

September 19, 2016

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

Re: MB Docket Nos. 11-43 & 12-108

Dear Ms. Dortch:

On September 15, 2016, Diane Burstein, Vice President and Deputy General Counsel, Jill Luckett, Senior Vice President, Program Network Policy, and I, of NCTA – The Internet & Television Association (“NCTA”), met with Michelle Carey, Lyle Elder, Martha Heller, Maria Mullarkey, Mary Beth Murphy, and Diana Sokolow of the Media Bureau, and Rosaline Crawford, Suzy Rosen Singleton, and Karen Peltz Strauss (via telephone) of the Consumer & Governmental Affairs Bureau, regarding the above-captioned proceedings implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).

Video Description. At the meeting, we explained that NCTA member companies are committed to providing video-described programming – indeed, the amount of such programming is not limited to satisfying current regulatory requirements, but includes a growing library of programming that has previously been video-described.¹ That said, consistent with our comments in this proceeding, we stressed that any expansion of the video description rules must respect the bounds of authority that Congress defined in the CVAA.² In particular, as made clear by legislative history, any increase in the number of nonbroadcast networks covered by the rules would be inconsistent with the CVAA,³ as would the adoption of a “no backsliding” rule.⁴

¹ See NCTA Comments at 1; see also Time Warner Inc. (“TWI”) Reply Comments at 2 (noting that Turner has offered “more than 15,000 hours of described programming since the Rule was reinstated, including many hours on other popular and widely available Turner networks (e.g., Turner Classic Movies and Cartoon Network) that are not subject to the Rule, as well as programming outside of prime time or that otherwise was not counted toward the Rule’s quarterly hour requirements”); see also NAB Comments at 2 (“television stations frequently exceed the required threshold for the amount of programming that must be video described”). Unless otherwise indicated, all comments and reply comments cited herein were filed in MB Dkt. No. 11-43 on June 27, 2016, and July 26, 2016, respectively.

² See NCTA Comments at 3-13.

³ See *id.* at 5-9.

⁴ See *id.* at 9-11.

Furthermore, we explained that the video description rules do not, and should not, apply to programming offered on a Video-On-Demand basis.⁵

In addition, we explained that any increase in the required number of video-described hours must include built-in flexibility to avoid a conflict between the need to provide video description and program scheduling.⁶ Even pursuant to the current rules, covered networks may have challenges in meeting their obligation if they do not have sufficient prime time and children's programming to meet the hours requirement in a given quarter. This issue will only be exacerbated with an increase in the number of hours.⁷ We pointed out that a number of possible solutions to address the situation are raised in the record.⁸ We also noted how the industry is working to improve consumer access to described programming.⁹ We urged the Commission to adopt reasonable implementation periods for any new rules, taking into account the need for companies to establish budgets and to thoughtfully determine which programs to describe.¹⁰

Caption Display Settings. Consistent with our comments, we explained why the Commission should not adopt new mandates for accessing caption display settings. As we have demonstrated in the record, neither the CVAA nor the Television Circuitry Decoder Act provide the Commission with authority to adopt such a mandate.¹¹ Moreover, any such action would risk negative consequences,¹² and is unnecessary given that companies are already developing interfaces that provide easy access to accessibility settings in an intuitive manner.¹³ If the

⁵ See *id.* at 11-13 (explaining that any such requirement would raise complex technical and rights issues that would involve a number of stakeholders, including movie studios, program networks, program aggregators, MVPDs, and others).

⁶ See *id.* at 13-16. We shared the attached handouts to illustrate the limited number of hours and the need for flexibility. The handouts show the prime time lineup of two of the five covered networks for a recent week, showing blocks of time that include descriptions (noting where programming is repeated and thereby may not qualify toward the hours requirement under the video description rules), and where programs cannot include descriptions because they are “live/near live” or include Spanish in the second audio stream. (We made one correction to the TBS lineup since the meeting, namely to indicate that the program *ELEAGUE* is near-live.).

⁷ See *id.* at 14-15.

⁸ See *id.* at 15-16; TWI Reply Comments at 5-7; NAB Reply Comments at 18-19.

⁹ See NCTA Comments at 16-18.

¹⁰ See *id.* at 18-19.

¹¹ See NCTA Comments at 2-5, & n.7, filed in MB Dkt. No. 12-108 (Feb. 24, 2016); NCTA Reply Comments at 2-3, filed in MB Dkt. No. 12-108 (Mar. 7, 2016).

¹² See NCTA Comments at 6, filed in MB Dkt. No. 12-108 (explaining that such rules “could be very expensive to implement and [could impede] the innovation of user guides and menus”).

