

December 16, 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

Dear Ms. Dortch,

On December 12, 2014, I spoke with Eliot Greenwald in the Disability Rights Office about potential Commission action in the above-referenced proceeding to address the pending requirements that video programming distributors (“VPDs”) obtain, and video programmers (“VPs”) provide, certifications of adherence to the Commission’s Best Practices for ensuring the quality of closed captions.¹ Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (collectively, “Consumer Groups”), and the Technology Access Program at Gallaudet University (TAP) write to address that issue.

We understand that the Commission is considering shifting the certification rules to require VPs to provide certifications directly to the Commission instead of to VPDs, thereby facilitating direct enforcement action against VPs who do not certify compliance with the Best Practices.² As a result, we understand that the Commission is considering the possibility of delaying the effective date of the existing certification rules until they can be changed to require direct certification from VPs to the Commission.

Ensuring that VPs are responsible for certifying their adherence to Best Practices is a critical tenet of the Commission’s quality rules, and we strongly urge the Commission to act swiftly to ensure that a robust certification regime goes into effect as soon as possible. Because the existing certification rules have been publicized for some time, both VPDs and VPs should be prepared to comply with them, and we believe the burden on VPDs to obtain certifications from VPs in the interim while the Commission considers adjusting the underlying regime should be nominal at most. Accordingly, we see no compelling

¹ See 47 C.F.R. § 79.1(j)(1), (k)(1)(iv).

² See *Closed Captioning of Video Programming*, Second Further Notice of Proposed Rulemaking, CG Docket No. 05-231, at ¶¶ 7-10 (Dec. 15, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1215/FCC-14-206A1.pdf

reason for the Commission to delay the certification rules from going into effect, and urge the Commission not to do so absent justification on the record.

Nevertheless, should the Commission choose to delay the imposition of the certification rules, **we would tentatively support a temporary delay or waiver of the certification rules so long as the Commission publicly commits to swiftly resolving and implementing the underlying certification scheme in a reasonable timeframe.** Consumers have patiently awaited quality captions for more than a decade, and we would strenuously object to delaying this critical component of the Commission's quality rules beyond the spring of 2015.

We also understand that some VPDs have expressed concern that a temporary waiver of the certification requirements in Rule 79.1(j)(1) would also waive the protections of Rule 79.1(j)(1)(iii), which provides a limited exemption from liability for quality violations for VPDs that successfully meet the certification requirements of Rule 79.1(j)(1).³ We believe that no liability waiver is necessary because the Commission can simply delay any ramp-up in enforcement until it determines whether to make any changes to the underlying certification rules.

Nevertheless, we understand that the Commission could retain this exemption by adopting as part of an interim waiver of Rule 79.1(j)(1) a temporary liability waiver for VPDs who make good faith efforts to ensure that they programming they deliver generally comports with the Commission's quality standards. Again, we would tentatively support such a temporary exemption so long as the Commission publicly commits to swiftly resolving and implementing the underlying certification scheme in a reasonable timeframe.

However, we urge the Commission to reject the prospect of addressing VPDs' concerns by delaying the effective date of the quality rules following necessary approvals under the Paperwork Reduction Act. While we understand that the Commission is not considering any delay longer than 30-45 days, we believe there is no reason to delay the variety of extremely important caption quality measures over the certification issue.⁴ While we appreciate the Commission's commitment to properly calibrate the scope of the rules, delaying them all, even modestly, for the sake of accommodating a change to one of them would unnecessarily and unduly burden the long-awaited civil rights of Americans who are deaf or hard of hearing to access video programming on equal terms through high-quality captions. Accordingly, we urge the Commission to reject any measure premised on delaying rules unrelated to the context of certification.

³ See 47 C.F.R. § 79.1(j)(1)(iii).

⁴ We would strenuously object to any delay longer than 30-45 days in the rollout of the captioning quality rules.

More broadly, **we implore the Commission to take the necessary steps to resolve this certification issue—and others related to caption responsibility—as swiftly as possible.** Again, while we recognize the importance of—and strongly support—properly calibrating the specifics of the rules to ensure incentives for high-quality captioning, rapid resolution of complaints, and swift enforcement, every day the specifics sit unresolved is another day added to the deaf and hard of hearing community’s decades-long wait for high-quality captions.

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

Respectfully submitted,

/s/

Blake E. Reid

Counsel to TDI

blake.reid@colorado.edu

303.492.0548

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

Contact: Claude Stout, Executive Director • cstout@TDIforAccess.org

8630 Fenton Street, Suite 121, Silver Spring, MD 20910

www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org

Contact: Andrew Phillips, Policy Counsel • andrew.phillips@nad.org

8630 Fenton Street, Suite 820, Silver Spring, MD 20910

301.587.1788

www.nad.org

Hearing Loss Association of America (HLAA)

Anna Gilmore Hall, Executive Director • AGilmoreHall@Hearingloss.org

Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org

7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814

301.657.2248

www.hearingloss.org

Association of Late-Deafened Adults (ALDA)

Dave Litman, President • aldaprez2014@gmail.com

Contact: Brenda Estes • bestes@endependence.org

8038 Macintosh Lane, Suite 2, Rockford, IL 61107

www.alda.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Cheryl Heppner, Vice Chair • CHheppner@nvrc.org

3951 Pender Drive, Suite 130, Fairfax, VA 22030

Technology Access Program at Gallaudet University (TAP)

Contact: Christian Vogler, Ph.D., Director • christian.vogler@gallaudet.edu

Department of Communications Studies

SLCC 1116, Gallaudet University

800 Florida Avenue NE, Washington, DC 20002

202.250.2795

tap.gallaudet.edu

CC: Karen Peltz Strauss, CGB

Eliot Greenwald, DRO

Maria Kirby, Office of Chairman Wheeler