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

In the Matter of )
Petition for Declaratory Ruling of Sorenson Communications, Inc. and CaptionCall, LLC )
to Ensure Competition in Internet Protocol )
Captioned Telephone Service )

CG Docket No._______ )

Petition for Declaratory Ruling of
Sorenson Communications, Inc., and
CaptionCall, LLC

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PETITION FOR DECLARATORY RULING

Sorenson Communications, Inc. and its affiliate, CaptionCall, LLC (collectively “CaptionCall”) hereby seek a declaratory ruling to confirm that Ultratec, Inc. (“Ultratec”) is required to offer a license to legitimate Telecommunications Relay Service (“TRS”) providers seeking to offer Internet Protocol Captioned Telephone Service (“IP CTS”) at reasonable rates, not merely to enter into reseller agreements for use of Ultratec’s own platform and equipment.

INTRODUCTION AND SUMMARY

This Petition asks the Commission to ensure the continuation of competition among IP CTS providers that has greatly benefitted hard-of-hearing persons. In its 2007 IP CTS Order ruling that providers of IP CTS may obtain compensation from the TRS Fund, the Commission determined that IP CTS should “not be a service under the control of one vendor or provider.”

1 Recognizing the dominance of Ultratec’s CapTel service at the time, the Commission

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conditioned its approval “on Ultratec’s representation that it will continue to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.”

This Petition asks the Commission to declare that the 2007 IP CTS Order requires Ultratec to license legitimate TRS providers on reasonable terms, notwithstanding Ultratec’s current position that it may choose to license or not to license at its discretion and on any terms it chooses to offer.

Alternatively, regardless of its conclusions about Ultratec’s obligations under the 2007 IP CTS Order, the Commission should declare prospectively that Ultratec must offer licenses for its patents at reasonable rates.

CaptionCall entered the IP CTS market in 2011. CaptionCall differentiates itself both on service quality and on features. By independently developing its own equipment and software, and operating its own IP CTS platform, including call centers, CaptionCall has brought significant new innovations to consumers, including a larger and clearer captions screen, a touch screen, smooth scrolling captions, and in-line error correction, among others. Prior to CaptionCall’s entry, IP CTS was provided only by companies that resell Ultratec’s “CapTel” service, such as Hamilton Relay and Sprint. (Ultratec is not an FCC-certified IP CTS provider and thus does not directly provide service to consumers.) As the Hearing Loss Association of America (“HLAA”) told the Commission, CaptionCall’s entry into the market had substantial consumer benefits.

CaptionCall’s market share now exceeds that of the companies that provide the CapTel service. CaptionCall understands that other providers, such as Purple Communications, also offer IP CTS over their own platforms, with innovative features and functions, independent of CapTel’s platform and features.

2 Id.

3 See infra at 6-7.
Ultratec filed a suit for infringement of eight Ultratec patents against CaptionCall in the Western District of Wisconsin in 2013 and a second suit for alleged infringement of four more patents in the same District in 2014. Ultratec reads its patents very broadly, alleging among other things that its patents are infringed by any service that uses (1) re-voicing or (2) a two-line configuration (including an IP connection). Under Ultratec’s broad view of its claims, no one may provide reimbursable IP CTS without first obtaining a license from Ultratec. A Western District of Wisconsin jury recently found Ultratec’s patents to be valid and infringed.4

CaptionCall has filed petitions with the Patent Trial and Appeals Board (“PTAB”) of the United States Patent and Trademark Office to declare the patent claims at issue invalid, and the PTAB has found that there is a reasonable likelihood that CaptionCall will prevail on those petitions.5 The hearing on the IPRs will be held on November 19, 2014, and a decision is expected by March 5, 2015. Despite the reasonable likelihood that some or all of the claims that are subject to the IPRs will be found to be invalid, Ultratec has sought an injunction based on the jury verdict to prevent CaptionCall from competing with Sprint and Hamilton for IP CTS customers.

