

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** )

**Opposition to Petition for Rulemaking and Request for Waiver of the  
National Court Reporters Association (NCRA), et al. by  
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)  
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)  
Technology Access Program at Gallaudet University (TAP)**

*via electronic filing*  
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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), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP), respectfully oppose the February 19, 2015 Petition for Rulemaking and Request for Waiver (“*PFR*” and “*RFW*,” respectively) of the National Court Reporters Association (NCRA), et al. (“Captioners”).<sup>1</sup>

At the outset, we agree with the Captioners that the Commission’s landmark caption quality standards are leading to significant positive action by various entities in the video programming ecosystem.<sup>2</sup> Moreover, we agree with the Captioners that we collectively share the same goal of “highly accurate, readable, and understandable captions.”<sup>3</sup> Just as the Captioners “appreciate the significant time and energy invested by consumer organizations in ensuring that this rulemaking was finalized by the Commission,” we appreciate the significant efforts of Captioners to improve the quality of the captioning services they provide to video programmers.<sup>4</sup> Finally, we recognize that the quality of captioning is not the sole responsibility of caption vendors, and that programmers and distributors also play a critical role in ensuring that captions are accurate.

However, we strongly oppose the procedurally defective *PFR* and *RFW*. As we have detailed in several filings, which we incorporate by reference here, the “grade inflation” metric initially proposed by the Captioners in this proceeding is a wholly inappropriate substitute for the Commission’s well-reasoned best-practice metric.<sup>5</sup> The *RFW*

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<sup>1</sup> <http://apps.fcc.gov/ecfs/document/view?id=60001032656>.

<sup>2</sup> See *RFW* at 2.

<sup>3</sup> See *id.* at 3.

<sup>4</sup> See *id.*

<sup>5</sup> *Ex Parte of TDI, et al.* (Dec. 11, 2014) (“*Consumer Groups Dec. 11 Ex Parte*”); *Ex Parte of TDI, et al.* (Nov. 26, 2014), *Ex Parte of TDI, et al.* (Oct. 31, 2014).

alternatively rehashes the same unavailing arguments made by the Captioners throughout this proceeding and advances new arguments contradicted by the old ones, and should be denied accordingly.<sup>6</sup> The *PFR* doubles down on the flawed “grade inflation” metric by urging the Commission to allow captioning vendors to use any metric they choose—a harmful request that the Commission should also deny.

**I. The Commission should dismiss the *PFR* and *RFW* as procedurally defective.**

At the outset, the Captioners fail to specify any legal basis, whether statutory or in the Commission’s rules, upon which they believe the Commission should grant the *PFR* and the *RFW* and upon which Consumer Groups or other interested parties could file a response within the guidelines of ordinary Commission procedures. Therefore, we urge the Commission to dismiss both the *PFR* and *RFW* as procedurally defective.

Pursuant to the guidance of Commission staff, we file this Opposition to address the lack of substantive merit in the *PFR* and *RFW* and the significant harm to the public interest that would result if they were granted, which demand that the Commission deny the *PFR* and *RFW* under whatever standard it might choose to evaluate them. However, given the procedural defects of the *PFR* and *RFW*, we reserve the right to file further comments and objections consistent with the Commission’s rules should the Commission choose to evaluate the *PFR* and *RFW* under some specific standard.<sup>7</sup>

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<sup>6</sup> Should the Commission nevertheless choose to grant a waiver, it should do so on a temporary basis of no more than one month, and only to mitigate any confusion in the captioning industry caused by the filing of the *RFW*.

<sup>7</sup> For example, should the Commission choose to evaluate the *PFR* pursuant to Rule 1.405(d), we reserve the right to timely file further statements in opposition pursuant to Rule 1.405(a) once the Commission issues a Public Notice under Rule 1.403. *See* 47 C.F.R. §§ 1.403, 1.405(a), (d). In another example, should the Commission choose to evaluate the *RFW* as a petition for an exemption based on economic burden under Rule 79.1(f) based on the *RFW*’s contention of an “undue burden,” *see RFW* at 4-5, we reserve the right to timely file an opposition pursuant to Rule 79.1(f)(6). *See* 47 C.F.R. § 79.1(f)(1),

## **II. The Commission’s best-practice metric is appropriate for live programming for the same reasons the Captioners concede it is appropriate for pre-recorded programming.**

