

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Hamilton Relay, Inc.

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File No.: EB-TCD-14-00017285
Acct. No.: 201532170017
FRN: 0009-1573-22

ORDER

Adopted: September 24, 2015

Released: September 24, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Hamilton Relay, Inc. (Hamilton or Company), was unable to accept and handle emergency calls made by users of its web and wireless Internet Protocol Captioned Telephone Service (IP CTS) and submitted inaccurate data to the Telecommunications Relay Service (TRS) Fund administrator. The ability to make emergency calls and to have them handled expeditiously is a critical service for all citizens, including persons with disabilities accessing our nation's communications network through TRS. Providers of TRS must be able accept and handle emergency calls at all times and to the extent there are any problems in accepting and handling such emergency calls, those problems should be detected by the TRS provider and notice should be provided to the Commission. In addition, in order to maintain the integrity of the TRS Fund and to avoid undermining the efficiency and effectiveness of the TRS program, it is essential that TRS providers adhere to Commission rules requiring those providers to submit accurate data to the TRS Fund administrator.

2. From August 18, 2014, through September 25, 2014, Hamilton was unable to accept and handle emergency calls through its web and wireless IP CTS, and sought reimbursement of minutes generated during part of that time period. To settle this matter, Hamilton admits that the Company was not able to accept and handle emergency calls through its web and wireless IP CTS and made inaccurate submissions to the TRS Fund administrator. Hamilton will implement a compliance plan, will pay a \$235,000 civil penalty, and file compliance reports with the Bureau until the termination of the Consent Decree. Finally, Hamilton has reimbursed the TRS Fund for money the Company received from the TRS Fund to which it was not entitled, and represents and warrants that it has relinquished any and all rights and claims to reimbursements that the Company may otherwise seek, for IP CTS calls handled during that time period.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Hamilton's compliance with the Commission's TRS rules.

4. In the absence of new material evidence relating to this matter, the Bureau will not institute, on its own motion, any new proceeding against Hamilton concerning the matters that were the subject of the above referenced investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹ and the authority delegated by Sections 0.111 and 0.311 of the Rules,² the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to David O'Connor, Wilkinson Barker Knauer LLP, attorney for Hamilton Relay, Inc., 2300 N Street, NW Suite 700, Washington DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

¹ 47 U.S.C. § 154(i).

² 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Hamilton Relay, Inc. (Hamilton or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Hamilton violated Sections 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(I), and 64.605(a)(2) of the Commission's rules, in the Company's provision of Internet Protocol Captioned Telephone Service (IP CTS) and its submissions to the Telecommunications Relay Services (TRS) Fund administrator.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "August Period" means August 18-31, 2014.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Call Detail Record" or "CDR" shall mean the monthly data submissions the Company submits to the TRS Fund Administrator for the purpose of seeking reimbursements from the TRS Fund.³
 - (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) "Communications Assistant" or "CA" shall have the same meaning as the term is defined in 47 C.F.R. § 64.601(a)(10).
 - (h) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Hamilton is subject by virtue of its business activities, including but not limited to the TRS Rules.
 - (i) "Compliance Plan" means the compliance obligations, program, and procedures

¹ 47 C.F.R. §§ 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(I), 64.605(a)(2).

² 47 U.S.C. § 151 *et seq.*

³ *See* 47 C.F.R. § 64.604(c)(5)(iii)(D)(I)-(3).

described in this Consent Decree at paragraph 14.

