ASR-only platforms, which averaged from 4.5 to 17.1 over the same set of call scenarios.<sup>31</sup>

12. *Privacy.* IP CTS providers are subject to the Commission's confidentiality requirements for TRS call content, which prohibit providers from retaining TRS call content for any purpose, either locally or in the cloud.<sup>32</sup> In addition, providers must protect the privacy of customer information.<sup>33</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>34</sup> Hamilton's 6th Amendment sufficiently describes how its ASR-only mode will comply with the Commission's TRS confidentiality requirements. Hamilton states that its ASR-only mode does not collect, store, cache, or otherwise retain the conversation content (audio or captions) once the call is terminated.<sup>35</sup> According to the 6th Amendment, Hamilton's agreements with its ASR technology vendors similarly provide that the vendors shall not collect, store, cache, or otherwise retain the conversation content (audio or captions) once the call is terminated and shall not "use, monitor, capture, analyze, or sell the content of the call in a way that would violate call confidentiality."<sup>36</sup> In addition, Hamilton states that it "employs internal methods" ensuring relay users' confidentiality, which

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<sup>27</sup> NTL Test Report at 4.

<sup>28</sup> *Id.* at 4.

<sup>29</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 Individual 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. The Commission recently proposed a quantitative standard for accuracy based on measuring word error rate. *IP CTS Metrics Further Notice*, 35 FCC Rcd at 10900-02, paras. 71-78.

<sup>30</sup> NTL Test Report at 3.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> 47 CFR § 64.604(a)(2)(i); see also *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60 (clarifying that confidentiality rules apply to ASR-only IP CTS).

<sup>33</sup> 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); *id.* §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information).

<sup>34</sup> See, e.g., *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60.

<sup>35</sup> 6th Amendment at 7-8.

<sup>36</sup> *Id.* at 8.

include “restriction of access to its call centers and the portioning of CAs into individual cubicles or compliant at-home environments to ensure relay call privacy.”<sup>37</sup>

13. *Emergency Call Handling.* Hamilton has established that the addition of its ASR-only platform will not adversely affect its ability to handle 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 public safety answering point (PSAP).<sup>38</sup> Hamilton’s existing 911 procedures will remain unchanged in this regard after it deploys ASR-only.<sup>39</sup>

14. IP CTS providers also must ensure that 911 calls are given priority over non-911 calls.<sup>40</sup> Although Hamilton’s submissions indicate a clear preference to have 911 calls captioned by a CA,<sup>41</sup> Hamilton clarifies that it intends to comply with the prioritization requirement, in cases where no CAs are immediately available, by initially using ASR-only to caption the call, and then adding a CA to the call as soon as one is available.<sup>42</sup>

15. *Response to Other Commenter Concerns.* For the same reasons stated in the *ClearCaptions ASR Order*,<sup>43</sup> we decline to require Hamilton to permit users to switch from ASR-only to CA-assisted captioning.<sup>44</sup> Although Hamilton states that it will provide this capability,<sup>45</sup> this option is currently offered by only one of the five providers of fully automatic IP CTS certified to date.<sup>46</sup> Whether

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

<sup>38</sup> 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) (*2019 IP CTS Order*) (partially waiving certain provisions of the emergency call-handling rule for IP CTS providers).

<sup>39</sup> 7th Amendment at 3.

<sup>40</sup> 47 CFR § 9.14(b)(2)(ii) (requiring Internet-based TRS providers to “[i]mplement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue”).

<sup>41</sup> 6th Amendment at 9; 7th Amendment at 3.

<sup>42</sup> 7th Amendment at 3.

<sup>43</sup> *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, 7257, para. 24 (CGB 2021) (*ClearCaptions ASR Order*).

<sup>44</sup> *See* Consumer Groups and Accessibility Researchers Comments at 2.

<sup>45</sup> 6th Amendment at 3.