At the outset of the *RFW*, the Captioners readily concede that the Commission’s metric is “*without a doubt*, sufficient for prerecorded captions.”<sup>8</sup> The Captioners further agree that “pre-recorded programming should be measured at 100 percent accuracy with only *de minimis* errors allowed” using the Commission’s metric.<sup>9</sup> This basic concession belies the basic and intuitive reason that the Commission’s metric is appropriate for measuring accuracy of real-time captions and that the “grade inflation” metric is not: *the Commission’s metric actually measures accuracy, and the “grade inflation” metric does not.*

Indeed, the only way to determine whether a pre-recorded program is captioned 100% accurately is to compare, as the Commission’s metric does, the numbers of words captioned correctly versus the number of words in the program.<sup>10</sup> If words are omitted or inaccurately captioned, the accuracy rate drops accordingly—a logical and sensible result.

If the accuracy of captions for prerecorded programming were instead measured using the Captioners’ “grade inflation” metric, a captioner could omit or substitute words under a variety of circumstances *without affecting the accuracy rating*.<sup>11</sup> Using the “grade

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(6) (in such an opposition, we would note, among other things, that the Captioners are neither “video programming providers,” “video programming producers,” nor “video programming owners” and are therefore ineligible to petition the Commission for an exemption under Rule 79.1(f)(1), as well as the Captioners’ failure to address any of the factors listed in Rule 79.1(f)(2)). Alternatively, should the Commission evaluate the *RFW* as a petition for a general waiver under Rule 1.3, we reserve our right to file further oppositions and comments. *See* 47 C.F.R. § 1.3.

<sup>8</sup> *RFW* at 3 (emphasis added).

<sup>9</sup> *See id.* at 3-4.

<sup>10</sup> *See id.* at 3.

<sup>11</sup> *See Ex Parte of Caption Providers*, at slide 10 (Nov. 14, 2014) (“*Captioners Nov. 14 Ex Parte*”) (listing a variety of permissible substitutions and omissions that would not be counted as errors under the captioners “grade inflation” metric).

inflation” metric, a pre-recorded program with captions deviating substantially from the soundtrack could be deemed “100% accurate.” Thus, as the Captioners effectively concede, the “grade inflation” is guaranteed to produce objectively incorrect and unscientific results when measuring the accuracy of offline captions.<sup>12</sup>

It should come as no surprise that using the “grade inflation” metric to assess real-time captions would yield the same unacceptable results as applying the metric to offline captions. The Captioners identify no attribute of real-time captions, nor does one exist, that would allow the “grade inflation” metric to succeed in correctly measuring their accuracy when it will necessarily fail to do so for offline captions.

None of the *RFW*’s remaining arguments meaningfully dispute that the “grade inflation” metric fails to serve its basic purpose: to measure accuracy—a purpose well-served by the Commission’s best-practice metric. Because the Captioners do not identify any other metric that would serve the purpose, the Commission should deny the *RFW*.

### **III. The Captioners’ “internal controls” argument is contradicted by the Captioners’ earlier statements in this proceeding.**

Rather than acknowledge the intuition that an accuracy metric should actually *measure accuracy*, the Captioners argue that the purpose of including an accuracy metric in the Commission’s best practices was *not* to facilitate objective accuracy measurements.<sup>13</sup> Instead, the Captioners argue, the purpose was to allow captioning vendors to create “internal controls” to facilitate “measur[ing] the performance of captioners against one another.”<sup>14</sup> The Captioners suggest that accuracy metrics were intended only for use by captioning vendors, insinuating that their veracity is unimportant because no one else

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<sup>12</sup> *See RFW* at 3-4.

<sup>13</sup> *Id* at 4.

