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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 Thursday, January 21, 2016, Drew Simshaw of the Institute for Public Representation (IPR), Georgetown Law (Counsel to TDI), Carolina Alonso, Georgetown Law IPR clinical student, Zainab Alkebsi of the National Association of the Deaf (NAD), and Blake Reid (Counsel to TDI) (collectively, "Consumer Groups"), spoke with Matthew Berry, Chief of Staff to Commissioner Pai, and Max Staloff, law clerk in Commissioner Pai's office, regarding the above-referenced docket.

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

* 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.

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. 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. For these reasons, Consumer Groups reiterated the need for requiring VPDs to provide better customer service training, which would ensure swifter resolution of reported captioning problems, as well as reduce the number of complaints that need to make their way to the FCC. In addition, VPDs should be required to provide better 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 also reiterated their support for Commissioner Pai’s “dashboard” proposal, which would allow both the Commission and the public to examine information about the resolution of captioning complaints and identify trends with programming, programmers, or distributors that routinely exhibit captioning problems.³

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

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 (Jul. 9, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=6017879330>.

³ See *Comments of TDI, et al.*, at 9 (Jul. 9, 2014); see *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 05-231, PRM11CG, 29 FCC Rcd. 2221 (Feb. 24, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0313/FCC-14-12A1.pdf.

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.

Respectfully submitted,

/s/

Drew Simshaw
Institute for Public Representation
Counsel to TDI

CC (by email):Matthew Berry