

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Closed Captioning of Internet Protocol- Delivered Video Programming: |) | MB Docket No. 11-154 |
| Implementation of Twenty-First Century Communications and Video Accessibility Act of 2010 |) | |

**COMMENTS OF STARZ ENTERTAINMENT, LLC
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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Starz Entertainment, LLC (“Starz”)¹ submits these comments in response to the Notice of Proposed Rulemaking in the matter of *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, FCC 11-138 (rel. Sep. 29, 2011) (“NPRM”). The NPRM was issued in response to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”). See *Pub. L. No. 111-260, 124 Stat. 2751, § 202(b) (2010), as amended by the Amendment of Twenty-First Century Communications and Video Accessibility Act*

¹ Starz is one of the largest owners of video programming networks licensed to cable, satellite, and telephone company distributors. Starz provides sixteen different programming networks, including the Starz channel and its five multiplex channels, the Encore channel and its seven multiplex channels, MoviePlex, IndiePlex, and RetroPlex; most of which are available in both standard definition and high definition feeds. Starz also licenses the subscription video on demand services Starz On Demand, Encore On Demand, and MoviePlex On Demand. In addition to Starz’s licensing of content through traditional terrestrial and satellite technologies, Starz also licenses, and will distribute, the IP-delivered services Starz Online and Encore Online that are or will be featured for several distributors’ “TV Everywhere” offerings, and the Starz Play offering featured by online-only distributors such as Netflix. Starz’s video programming services generally feature full length, theatrically released motion pictures licensed from various movie studios, as well as original series and entertainment specials.

of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010). As an owner, sublicensor and distributor of a considerable amount of IP-delivered content, Starz steadfastly supports the systemic integration of closed captioning for IP-delivered content. These comments identify and discuss the more efficient allocation of responsibilities and liabilities among participants in the IP-content delivery chain than initially proposed in the NPRM. Specifically, Starz recommends that the Commission: (I) subject the IP-content delivery chain to role-specific closed captioning requirements (i.e., all owners, sublicensors, stages of distributors, and consumer electronic and software video viewing apparatus); (II) adopt a single industry standard for the interchange format; (III) require closed captioning certifications for only IP-delivered content² that does not contain closed captioning; (IV) streamline its complaint procedures to investigate the IP-delivery chain in a logical progression – beginning with the VPDs/VPPs; and (V) exempt video programming services such as Starz from any requirement to caption programming streamed through programmers' websites.

I. The Commission Should Subject the Entire IP-Content Delivery Chain to Role-Specific Closed Captioning Requirements.

To accomplish systemic closed captioning compliance, the Commission should narrowly tailor requirements for each participant in the IP-content delivery chain that are logically related to their respective roles within the chain – creating closed captioning (by video programming owners, or “VPOs”), passing through closed captioning (middlemen), and displaying closed captioning (by viewing apparatus and

² These comments assume that “IP-content” and “IP-delivered content” are first aired on television as required by the proposed rules.

video programming distributors/video programming providers, or “VPDs/VPPs”). These comments address the responsibilities for creating and passing through closed captioning and do not address the proper balance of regulation for the display of closed captioning as may be implemented by and between VPDs/VPPs and apparatus manufacturers/developers.³

The VPO should be solely responsible for creating, or arranging for the creation of,⁴ closed captioning for any particular work. Under such an approach, Starz would be responsible for captioning its original series and entertainment specials. Closed captioning is a creative process which must protect the creative integrity and ownership of the underlying copyrighted work. The copyright owner, or VPO, is legally responsible for all creative aspects of a copyrighted work, including without limitation, compliance with various laws such as clearance of all talent and intellectual property rights and compliance with all slander, defamation, obscenity and adult content laws. Closed captioning, an inherently creative presentation of a video/audio work, should similarly be the responsibility of the VPO.

Further, all other participants in the IP-content delivery chain (such as third party sublicensors and middleman VPDs/VPPs) should be solely responsible for

³ In an IP world, viewing apparatus will likely be a collection of hardware, software and hardware/software devices that may or may not be under the control of VPDs/VPPs. At this time, Starz defers to comments of more established VPDs/VPPs and apparatus developers.