<sup>14</sup> *Id.*

needs to look at them.<sup>15</sup> The Captioners further contend that accuracy “statistics [are not] typically sought after by content creators.”<sup>16</sup>

The notion that accuracy metrics are important only as “internal controls” for captioning vendors is plainly contradicted by the obvious needs of many other entities to access reliable captioning metrics for a variety of purposes.<sup>17</sup> Indeed, as our previous filings explain in detail, accuracy metrics are important not only to captioning vendors, but to the Commission, consumers, programmers, researchers, technologists, and entrepreneurs.<sup>18</sup> For example, a reliable understanding of the state of caption quality, which the Commission’s metric provides, is critical to incentivize the creation of improved captioning technology to close the significant accuracy gap that presently exists. The need for these improved metrics should not be a surprise given that consumers have demanded them for more than a decade.<sup>19</sup>

More troubling, however, is that the Captioners “internal controls” argument is expressly contradicted by the Captioners’ own statements in this proceeding. Specifically, the Captioners’ November 14, 2014 filing to the Commission unequivocally declares that “Our primary Concern [sic]” is that “programmers are insisting on using the [Commission’s best-practice] metric and assigning unattainable percentages to the metric.”<sup>20</sup> The Captioners go on to argue that the programmers’ demands “presen[t] an undue burden to caption providers.”<sup>21</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *E.g., Consumer Groups Dec. 11 Ex Parte* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *E.g., Petition for Rulemaking of TDI, et al., RM-11065*, at 38 (July 23, 2004).

<sup>20</sup> *Captioners Nov. 14 Ex Parte*, at slide 2.

<sup>21</sup> *Id.*

In other words, the *RFW*'s claim that accuracy metrics are merely “internal controls” yielding statistics not “typically sought after by content creators” is squarely contradicted by the Captioners’ *own objection* to the Commission’s metric—that programmers are demanding impossibly accurate captions using the Commission’s accuracy metric and thereby imposing undue additional expense on captioning vendors. The Captioners cannot credibly claim that an accuracy metric need not be rigorous because it is only for internal use when they have previously conceded that that *video programmers are demanding just such a metric*. The Commission should dismiss this claim and the *RFW* accordingly.

#### **IV. The Captioners’ claim of “undue burden” is conclusory and unsupported.**

The *RFW* nevertheless reiterates the Captioners’ earlier claim that the Commission’s best-practice metric “represents an undue burden on captioning providers.”<sup>22</sup> Without providing any supporting data, the *RFW* claims that the Commission’s metric will “likely be detrimental to the business of broadcast captioning” and that “[f]unding does not exist for this type of measurement . . . .”<sup>23</sup>

In the abstract, we agree with Captioners that the “grade inflation” metric is likely less expensive to apply to a particular program than the Commission’s best-practice metric—primarily because the “grade inflation” metric does not attempt to actually measure accuracy. But neither the Commission, we, nor other commenters can meaningfully evaluate the Captioners’ claims of undue burden because the Captioners have provided no data to place the expense of the two metrics in meaningful context.

For example, how much does it cost leading vendors to apply each metric to a 30-minute program? How much are those costs relative to the price charged by those vendors for captioning as a whole? Why can’t captioners pass the costs of the

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<sup>22</sup> *RFW* at 4-5.

<sup>23</sup> *Id.* at 5.

Commission’s metric through to programmers who demand reliable statistics? Perhaps most importantly: can the costs be avoided altogether, as we have suggested, by performing the metrics on a representative sample of programming rather than on all programs?<sup>24</sup>

The *RFW* makes no effort to begin answering these basic questions, much less to provide evidence that the imposition of captioning metric imposes a burden remotely approaching the high thresholds demanded by Congress and the Commission’s rules for programmers to seek exemptions.<sup>25</sup> The Commission should reject the *RFW* accordingly.

**V. Rigorously training captioners and holding them to high standards does not change the fact that live captioning is often highly inaccurate.**

The *RFW* finally contends that the metric proposed by the Captioners does not amount to “grade inflation.”<sup>26</sup> The Captioners advance two arguments in the metric’s defense:

1. That individual captioners employed by the Captioners are highly trained and do the best job they can creating live captions;<sup>27</sup> and
2. That the metric allows captioning vendors to distinguish the performance of individual captioners.<sup>28</sup>

In the abstract, we do not disagree with either argument. Indeed, we agree that the real-time captions created by the Captioners are among the best that technology currently allows for, and that that they train their individual captioners to perform to a high level. Moreover, we have no reason to doubt that the “grade inflation” metric may reveal differences between individual captioners—possibly to an extent that caption

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<sup>24</sup> *Consumer Groups Dec. 11 Ex Parte* at 2.

<sup>25</sup> *See, e.g.*, 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2).

<sup>26</sup> *RFW* at 5.

<sup>27</sup> *Id.* at 5-7.

