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

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

REPLY COMMENTS OF AT&T

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REPLY COMMENTS OF AT&T

AT&T Services, Inc. ("AT&T") on behalf of itself and its subsidiaries, hereby submits the following reply comments in response to the record developed on the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("*Notice*") on implementing Sections 202(b) and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"),[1] which require the Commission to revise its regulations to mandate closed captioning on certain video programming delivered using Internet Protocol ("IP").[2]

I. INTRODUCTION & SUMMARY

The initial comments submitted in response to the *Notice* demonstrate widespread support for the main positions stated in AT&T's comments.[3] Specifically, the record reinforces

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[1] *See* Pub. L. No. 111-260, 124 Stat. 2751, §§ 202(b), 203 (2010) *as codified at* 47 U.S.C. §§ 303, 360, 613 ("CVAA"). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

[2] *See* 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, *Notice of Proposed Rulemaking*, 26 FCC Rcd 601 (2011) ("*Notice*").

[3] *See* Comments of AT&T, MB Docket No. 11-154 (filed Oct. 18, 2011) ("AT&T Comments").

AT&T's observation that the CVAA clearly delineates the responsibilities of the various parties to provide closed captions for IP-delivered video programming, including the limited role of video programming distributors and providers ("VPDs/VPPs") of passing through or rendering captioning content. Moreover, any new captioning rules should be flexible enough to reflect the wide variability among IP video services and should not seek merely to recreate online the TV closed caption paradigm.

Additionally, in addressing the various proposals raised by commenters, the Commission should emulate the flexibility and pragmatism of the CVAA itself. As such, the Commission's complaint and enforcement procedures should emphasize the goal of achieving accessibility and should not be unnecessarily burdensome or punitive. Also, while AT&T continues to assert that the Commission should not adopt a mandatory captioning interchange standard at this time, the Commission should consider identifying one or more safe harbor standards that will be deemed sufficient to demonstrate compliance with the new captioning rules. Finally, AT&T agrees with the consensus position developing among the commenters that the Commission should extend its proposed implementation schedule to require compliance with the rules 24 months after publication in the Federal Register.

II. THE RECORD DEMONSTRATES BROAD SUPPORT FOR THE POSITIONS OF AT&T.

The record compiled on the *Notice* echoes the main themes of AT&T's initial comments, namely that in implementing the CVAA's closed captioning provisions, the Commission should strike a balance between ensuring that video programming is highly accessible and not placing unreasonable burdens on video programming owners ("VPOs") and VPDs/VPPs. This balance is evidenced by the CVAA's clear division of responsibility among VPOs, VPDs/VPPs, and apparatus manufacturers, and by its themes of industry flexibility and promoting innovation.

Specifically, the initial comments filed in this docket indicate that the Commission should reject calls to impose greater regulatory obligations on VPDs/VPPs than the limited pass-through or rendering role articulated in the CVAA. Similarly, any new Commission regulations should be developed with an eye towards accommodating the wide variety of different technologies, applications, and services that constitute IP video, which differs significantly from legacy television services.

A. The CVAA Limits the Obligation of VPDs/VPPs to Passing Through Closed Captioning Content.

AT&T explained in its initial comments that Sections 202(b) and 203 of the CVAA establish a clear division of responsibility between the VPO, the VPD/VPP, and the apparatus provider for making IP-delivered video programming accessible to persons with deaf or hard-of-hearing consumers.[4] Specifically, Section 202(b) limits the VPD's/VPP's necessary role to the rendering or passing through of closed captioning information, which the Commission has correctly concluded should be provided by VPOs.[5] As such, the Commission should not impose on VPDs/VPPs any additional obligations, such as requirements to monitor the performance of VPOs, to make detailed consumer disclosures, or to edit closed captions provided by VPOs.[6]

This observation is echoed by numerous commenters, who agree that the Commission correctly limited the scope of the VPD/VPP role when it proposed "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

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[4] *See* AT&T Comments at 5.

[5] CVAA, § 202(b), as codified at 47 U.S.C. § 613(c)(2)(D)(vi) (VPPs and VPDs should "be deemed in compliance if such entity enables the rendering or pass through of closed captions and makes a good faith effort to identify video programming subject to the Act using the mechanism created in (v).").