<sup>46</sup> Of the five previously certified providers of ASR-only IP CTS, two—MachineGenius, Inc., and Clarity Products, LLC—do not provide CA-assisted captioning for any calls. *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, 4569, para. 2 (CGB 2020) (*MachineGenius 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, 35 FCC Rcd 5635, 5636, para. 2 (CGB 2020) (*Clarity ASR Order*). ClearCaptions, LLC, makes its own determinations regarding which mode of captioning is provided for non-911 calls. *See ClearCaptions ASR Order*, 36 FCC Rcd at 7247-48, 7257, paras. 3, 24. CaptionCall, LLC, does not provide an in-call switching functionality. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, DA 21-1080, at 8, para. 18 (CGB 2021) (*CaptionCall ASR Order*). Only InnoCaption (Mezmo Corporation d/b/a InnoCaption) currently enables consumers to choose whether the captioning for a call is provided with CA assistance or on a fully automatic basis. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*;

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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>47</sup>

16. In sum, Hamilton's amendments and the National Test Lab's test results facially establish that Hamilton 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>48</sup>

17. *Conditional Certification.* We grant certification for Hamilton's provision of fully automatic IP CTS on a conditional basis, for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance 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 Hamilton's service in operation to confirm that this service will meet or exceed the minimum TRS standards.<sup>49</sup>

18. To assist the Bureau in a final determination of Hamilton's qualifications to provide fully automatic IP CTS, we apply the same reporting requirements adopted in five previous orders conditionally certifying applicants to provide fully automatic IP CTS.<sup>50</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>51</sup> The first report shall be due August 1, 2022, and shall cover the period

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*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, 14195, para. 4 (CGB 2020) (*InnoCaption ASR Order*).

<sup>47</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 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); Letter from Blake E. Reid, Counsel to TDI, on behalf of HLAA, TDI, NAD, ALDA, CPADO, DSA, DHH-RERC, and IT-RERC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51, and 13-24, at 2 (filed Mar. 26, 2021) (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>48</sup> See 47 CFR § 64.606(b)(2).

<sup>49</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>50</sup> See *MachineGenius ASR Order*, 35 FCC Rcd at 4574, para. 13; *Clarity ASR Order*, 35 FCC Rcd at 5640-41, para. 13; *InnoCaption ASR Order*, 35 FCC Rcd at 14202, para. 22; *ClearCaptions ASR Order*, 36 FCC Rcd at 7255, para. 18; *CaptionCall ASR Order*, DA 21-1080 at 9, para. 21.

<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 fully automatic IP CTS is providing functionally equivalent service).

from the commencement of TRS-funded ASR service through June 30, 2022.<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 November 1, 2022, and shall cover the calendar quarter from July through September 2022. Hamilton 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.<sup>53</sup>

19. Further, because Hamilton will continue providing captioning in the CA-assisted mode, we impose additional conditions to ensure effective review of requests for 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.<sup>54</sup> Specifically, Hamilton shall identify, in its monthly call detail reports, those calls and minutes handled by ASR without CA assistance. In addition, to enable the Administrator and the Commission to assess the impact of fully automatic IP CTS on speed-of-answer performance, Hamilton shall report its daily speed-of-answer statistics separately for calls handled by ASR only and calls for which a CA is involved in captioning, as well as the aggregate daily statistics for the two modes together.<sup>55</sup> For this purpose, calls shall be classified as ASR-only or CA-assisted based on whether or not a CA is involved in the initial captioning, regardless of whether the captioning mode changes later in the call.<sup>56</sup>

20. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of Hamilton's application, such as the results and protocols for performance tests conducted by Hamilton or independent third parties.<sup>57</sup> We also require Hamilton to report promptly any changes in the information previously provided to the Commission in its application and

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<sup>52</sup> The first report shall specify the date of Hamilton's first TRS Fund-supported call using ASR-only as its commencement-of-service date for fully automatic IP CTS.

<sup>53</sup> After such time, the Commission's rules require Hamilton to file one annual consumer complaint log covering both CA-supported and fully automatic IP CTS. 47 CFR § 64.604(c)(1).