⁴ For example, a studio VPO may contract for a sublicensor such as Starz to capture CEA 608-formatted closed captioning from a DigiBeta master and transcode such closed captioning into the IP-delivery interchange format. Although this is an inefficient allocation of resources for multiple IP sublicensors/distributors across various release windows, the studio VPO should be solely responsible for creating, or arranging for, such closed captioning in the required IP-delivery interchange format.

receiving and passing through closed captioning originally created by the VPO. Any Commission requirement for an entity other than the VPO to monitor and edit the copyrighted aspects of closed captioning would undermine the VPO's right to control derivative works under copyright law and unnecessarily shift a creative burden to an entity that may not share the creative interests of the VPO. Instead, each other participant in each IP-delivery chain should focus solely on receiving and passing through closed captioning. As discussed below, this exchange of closed captioning will be best accomplished if the Commission implements a single industry standard interchange format that is reliable and predictable.

II. The Commission Should Adopt a Single Industry Standard for the Interchange Format.

In order to establish predictable and reliable interactions between participants in the IP-content delivery chain for the exchange of closed captioning, the Commission should adopt a single industry standard for the interchange format for receiving and passing through closed captioning. An acceptable minimum expectation for the interchange of data packets containing closed captioning data has been refined over decades for set-top boxes and television sets. Participants know the type of data expected and where to look for that data through the CEA 608/708 format standard.⁵

The data and data structure for closed captioning are relatively simplistic, and Starz does not believe multiple alternatives with respect to IP delivery would

⁵ These comments refer to CEA 608/708 as a single standard because CEA 608 (applicable to analog transmissions) is incorporated into CEA 708 (applicable to digital transmissions).

materially improve the closed captioning exchange process. To the contrary, without a single interchange standard, the implementation of closed captioning will become inefficient, reducing the speed and reliability of the textual data created and exchanged by the various participants in the delivery chain. For example, if the 800-plus titles that Starz currently licenses for IP delivery⁶ must be duplicated to accommodate multiple interchange formats, then the time and cost of closed captioning will increase substantially and unnecessarily.

Instead, the Commission should establish industry uniformity for the data and data packets created by VPOs and passed through the delivery chain. The industry successfully developed and implemented the CEA 608/708 standard and is capable of implementing a similar interchange format for IP-delivered content. Starz recommends the SMPTE-TT standard developed by the Society for Motion Picture and Television Engineers because of its current commonality with the CEA 608/708 standard applicable to traditional television content. By ensuring that each VPD/VPP creates closed captioning under only one interchange format, the exchange of closed captioning throughout the IP-content delivery chain will be uniform and dependable. Uniformity and dependability reduce complexity and cost and enable VPDs/VPPs to dedicate resources on using the closed captioning data to improve and enhance the delivery and presentation of closed captioning.⁷

⁶ Many content providers refresh/replace approximately 10% to 25% of their IP-delivered content on a monthly basis.

⁷ As noted above, Starz defers to more well-established VPDs/VPPs and apparatus manufacturers/developers for proposals to implement the delivery format and alternative display

III. The Commission Should Require Closed Captioning Certifications for Only That IP-Delivered Content That Does Not Contain Closed Captioning.

In order to alleviate any unnecessary administrative burden on entities in the IP-delivery chain, the Commission should recognize the widespread adoption of closed captioning for IP-delivered content and require closed captioning certifications by VPOs and other participants in the delivery chain only for content that does not contain closed captioning. It is likely that the industry will adopt and implement closed captioning for IP-delivered content as it has been adopted for traditional broadcast and cable-delivered content. In other words, the amount of IP-delivered content without closed captioning likely will be *de minimis* in comparison to the amount of IP-delivered content containing closed captioning.⁸

Mandating that large volumes of certifications be created, catalogued and stored in connection with each piece of IP-delivered content is inefficient. The true concern is the absence of closed captioning, and the Commission should focus on IP-delivered content that does not include the required closed captioning. Creating volumes of certifications confirming the presence of closed captioning for an overwhelming majority of content is an unnecessary administrative burden. Instead, the Commission should narrowly tailor its rules to require certifications

approaches.

⁸ Starz assumes that current windowing of "TV Everywhere" business models will continue and that the vast majority of consumable IP-delivered content that is not user-generated will have aired on television prior to, or simultaneously with, the IP-delivery window of such content.

only for IP-delivered content without closed captioning.⁹ This approach streamlines the record keeping burdens while maintaining a clear evidentiary trail to identify IP-delivered content that does not contain closed captioning.

IV. The Commission Should Streamline Its Complaint Procedures to Investigate the IP-Delivery Chain in a Logical Progression – Beginning with the VPDs/VPPs.

