

Laura M. Moy
Director
Michael Rosenbloom
Victoria Tang
Staff Attorneys

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



GEORGETOWN LAW
COMMUNICATIONS & TECHNOLOGY LAW CLINIC

March 9, 2021

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Accessibility Priorities for New
Commission Leadership
Relevant Dockets: CG 10-213, WT 96-198,
CG 03-123, CG 10-51, CG 13-24, CG 16-145,
GN 15-178, WC 12-375, CG 10-145, PS 15-91,
WC 11-42, WC 09-197, CG 05-231, MB 11-43,
MB RM-11065

Dear Ms. Dortch:

On March 5, 2021, Eric Kaika of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Zainab Alkebsi of the National Association of the Deaf (NAD), Christian Vogler and Linda Kozma-Spytek of the Gallaudet University Technology Access Program (TAP), Lise Hamlin of the Hearing Loss Association of America (HLAA), Clark Rachfal of the American Council of the Blind (ACB), Sarah Malaier of the American Foundation for the Blind (AFB), Blake Reid, Brandon Ward, Caitlin League, Michael Obregon, and Scott Goodstein of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC), counsel to TDI, and Michael Rosenbloom, Ellen Gardiner, Niki Wasserman, and I of the Georgetown Communications & Technology Law Clinic (CTLC), counsel to TDI, met with Acting Chairwoman Jessica

Rosenworcel and David Strickland, Legal Advisor to the Acting Chairwoman, to discuss the Commission's priorities on several accessibility issues.¹

We encouraged the Commission to focus its priorities on strengthening the Commission's leadership on accessibility issues, providing guidance and metrics for automatic speech recognition (ASR) for video programming, expanding audio description capabilities, increasing accessibility for advanced communications services (ACS), clarifying standards for the transition to ASR-based IP-CTS, improving access to both wireline and wireless RTT services, and incorporating standards for wireless handsets.

We urge the Commission to bolster its leadership on accessibility issues.

In the wake of the Twenty-First Century Communications and Video Accessibility Act (CVAA), the Commission played a leading role in convening conversations with industry leaders and consumers, developing substantive policy and rules around accessibility, and pursuing enforcement. We asked the Commission to reassert its leadership and reenergize the CVAA in these three areas.

Specifically, we encouraged the Commission to support the Disability Rights Office (DRO) and to provide them with the requisite resources to both resolve accessibility issues and lead policy conversations surrounding accessibility initiatives. We suggested that the Commission consider creating an Office of Civil Rights and relocate the DRO within that office. This move would help ensure that accessibility issues are viewed not only as consumer protection issues, but also as civil rights issues.

Additionally, we reminded the Commission that there are numerous pending rulemakings and petitions regarding accessibility that should be revisited and restarted.² Finally, we urged the Commission to take a more active role in meaningful

¹ This filing was prepared with the substantial research and drafting assistance of Ellen Gardiner and Niki Wasserman, students in the Georgetown Communications & Technology Law Clinic.

² See *Implementation of Section 716 and 717*, Further Notice of Proposed Rulemaking, 26 FCCR 14,557, 14,684-85, ¶ 301 et seq. (Oct. 7, 2011); Petition for Declaratory Ruling

enforcement. The Commission can engage in proactive monitoring, develop remedies that offer meaningful incentives, and overhaul its consumer complaint process to be more user-friendly.

The Commission should provide oversight and develop metrics for ASR captions on video programming.

There is an increasing reliance on ASR-based captioning for video programming. We thus encouraged the Commission to provide oversight, and eventually quality metrics, to aid in the transition to ASR.

We explained to the Commission that consumers are reporting a decrease in the quality of closed captions as ASR begins to replace human captioners for live programming.³ Captions generated by machine often miss context and leave out critical information. Members of the deaf and hard of hearing community have specifically complained about captioning during major live televised events such as the Super Bowl, the Presidential Inauguration, and COVID-19 press briefings. The recent presidential inauguration, which was broadcast across different networks and viewed by millions of people, resulted in varying levels of quality for a range of consumers. These consumers reported a diverse array of experiences, acutely highlighting the disparities in ASR captions. We also expressed concern about the quality of ENT-generated captions. A substantial amount of live news programming continues to have poor captioning.⁴

We reminded the Commission that we have a pending petition regarding ASR solutions that contains both short-term and long-term goals.⁵ In the short-term, we urged the Commission to consider how ASR fits within the Commission's best practices, which tend to focus on human captioning. In advance of metrics, we therefore asked the Commission to offer oversight in the form of transparency, a public ruling, or

and/or Rulemaking from TDI, *Closed Captioning of Video Programming*, Dkts. 05-231, RM-11065 (filed July 31, 2019).