<sup>28</sup> *Id.* at 7.

vendors can measure the performance of individual captioners and provide additional training where needed.

However, these arguments miss the essential point of this dispute. To be clear: we don't remotely suggest that the "grade inflation" metric provides undeserved praise to highly skilled and trained captioners, or that it fails to provide caption vendors with information that helps them distinguish the performance of individual captioners.

Rather, our objection is that the Captioners' metric inflates the grades of *real-time captioning as a whole*—particularly relative to offline captioning. Assessing real-time captioning as "99% accurate" suggests that it is *nearly as accurate* as "100% accurate" offline captioning—a suggestion that has led some programmers to conclude that real-time captioning is acceptable simply because it costs less than offline captioning. But when real-time captioning is in fact only 70-80% accurate or even less, the experience of viewers who are deaf or hard of hearing is *drastically worse*, and their access to the programming *substantially less equal*, than when programming is captioned offline.

It may be the case that real-time captioning is less expensive and faster to create, using current technology, than offline captioning. It may also be the case that it is not possible, using current techniques, for real-time captioning to be more accurate than what the Captioners provide. But those facts, to whatever extent they are true, do not change the reality that real-time captioning is often *substantially less accurate* than offline captioning.

Thus, to suggest that that real-time captioning is more accurate than it is amounts to little more than "grade inflation." That Captioners may have incentives to assess real-time captioning using a grade-inflation metric does not make that metric a suitable substitute for the Commission's best-practice metric—particularly when the metric is designed to measure captions' suitability to facilitate language comprehension and understanding. The Commission should reject the *RFW* accordingly.

## **VI. The Commission should deny the *PFR* because it requests nothing more than an illusory rule.**

Finally, the *PFR* requests that the Commission replace the best-practice metric with a new rule.<sup>29</sup> The new rule would “allow for captioning providers to measure accuracy using a formula of their choosing.”<sup>30</sup>

The *PFR* doubles down on the Captioners’ initial suggestion in this proceeding to adopt the flawed “grade inflation” metric by suggesting that the Commission should adopt no metric at all. Indeed, the *PFR* suggests that instead of measuring accuracy reliably, objectively, and scientifically using the Commission’s best-practice metric, caption vendors should be able to use any metric they like. The *PFR* offers no limits or guidance on the selection of an acceptable metric and would presumably permit the “grade inflation” metric or worse. Indeed, the *PFR* opens the possibility that caption vendors could simply declare all of their captions “99% accurate”—or even “100% accurate”—without performing any measurement at all. Moreover, the *PFR* would largely preclude programmers, the Commission, and the public from objectively comparing caption accuracy across vendors because no consistent metric would exist.

The *PFR*, if granted, would open the door to eviscerating the Commission’s well-reasoned best-practice metric for no tenable reason and with no workable substitute. Worse, the three-sentence *PFR* offers no argument in support of this absurd result other than that it “would remove all existing concerns that the Captioning Providers have” with the best-practices metric.<sup>31</sup> That rationale offers no substantive support for the *PFR* and

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<sup>29</sup> *PFR* at 7.

<sup>30</sup> *Id.*

<sup>31</sup> *See id.*

fails to address the substantial harm to the public interest that would result if the Commission were to grant it. We urge the Commission to deny the *PFR* accordingly.<sup>32</sup>

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Because the *PFR* and *RFW* fail to specify bases upon which they could be granted, we are uncertain whether formal service of this Opposition is required—an uncertainty compounded by the Captioners’ omission of mailing addresses or contact information for four out of the five filers listed on the document.<sup>33</sup> In the interest of expediency, we are providing a copy of this Opposition via e-mail to Adam Finkel of NCRA, with whom we routinely communicate, at [afinkel@ncra.org](mailto:afinkel@ncra.org). Should the Commission determine that further service is required, or should Mr. Finkel or another representative of the Captioners request it, we would be happy to oblige.

Respectfully submitted,

/s/

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<sup>32</sup> Should the Commission nevertheless choose to solicit comment on the *PFR*, we again reserve the right to file further comments following public notice of the solicitation.

<sup>33</sup> The landing page for the *PFR* and *RFW* contains one mailing address, but does not specify to whom it belongs. *See* <http://apps.fcc.gov/ecfs/comment/view?id=60001019513>.

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