To improve investigation efficiencies and its complaint proceedings, the Commission should organize and direct its inquiries in a logical progression, beginning in the layer of the IP-content delivery chain that deals with the most complex variables in presenting closed captioning – the VPDs/VPPs. In Starz's experiences, the VPDs/VPPs deal with the vast majority of closed captioning complexities in delivering closed captioning to multiple devices with different display limitations and presentations. As a result, the vast majority of closed captioning failures are technical in nature, generally resulting in a limitation or failure of the interface between the delivery format and the apparatus. For example, Starz discovered that technical limitations on older set top boxes prevent the display of more than 4 rows of closed captioning. Technical limitations and failures such as this typically are not limited to any one VPO providing the closed captioning, and require the VPD/VPP to communicate system and apparatus limitations to, and coordinate solutions with, all VPOs. Therefore, in order to focus on the delivery level most commonly giving rise to a technical closed captioning failure, the Commission should

⁹ It is unclear what form the Commission expects for certifications. Any certification requirement should anticipate the eventual ability to provide electronic certifications embedded in the IP-delivered content or associated metadata or within the closed captioning itself.

begin such investigations with the VPDs/VPPs.

If the VPD/VPP verifies that there is no technical reason causing the closed captioning failure, thereby confirming the more rare instance of the absence of closed captioning data in the interchange format or the failure of an apparatus to display closed captioning, the FCC can further investigate as necessary. This logical investigation procedure will more quickly identify the vast majority of closed captioning failures and reduce the administrative burden on the entire IP-content delivery chain.

V. The Commission Should Clarify that Video Programming Separately Streamed Through Programmers' Websites Need Not Be Captioned.

The CVAA requires the Commission to “describe the responsibilities of video programming providers or distributors and video programming owners” regarding captioning. *See* 47 U.S.C. §613(c)(2)(D)(iv). The CVAA clearly requires the captioning of linear and video-on-demand programming streamed to authenticated subscribers. Starz respectfully requests, however, that the Commission clarify that VPOs need not caption other programming streamed through VPOs' websites.

The CVAA expressly directs the Commission to revise its regulations to mandate “the provision of closed captioning on video programming *delivered* using Internet protocol that was published or exhibited on television with captions....” *See* 47 U.S.C. §613(c)(2)(A)(emphasis added). The CVAA's legislative history confirms that the statutory captioning requirement applies to “programming that is aired on television with captions and also *delivered* using Internet protocol.” *See* S. Rep. No.

111-386, at 14 (2010) (emphasis added). Consistent with the CVAA's directive, in the NPRM, the Commission "proposes to require VPOs to send program files to VPDs/VPPs with all required captions, and...to enable 'the rendering or pass through' of all required captions to the end user." *See* NPRM at ¶16.

Thus, the statutory priority which the Commission must incorporate into the revised regulations is the inclusion of closed captioning in IP-delivered programming forwarded by VPOs to VPPs/VPDs, and then by VPPs/VPDs through to end users. Neither the CVAA nor its legislative history refers to any closed captioning requirement applicable to additional video programming streamed on a video programming service's website. The Commission's "goal" in this proceeding "is to require the provision of closed captions with IP-delivered video programming...while ensuring that [its] regulations do not create undue economic burdens for distributors, providers and owners of online video programming." *See* NPRM at ¶1. Starz respectfully urges the Commission to refrain from imposing the additional economic burden of closed captioning video programming streamed by video programming services on their websites.¹⁰

¹⁰ With regard to a specific form of video programming typically featured on video programming services' websites—clips—Starz supports the Commission's proposal to exclude clips from compliance with the revised closed captioning regulations promulgated by the Commission. *See* NPRM at ¶21. Starz believes that the proposed definition of clips as "small sections of a larger video programming presentation" sufficiently identifies such programming and that a more restrictive definition is unnecessary.

Conclusion

For these reasons, Starz respectfully urges the Commission to: (I) subject the entire IP-content delivery chain to the closed captioning requirements (i.e., all owners, sublicensors, stages of distributors, and consumer electronic and software video viewing apparatus); (II) adopt a single industry standard for the interchange format; (III) require closed captioning certification for only that IP-delivered content that does not contain closed captioning; (IV) streamline its complaint procedures to investigate the IP-delivery chain in a logical progression – beginning with the VPDs/VPPs; and (V) clarify that video programming streamed through programmers' websites need not be captioned. This will restore reliable and economically efficient closed captioning implementation and enforcement.

October 18, 2011

Respectfully submitted,

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