³ See Petition for Declaratory Ruling and/or Rulemaking from TDI, *Closed Captioning of Video Programming*, Dkts. 05-231, RM-11065, at 10 (filed July 31, 2019).

⁴ *Id.* at 4.

⁵ See *id.* at 16–18.

enforcement guidance. This oversight is pertinent as broadcasters continue to rely more frequently on ASR for live programming. In the long-term, we underscored the importance of establishing quality metrics specifically addressing ASR.

In addition to considering our requests for ASR standards and metrics, we explained that the Commission can take several courses of action to address captioning issues. First, the Commission can reexamine its authority under the Telecommunications Act of 1996. At the time the '96 Act was enacted, the Commission did not extensively consider the implications of video on the Internet.⁶ We urged the Commission to revisit its authority to regulate those issues in light of the proliferation of streaming services. Second, we encouraged the Commission to inform the legislative process and help close loopholes in the CVAA that contribute to poor captioning. Third, we asked the Commission to address the deficiencies with its consumer complaint process. The current process is cumbersome to navigate and exacerbates consumer frustrations. We therefore encouraged the Commission to create a simpler, more user-friendly complaint process for video programming and other accessibility issues.

Finally, we highlighted two issues related to the placement of captions. First, broadcasters typically have control over caption placement, frequently causing inconsistencies across programs. Second, current technical standards for television are antiquated and leave limited options for caption placement. We thus encouraged the Commission to develop improved and advanced technical standards for captioning placement.

We urge the Commission to explore ways of expanding audio description coverage.

We expressed appreciation for the effort the Commission has made to expand audio description. Over the next four years, audio description will be required in markets reaching approximately 87% of broadcast television consumers, though that still means there are 13% of people without access. We also indicated that consumers would like more audio description outside just the top broadcasters and providers.

⁶ *Closed Captioning and Video Description of Video Programming*, 13 FCCR 3272, ¶249 (1997).

Once an audio description is created, it should persist with the program across platforms – including streaming services. Finally, we would like to see an expansion of audio description in non-English languages.

We asked that the Commission work with Congress to expand coverage of audio description to internet programming. Streaming services are currently not covered under Commission description rules, though some platforms such as Apple TV+ are independently improving their service. Still, many streaming apps that are not native to the video hardware are inaccessible. While Netflix natively built-in to a third generation Apple TV+ has audio description, the Netflix app downloaded onto different third-party hardware may not have the same level of accessibility.

We also urged the Commission to establish quality standards for audio description. As seen in the Disability Advisory Committee’s 2020 recommendation on audio description, users continue to face quality issues that range from the quality of the description production to the proper transmittal and delivery of audio description by broadcasters.⁷

New rules should also modernize outdated requirements on the number of hours of described content on a network. Many broadcasters are airing marathon programming, and older reruns do not count towards the number of description hours. For example, in 2019, NBCUniversal asked the Commission to waive requirements for USA Network.⁸ As more programmers are filing for waivers of audio description requirements, the Commission should consider updates to the rules that ensure consumers have more access to audio described programming while acknowledging the rules may not fit all programming.

⁷ Recommendation of the Federal Communications Commission Disability Advisory Committee, Audio Description Quality Working Group (rel. Oct. 14, 2020), <https://ecfsapi.fcc.gov/file/1016272418512/DAC%20Recommendation%20on%20Audio%20Description%20Quality%20Adopted%20October%202014%202020.pdf>.

⁸ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 34 FCCR 9335 (2019).

When consumers have problems with the audio description, they cannot always find the right source of the problem or the point of contact for lodging the complaint, which delays resolution of the issue. While the point of contact designated for captioning may sometimes be able to resolve the concern, consumers often are not aware of this and do not reach out. It would ultimately benefit consumers to have a similar point of contact for audio description.

The Commission should facilitate improvement to accessibility features for video conferencing services.

We have all experienced a massive shift from phone-based communications to IP-based communications, underscoring the need for enhanced accessibility features to ensure that people with communications disabilities are not left behind. Advanced communications services – especially video conferencing platforms – currently lack the requisite interoperability and functionality for equal access.

Over the past two years, and especially during the COVID-19 pandemic, video conferencing is becoming a de facto standard for telecommunications for business and even personal contexts. This shift necessitates improvements to video conferencing features so individuals with communications disabilities can enjoy equal access. We urge the Commission to make sustainable, long-term adjustments to video conferencing accessibility.