- (j) “Covered Personnel” means all employees and agents of Hamilton who perform, supervise, oversee, or manage the performance of duties that relate to Hamilton’s responsibilities under the Communications Laws, including the TRS Rules.
- (k) “Effective Date” means the date by which both the Bureau and Company have signed the Consent Decree.
- (l) “Emergency Call Handling Requirements” means requirements adopted in the TRS Rules to enable the acceptance and handling of 911 Calls.
- (m) “Hamilton” or “Company” means Hamilton Relay, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (n) “Internet-based Telecommunications Relay Services” or “iTRS” shall have the same meaning as the term is defined in 47 C.F.R. § 64.601(a)(15).
- (o) “Internet Protocol Captioned Telephone Service” or “IP CTS” shall have the same meaning as the term is defined in 47 C.F.R. § 64.601(a)(16).
- (p) “Investigation” means the investigation commenced by the Bureau in EB-TCD-14-00017285 regarding whether Hamilton violated the TRS Rules governing 911 Calls and submissions to the TRS Fund administrator.
- (q) “911 Call” means any IP CTS call initiated by an end-user by dialing 9-1-1 for the purpose of accessing an emergency service provider.
- (r) “Operating Procedures” means the standard internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.
- (s) “Parties” means the Company and the Bureau, each of which is a “Party.”
- (t) “Public Safety Answering Point” or “PSAP” shall have the same meaning as the term is defined in 47 C.F.R. § 64.3000(c).
- (u) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (v) “September Period” means September 1-25, 2014.
- (w) “Telecommunications Relay Services” or “TRS” shall have the same meaning as the term is defined in 47 C.F.R. § 64.601(a)(32).
- (x) “TRS Fund” means the fund used to compensate providers for their reasonable costs of providing interstate relay service and Internet-based forms of TRS, which include interstate and intrastate relay calls.
- (y) “TRS Fund administrator” means the entity selected by the Commission to administer the TRS Fund, currently “RolkaLoube”.
- (z) “TRS Rules” means the regulations set forth at Section 64.601 through Section 64.636 of the Rules, 47 C.F.R. §§ 64.601- 64.636, Commission orders implementing and interpreting 47 U.S.C. § 225 of the Act, and any other Rules and orders applicable to Hamilton as an IP CTS provider.

II. BACKGROUND

3. Telecommunications Relay Services enable an individual with a hearing or speech disability to communicate with others in a manner that is functionally equivalent to a hearing individual’s

ability to communicate using voice communication services.⁴ In 2007, the Commission approved Internet Protocol Captioned Telephone Service as a compensable form of TRS.⁵ IP CTS enables people who can use their own voice but have difficulty hearing when on a call, to engage in a telephone conversation using an Internet Protocol enabled device that allows them to simultaneously listen to the other party and read captions of what the other party is saying.⁶ To receive compensation from the TRS Fund, an IP CTS provider must be authorized by the Commission,⁷ provide functionally equivalent service to users in accordance with the TRS Rules, and submit true and adequate data to the TRS Fund administrator.⁸ Hamilton is eligible to provide relay services and receive compensation from the TRS Fund.⁹ Hamilton currently provides several forms of TRS, including IP CTS which it has offered since 2008. Hamilton provides IP CTS through specialized IP CTS telephones and through web and wireless applications using a CA and an automated speech recognition based method to produce captions that are delivered to users.

4. As a part of the functional equivalency mandate, TRS providers must be capable of handling any type of call provided by telecommunications carriers, including 911 Calls.¹⁰ To emphasize the importance of TRS users' access to emergency services, the Commission adopted specific Emergency Call Handling Requirements. Section 64.605(a)(2) of the Rules requires IP CTS providers to accept and handle 911 Calls, determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and relay the call to that entity. IP CTS providers also must implement a system that ensures that 911 Calls are answered before non-911 Calls, and among other things, allows the user's information, e.g., caller's name and location, to be collected at the beginning of the call and provided to the PSAP, designated statewide default answering point, or appropriate local emergency authority to enable a 911 Call to be reconnected in the event one or both legs of a call is disconnected.¹¹ An IP CTS provider may allow third party entities to handle 911 Calls or any function associated with handling 911 Calls on its behalf, but the IP CTS provider that receives compensation from the Fund ultimately remains responsible for complying with the TRS Rules.¹²

⁴ See 47 C.F.R. § 64.601(a)(32).

⁵ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 22 FCC Rcd 379 (2007) (*IP CTS Declaratory Ruling*).

⁶ See 47 C.F.R. § 64.601(a)(16).

⁷ See *infra* n. 9.

⁸ See 47 C.F.R. § 64.604(c)(5)(iii)(D)(I).

⁹ Under the new rules adopted by the Commission requiring all iTRS providers to be Commission certified, Hamilton and other providers not currently certified by the Commission but that provided iTRS by virtue of other criteria established by the Commission were granted interim eligibility to receive compensation from the TRS Fund until the Commission grants or denies their application for certification. *Structure and Practices of the Video Relay Services Program*, Second Report and Order and Order, 26 FCC Rcd 10898, 10922, para. 59 (2011) (*iTRS Certification Order*); see also *Consumer & Governmental Affairs Bureau Clarifies the Eligibility Requirement for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund for Providers of Internet Protocol Captioned Telephone Service*, Public Notice, 23 FCC Rcd 2889 (CGB 2008). Hamilton filed its pending application for IP CTS certification on December 5, 2011.