¹³ See *id.* at 5 (“[c]able operators are working to develop intuitive ways for users to access enhanced captioning display settings on navigation devices – some companies have already rolled out new electronic program guides that provide easy access to such features”); see also Comcast, *Turn Closed Captioning On or Off on X1* (among other things, explaining how to “select your preferred settings (font size, color and formatting)” for captions), at <https://customer.xfinity.com/help-and-support/cable-tv/x1-closed-captioning/> (last visited Sept. 19, 2016);

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Commission nevertheless decides to move forward with a rule in this area, the record demonstrates that it must consider at least a two year compliance window for any new mandates.¹⁴

Respectfully submitted,

/s/ Stephanie L. Podey

Stephanie L. Podey

cc: Rosaline Crawford
Suzy Rosen Singleton
Karen Peltz Strauss
Michelle Carey
Lyle Elder
Martha Heller
Maria Mullarkey
Mary Beth Murphy
Diana Sokolow

Charter, *New Spectrum Guide Settings: Closed Captioning* (among other things, explaining how to set “closed captioning presentation settings to adjust how closed captioning appears on your screen”), at <http://www.charter.net/support/tv/spectrum-guide-settings-closed-captioning-spectrum2/> (last visited Sept. 19, 2016).

¹⁴ See NCTA Reply Comments at 4, filed in MB Dkt. No. 12-108 (Mar. 7, 2016).

USA NETWORK

Date	8:00 PM - 8:30 PM	8:30 PM - 9:00 PM	9:00 PM - 9:30 PM	9:30 PM - 10:00 PM	10:00 PM - 10:30 PM	10:30 PM - 11:00 PM
9/9/2016	Modern Family 8:00 - 8:30	Modern Family 8:30 - 9:00	Modern Family 9:00 - 9:30	Modern Family 9:30 - 10:00	Modern Family 10:00-10:30	Modern Family 10:30 - 11:00
9/10/2016	Need for Speed 8:00 - 11:00					
9/11/2016	Law and Order: Special Victims Unit 8:00 - 9:00		Law and Order: Special Victims Unit 9:00 - 10:00		Law and Order: Special Victims Unit 10:00 - 11:00	
9/12/2016	WWE Monday Night Raw 8:00 - 11:05					
9/13/2016	WWE Smackdown 8:00 - 10:00				Chrisley Knows Best 10:01 - 10:31	Chrisley Knows Best 10:31 - 11:01
9/14/2016	Law and Order: Special Victims Unit 8:00 - 9:00		Suits 9:00 - 10:03		Mr. Robot 10:03 - 11:10	
9/15/2016	Law and Order: Special Victims Unit 8:00 - 9:00		Law and Order: Special Victims Unit 9:00 - 10:00		Queen of the South 10:00 - 11:00	

Live/Near-Live
Spanish in SAP
DVS
Repeat
Repeat with DVS

Note: Per FCC rules, certain repeats may not be counted toward the 50 hour requirement.

TBS NETWORK

Date	8:00 PM - 8:30 PM	8:30 PM - 9:00 PM	9:00 PM - 9:30 PM	9:30 PM - 10:00 PM	10:00 PM - 10:30 PM	10:30 PM - 11:00 PM
9/9/2016	Stand Up to Cancer 8:00 - 9:00		Big Bang Theory 9:00 - 9:30	Big Bang Theory 9:30 - 10:00	Eleague 10:00 - 11:00	
9/10/2016	Big Bang Theory 8:00 - 8:30	Big Bang Theory 8:30 - 9:00	Big Bang Theory 9:00 - 9:30	Big Bang Theory 9:30 - 10:00	Big Bang Theory 10:00 - 10:30	Big Bang Theory 10:30 - 11:00
9/11/2016	Big Daddy 8:00 - 10:00				Big Daddy 10:00 - 12:00	
9/12/2016	Family Guy 8:00 - 8:30	American Dad! 8:30 - 9:00	American Dad! 9:00 - 9:30	Family Guy 9:30 - 10:00	Family Guy 10:00 - 10:30	Full Frontal with Samantha Bee 10:30 - 11:00
9/13/2016	Big Bang Theory 8:00 - 8:30	Big Bang Theory 8:30 - 9:00	Big Bang Theory 9:00 - 9:30	Big Bang Theory 9:30 - 10:00	Big Bang Theory 10:00 - 10:30	Big Bang Theory 10:30 - 11:00
9/14/2016	Big Bang Theory 8:00 - 8:30	Big Bang Theory 8:30 - 9:00	Big Bang Theory 9:00 - 9:30	Big Bang Theory 9:30 - 10:00	Big Bang Theory 10:00 - 10:30	Big Bang Theory 10:30 - 11:00
9/15/2016	2 Broke Girls 8:00 - 8:30	2 Broke Girls 8:30 - 9:00	Big Bang Theory 9:00 - 9:30	Big Bang Theory 9:30 - 10:00	2 Broke Girls 10:00 - 10:30	2 Broke Girls 10:30 - 11:00

Live/Near-Live
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