An injunction would nearly eliminate IP CTS competition, to the detriment of hard-of-hearing consumers. This harm can be prevented by a prompt declaration by the Commission that Ultratec must license its technology on reasonable terms to the TRS providers, including those operating on their own technology platforms. That is the only reasonable interpretation of ¶ 24


5 The PTAB did not institute IPRs on Claims 6 and 8 of the Ultratec ‘835 Patent, but Ultratec dropped Claim 6 before trial, and the Wisconsin court held that CaptionCall did not infringe Claim 8 in the normal operation of its system.
of the 2007 IP CTS Order. The first sentence of ¶ 24 explained that the Commission’s goal was to prevent IP CTS from being “under the control of one vendor or provider.” Given the purported breadth of Ultratec’s claims, which Ultratec asserts exclude any service that uses an Internet connection with a telephone line to deliver captions, IP CTS would be under Ultratec’s control if it does not offer licenses on reasonable terms. And that is what the second sentence of ¶ 24 made clear—Ultratec agreed “to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.” If Ultratec’s current interpretation of ¶ 24 is correct, then that provision will not accomplish the Commission’s goal in adopting it, because IP CTS will remain under the control of Ultratec.

The Commission has an additional institutional interest in the prompt resolution of this petition. In the district court proceedings, Ultratec has claimed that its outside counsel contacted the Chief of the Disability Rights Office during the Sunshine period after the adoption of the 2007 IP CTS Order and objected to language appearing in the press release announcing that Ultratec would be required to offer its licenses to “all providers.”6 Ultratec contended in the district court that the Commission omitted any reference to “all providers” in the 2007 IP CTS Order because the Commission changed position as a result of that ex parte communication.7 According to Ultratec, it had not promised to provide licenses to providers of their own equipment and services, such as CaptionCall (and Purple). Instead, Ultratec now claims that it obligated itself only to license resellers or providers of CapTel products and services (such as Hamilton Relay and Sprint).

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7 Id.
No notice of the *ex parte* communication was posted on the docket. (It bears noting that the FCC Chairman included a reference to Ultratec’s commitment to license “all providers” in his 2007 separate statement accompanying the order as released and that an interpretation of ¶ 24 as requiring Ultratec to license all IP CTS providers on reasonable terms is fully consistent with the language of ¶ 24.) Of course, a communication during the Sunshine period is a violation of the Commission’s rules, and a failure to post a notice of an ex parte communication that raised new arguments—such as that the press release did not comport with Ultratec’s commitment—would have been a violation of the Commission’s rules had it occurred in the manner Ultratec contends. Those rules are designed to prevent just the sort of due process violation Ultratec claims to have accomplished by persuading the Commission to change its publicly announced position by means of a secret and prohibited communication.8

In the district court proceeding, Ultratec’s counsel in 2007 (now Deputy Chief of the Consumer and Governmental Affairs Bureau) acknowledged that she contacted the Chief of the Disability Rights Office (now a lawyer at the Department of Justice) during the Sunshine period. But her account of their conversation differs significantly from what Ultratec now claims in the suit, because she testified that she told the Commission that Ultratec had promised only to license other relay providers (which would include CaptionCall) and had not promised to license providers of any other sort of service that might wish to license Ultratec’s patents.

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8 The appropriate course would have been for Ultratec to seek reconsideration of the Commission’s order once issued. Had Ultratec done so, Sorenson and others would have been on notice of Ultratec’s interpretation of its commitment, and the Commission could have resolved the issue at that time, long before other providers had invested in their own IP CTS platforms and services.
The Commission should declare that ¶ 24 of the 2007 IP CTS Order requires Ultratec to license its patents to other IP CTS providers at reasonable rates, and not merely enter into resale agreements for Ultratec’s CapTel service. Alternatively, the Commission should declare that, in order to ensure the continuation of the competition that benefits consumers, Ultratec must do so prospectively.

STATEMENT OF FACTS

IP CTS and the Benefits of IP CTS Competition. IP CTS is a technology that allows hard-of-hearing consumers to see captions of what the other party to a telephone call says. CaptionCall and Ultratec’s CapTel service are currently the two most widely used IP CTS services in the United States, though each service also competes with newer services. CaptionCall is a certified IP CTS provider. Ultratec is not. Instead, Ultratec operates call centers and distributes equipment through two vendors, Hamilton Relay and Sprint, each of which is a certified TRS provider.

From 2003-2011, CapTel was the only major captioned telephone service, first in analog form, then starting in 2007, in an IP-based form. In 2011, CaptionCall launched the first IP CTS service that provided meaningful competition to Ultratec’s CapTel service. CaptionCall independently developed its own equipment and software, and CaptionCall operates its own call centers to provide IP CTS. The benefits of this emergent competition are clear. As the Hearing Loss Association of America observed,

[Provided has been more aggressive in marketing IP CTS to consumers. They are reaching out to retirement villages, nonprofit organizations, audiologists and hearing aid dispensers. They are installing phones for seniors who are not
comfortable with technology. They are demystifying the phone for seniors and even installing the equipment, making it a product people feel comfortable using.\(^9\)