¹⁰ See 47 C.F.R. § 64.604(a)(3)(ii). The mandatory minimum standards governing the provision of TRS, requires that TRS providers have the capability to handle any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so or the requirement to handle a specific type of call has been waived by the Commission.

¹¹ See 47 C.F.R. § 64.605(a)(2).

¹² See 47 C.F.R. § 64.605(a)(2)(i).

5. In September 2014, Commission staff tested Hamilton's web and wireless IP CTS applications and found that the Company could not accept 911 Calls through those applications. The Consumer and Governmental Affairs Bureau (CGB) notified Hamilton of the failed test calls on September 25, 2014.¹³ After being notified of the results of the Commission's test calls, Hamilton immediately conducted an internal review of the matter and notified the Commission on September 25, 2014, that the problem was corrected.¹⁴

6. On October 7, 2014, the Bureau's Telecommunications Consumers Division (TCD) issued a Letter of Inquiry (LOI) to Hamilton seeking information on its emergency call handling process, including testing and complaints.¹⁵ Hamilton filed timely responses to the inquiry and admitted that from August 18, 2014, through September 25, 2014, it was unable to accept and handle 911 Calls through its web and wireless applications.¹⁶ Hamilton's response stated that on August 18, 2014, during a database update, employees inadvertently removed "placeholder accounts" that are used to process web and wireless 911 Calls.¹⁷ Hamilton's failure to comply with the applicable TRS Rules, including the Emergency Call Handling Requirements, resulted in the Company's submission of inaccurate data to the TRS Fund administrator for the August Period.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Hamilton agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Hamilton agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Hamilton concerning the matters that were the subject of the Investigation.

¹³ See Letter from Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs, Federal Communications Commission to Dixie Ziegler, Vice President, Hamilton Relay, Inc. (Sept. 25, 2014) (on file in EB-TCD-14-00017285).

¹⁴ See E-mail from David O'Connor, Counsel for Hamilton Relay, Inc., to Gregory Hlibok, Chief, Disabilities Rights Office, Consumer and Governmental Affairs Bureau, Federal Communications Commission (Sept. 25, 2014, 17:13 EDT).

¹⁵ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, Federal Communications Commission to David O'Connor, Counsel for Hamilton Relay, Inc. (Oct. 7, 2014) (on file in EB-TCD-14-00017285) (LOI).

¹⁶ See Letter from David O'Connor, Counsel for Hamilton Relay, Inc., to Richard Hindman, Chief, Telecommunications Consumer Division, Federal Communications Commission (Oct. 17, 2014) (on file in EB-TCD-14-00017285) (Oct 17, 2014 Response).

¹⁷ These "placeholder accounts" were restored to the database on September 25, 2014, and the Company contacted the Commission on September 25, 2014, to confirm that its web and wireless IP CTS applications were functioning properly.

11. **Admissions.** Hamilton admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions as described in paragraph 5 violated Sections 64.604(a)(3)(ii), 64.604(c)(iii)(D)(I), and 64.605(a)(2) of the Rules.¹⁸ Hamilton admits that because it violated the above referenced rules, the web and wireless IP CTS minutes submitted to the TRS Fund administrator for the August Period are non-compensable and are not eligible for reimbursement from the TRS Fund.