[6] *Id.*, 7-8.

end user."[7] Those commenters also agreed that "the rendering or pass through" of closed captioning information requires a VPD/VPP, when it receives a program file with captions, to include those captions at the time it makes the program file available to end users.[8] The commenters agree with AT&T that the Commission should dismiss considerations of imposing any further responsibilities on VPDs/VPPs.[9] As the American Cable Association explains, "[a]ll of the additional obligations discussed in the NPRM go well beyond the statutory mandate of enabling 'the rendering or pass through' of all required captions to the end user."[10]

The Commission should reject outlier proposals suggesting that the primary responsibility for captioning Internet-delivered video programming should rest on the VPD/VPP.[11] Such proposals are plainly inconsistent with the language of the CVAA and the well-reasoned division of responsibilities set forth by the Commission in the *Notice*. Indeed, because the CVAA expressly states that a "video programming provider or distributor shall be deemed in compliance if such entity enables the rendering or pass through of closed captions and makes a good faith effort to identify video programming subject to the Act,"[12] imposing such

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[7] *See* Comments of Verizon and Verizon Wireless at 3, MG Docket No. 11-154 (filed Oct. 18, 2011) ("Verizon Comments") (*citing Notice*, 26 FCC Rcd at 610, ¶ 10); *see also* Comments of the American Cable Association at 14, MB Docket No. 11-154 (filed Oct. 18, 2011) ("ACA Comments") (same).

[8] *Id.*

[9] *See* ACA Comments at 14-15, Verizon Comments at 3; Comments of the National Cable & Telecommunications Association at 14-15, MB Docket No. 11-154 (filed Oct. 18, 2011) ("NCTA Comments").

[10] ACA Comments at 14.

[11] *See, e.g.*, Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., et al. at 7-8; MB Docket No. 11-154 (filed Oct. 18, 2011) ("Consumer Groups Comments"); Comments of the Motion Picture Association of America at 3-4, MB Docket No. 11-154 (filed Oct. 18, 2011) ("MPAA Comments").

[12] CVAA § 202(b).

additional responsibilities would be legally impermissible. Further, as Starz Entertainment, LLC explains:

> "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."[13]

Any proposed Commission regulations making VPDs/VPPs primarily responsible for the creation of captioning, or requiring these parties to monitor or correct the captions provided by VPOs would deviate from the requirements of the CVAA and conflict with the rights of VPOs as content creators, and should be rejected.

B. Any New Requirements Should Recognize the Wide Variability Across IP-Video Implementations.

The record also demonstrates broad support for the proposition that the Commission's new regulations should take into account the differences among the many forms of IP-delivered video and between IP-delivered video and legacy TV services. As AT&T stated in its initial comments, "there is no easily identifiable and discrete group of services sharing a common set of core features that can be labeled as IP-delivered video programming."[14] Microsoft Corporation explains that this distinguishes the IP video ecosystem from legacy television, because while "[c]aptioning delivered over IP is displayed via a wide variety of operating systems, browsers, media players, and file formats; no equivalent range of possibilities faces those responsible for

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[13] Comments of Starz Entertainment, LLC at 3, MB Docket No. 11-154 (filed Oct. 18, 2011) ("Starz Comments").

[14] AT&T Comments at 3.

captioning television programming."[15] The National Association of Broadcasters also points out that developing a regulatory regime for closed captions of IP-delivered video programming is complicated as compared to closed captions for legacy television because "[o]nline distribution of video content generally involves many more entities than broadcast- or cable-based distribution, and not all of these entities fall under the FCC's jurisdiction."[16]

In light of these significant differences between the many variations of IP-delivered video and the comparatively more discrete legacy television models, commenters largely agree that the Commission should not impose a requirement that captions for IP-delivered video programming should be "of at least the same quality"[17] as captions shown on television.[18] As Microsoft succinctly explains, adopting such a standard would "proceed on the incorrect and potentially harmful assumption that the world of traditional television and IP video delivery are fundamentally the same."[19] To the extent that individual commenters urge the Commission to require an identical captioning experience across IP-delivered video platforms and legacy television, they ignore these fundamental differences between the technologies, and should be disregarded.[20]

On a related point, several commenters also ask the Commission to clarify that any new closed caption rules adopted pursuant to the CVAA apply only to video programming provided

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15 Comments of Microsoft Corporation at 14, MB Docket No. 11-154 (filed Oct. 18, 2011) ("Microsoft Comments").

16 Comments of the National Association of Broadcasters at 7-8, MB Docket No. 11-154 (filed Oct. 18, 2011) ("NAB Comments").

17 *See Notice*, 26 FCC Rcd at 611, ¶ 18.

18 *See, e.g.*, Microsoft Comments at 14, NAB Comments at 15.

