

Before the
Federal Communications Commission
Washington, DC

In the Matter of:)
Closed Captioning of Video)
Programming) CG Docket No. 05-231
Telecommunications for the)
Deaf, Inc. Petition for)
Rulemaking)

Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
American Association of the Deaf-Blind (AADB)
Speech Communication Assistance by Telephone (SCT)
Technology Access Program at Gallaudet University (TAP)

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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), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the American Association of the Deaf-Blind (AADB), and Speech Communication Assistance by Telephone (SCT), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP), respectfully comment on the *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”) in the above-referenced docket.¹ The Consumer Groups seek to promote equal access to video programming for the 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution. We commend the Commission’s ongoing efforts to improve caption quality.

As we have recently emphasized several times in this proceeding, we tentatively support but remain concerned about the Commission’s efforts in this proceeding to shift from its traditional video programming distributor (“VPD”)-centric responsibility model to one that apportions responsibility for the provision, delivery, rendering, and quality of captions between VPDs and other entities in the video programming ecosystem.² While we understand that the Consumer and Governmental Affairs, Media, and Enforcement Bureaus all support the shift, we again implore the Commission to ensure that the shift, if implemented, is calibrated to provide the relevant entities with the appropriate incentives

¹ *Closed Captioning of Video Programming*, Second Further Notice of Proposed Rulemaking, CG Docket No. 05-231, (Dec. 15, 2014) (“*Second FNPRM*”), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-206A1.pdf.

² *E.g.*, *Ex Parte of TDI, et al.*, CG Docket No. 05-231, MB Docket No. 12-83, at 1-2 (Oct. 31, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=60000977898>

to generate and distribute high-quality captions, yield a workable framework to quickly resolve issues, and facilitate swift and effective enforcement where necessary.

Assuming the Commission chooses to implement the shift, we generally support adjustments to the Commission’s certification regime that are calibrated to serve the ends of incentives, issue resolution, and enforcement. **However, it is most important to consumers who are deaf or hard of hearing that the Commission quickly and confidently resolve both the certification and responsibility issues so that the caption quality rules come to fruition without further delay.**³

Bearing that in mind, we offer several comments on the proposals in the *Second FNPRM*:

- **The Commission should require video programmers to certify compliance with the caption provision and quality rules.** To whatever extent the Commission “decides to extend some responsibilities for compliance with its closed captioning rules to video programmers,” it should require video programmers to certify that they are meeting those responsibilities.⁴ Doing so would require programmers to understand and assert that they are responsible

³ See, e.g., *Ex Parte of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 2 (Dec. 16, 2014), <http://apps.fcc.gov/ecfs/document/view?id=60001009823>.

⁴ See *Second FNPRM* at ¶¶ 6, 9. To the extent the Commission shifts responsibility from VPDs to video programmers, we would also support amending references to “program suppliers” to clarify that VPDs may only rely upon certifications provided by the entity actually responsible for the underlying program’s compliance with the rules and not another VPD who is not responsible for compliance. See *Second FNPRM* at ¶ 8. We would also tentatively support amending the term “programming supplier” to “video programmer” in Rule 79.1(e)(6), assuming such a change was accompanied by the other changes to Rule 79.1(e) and other sections of Rule 79.1 that may be necessary to effect a responsibility shift from VPDs to video programmers. See *Second FNPRM* at ¶ 8.

for compliance, and would alert VPDs and the Commission that a problem may be afoot when a programmer fails to provide a certification.⁵

- **The Commission should require programmers to file certifications and contact information directly with the Commission under both Rule 79.1(j)(1) and the best practices in Rule 79.1(k)(1)(iv).**⁶ Doing so will enable the Commission to proactively identify the party responsible for captioning problems that are not under the direct control of a VPD and initiate swift resolution and enforcement action if necessary. Certificates and contact information should be readily available to VPDs to ensure that they can resolve consumer complaints about captioning problems for which the programmer is responsible. Certificates and contact information should also identify the relevant programming in sufficient detail to facilitate quick resolution of problems and be visible to the public to guarantee transparency and accountability to consumers.⁷

⁵ The *Second FNPRM* also asks whether, “[a]s an alternative to amending section 79.1(g)(6), should the Commission include within section 79.1(j)(1) or section 79.1(k)(1)(iv) certification language to the effect that the video programmer is in compliance with the Commission’s rules for the provision of closed captioning?” *Second FNPRM* at ¶ 9. We are unclear what the Commission intends with this suggestion or how it would operate, and reserve our support at this time pending further clarification.

