

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Closed Captioning of Internet Protocol-Delivered Video Programming:
Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

MB Docket No. 11-154

COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

Verizon actively supported the adoption of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), and we are pleased to work with the Commission to implement the many facets of the new law, including the required closed captioning on certain video programming delivered using Internet protocol (IP). Video Programming Distributors (VPDs) and Video Programming Providers (VPPs) have an important, but inherently limited, role in providing closed captions. VPDs and VPPs can receive programming and associated closed captioning from Video Programming Owners (VPOs) and pass it through to their customers, but the responsibility for ensuring that programming includes required closed captioning lies with the VPOs, which originate the content. The Commission’s implementing rules should take this into account, and should also allow the industry flexibility to meet the requirements by providing reasonable deadlines and avoiding specific technical standards.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

A. Video Programming Distributors and Video Programming Providers Pass Through the Content they Receive

For purposes of closed captioning of video programming delivered using IP, the Commission proposes to define VPDs and VPPs identically, as “any entity that makes available directly to the end user video programming through a distribution method that uses IP.”² While Verizon agrees with the Commission that in this context, there is no practical benefit to differentiating between VPDs and VPPs, whether an entity is acting as a VPD/VPP or a VPO at any particular time depends upon the circumstances. An entity may originate content in some situations, while at other times it may simply distribute or provide content that another entity originated. The Commission’s rules should reflect this and make clear that whether an entity is considered a VPO or a VPD/VPP will vary under different circumstances. An entity can serve any or all of these functions, and the proposed regulations and attendant responsibilities and obligations should apply to an entity only when it is actually serving as a VPO or as a VPD/VPP.

Unless an entity is acting as a VPO and is originating content, generally all it can do is pass through the closed captioning it receives. The CVAA takes this into account, specifying that “the video programming provider or distributor shall be deemed in compliance if such entity enables the rendering or pass through of closed captions....”³ If a VPO originates programming with closed captioning and supplies that content to a VPD/VPP, the VPD/VPP will pass through that content, which is all the VPD/VPP can and should be required to do.

² *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, MB Docket No. 11-154, FCC 11-158, ¶ 15 (Sept. 19, 2011) (“NPRM”).

³ 47 USC 613(c)(2)(D)(vi).

The Commission proposes “to require VPOs to send program files to VPDs/VPPs with all required captions, and, as contemplated by Section 202(b), to require VPDs/VPPs to enable ‘the rendering or pass through’ of all required captions to the end user. When a VPD/VPP receives a program file with required captions, it would be required to include those captions at the time it makes the program file available to end users.”⁴ This proposal is sensible and consistent with the CVAA, and the Commission should adopt it. The Commission should not, however, go beyond the statutory mandate and create additional requirements for VPDs/VPPs, such as requiring a VPD/VPP to obtain captions before providing programming to end users if a VPO failed to provide captions. Not only would a requirement like that go far beyond Congress’s intent, but it would put the VPDs/VPPs in the untenable position of having to block programming transmitted over IP. VPDs and VPPs cannot be responsible for closed captioning in content that they do not create. If captioning is not available on a program received by a VPD/VPP, the VPD/VPP should not have an obligation to create it in order to provide it, nor should the VPD/VPP have any kind of obligation to block traffic without captions. Instead, the Commission should raise concerns directly with the VPO if programming that should be captioned is not.

The NPRM asks a series of questions concerning the statutory directive that VPDs/VPPs “make a good faith effort to identify video programming subject to the Act.”⁵ The responsibility for including required closed captioning with the programming rests with the VPOs. The only way for the VPDs/VPPs to know, and to identify, whether programming includes closed captioning is for the VPOs to tell the VPDs/VPPs. The NPRM proposes a process by which

⁴ NPRM, ¶ 16 (internal citation omitted).

⁵ 47 USC 613(c)(2)(D)(vi).

VPOs must certify to VPDs/VPPs that programming that it delivers without closed captioning does not require captioning under the statute and the Commission’s rules. So long as the VPDs/VPPs implement a system to process those certifications and review them upon receiving notice that certain programming is not captioned, the VPDs/VPPs will have done all they can do. The Commission should not create any further “good faith” obligations for the VPDs/VPPs.

The Commission also proposes that the captioning of IP-delivered video programming be “of at least the same quality as the television captions for that programming,”⁶ which is consistent with the Video Programming Accessibility Advisory Committee’s Report (“Advisory Committee Report”). The Commission proposes that this includes requiring IP-delivered captions to include the same user tools as with television captioning, such as the ability to change caption font and size. Here, too, the VPDs/VPPs’ role is limited to passing through content. Whether an end user can change the appearance of closed captions is dependent first on the captioning methodology used by the VPO, however, and whether that methodology provides flexibility in the captioning information. It also depends upon the receiving device’s capabilities, and the software associated with the device. The Commission should take care to focus its regulations on the entities that actually have control over the quality of the captioning.