In short, because of IP CTS competition, “[f]inally people with hearing loss are getting access to the phones they need.”\(^{10}\)

Beyond better marketing and customer service, competition also makes it more likely that hard-of-hearing consumers have access to reliable high-quality captions and user-friendly hardware and software. For example, CaptionCall has brought significant new innovations to consumers, including a larger and clearer captions screen, a touch screen, smooth scrolling captions, Wi-Fi capability (so that the captioned telephone does not need to be located next to the broadband modem), and in-line error correction, among others. Better captioning and equipment quality makes it easier for hard-of-hearing consumers to contact their friends, families, and doctor’s offices. It also helps hard-of-hearing consumers understand emergency dispatchers during a 911 call.

The Commission has long recognized the benefits of competition among captioned telephone providers. Indeed, in 2007, as a condition of allowing Ultratec to receive compensation for IP-based CTS from the TRS Fund, the Commission required Ultratec to license its technology at reasonable rates.\(^{11}\) This condition was designed to ensure that a single service did not dominate the IP CTS market.

**The Importance of Revoicing.** To understand the dispute between CaptionCall and Ultratec, it is important to understand a few key aspects of IP CTS. A CaptionCall customer

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\(^{10}\) *Id.* at 2.

\(^{11}\) *2007 IP CTS Order* at ¶ 24.
uses specialized equipment that connects to both the consumer’s broadband connection and to a voice telephone line. The parties to an IP CTS call utilize the voice line to communicate, just as with any other telephone call. At the same time, the hard-of-hearing party’s IP CTS equipment uses the broadband connection to transmit the other party’s voice to a CaptionCall call center.

From the consumer’s perspective, two of the most important characteristics of IP CTS are latency and accuracy. If captions are too slow, they will lag behind hearing party’s spoken words, leading to confusion or simply rendering the captions useless. And of course, if captions are inaccurate, they will not help the hard-of-hearing party understand what he or she is hearing.

To minimize latency, the call center relies primarily on state-of-the-art voice-recognition software developed by and licensed from third parties to transcribe the hearing-party’s voice. Even the highest quality software, however, currently has difficulty recognizing the wide range of accents, dialects, and cadences with which people speak. Thus, a standard feature of such third-party voice recognition software is to provide a way for the user to “train” the software to recognize his or her particular speech patterns. This functionality is typically referred to as “speaker dependent” voice recognition. To maximize accuracy, a communications assistant (“CA”), who has previously trained the voice recognition software to his or her voice, listens to the audio and repeats the hearing-party’s words with an even, monotone voicing. This “revoicing” gives the software the best possible opportunity to recognize the voice of the CA and to generate an accurate transcription. The combination of voice-recognition software and revoicing is important for accurate captioning with minimal latency.

After the software completes its transcriptions, the call center returns the text through the hard-of-hearing consumer’s broadband connection, and the CaptionCall phone displays the
captions. If the software makes transcription errors, the CA can correct them in real time—as edits come through, they are highlighted in green on the phone’s user interface.

**Ultracec’s Lawsuit.** Ultratec sued CaptionCall on May 17, 2013. Among other things, Ultratec claims that CaptionCall violates Ultratec’s patents because the CaptionCall system (1) uses re-voicing and (2) uses a two-line configuration (including an IP connection). The manner in which Ultratec asserts its claims is so broad that, if valid, the patents will likely eliminate every IP CTS service other than Ultratec’s CapTel service. On October 23, 2014, a jury determined that Ultratec’s captioned telephone patents were valid and infringed. CaptionCall plans to appeal, and CaptionCall has also challenged the validity of Ultratec’s patents before the Patent Trial and Appeals Board of the Patent and Trademark Office. CaptionCall anticipates a decision from the PTAB on those challenges on or before March 5, 2015.

In the meantime, however, the district court will consider whether to grant Ultratec’s request for injunctive relief. As part of its request, Ultratec has asked the court immediately

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12 Ultratec filed a second action on February 3, 2014, where the parties are currently engaged in the discovery process.


14 *Id.* at 88-90.


16 The USPTO has initiated cases, termed “inter partes reviews,” to review the validity of all of the Ultratec patents at issue. If the USPTO concludes that the patents are invalid, that determination will supersede the District Court’s judgment. In order to initiate an inter partes review the USPTO concluded that there was a substantial likelihood that the patents would be found invalid.

