



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Aderson Francois
Laura M. Moy
Benton Senior Counselor
Andrew Jay Schwartzman
Staff Attorneys
Yael Bromberg*
Peter DeMarco
Sarah Fox
Patrick Llewellyn
Drew Simshaw

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
Fax: 202-662-9634

October 24, 2016

via electronic filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte*
Accessibility of User Interfaces
MB Docket No. 12-108

Dear Ms. Dortch:

On Thursday, October 20, 2016, Drew Simshaw of the Institute for Public Representation (IPR), Georgetown Law (Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)) and Blake Reid (Counsel to TDI) spoke with Maria Mullarkey and Diana Sokolow of the Media Bureau, and Rosaline Crawford, Suzy Rosen Singleton, and Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau, regarding the above-referenced docket.

Counsel to TDI discussed the Commission's efforts to ensure the accessibility of user interfaces, including possible requirements of manufacturers and MVPDs to ensure that closed captioning settings are readily accessible.

Throughout this proceeding, TDI and a coalition of deaf and hard of hearing advocacy organizations have stressed that in order for consumers to be able to access closed captioning,

* Admitted to the bars of New York and New Jersey. Supervised by a member of the DC bar.

they must be able to readily access settings that allow them to adjust the font, size, color, background, and location of closed captioning text.¹ If a consumer cannot readily locate and use display settings, then closed captioning itself is not truly accessible, because the consumer cannot ensure that captions are rendered in a readable and accessible format. Accessible settings are more important now than ever with the increased volume and variety of both the programming and devices available to consumers, each of which require customization based on a user's particular needs. Consumers who are unable to locate and use closed captioning settings may be discouraged from utilizing closed captioning, or even from using media altogether. For many users who might not be "tech savvy," if these settings are difficult to locate and use once, they will always remain inaccessible.

Captioning settings are currently difficult for many consumers to access. For example, many consumers must search through a series of menus in order to find the buried captioning settings menu. In the case of Netflix, user display settings for most devices can only be changed from Netflix's web interface, and not from a device itself.² This is problematic for users of closed captioning because the proper settings for a mobile phone may be very different from those of a large television.

In some especially troubling cases, consumers must take complicated, illogical steps to access the captioning settings on a device. One online "help" post advises a customer that, to access the captioning menu, they must turn their TV on, turn the cable box off (but leave the TV on), and press the Guide button or press the Channel Up and Channel Down buttons on the box simultaneously.³ From there, the user must inexplicably select from the menu "Primary Language" in order to display options to adjust the settings.⁴

There are a number of ways to make settings more accessible than by the means employed in these preceding examples. TDI and its coalition of consumer groups have throughout this proceeding described the ease with which a manufacturer could make captioning settings readily accessible via the first level of a menu. For example, with CNN's online video player, a user simply clicks the "gear" settings icon and selects "captioning settings" in order to access the settings. Logical and readily accessible interfaces such as these not only enable deaf and hard of hearing consumers to access these critical settings on their personal devices, but also ensure that these settings can be accessed by employees of restaurants, bars, hotels, nursing homes, and hospitals when needed.

User interface requirements adopted by the Commission should apply to all devices that are currently subject to the Commission's closed captioning rules and any future devices that

¹ See, e.g., Comments of Consumer Groups and RERC, MB Dkt. 12-108 (Feb. 24, 2016); Reply Comments of Consumer Groups and RERC, MB Dkt. 12-108 (March 7, 2016).

² See Netflix Help Center, How do I adjust subtitles, captions and alternate audio on my device? <https://help.netflix.com/en/node/372>.

³ See Comcast Help & Support Forums, Help New closed captions colors not readable, <http://forums.xfinity.com/t5/Non-X1-Service/Help-New-closed-captions-colors-not-readable/td-p/2036807>.

⁴ *Id.*

may be subject to those rules, including the full range of apparatuses on which video programming is currently viewed (*e.g.*, televisions, cable boxes, smartphones, tablets, and IP-connected set-top boxes).

Additionally, both manufacturers and MVPDs should share responsibility in ensuring the ability of consumers to locate and utilize user display settings. Consumers have on-going relationships with their MVPDs, and are likely to turn to their MVPD in order to resolve any issues they have while viewing programming. It would add more frustration and difficulty to this process if consumers were relegated to only receiving support from manufacturers, with which consumers do not have an ongoing relationship, and which would be difficult to identify and contact.

The Commission should also refrain from adopting technical feasibility or achievability exceptions for manufacturers subject to user interface requirements. There is no indication that any devices with the processing power to render video and closed captioning would somehow nevertheless be unable to adjust a menu or create a button, key, or icon to make captioning settings readily accessible.

The Commission should also implement a short deadline for compliance with a requirement that captioning settings be readily accessible. It should reject the two year deadline advocated for by industry, since the implementation here would not require a new product, but rather only a small software modification to a product that already exists or is currently being developed.

Finally, TDI stresses the imperativeness of aggressive enforcement of any new user interface requirements in order to ensure that manufacturers are making captioning settings readily accessible. Industry has repeatedly called for flexibility in allowing manufacturers to make captioning settings accessible in whatever way they choose. TDI stresses that the more flexibility that is allowed, the more important enforcement is. The volume and variety of devices and programming available to consumers, along with a potentially wide array of differing user interfaces, make it critical that the Commission is proactive with its resolution of consumer complaints regarding captioning settings that are not readily accessible.

We appreciate the opportunity to discuss these important topics and look forward to working with the Commission and industry stakeholders to continue to improve the accessibility of user interfaces for deaf and hard of hearing consumers.

Please do not hesitate to contact me if you have any questions regarding this filing.

Ms. Dortch
October 24, 2016
Page 4 of 4

Respectfully submitted,

/s/

Drew Simshaw
Institute for Public Representation
Counsel to TDI

October 24, 2016

CC (by email): Maria Mullarkey
Diana Sokolow
Rosaline Crawford
Suzy Rosen Singleton
Karen Peltz Strauss