⁶ See *Second FNPRM* at ¶¶ 5, 7. We also agree with the suggestion that programmers should be able to provide certifications and contact information via a web form, such as the Commission’s VPD Registry or a similar database created for this purpose. See *Second FNPRM* at ¶ 5.

⁷ We would also support requiring video programmers to designate a person responsible for handling closed captioning concerns and to post contact information on their websites, so long as the Commission makes clear that VPDs must remain responsible for resolving consumer complaints and may not simply pass consumers off to a programmer’s website. See *Second FNPRM* at 5.

- The Commission should require certifications that programming is exempt to specify the claimed exemption.**⁸ The extensive record established over the past decade in the Commission’s resolutions of consumer complaints and individual exemption petitions is replete with examples of VPDs and video programmers erroneously asserting eligibility for various exemptions.⁹ Requiring certifications to specify the purported basis for exempting programming would provide the Commission with the ability to spot misunderstandings of the exemptions, educate VPDs and video programmers, provide useful data for modernizing exemption policies, and facilitate enforcement where necessary.¹⁰
- The Commission should require VPDs to retain accountability for ensuring that their programmers are in compliance with the caption provision and quality rules.**¹¹ Because consumers have a direct relationship with VPDs and will continue to rely on them to resolve many captioning problems even if the Commission shifts some captioning responsibility to video programmers, the Commission must ensure that VPDs remain fully engaged

⁸ See *Second FNPRM* at 9.

⁹ See, e.g., *Letter from Suzy Rosen Singleton, Disability Rights Office to Tunuwa Media, LLC*, CGB-CC-1351, CG Docket No. 06-181 (Dec. 23, 2014) (rejecting erroneous claims of eligibility for various categorical exemptions), <http://apps.fcc.gov/ecfs/document/view?id=60001010860>; *Ex Parte of TDI, et al.*, CG Docket Nos. 05-231 & 06-181 (Sept. 26, 2014) (refuting eligibility of a school district with a multibillion dollar budget for the \$3 million exemption in Rule 79.1(d)(12)), <http://apps.fcc.gov/ecfs/document/view?id=60000868679>; *Ex Parte of NAD*, Case No. 14-C00573084, CG Docket No. 05-231 (Aug. 26, 2014) (explaining erroneous claim of eligibility for the 2% exemption in Rule 79.1(d)(11)), <http://apps.fcc.gov/ecfs/document/view?id=7521824418>.

¹⁰ See *Closed Captioning of Video Programming*, Further Notice of Proposed Rulemaking, 29 FCC Rcd. 2221, 2305-08, ¶¶ 153-159 (Feb. 24, 2014).

¹¹ See *id.* at ¶ 10.

with the provision and quality of the captions they deliver. In this context, the Commission should ensure that VPDs alert video programmers to the need to certify compliance with the captioning rules, verify that the programmers have done so, and identify to the Commission and the public any programmer who fails to provide a certification.¹² The Commission should specifically prohibit VPDs from ignoring non-compliance by programmers with whom they contract to deliver programming and clarify that a failure to report a non-certifying programmer is itself a violation of the rules on which the Commission can base enforcement action against both the VPD and the programmer.

We appreciate the Commission's continued attention to and rapid resolution of this matter and stand by to assist however we can in shepherding the Commission's landmark caption quality standards to fruition.

Respectfully submitted,

/s/

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¹² *See id.* Such a requirement would be consistent with the Commission's practices in related areas. For example, VPDs delivering programming via Internet Protocol must disclose the identities of video programmers the VPDs believe are responsible for caption problems both to the Commission and to a complaining consumer. *Letter from Gregory Hlibok, Disability Rights Office, to Blake Reid, Counsel to TDI, Complaint #12-C00454509-1 (Dec. 9, 2014) (on file with author).*

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