(1) to prohibit CaptionCall from enrolling any new customers, and (2) to require CaptionCall to pay an ongoing royalty equal to three times the amount determined by the jury. CaptionCall will oppose this request. But if the court decides to issue an injunction, CaptionCall will have no choice but to comply until and unless a court grants it relief from the injunction pending determination of the IPRs and the appeal of the district court judgment.

If the court grants Ultraec’s motion, CaptionCall will be unable to offer IP CTS to new customers. IP CTS will once again be under the control of a single provider, and consumers will be denied the substantial benefits that, as the Commission foresaw in 2007, competition has yielded. Moreover, if Ultraec can control the rates at which it does license its patents, it will have control over the average costs reported by all IP CTS providers. As a result, the Commission will be forced to choose between a single-provider IP CTS market or IP CTS rate increases necessary to satisfy Ultraec’s unreasonable self-selected royalty rates.

If, however, Ultraec complies with the 2007 IP CTS Order and licenses its technology to competing providers, Ultraec’s injunctive-relief claims would become moot, and CaptionCall, and any other provider that seeks to provide IP CTS service, would be able to continue offering IP CTS pending the resolution of the issues regarding validity of the Ultraec patents. Furthermore, if the Commission requires Ultraec to comply with its obligation to set reasonable royalty rates, it will minimize the impact on the TRS Fund.

ARGUMENT

When it authorized IP CTS as a compensable form of TRS, the Commission affirmatively sought to prevent Ultraec from stifling IP CTS competition. To the extent Ultraec holds valid patents that cover technology required (or, indeed, desirable) for the provision of IP CTS, the Commission required Ultraec to license that technology to TRS providers at reasonable rates.
Ultratec’s licensing commitment was not to be limited to resellers or suppliers of the CapTel service. The Commission should reaffirm this requirement of its 2007 IP CTS Order.

Alternatively, the Commission should declare prospectively that, in order to ensure that IP CTS is not under Ultratec’s control, it must offer to license competitors (and not just resellers and providers of the CapTel service) at reasonable rates.


A. Many Parties Voiced Significant Concern about Ultratec’s Market Power.

In late 2005 and early 2006, after consumer groups and Ultratec asked the Commission to recognize IP-based CTS as a service compensable from the TRS Fund,\(^\text{18}\) many parties voiced significant concern about Ultratec’s stranglehold on captioned telephone services. For example, MCI stated, “Captioned Telephone currently is available from only one company, Ultratec, using proprietary equipment and technology that no other provider has been able to offer.”\(^\text{19}\) And MCI left no doubt about Ultratec’s willingness to license its technology: “MCI has been unable to license this technology from Ultratec at commercially reasonable terms, and on some instances Ultratec has refused to license this technology to MCI at all…”\(^\text{20}\)


\(^{19}\) Comments of MCI, Inc. In Opposition to Petition for Rulemaking at 1-2, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 (Dec. 20, 2005).

\(^{20}\) Id. at 2.
Furthermore, Verizon observed that, “when there is only one company that offers the service, there can be no guarantee that TRS providers would be able to obtain the service at commercially reasonable prices and terms.”\textsuperscript{21} The California PUC echoed these concerns, noting that Ultratec’s CapTel service was “the only captioned telephone device currently, and for the foreseeable future, available to the public.”\textsuperscript{22}

\textbf{B. To Address the Concerns About a Lack of IP CTS Competition, the Commission Required Ultratec to Promise to License Its Technology at Reasonable Rates to All TRS Providers.}

Recognizing these concerns, Ultratec represented that it “has licensed its technologies at reasonable rates since captioned telephone service first become available over five years ago,” and Ultratec promised that it would “continue to license its technologies, including technologies relating to IP captioned telephone, going forward.”\textsuperscript{23}

When the Commission approved Ultratec’s IP-based CapTel service for compensation from the TRS Fund, the Commission took Ultratec at its word. Indeed, the Commission’s 2007 \textit{IP CTS Order} explicitly stated that “this will not be a service under the control of one vendor or provider,”\textsuperscript{24} and conditioned the approval on “Ultratec’s representation that it will continue to

\begin{footnotes}
\item[23] Letter from Karen Peltz Strauss, Counsel to Ultratec Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (Nov. 27, 2006).
\end{footnotes}
license its captioned telephone technologies, including technologies related to IP CTS, at
reasonable rates.”

It is clear that, to avoid giving one provider control over IP CTS, Ultratec was required to
license its technology to providers that compete with the CapTel service. If Ultratec were
required only to allow other companies to resell its service, Ultratec would have total control
over IP CTS service quality and innovation. Lest there be any doubt about the Commission’s
intent, however, both the press release accompanying the Order, which was adopted at a
Commission meeting on December 13, 2006, and Chairman Martin’s separate statement, which
was attached to the Order when it was released on January 11, 2007, reflected an expectation that
Ultratec would license its technology to “all providers.”