12. **Representations; Warranties.** Hamilton represents and warrants that on October 7, 2014, the Company voluntarily reimbursed the TRS Fund for compensation received for web and wireless IP CTS calls handled during the August Period. Hamilton further represents and warrants that the Company voluntarily chose not to seek compensation for web and wireless IP CTS call minutes handled during the September Period. Additionally Hamilton represents and warrants that it has agreed to relinquish any and all rights and claims to reimbursements for IP CTS minutes submitted to or that can be submitted to the TRS Fund administrator that were generated through the Company's web and wireless IP CTS applications during the period described in paragraph 6 of this Consent Decree.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Hamilton shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Hamilton complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the TRS Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Hamilton agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the TRS Rules, Hamilton will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Hamilton shall establish, use, and maintain Operating Procedures that the Compliance Officer and all Covered Personnel shall follow to help ensure Hamilton's compliance with the TRS Rules applicable to IP CTS web and wireless applications. Hamilton's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Hamilton is able to provide web and wireless IP CTS in compliance with the TRS Rules, including the Emergency Call Handling Requirements, the requirement to handle all types of calls, and the requirement to provide accurate data to the TRS Fund administrator. At a minimum the Company's Operating Procedures shall include procedures:
 - i. that enable the Compliance Officer to maintain records of any issues the Company experiences in complying with the Emergency Call Handling Requirements applicable to web and wireless IP CTS. The Operating Procedures will also enable the Company to retain records necessary for preparing the reports described in paragraphs 15 and 16 of this Consent Decree.
 - ii. to routinely assess the Company's compliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS.

¹⁸ 47 C.F.R. §§ 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(I), 64.605(a)(2).

Assessments shall include the review of entities Hamilton contracts with as a part of its provision of web and wireless IP CTS.

- iii. to conduct an annual assessment of internal processes that support submissions to the TRS Fund administrator and to modify such processes as needed to improve the accuracy of such submissions. The annual assessments should incorporate the review of submission issues identified by Hamilton, the TRS Fund administrator, or the Commission since the last annual assessment.
 - iv. to routinely collect, assess, and modify, as needed, its policies based on events identified as unforeseen service interruptions or problems that prevent or delay a user's ability to make and/or receive a web or wireless IP CTS call, including a 911 Call, or prevent captions from being displayed to users during an IP CTS call through the actions or omissions of Hamilton or entities Hamilton contracts with as a part of its provision of web and wireless IP CTS.
 - v. that govern the Company's oversight of and receipt of information from entities which Hamilton contracts with as a part of its provision of web and wireless IP CTS.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Personnel. The Compliance Manual shall set forth the applicable TRS Rules and Operating Procedures that Covered Personnel shall follow to help ensure Hamilton's compliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS, the requirement to handle all types of calls, and the requirement to provide accurate data to the TRS Fund administrator, and the terms and conditions of this Consent Decree. Hamilton shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Hamilton shall distribute any revisions to the Compliance Manual promptly to all Covered Personnel.
- (c) **Compliance Training Program.** Hamilton shall establish and implement a Compliance Training Program on compliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS, the requirement to handle all types of calls, and the requirement to provide accurate data to the TRS Fund administrator. As part of the Compliance Training Program, Covered Personnel shall be advised of Hamilton's obligation to report any noncompliance with the TRS Rules applicable to web and wireless IP CTS providers under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Personnel shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Personnel at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Personnel. Hamilton shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (d) **Additional Compliance Measures.** Hamilton shall implement the following additional compliance measures:

- i. Within thirty (30) calendar days after the Effective Date, Hamilton shall post an “Emergency Calling” link that is prominently displayed on the front page of the Company’s website and use the webpage associated with the Emergency Calling link to inform and educate consumers about making 911 Calls. By clicking on the link, TRS users will be provided access to information on how to make 911 Calls using any product offered by the Company. The “Emergency Calling” page shall include all requirements for using Hamilton’s web and wireless IP CTS to make a 911 Call, any steps users will need to take to ensure that such 911 Calls can be made, and notices of any downloads and/or upgrades users must have to use Hamilton’s web or wireless IP CTS and a list of recommended minimum specifications for devices that are compatible with Hamilton’s service for purposes of making such 911 Calls.
- ii. Within sixty (60) calendar days after the Effective Date, and on a quarterly basis thereafter, Hamilton shall test the Company’s web and wireless IP CTS to ensure compliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS and maintain all documents associated with the testing. These tests must include an assessment of the Company’s compliance with every aspect of the Emergency Call Handling Requirements, e.g., through delivery of a call to the PSAP, delivery of information to the PSAP, and reconnection of call legs. All test results generated by Hamilton or a Hamilton contractor shall be included in the Compliance Reports described in paragraph 16.
- iii. Within sixty (60) calendar days after the Effective Date, Hamilton shall develop and implement processes to (1) *Identify* risks that could result in web and wireless 911 Call failures, (2) *Protect* against such risks, (3) *Detect* future web and wireless 911 Call failures, (4) *Respond* to such failures with remedial actions, including notification to consumers, and (5) *Recover* from such failures on a timely basis.
- iv. Within ninety (90) calendar days after the Effective Date, Hamilton shall review and modify, as needed, policies aimed at reducing the misuse of IP CTS.
- v. As of the Effective Date, Hamilton shall notify the Commission thirty (30) calendar days in advance of a voluntary web or wireless IP CTS service interruption of more than thirty (30) minutes in duration. In the event that circumstances do not permit Hamilton to provide such notice thirty (30) calendar days in advance of the service interruption, Hamilton shall notify the Commission as promptly as possible prior to the planned service interruption. Hamilton shall submit a written notification to Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov and TRSreports@fcc.gov.
- vi. Within ninety (90) calendar days after the Effective Date, Hamilton shall designate a Hamilton contact(s) for any entity which Hamilton contracts with as a part of its provision of web and wireless IP CTS. The designated Hamilton contact(s) will be accessible to contractors and agents twenty-four (24) hours per day, seven (7) days per week for notification and communication of issues impacting the acceptance and handling of 911 Calls made through Hamilton.

