



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Angela J. Campbell
Michael T. Kirkpatrick
Benton Senior Counselor
Andrew Jay Schwartzman
Senior Staff Attorney
Eric Null
Staff Attorneys
Meghan M. Boone
Sarah Fox*
Patrick Llewellyn*
Daniel H. Lutz**
Drew T. Simshaw*

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
Fax: 202-662-9634

January 14, 2016

via electronic filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte* Meeting
Closed Captioning Quality
CG Docket No. 05-231

Dear Ms. Dortch:

On Tuesday, January 12, 2016, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Drew Simshaw of the Institute for Public Representation, Georgetown Law (Counsel to TDI), Blake Reid (Counsel to TDI), Zainab Alkebsi of the National Association of the Deaf (NAD), and Lise Hamlin of the Hearing Loss Association of America (HLAA) (collectively, "Consumer Groups") held meetings with Robin Colwell in the Office of Commissioner O'Rielly, Edward "Smitty" Smith in the Office of Chairman Wheeler, Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau, Jennifer Thompson in the Office of Commissioner Rosenworcel, and Daudeline Meme in the Office of Commissioner Clyburn regarding the above-referenced docket.

In these meetings, Consumer Groups expressed their appreciation for the Commission's efforts to ensure that *some* entity bears responsibility for compliance with the closed captioning

* DC bar membership pending. Practice supervised by members of the DC bar.

** Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

provision and quality rules, and their hope that this Order will facilitate swift and effective enforcement where necessary. Consumer Groups reiterated, however, several concerns they have expressed throughout this proceeding regarding the proposed shift from the long-standing video programming distributor (“VPD”)-centric responsibility model to one that apportions the responsibility for the provision, delivery, rendering, and quality of closed captions between VPDs and video programmers.¹ Consumer Groups believe that this responsibility shift will be most effective if VPDs’ remaining pass-through and customer service obligations meet high standards, including routine technical equipment checks and robust outage reporting. Consumer Groups elaborated upon several key points.

The Consumer Complaint Process

Consumer Groups reiterated that the swift resolution of consumer complaints is critical to achieving higher quality captioning.² Consumer Groups noted that they routinely receive feedback from their constituents that it is difficult to contact representatives of VPDs who are in a position to resolve complaints. Moreover, survey responses included in the reply to the ENT Progress Report filed in this docket revealed a deep skepticism about the efficacy of filing complaints in the ENT context.³ While Consumer Groups remain strong advocates of raising concerns through the complaint process, they urge the Commission to acknowledge that consumer complaints may understate the scope of captioning quality problems experienced by consumers.

For these reasons, Consumer Groups reiterated the need for requiring VPDs to provide better customer service training and compliance processes, to provide phone and e-mail contact information dedicated to handling captioning complaints on consumer-facing web portals and on paper bills, and to provide appropriate staffing during evening and weekends—when many viewers watch programming.

Consumer Groups again acknowledged their support for the Commission’s goal of ensuring strong privacy protections for consumers who are deaf or hard of hearing, while also supporting the simplification of the captioning complaint process. In the event that a VPD receives a customer captioning complaint that the VPD determines needs to be forwarded to a video programmer, Consumer Groups believe that, in many instances, such complaints can be forwarded without any personally identifiable information included. In instances where such information cannot be removed and the VPD must acquire the customer’s consent in order to forward the complaint, VPDs and their customers should have the flexibility to communicate

¹ See, e.g., *Comments of TDI, et al.*, at 1-2 (Jan. 20, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001009708>.

² See, e.g., *Comments of TDI, et al.*, at 8-10, 11-13 (July 9, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=6017879330>.

³ See *TDI et al. Reply to National Association of Broadcasters ENT Progress Report*, at 14 (November 13, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001309321>, *Survey Report of TDI, NAD, HLAA, and TAP*, at 31-33 (October 28, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001309321>.

meaningful consent in a manner consistent with how the complaint was originally filed. For example, if the original complaint was sent via email message, and the VPD seeks consent to forward via a reply email message, then a simple “yes” reply email from the customer should suffice to communicate consent. Consumer Groups again stress that it is important that the Commission ensure that VPDs—with whom consumers have a direct relationship—remain the primary point of contact for captioning complaints, from receipt to resolution.

Programmer Certification

Once some responsibilities for compliance with captioning rules are shifted to programmers, Consumer Groups also expressed support for requiring these programmers to certify that they are meeting those responsibilities, and for requiring that these certifications be made available on the FCC’s website. These certification practices are important because they notify programmers of their compliance responsibilities, and because they alert VPDs and the Commission that problems may be afoot if a programmer fails to provide a certificate.

However, Consumer Groups remain concerned that, after the responsibility shift, VPDs might willfully ignore problems with programmers if those VPDs no longer have an obligation to check the certifications. Because consumers have a direct relationship with VPDs and will continue to rely on them to solve many captioning problems regardless of where the ultimate responsibility falls, the Commission should ensure that VPDs remain fully engaged with the provision and quality of the captions they deliver. Therefore, the Commission should require VPDs to alert programmers of their need to certify, verify that the programmers have indeed certified, and identify to the Commission and the public any programmer who fails to provide a certification. These requirements would only pose a minimal burden on VPDs in light of the overall lower burden that will result from any responsibility shifting implemented through this Order.

Programmer Registry

Finally, Consumer Groups reiterated that a registry of programmer contact information will serve the public interest because it will put those programmers on notice of their captioning obligations, help VPDs resolve captioning complaints from their customers, and assist Commission staff in initiating swift enforcement actions in the event of violations. However, and contrary to some industry comments, the provision of contact information for video programmers should not suggest or be used as a basis for requiring consumers to complain to programmers rather than to VPDs, which should remain the main point of contact with the consumers with whom they contract.

We appreciate the opportunity to discuss these important topics and look forward to working with the Commission and industry stakeholders to continue to improve the quality of closed captioning for deaf and hard of hearing consumers.

Please do not hesitate to contact me if you have any questions regarding this filing.

Ms. Dortch
January 14, 2016
Page 4 of 4

Respectfully submitted,

/s/

Drew Simshaw
Institute for Public Representation
Counsel to TDI

CC (by email): Robin Colwell
Edward "Smitty" Smith
Karen Peltz Strauss
Jennifer Thompson
Daudeline Meme