C. There is no Inconsistency among the Commission’s Press Release, Chairman
Martin’s Separate Statement, and the Commission’s Order.

To avoid its licensing obligation, Ultratec has made allegations—flatly contradicted by
all available evidence—that the Commission changed its Order as a result of an impermissible
and undisclosed ex parte communication that has conveniently surfaced only at a time when it is
to Ultratec’s benefit. According to Ultratec, it never agreed to license its technology to “all
providers.” When the FCC issued the press release including the “all providers” language,
Ultratec asked its counsel to fix what Ultratec now says was as a mistake. According to
Ultratec, Ultratec’s former counsel, at the request of Ultratec’s CEO, called the then-Chief of the

25 Id.
Disability Rights Office ("DRO") and requested that he make sure that "all providers" did not appear in the final order. As a result, Ultratec contends, the reference to "all providers" in the press release—but not in the Order itself—demonstrates that it has no obligation to license "all providers"—i.e., parties who would provide anything other than Ultratec’s proprietary CapTel product and service.28

Ultratec’s made-for-litigation position regarding the purported contact between its counsel and the Chief of the DRO is not consistent with the law or with the facts. First, a party-initiated communication with an FCC official between the time of the Commission’s vote and the Order’s release would have violated the FCC’s Sunshine rules.29 Second, under the ex parte rules in effect at the time, Ultratec would have been required to file an ex parte notice describing its argument—which it had not previously raised in the record—that the press release incorrectly reflected its commitment and that the FCC should limit the licensing obligation to fewer than all providers.30 But no such notice was ever filed. Accordingly, if a secret phone call during the Sunshine period raised new arguments that caused the FCC to eliminate Ultratec’s duty to license its technology to all TRS providers, then the due process rights of other parties to the proceeding were compromised.

Ultratec’s position is wrong. Ultratec’s former counsel has testified that she asked the Commission to delete the “all providers” language because it could be interpreted to include any

28 Id.
29 See 47 C.F.R. § 1.1203(a) ("[A]ll presentations to decisionmakers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period….").
30 See FCC Commission’s Ex Parte Rules and Other Procedural Rules, 76 Fed. Reg. 24376 at 24376 (May 2, 2011) (identifying the former requirement that ex parte notices of oral communications be filed “if new… arguments not already reflected in the party’s written comments, memoranda, or other filings in that proceeding are discussed.”).
company that sought a license, not just relay providers. This limitation makes sense—to address concerns about IP CTS competition, Ultratec needed only license its technology to other relay providers. A broader requirement would be superfluous, as allowing entities other than relay providers to obtain licenses from Ultratec at reasonable rates would not advance the Commission’s goal of ensuring IP CTS competition. Moreover, the record did not reflect any desire, on behalf of the FCC or any interested party, for Ultratec to offer licenses to anyone other than TRS providers. Accordingly, accepting Ultratec’s former counsel’s testimony as true—and there is no reason to doubt that testimony—the sequence of events in December 2006 did not harm any party. But for that to be the case, there also must be no material inconsistency among ¶ 24 of the 2007 IP CTS Order, the 2006 press release, and Chairman Martin’s separate statement. And those documents make clear that the Commission expected Ultratec to license its patents at reasonable rates to all relay providers—but not to anyone else who might find Ultratec’s patents useful.

D. The Commission Should Confirm that Ultratec Must Comply with Its Licensing Obligation.

The Commission’s clearly stated licensing requirement notwithstanding, at the time the Commission issued its 2007 IP CTS Order, Ultratec had not licensed its technologies to a TRS provider. Indeed, Hamilton explicitly stated in 2005 that “it is not licensing captioned telephone technology from Ultratec, Inc. as suggested in the Petition. Rather, Hamilton has entered into a wholesale arrangement to purchase captioned telephone service from Ultratec, Inc. and resell it
to various State TRS programs.” As the California PUC has stated, Ultratec had a similar arrangement with Sprint: “Under the terms of its agreement with Ultratec/CTI, Sprint does not actually provide the service.” And as MCI stated, “Ultratec is not a direct party to the competition between TRS providers. Although TRS providers must compete for the opportunity to provide Captioned Telephone, as the sole provider of Captioned Telephone, Ultratec has no such competition.”