We highlighted several concerns. First, we continued our discussion on captioning and extended it to video conferencing. Although some platforms have added automatic captioning features for its users, many other comparable video conferencing and video calling platforms still lack these features. Instead, users of these platforms must utilize third party software such as CART (Communication Access Realtime Translation) for captioning services. Additionally, ASR captions for Zoom and other video conferencing platforms are not always accurate. This inaccuracy can lead to missing context and miscommunication between meeting participants. In the work setting, for example, accurate captioning is especially important so that co-workers can understand each other. Other platform features, or lack thereof, also pose issues for

people who are blind or visually impaired, such as platforms that are accessible in participant mode but not in presentation mode.

Inaccessible video conferencing now means inaccessible telehealth. The problems highlighted above are barriers to deaf and hard of hearing people receiving quality treatment, as has been especially true during the COVID-19 pandemic. We stressed to the Commission that deaf and hard of hearing people should be able to jump into any video conferencing and telehealth platform to connect.

Accordingly, we urged the Commission to revisit its 2011 rulemaking implementing the videoconferencing accessibility requirements of the CVAA.⁹ In resuming this rulemaking process, we asked the Commission to consider how the ACS rules¹⁰ apply to these issues and address the concerns we raised involving captioning features and connective services.

The Commission should also oversee the shift to ASR for IP-CTS.

We encouraged the development of standards as the Commission considers moving toward ASR for IP-CTS.¹¹ In light of the accuracy issues surrounding ASR, we urged the Commission to ensure that consumers retain the option to switch between ASR and human captioning. Although human-assisted captioning has its imperfections, the ability to switch between the two forms of caption generation mitigates some of these issues for consumers. Therefore, we asked the Commission to oversee the transition to ASR-based IP-CTS and to work on developing the requisite standards.

The Commission should improve RTT support and access.

⁹ See *Implementation of Section 716 and 717, Further Notice of Proposed Rulemaking*, 26 FCCR 14,557, 14,684-85, ¶ 301 et seq. (Oct. 7, 2011).

¹⁰ The Twenty-First Century Communications and Video Accessibility Act, 47 U.S.C. § 716 (2010); 47 CFR § 14.

¹¹ Comments of HLAA, TDI, et al., *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Dkts. 03-123, 10-51, 13-24 (filed March 3, 2021).

We expressed our concerns around the rollout of Real-Time Text (RTT). The hope we had in 2016 that the move from TTY to RTT¹² would accompany the transition of phone networks from analog to digital IP-based networks has faded. TTY does not reliably work on IP-based networks and there remains significant progress to be made. First, the Commission should determine what measures should be taken to ensure that all *wireless* vendors and carriers deploy RTT functionality. Second, RTT support by *wireline* providers is desperately needed. Wireline service remains an important source of connection.

We still have not had an emergency rulemaking for wireless RTT. Vendors for rural carriers are still not universally supporting RTT. And without another rulemaking, there are no standards or requirements for interoperability between wireless and wireline RTT. This is particularly crucial for carceral communications and access to N11 numbers. We urge the Commission to consider both the continued support of TTY and a smooth transition to RTT accompanied with quality standards.

People with hearing disabilities depend on the Commission to oversee the accessibility of wireless handset devices.

The Commission should take steps to improve accessibility of wireless handset devices, including those provided as part of the Lifeline program. Phones are increasingly more difficult to use for people who use hearing aids. Options for accessible basic feature phones are dwindling. There are also fewer non-smartphones with text to speech capabilities to navigate calls, text messages, menus, and settings.

In addition, as we move forward on HAC, there are difficulties regarding the ANSI C63.19 standard for hearing aid compatibility of wireless handsets. Handset manufacturers do not yet understand the impact the new standard will have on them. As to Bluetooth, we are hopeful of its promise going forward as another reliable means for providing connectivity between hearing aid devices and wireless devices, but we are still seeing connectivity and interoperability issues. As Bluetooth connectivity evolves,

¹² See *Transition from TTY to Real-Time Text Technology*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13,568 (Dec. 16, 2016).

improves, and matures, both microphone and telecoil connectivity has remained heavily relied on. The C63.19 standard remains important, and the Commission should address RF interference. Though we look forward to adding future technology options, people still want to hold the handset up to their hearing device for telephone communication.

We look forward to engaging further with the Commission and the Acting Chairwoman on these critical accessibility issues.

Respectfully submitted,

/s/

Laura M. Moy
Michael Rosenbloom
Communications & Technology Law Clinic
Georgetown University Law Center
laura.moy@georgetown.edu

/s/

Blake E. Reid
Samuelson-Glushko Technology Law &
Policy Clinic (TLPC) at Colorado Law
blake.reid@colorado.edu

*Counsel for Telecommunications for the Deaf
and Hard of Hearing, Inc. (TDI)*