Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	)	MB Docket No. 11-154
	)	
Closed Captioning of Internet Protocol-Delivered Video Clips	)	

REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (NCTA)[1] hereby submits its reply comments in the above-referenced proceeding.[2] As we explained in our initial comments, the Commission recently adopted far-reaching online clips requirements that will increase the amount of captioned material online. Consumers will find that these newly-adopted rules will result in additional avenues for viewing clips with captions, even without further Commission action.[3] Such opportunities will occur both on programmers' own websites and through links to those sites from many other places on the Internet. The Commission should allow these rules to take effect and experience should be gained with clips captioning before the Commission considers expanding or revising an already complicated regulatory regime.

---

[1] NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over $210 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 27 million customers.

[2] *In re Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips*, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (2014) ("*Clips Order*" or "*Second Further Notice*").

[3] *See* NCTA Comments at 5-6.

In particular, there are numerous reasons why the Commission should refrain from extending captioning obligations to video clips that appear on third party websites.[4] As NAB explained, "captioning online video clips entails many challenging and complex steps. Extending the obligation to third-party providers raises even more difficult issues."[5] Moreover, nothing has changed to alleviate industry's concerns that justified the Commission's decision to "limit the current application of the rules" to exclude clips distributed by third parties.[6]

In urging the Commission to hastily expand the rules to third party distributors who post video clips online,[7] TDI *et al.* try to analogize to the existing full-length online captioning rules that hold video programming owners ("VPOs") responsible for sending captioning files to distributors.[8] But as NCTA's comments showed, this comparison is inapt. In contrast to the relatively limited number of distribution channels for full-length programming, the number of potential online outlets for clips is virtually unlimited. A recent news event provides an illustration: on October 28, 2014, the Antares rocket exploded seconds after liftoff in Virginia. Within a few hours, a Google video search of "Antares rocket NASA video" returned over 3.6 million hits, indicating that the NASA video clip of the incident was posted far and wide. The NASA clip appeared on the websites of broadcast and cable news outlets, news wires, individual

---

4 *See* NAB Comments at 10-15; NCTA Comments at 2-6.

5 NAB Comments at 10. Among other complexities, "there are no appropriate mechanisms to ensure compliance" and "no system exists that identifies whether a clip was previously shown on television before it was posted as an online video clip." NAB Comments at 10-11; *see also* NCTA Comments at 2-6 (explaining that "the practices for licensing full-length programming and clips to third party sites differ in scale, timing, and technology" and noting that "rules for third party sites would create consumer confusion and enforcement in this area would lead to significant administrative and compliance burdens").

6 *Clips Order* ¶ 22 (deferring action on clips distributed by third parties and recognizing industry's concern "that a broader application of the IP closed captioning rules to video clips may hold entities responsible for issues that they do not control").

7 *See* TDI *et al.* Comments at 7 (arguing that "the Commission should not adopt third-party deadlines more than six months out from the first-party deadlines").

8 *See id.* at 6.

broadcast stations, local, national and international newspapers, Internet video sites like YouTube, and in many other places. Requiring programmers to send caption files with video clips to all these entities would raise enormous practical and operational problems. And enforcing a rule that would require all video clips taken from a captioned television program to be provided with captions on all these third-party outlets would be no easier task. For example, how would the Commission (or complainant) know whether the clip was from a captioned television version or not? Even if it was originally televised with captions, as we have described, programmers may not have any formal relationship with many of these websites. And, even where they do, the captioning ecosystem for clips is currently significantly different than that for full-length programming.[9]

Furthermore, TDI *et al.* are mistaken in claiming that The Twenty-First Century Communications and Video Accessibility Act ("CVAA" or "Act") "makes no provision to exclude the delivery of a video from the Commission's captioning rules simply because it is delivered by a third-party."[10] In fact, the Commission has authority to apply a wait-and-see approach, as the Act grants it significant flexibility to establish appropriate deadlines for its captioning rules.[11] The Act also permits the Commission to categorically exempt video clips distributed to third-party websites if economically burdensome.[12] (Indeed, the Commission most recently exercised its authority to adopt a categorical exemption in the *Clips Order*, finding that

---

[9] *See* NCTA Comments at 3-5.

[10] TDI *et al.* Comments at 5.

[11] *See* The Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 202(b), 124 Stat. 2751, 2770 (2010) (codified at 47 U.S.C. § 613(c)(2)(B)) ("CVAA" or "Act") (stating that regulations under this section "shall include an appropriate schedule of deadlines," taking into account a variety of factors).

[12] *See* CVAA § 202(b) (codified at 47 U.S.C. § 613(c)(2)(D)(ii)). As the *Second Further Notice* suggests, the Commission could "exempt any third party video programming distributors or categories of distributors from its video clips captioning obligation on the basis that it would be 'economically burdensome' for these distributors to comply." *Second Further Notice* ¶ 41 & n.171.

"it would be an economic burden to require closed captioning of video clips that are in the video programming distributor's or provider's online library before the compliance deadline with minimal benefits."[13]) There is ample record evidence that imposing a requirement to distribute captioned clips to third- party websites would be economically burdensome at this time.[14]

For all these reasons, and for the reasons stated in our initial comments, the Commission should refrain from adopting additional captioning requirements applicable to the provision of online video clips.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen
Diane B. Burstein
Stephanie L. Podey
National Cable & Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

Jill M. Luckett
Senior Vice President
Program Network Policy

November 3, 2014

[13] *Clips Order* ¶ 33.

[14] *See* NAB Comments at 10-15; NCTA Comments at 2-6.