19 Microsoft Comments at 14.

20 *See, e.g.*, Consumer Groups Comments at 9-10.

over the "Internet" and not to traditional managed video services provided by multichannel video programming distributors ("MVPDs") to their MVPD customers within their service footprint, notwithstanding the transmission protocol used.[21] AT&T agrees with these commenters that imposing a second layer of new rules on video services that are already covered by the existing TV closed captioning rules is unnecessary and potentially confusing to VPOs, VPDs/VPPs, apparatus manufacturers, and consumers. The existing TV closed captioning rules have been very effective in making accessible MVPD-delivered managed video services, regardless of the transmission mechanism, and there is no need for changes to this system.

Moreover, as ACA explains, the text of the CVAA itself supports an interpretation that it is not intended to apply to video programming distributed via IP by MVPDs over existing systems, because Section 202(b) states that it applies only to programming "once published or exhibited on television with captions."[22] In other words, the video program has already been exhibited on television with captions and is subject to CVAA closed caption requirements only when redistributed over the Internet. AT&T also agrees with these commenters that a definition limiting the CVAA to video distributed over the Internet would better reflect the intent of Congress, which made specific reference to "Internet-only" programming and "programming distributed over the Internet."[23]

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[21] *See, e.g.*, ACA Comments at 6-13; NCTA Comments at 10-11.

[22] ACA Comments at 10 (*citing* CVAA, § 202(b)).

[23] *See* H.R. Rep. No.111-563, 111th Cong., 2d Sess. at 18 ("House Report"); *Introduction of the 21st Century Communications and Video Accessibility Act*, 154 Cong. Rec. E1292 (June 19, 2008) (statement of Rep. Markey) (explaining that the bill "adds a definition for video programming to include programming distributed over the Internet to make clear that the existing closed captioning obligations . . . contained in Section 713 apply to video programming that is distributed or redistributed over the Internet"); *see also* S. Rep. No. 111-386, 111th Cong., 2d Sess., at 13 ("Senate Report") (referring to programming exhibited on television with captions "and also" distributed using IP); House Report at 30 (same).

However, even if the Commission takes a contrary reading and determines that its new rules should apply to these already-covered services, the Commission should clarify that compliance with the existing TV closed captioning rules suffices as an "alternate means of compliance" as contemplated by the CVAA.[24] Indeed, the fact that the Commission has identified the existing captioning regime as the appropriate quality model for IP-delivered video captioning evidences that compliance with these rules will adequately serve the public interest.

III. THE COMMISSION SHOULD PROVIDE SUFFICIENT FLEXIBILITY IN IMPLEMENTING THE CVAA.

In addressing other proposals made by the various commenters, the Commission should emulate the functionalist and flexible approach taken in the CVAA. In doing so, the Commission should eschew unnecessarily short deadlines and rigid classifications wherever they might obstruct innovation in and effective implementation of closed captioning for IP-delivered video. In this vein, the Commission should reject proposals to shorten complaint response windows, increase forfeiture amounts, and make other changes that would render the process unnecessarily punitive. To promote the dual goals of innovation and reliability in captioning, the Commission should not adopt any mandatory interchange or delivery standards, but safe harbor standards would be appropriate. Finally the Commission should adopt a 24 month implementation plan for any new rules.

A. The Complaint and Enforcement Procedures Should Not be Unnecessarily Punitive.

The emphasis in the closed captioning complaint and enforcement procedures should be on identifying and solving problems with captioning and promoting widespread accessibility for

[24] *See* CVAA § 202(b), as codified at 47 U.S.C. § 613(c)(3) ("An entity may meet the requirements of this section through alternate means than those prescribed by regulations pursuant to subsection (b), as revised pursuant to paragraph (2)(A) of this subsection, if the requirements of this section are met, as determined by the Commission.")

IP-delivered video programming, not on trying to quickly identify and punish as many nominally noncompliant parties as possible. As such, the Commission should reject unnecessary modifications to its proposed complaint and enforcement procedures. Specifically, the Commission should reject calls to eliminate the 60 day window for filing complaints, begin enforcement actions immediately upon receiving a complaint, impose a minimum forfeiture of $10,000 per complaint, require VPDs/VPPs to respond to complaints within 15 days, and set a fifteen day "shot clock" for Commission resolution of complaints.[25] These proposals are inconsistent with established Commission practice, demonstrate a presumption of wrongdoing on behalf of VPDs/VPPs, and indicate a predilection for punishment over remediation that does not serve the public interest.