<sup>54</sup> See *InnoCaption ASR Order*, 35 FCC Rcd at 14202-03, para. 23; *ClearCaptions ASR Order*, 36 FCC Rcd at 7255, para. 19; *CaptionCall ASR Order* at para.22.

<sup>55</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 22-324 (CGB Mar. 25, 2022) (extending through June 30, 2022, 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>56</sup> The distinction made here for purposes of compiling these separate informational reports is consistent with the distinction Hamilton draws in its 7th Amendment regarding how speed of answer is calculated for different call modes. See 7th Amendment at 5 (explaining that, when a CA uses ASR to assist with captioning, speed of answer is calculated based on when a CA answers, and that, where a call is initially captioned using ASR only, and a CA is introduced later in the call, speed of answer is calculated based on when the ASR answers the call).

<sup>57</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 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 Further Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

supplemental filings, including, for example, any changes in service agreements and suppliers or in the manner in which Hamilton provides fully automatic IP CTS.

21. Pursuant to this grant of conditional certification, Hamilton may provide fully automatic IP CTS in the manner described in its application, for a period not to exceed two years from the effective date of this order, 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 Hamilton's application, 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 Hamilton's premises and may request additional documentation relating to Hamilton's 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 Hamilton 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 Hamilton is operating pursuant to this conditional certification, the Commission determines that Hamilton 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 Hamilton's amended application. In the event of such denial, Hamilton's conditional certification will automatically terminate thirty-five (35) days after such denial.<sup>58</sup>

22. *Preventing Misuse.* We remind Hamilton 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>59</sup> Further, although our rules do not prohibit Hamilton 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>60</sup> We also remind Hamilton that its marketing of this service must conform with the Commission's rules.<sup>61</sup>

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<sup>58</sup> See *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

<sup>59</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 *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, 5109-10 (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>60</sup> See 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

<sup>61</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, 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.

#### IV. REQUEST FOR WAIVER

23. *Waiver standard.* A Commission rule may be waived for “good cause shown.”<sup>62</sup> In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>63</sup> In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>64</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>65</sup>

24. *Discussion.* To the extent necessary, we grant Hamilton’s request for partial waiver of section 64.611(j)(1)(v) of the rules, which requires IP CTS providers to obtain from each registrant a written statement 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>66</sup> To reflect that some of its IP CTS calls henceforth will be handled without any CA involvement, Hamilton requests permission to substitute “may be” for “is” in the above statement.<sup>67</sup> As we noted in the *MachineGenius ASR Order*, the required statement is incorrect as applied to fully automatic IP CTS.<sup>68</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>69</sup> Thus, we grant Hamilton’s request for waiver to the extent necessary to allow substitution of its amended consumer self-certification when Hamilton starts providing ASR-only IP CTS.

#### V. PROCEDURAL MATTERS

25. *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).

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

#### VI. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that, pursuant to section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, sections 0.141, 0.361, and 64.606(b)(2) of the Commission’s rules, 47 CFR §§ 0.141, 0.361, 64.606(b)(2), and the authority delegated by paragraphs 60 and 64 of the Commission’s *2018 ASR Declaratory Ruling*, the request of Hamilton for certification to provide fully automatic IP CTS is GRANTED as conditioned in this Order.

28. IT IS FURTHER ORDERED, that Hamilton is conditionally certified to provide IP CTS, as conditioned in this Order.

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<sup>62</sup> 47 CFR § 1.3.

<sup>63</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>64</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>65</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>66</sup> See 47 CFR § 64.611(j)(1)(v)(B) (emphasis added); 6th Amendment at 5-6.

<sup>67</sup> 6th Amendment at 5-6.

<sup>68</sup> *MachineGenius ASR Order*, 35 FCC Rcd at 4580-81, para. 30; see also *ClearCaptions ASR Order*, 36 FCC Rcd at 7259, para. 28.

<sup>69</sup> *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5861-62, para. 133 n.366.

29. IT IS FURTHER ORDERED, that the Hamilton's Request for Waiver is GRANTED, subject to the conditions herein.

30. 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