- vii. Within ninety (90) calendar days after the Effective Date, Hamilton shall develop and implement policies that govern the Company's oversight of entities which Hamilton contracts with as a part of its provision of web and wireless IP CTS.
- viii. Within one hundred eighty (180) calendar days after the Effective Date, Hamilton shall use best efforts to review and revise written agreements between Hamilton and entities the Company contracts with in its provision of web and wireless IP CTS to:
 1. designate a contact person(s) from the entities that will be available twenty-four (24) hours per day, seven (7) days per week to notify and communicate with Hamilton on issues;
 2. stipulate the terms, including timeframes and methodology, that will govern the contractor's communications with Hamilton about (a) events that result in service interruptions or events that for 30 minutes or more result in users losing connectivity during a web or wireless IP CTS call, prevents users from making and/or receiving web or wireless IP CTS calls, or prevents captions from being displayed to users during a web or wireless IP CTS call through the actions or omissions of Hamilton or entities Hamilton contracts with as a part of its provision of web and wireless IP CTS; (b) testing/test results; and (c) internal reviews and/investigations;
 3. enable Hamilton or its vendor(s) to provide the Bureau with all information and/or documents requested as part of a government investigation;
 4. ensure failure alarms are in place to provide notification for web and wireless 911 Call failures/outages and to timely communicate information to Hamilton on such failures/outages; and,
 5. ensure that after each system modification or upgrade, the entity (a) has verified that the system changes do not prevent users from making and receiving calls or Hamilton and/or its agent(s) from being able to accept and handle all types of calls, including web and wireless 911 Calls and (b) upon request, provides Hamilton with evidence as to how the entity verified that no adverse impact resulted from the system changes.

If Hamilton is unable to execute or revise agreements with entities the Company contracts with in its provision of web and wireless IP CTS as specified above within one hundred and eighty (180) days, it shall provide the Commission with a written explanation of why such agreement modifications could not be achieved.

15. **Reporting Noncompliance.** Hamilton shall report any noncompliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance and the minutes and/or telephone numbers involved in each instance of noncompliance; (ii) the steps that Hamilton has taken or will take, including any monies paid back to the TRS Fund, to remedy such

noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Hamilton has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554, with copies submitted electronically to Sharon Lee at sharon.lee@fcc.gov and to fecebaaccess@fcc.gov.

