

October 31, 2014

via electronic filing

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Closed Caption Quality · CG Docket No. 05-231 · PRM11CG
Interpretation of the Terms “Multichannel Video Programming
Distributor” and “Channel” · MB Docket No. 12-83**

Dear Ms. Dortch,

On October 29, 2014, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips and Braden Forbes of the National Association of the Deaf (NAD), and Lise Hamlin of the Hearing Loss Association of America (HLAA), collectively, “Consumer Groups,” and I met with Karen Peltz Strauss and Caitlin Vogus of the Consumer and Governmental Affairs Bureau, Suzy Rosen Singleton and Eliot Greenwald of the Disability Rights Office, and Diana Sokolow and Steven Broeckaert of the Media Bureau to discuss the above-referenced matters.

Closed Captioning Responsibility

First, we discussed the *Further Notice of Proposed Rulemaking* on closed captioning quality currently on circulation (“*Second FNPRM*”). We reiterated both our overall tentative support and continuing concerns over the Commission’s migration from its traditional VPD-centric model to a split-responsibility model.¹ We confirmed that the Consumer and Governmental Affairs, Media, and Enforcement Bureau believe that such a model will best ensure that consumers can access video programming on equal terms by providing the relevant entity with the appropriate incentives to provide high-quality captions, provide the Commission and all entities in the distribution chain a workable framework to quickly resolve issues, and facilitate swift and effective enforcement where necessary.

We remain concerned about how the new model will play out in practice, and emphasized that the Commission’s careful calibration and enforcement of its rules are the lone remedy for deaf or hard of hearing viewers in the absence of a private right of action.

¹ See, e.g., *Reply Comments of TDI, et al.*, CG Docket No. 05-231, at 2-3 (Aug. 8, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521752500>; *Ex Parte of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 1-4 (Aug. 4, 2014) (“Consumer Groups Responsibility Ex Parte”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521750124>.

Nevertheless, we appreciate the Commission's attention to ensuring that the model's details are carefully calibrated to reach the best result for viewers who are deaf or hard of hearing. In particular, we acknowledged the Bureaus' belief that the split responsibility scheme will ensure that the Commission has the flexibility to pursue appropriate enforcement action as evolutions in the video programming market blur the distinctions between VPDs and other video programmers.

More specifically, we discussed the prospect of changing the Commission's certification requirements under Rule 79.1(g)(6) and (j)(1) to require video programmers to provide certifications of their compliance with the Commission's caption provision and quality rules directly to the Commission and to provide their contact information to the Commission's video programming distributor ("VPD") registry or a similar database. We expressed tentative support for the general idea of such a change, pending the opportunity to review the specifics in the *Second FNPRM*.

We also discussed the prospect of addressing concerns over privacy in forwarding complaints from VPDs to video programmers by redacting personally identifiable information ("PII") in complaints or only forwarding information necessary for the programmer to investigate and resolve the complaint. We understand that the Commission may require VPDs to provide consumers with a complaint identification number and contact information for any programmer to whom their complaint has been forwarded, enabling consumers to follow up on the status of their complaints. We support the implementation of these mechanisms, presuming that the VPD remains responsible for following through with consumers at all points in the complaint process, and pending the opportunity to review the specifics in the *Second FNPRM*. We also suggested that the Commission consider requiring a mechanism by which consumers could check the status of their complaints via a website.

Real-Time Closed Captioning Accuracy Metrics

We next discussed concerns raised by several captioning vendors over the accuracy metrics specified in the Commission's Best Practices for Real-Time Captioning Vendors in Rule 79.1(k)(2)(iv). In particular, captioning vendors have expressed concern over the difficulty and expense of calculating caption accuracy by looking at the percentage of correct words out of total number of words *in a program*, as opposed to their existing practice of calculating the percentage only by looking at the percentage of correct words out of the total words *actually captioned*.

While we understand the captioners' concerns, we are concerned about any change to the formula specified in the Best Practices that might increase the number of captions that deviate from verbatim representations of a program's dialogue and thereby risk misrepresenting the meaning of a program to a viewer who is deaf or hard of hearing. In particular, we are concerned that shifting the calculation to the captioners' preferred method will attribute falsely high rates of accuracy to captions that are missing words,

thereby incentivizing captioners to simply omit words to raise accuracy ratings. While such omissions would be considered errors under Rule 79.1(k)(2)(v), we are concerned that accuracy may be a leading metric for programming providers to evaluate the quality of real-time caption vendors, and that any artificial inflation of that metric could both reduce the incentive for programmers to contract with high-quality captioners and conceal serious quality problems. Nevertheless, we remain open to continued dialogue aimed at ensuring the ultimate success of the Commission's quality standards.

We also urged the Commission to mitigate any potential change to best practices for offline captioning by revisiting and narrowing the scope of programming for which live captioning is permissible. We further urged the Commission to carefully consider the impact of any metric change on efforts to address truncated captions at the end of programs.

The Scope of Multichannel Video Programming Distributors

Finally, we discussed the Commission's pending proceeding to reexamine the scope of multichannel video programming distributors ("MVPDs").² Consistent with our previous comments in the proceeding, attached here, we urged the Commission to adopt a common-sense interpretation of MVPDs that encompasses all entities that deliver what consumers understand to be multiple "channels" of programming, thereby ensuring that new entrants in the video programming marketplace deliver programming in accessible formats in line with consumer expectations and congressional intent.³ In particular, we agree with Chairman Wheeler's recent conclusion that "[t]wenty-first century consumers shouldn't be shackled to rules that only recognize 20th century technology"—a proposition consistent with the Commission's ongoing efforts to ensure accessibility in the modern video marketplace.⁴

² See *Media Bureau Action*, MB Docket No. 12-83 (Sept. 30, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1412A1.pdf.

³ See generally *Comments of TDI, et al.*, MB Docket No. 12-83 (May 14, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021917779>.

⁴ See *Tech Transitions, Video, and the Future* (Oct. 28, 2014), <http://www.fcc.gov/blog/tech-transitions-video-and-future>.

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Please don't hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

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CC: Meeting attendees

Maria Kirby, Office of Chairman Wheeler