B. The Commission Should Adopt the Same Exemption Process used for Television Closed Captioning

The CVAA includes a process for obtaining exemptions from closed captioning requirements where compliance would be economically burdensome. The Commission proposes an exemption process that follows the rules used for television closed captioning.⁷ Verizon

⁶ NPRM ¶ 18.

⁷ See NPRM ¶ 30.

agrees that no purpose is served by having two different exemption processes – one for television captioning and one for IP – and that the Commission should base its IP captioning exemption process on the existing television captioning process.

That said, the NPRM proposes to change the statutory directive that requires providers of video programming or program owners to show that compliance would be economically burdensome in order to obtain an exemption. The NPRM proposes to substitute “undue burden” for “economically burdensome,” even though “economically burdensome” is the Congressionally-mandated standard. The Commission concludes that “it appears that Congress intended that ‘economic burden’ in this context would have the same meaning as ‘undue burden’ in the television closed captioning context,”⁸ but nothing in the legislative history suggests that intention, and Congress deliberately decided to use the different term “economically burdensome” in this context. The Commission should not conflate the two standards and instead should recognize, as suggested by the plain language of the statute, that “economically burdensome” is a somewhat lower standard than “undue burden.” While the same factors may inform both standards, Congress’s decision to employ different standards was intentional. As a matter of basic statutory construction, Congress’s use of two distinct terms gives rise to the presumption that it intended to establish a different standard – “economically burdensome” – for providers of video programming or program owners to obtain an exemption.⁹ Moreover, on its face, the standard adopted by Congress in this particular context omitted the requirement that any

⁸ *Id.*

⁹ See *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452-53 (2002) (“[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion”) (citation and internal quotation marks omitted).

burden actually rise to the level of being “undue,” suggesting that the standard here requires a less substantial showing to justify an exemption.

C. The Commission Should Adopt Reasonable Implementation Deadlines

The Advisory Committee Report proposed a schedule of deadlines for compliance with the new requirements, which vary depending on whether the programming is prerecorded and not edited for Internet distribution, live or near-live, or prerecorded and edited for Internet distribution. The Commission found the Advisory Committee Report’s suggested schedule is reasonable and proposes to adopt it.¹⁰ Nevertheless, although the CVAA specifies when the Commission must promulgate rules, it does not specify when the rules should become effective. Nor did the Advisory Committee Report address the timeframe on which devices must become compliant.

The NRPM notes that the Commission allowed “slightly less than 24 months for device manufacturers to design and build DTV closed captioning display captioning into their products” and asks whether that timeframe is appropriate for closed captioning of IP programming.¹¹ In order to allow a commercially reasonable amount of time for device manufacturers to build devices that can display closed captions consistent with the new regulations, the Commission should allow device manufacturers at least twenty-four months, if not more, from the effective date of the new rules.

D. The Commission Should Define “Apparatus” to Include Software

Section 203(a) of the CVAA requires that “if technically feasible” each “apparatus designed to receive or play back video programming transmitted simultaneously with sound ...

¹⁰ See NPRM ¶ 28.

¹¹ *Id.* ¶ 60.

be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.”¹² And the Commission asks for comment on what an apparatus is, specifically asking whether it includes software.¹³

At the very least, “apparatus” should include software. If the end user uses the hardware that a VPD/VPP provides and the preloaded software that the VPD/VPP provides to view IP-based programming, then the apparatus would be a combination of the software and the hardware. But in many cases an end user may use other software or apps that do not come preloaded on a device. If an end user chooses to view IP-based programming through software that the end user has elected to download and place on a device, then in that instance *only* the downloaded software should be considered the apparatus. In either case, however, the software is an integral part of the process and must be configured to allow closed captioning, and therefore it must be considered part of the “apparatus.”

E. The Commission Should Not Adopt Specific Technical Standards

The Commission wisely chose not to specify a technical standard for IP-delivered video programming at this time, “to foster the maximum amount of technological innovation.”¹⁴ This is the correct approach, because it recognizes the need for the industry to work together to develop mutually agreeable solutions. While additional standardization is necessary and could facilitate the implementation of IP-based closed captioning, the Commission is correct not to lock in place any particular standard at this time. Instead, it should encourage appropriate standards-setting bodies to continue to work on innovative approaches to increase the availability

¹² 47 USC § 303(u)(1)(A).

¹³ See NPRM ¶ 50.

¹⁴ *Id.* ¶ 40.

of closed captioning across the various services and devices that provide IP-based video. Similarly, the Commission should recognize that any provider that implements the standards developed by such standards-setting bodies is in compliance with the Commission's regulations.

F. Conclusion

The Commission should implement the closed captioning requirements of the CVAA in a manner that recognizes that the VPOs have the responsibility for generating closed captions and that VPDs/VPPs can only pass through what they receive from the VPOs. The Commission should also allow the industry sufficient flexibility to implement the new rules, establish reasonable deadlines, and not adopt specific technical standards.

Respectfully submitted,

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