16. **Compliance Reports.** Hamilton shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Hamilton's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the TRS Rules applicable to web and wireless IP CTS, including accepting and handling web and wireless 911 Calls. At a minimum, each Compliance Report shall include the following:
 - i. A summary of all web and wireless IP CTS 911 test calls made since the last Compliance Report was filed and the results of each test call regardless of whether the test calls were made by or on behalf of Hamilton or by a Hamilton contractor performing such tests in the normal course of business. Each Compliance Report must also include the specific aspect of the Emergency Call Handling Requirements being tested on each call (e.g., 911 Call prioritization, ability to reconnect after a disconnection, ability to deliver to the PSAP the required information about the caller and Hamilton, etc.).
 - ii. Specific failure detection mechanisms implemented under this Compliance Plan, including an explanation of any measures implemented or proposed to better detect systemic web and wireless 911 Call failures or noncompliance with the Emergency Call Handling Requirements applicable to web and wireless IP CTS.
 - iii. A description of all incidents of noncompliance identified since the last Compliance Report was filed and the date such incidents were reported to the Commission pursuant to paragraph 15 herein.
 - iv. A summary of unforeseen events, occurring since the last Compliance Report, that for thirty (30) minutes or more resulted in users losing connectivity during a web or wireless IP CTS call, prevented users from making and/or receiving a web or wireless IP CTS call, or prevented captions from being displayed to users during a web or wireless IP CTS call through the actions or omissions of Hamilton or entities Hamilton contracts with as a part of its provision of web and wireless IP CTS. The summary shall at a minimum include details such as a description of the event, the cause, the impact, the duration, whether the event has been resolved and if so, when. The initial Compliance Report shall cover events from the Effective Date of this Consent Decree forward.
- (b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Hamilton, stating that the Compliance Officer has personal knowledge that Hamilton: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.

- (c) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁹
- (d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Hamilton, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that Hamilton has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Hamilton has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (e) All Compliance Reports shall be submitted to Chief, Telecommunications Consumer Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Sharon Lee at Sharon.Lee@fcc.gov and to fccebaaccess@fcc.gov. A copy of each Compliance Report shall also be submitted electronically to Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Section 225 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 225 of the Act²⁰ against Hamilton or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Hamilton with the Communications Laws.

19. **Civil Penalty.** Hamilton will pay a civil penalty to the United States Treasury in the amount of two hundred thirty-five thousand dollars (\$235,000) within thirty (30) calendar days of the Effective Date. Hamilton acknowledges and agrees that upon execution of this Consent Decree, the civil penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1) (hereinafter referred to (together with all accrued interest, penalties, and costs as set forth in paragraph 21 below) as the Debt).²¹

Hamilton shall send electronic notification of payment to fccebaaccess@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A and enter the letters "FORF" in block number 23A (payment type code). Below are additional instructions that should be followed based on the form of

¹⁹ 47 C.F.R. § 1.16.

²⁰ 47 U.S.C. § 225(e)(2).

²¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Event of Default.** Hamilton agrees that an Event of Default shall occur upon the failure by Hamilton to pay the full amount of the civil penalty on or before the due date specified in this Consent Decree.

21. **Interest, Penalties, Charges, Acceleration of Maturity Date and Collection.** Hamilton agrees that, upon the occurrence of an Event of Default under this Consent Decree, the then unpaid amount of the Debt shall become immediately due and payable in full and that, until payment in full, the Debt shall, (i) commencing on the date of the Event of Default, accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum; and (ii) commencing on the 91st day following an Event of Default, accrue a penalty of an additional 6 percent per annum. Hamilton shall also be liable for payment of all administrative costs incurred in connection with the processing, handling and collection of the Debt. Upon an Event of Default, Hamilton acknowledges and agrees that any collection procedure permitted by law may, at the Commission's discretion, be initiated. These remedies include but are not limited to, the Commission's offset of the Debt against any TRS Fund reimbursements owed to Hamilton until the Debt is paid in full. If an Event of Default occurs, Hamilton agrees that the Commission, through the Bureau, may direct the TRS Fund administrator to effectuate the offset against all TRS Fund reimbursements owed to Hamilton and to send all such TRS funds, to the U.S. Treasury. Hamilton waives all rights to notice, presentment, demand, protest, or notice of protest of any kind with respect to the occurrence of an Event of Default, acceleration of the Debt, accrual of interest, penalties and costs on the Debt, the Commission's exercise of any lawful collection procedure (including the Commission's right to offset), and all other rights that Hamilton may have under the DCIA²³ and its implementing regulations, including the Commission's debt collection regulations at 47 C.F.R. §§1.1901, *et seq.*

22. **Waivers.** As of the Effective Date, Hamilton waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Hamilton shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent

²³ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Decree or the Adopting Order, neither Hamilton nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Hamilton shall waive any statutory right to a trial *de novo*. Hamilton hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

23. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

24. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

25. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Hamilton does not expressly consent) that provision will be superseded by such Rule or Order.

26. **Successors and Assigns**. Hamilton agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

27. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

28. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

29. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

²⁴ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

31. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Gary Warren
Assistant Secretary
Hamilton Relay, Inc.

Date