

March 4, 2016

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,

Today, I spoke with Eliot Greenwald of the Disability Rights Office (DRO) regarding the above-referenced matter. I explained the positions of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), and the Hearing Loss Association of America (HLAA) (“Consumer Groups”) and the Technology Access Program (TAP) at Gallaudet University regarding the March 28, 2016 *ex parte* filing of the Association for Community Media (ACM) addressing certification requirements for public access channels and programmers.¹

Consumer Groups acknowledge ACM’s concerns about the burden of requiring video programming owners (VPOs) who distribute their programming exclusively on public access channels that are exempt from the Commission’s closed captioning provision rules to comply with the certification rules announced in the Commission’s recently released Second Report and Order.²

However, not all public access channel programming is exempt from the caption provision rules. The only specific treatment of public access channels in the captioning rules is in Rule 79.1(e)(9), which merely places responsibility for captioning public access, governmental, and educational access (PEG) channel programming with “the entity that contracts for its distribution”—i.e., the VPO—rather than with the channel itself.³ A public access channel’s programming is only exempt if the channel is exempt under some other provision of the Commission’s rules, such as the \$3 million annual channel revenue exemption.⁴

¹ <http://apps.fcc.gov/ecfs/document/view?id=60001560855>.

² See *id.* at 1-2 (citing *Closed Captioning of Video Programming*, Second Report and Order, CG Docket No. 05-231 (Feb. 18, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0322/FCC-16-17A1.pdf).

³ See 47 C.F.R. § 79.1(e)(9).

⁴ See 47 C.F.R. § 79.1(d)(12).

Thus, the Commission should ensure that any exemption from the certification rules applies only to programming aired on public access channels that are actually exempt from the caption provision rules. **The Commission must avoid incorrectly implying that public access channels are exempt from the caption provision rules more generally.**

Moreover, we reiterate our longstanding objection to the continued maintenance of the \$3 million exemption and others that may encompass some public access channels.⁵ Because the Commission is actively considering narrowing or eliminating those exemptions in response to a petition by the Consumer Groups, **the Commission must make clear that any exemption of VPOs who air programming exclusively on a caption-provision-exempt public access channel from the certification rules will not preclude or prejudice in any way the narrowing or elimination of the channel's exemption when the Commission acts on the Consumer Groups' petition.** The Commission should take great care not to cause confusion among programmers who may ultimately be subject to closed captioning requirements, or to implicitly endorse the \$3 million exemption or others that ultimately will be narrowed or eliminated.

We look forward to discussing these issues further with the Commission, ACM, and other stakeholders. Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

Blake E. Reid

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

blake.reid@colorado.edu

303.492.0548

CC:

Eliot Greenwald, DRO

Mike Wassenaar, ACM

⁵ *E.g., Comments of TDI, et al.*, CG Docket No. 05-231, at 14-18 (July 9, 2014)
<http://apps.fcc.gov/ecfs/comment/view?id=6017879330>.