Today, Sprint and Hamilton still supply CapTel-branded IP CTS service using CapTel equipment.

Again, when the Commission approved IP CTS for Fund compensation, it sought to ensure that IP CTS did not remain under the control of a single provider. Ultratec’s relationships with Hamilton Relay and Sprint do not meet that objective. Although Hamilton Relay and Sprint may be separate companies, they are still providing a single service—CapTel. Each company distributes CapTel equipment, and each company must license any improvements back to CapTel, who then makes the improved technology available to all CapTel vendors, making it impossible for there to be differentiation among CapTel distributors. And the FCC sets rates and compensates providers, which leaves few, if any, measures on which Sprint and Hamilton

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32 Comments of the California Public Utilities Commission and the People of the State of California at 9, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 (Dec. 29, 2005).

33 MCI Comments at 5 (emphasis added).

Relay can compete, at least from the end-user’s perspective. Put differently, Ultratec offers a single service, CapTel, and homogeneous equipment, through multiple vendors. Its so-called “licensing” relationships do not foster IP CTS competition.

By contrast, competing providers, such as CaptionCall and Purple, have developed their own equipment and software, and each company operates its own call centers. Each service separately competes with every other service—including CapTel—on the measures most important to hard-of-hearing consumers: captioning latency and accuracy and equipment ease-of-use. But if Ultratec can shut down every service that relies on an Internet connection and telephone line to provide captioned telephone service, then CapTel will once again be the only service available to hard-of-hearing consumers, and the benefits of competition will vanish. This is precisely the result the Commission sought to avoid when it required Ultratec to license its technology.

In its August 28, 2014 ruling, the district court nevertheless concluded that the 2007 IP CTS Order “did not obligate [Ultratec] to license [its] patents” to CaptionCall. This ruling illustrates the need for the Commission to affirm the meaning of its own Order, for multiple reasons. First, the court’s ruling did not acknowledge the strong desire of interested parties and the Commission to ensure IP CTS competition. Second, at the time Ultratec made its commitment to the FCC, it had not licensed its technologies to any third party. Third, the court’s

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35 Hamilton and Sprint may compete for contracts with the States to provide intrastate CTS, but regardless of who wins the contract in any particular State, the end user still receives the same CapTel service.

ruling fails to mention the references to “all providers” in the Commission’s press release and Chairman Martin’s separate statement.

The Commission should be very concerned with ensuring IP CTS competition. Thus, it is critical for the Commission to issue an order affirming that it meant what it said in ¶ 24 of the 2007 IP CTS Order.37

II. **Alternatively, the Commission Should Declare that Ultratec Must Offer Licenses to all FCC-Certified IP CTS Providers at Reasonable Rates Prospectively.**

Even assuming for the sake of argument that the 2007 IP CTS Order did not require Ultratec to license its technology to *all* relay providers—which it did—such a rule is required to provide the benefits of competition to users. Accordingly, the Commission should declare prospectively that Ultratec must do so with respect to any FCC-certified (including interim-certified) IP CTS provider. Such a rule is plainly warranted under the record compiled for the 2007 IP CTS Order and the record that will be compiled in connection with this Petition. A prospective ruling would not depend on determinations regarding what happened during the Sunshine period preceding the release of the 2007 IP CTS Order or, indeed, what the Commission specifically intended in 2007. But a prospective ruling would ensure that IP CTS continues to be widely available, that users choose among multiple competing IP CTS providers, and that providers must continue to differentiate themselves in order to attract and maintain customers.

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37 Ultratec may argue that it did not promise to offer licenses to all relay providers and that it may pick and choose which to license. There is no basis for such a position in ¶ 24 of the Order. In any event, if Ultratec may refuse to license the first (and, so far, only) provider that succeeded in offering a competing service to a substantial number of users, then the service would be under Ultratec’s control, contrary to goal set forth in ¶ 24.
CONCLUSION

The Commission should declare that ¶ 24 of the 2007 IP CTS Order requires Ultratec to make its licenses available to other IP CTS providers—and not just resellers of Ultratec’s CapTel service—at reasonable rates. Alternatively, the Commission should declare prospectively that Ultratec has such a duty.

Respectfully submitted,

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November 19, 2014  
Counsel for Sorenson Communications, Inc. and CaptionCall, LLC.
Certificate of Service

I hereby certify that on the 19th day of November, 2014, the foregoing document was filed in hand copy with the Commission, and has been served electronically on Ultratec via the ECF system.

November 19, 2014

/s/Christopher J. Wright

Christopher J. Wright