The Commission should retain the 60 day period for filing complaints and the 30 day window for a response. The Consumer Groups' proposal for an unlimited complaint window for consumers and only 15 days for VPDs/VPPs to respond disserves effective complaint resolution. Because of the highly technical nature of the provision of closed captioning, and the number of parties involved, it may not be immediately apparent which entity, the VPO, VPD/VPP, or apparatus manufacturer, is responsible for a failure to render captions or how to resolve this issue. A 15 day response window would not allow sufficient time to examine the technical nature of complaints, ensure that they are addressed appropriately, and provide an informative response to the consumer. Moreover, a 30 day, rather than a 15 day, response time is consistent with many other Commission complaint procedures, including in the existing TV closed captioning rules.[26] There is no need to create confusion surrounding the process for responding

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[25] Consumer Group Comments at 33-38

[26] *See* 47 C.F.R. § 79.1(g).

to complaints by adopting unnecessarily short response times that deviate from other similar Commission timelines.

Similarly, placing a 15 day "shot clock" on the Commission response to a complaint would discourage serious review of complaints and attempts at informal remediation or reconciliation. Moreover, this could result in an ineffective use of Commission resources. Regardless, a "firm" deadline for Commission action that is so short would be rarely met. Likely, the Commission would be forced to regularly "stop the clock" or give itself extensions.

The proposals to begin enforcement procedures immediately upon receiving a complaint and issue a $10,000 fine for each complaint (as opposed to each instance of noncompliance), would create an impermissible presumption of wrongdoing and are inconsistent with other Commission enforcement and forfeiture rules. Initiating an enforcement proceeding immediately upon receipt of a complaint and considering the VPD/VPP explanation or remediation only in relation to the level of forfeiture, would constitute a presumption of malfeasance in violation both of the Administrative Procedure Act's prohibition on arbitrary and capricious agency action, and of the Constitutional guarantee of due process. Issuing a $10,000 forfeiture for each individual complaint is also unreasonable. In addition to being inconsistent with the Commission's established forfeiture guidelines,[27] there is no logical justification for considering each complaint a separate occurrence. While the Consumer Groups argue that "[o]n the Internet, videos generally are not aired at a given time, but rather delivered on-demand at the request of individual consumer," this is little more than a straw man. Time-shifted viewing of video programming, which has existed at least as long as the VCR, long predates the

[27] *See* 47 C.F.R. § 1.80.

Commission's closed captioning rules. This has never been a justification for draconian application of the Commission's forfeiture authority in the past, and it should not be so now.

B. The Commission Should Adopt a Safe Harbor Interchange Format

While the Commission should not adopt a single mandatory interchange standard for closed captions, it would be appropriate to adopt one or more safe harbors for industry-recognized standards. Various commenters agree with AT&T's explanation that the Commission should not impose mandatory interchange or delivery standards for closed captioning because the IP-video market is still nascent and adopting mandatory standards now could unnecessarily limit innovation.[28] The Commission should instead monitor the progress in the development of captioning technology and "encourage appropriate standards-setting bodies to continue to work on innovative approaches to increase the availability of closed captioning across the various services and devices that provide IP-based video."[29]

However, in lieu of adopting a mandatory interchange format, it would be appropriate for the Commission to specify particular industry standards the use of which would be deemed compliant with the captioning rules. For example, AT&T agrees with the many commenters which indicate that SMPTE-TT, adopted by the Society of Motion Picture and Television Engineers, appears to be an adequate mechanism for facilitating the transmission of closed captioning over IP.[30] While SMPTE-TT is relatively recent, and further development may provide even greater functionality, it would be appropriate for the Commission to specify that

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[28] *See, e.g.*, Comments of DIRECTV, Inc. at 12, MB Docket No. 11-154 (filed Oct. 18, 2011) ("DIRECTV Comments"); Comments of Google Inc. at 4-6, MB Docket No. 11-154 (filed Oct. 18, 2011) ("Google Comments"); Verizon Comments at 7-8.

[29] Verizon Comments at 7-8.

[30] *See, e.g.*, NCTA Comments at 6; Starz Comments at 5.

relying upon the use of this standard as an interchange mechanism will be deemed as compliant with its rules.[31]

C. The Implementation Period Should be Appropriately Extended.

The Commission should extend its proposed implementation schedule to allow the development of necessary solutions. AT&T agrees with the various commenters indicating that, because of the many technical challenges to be addressed, the short implementation periods contemplated by the Commission may not be feasible. There appears to be a consensus developing among the commenters that 24 months is an appropriate implementation period.[32] As Microsoft indicates in its comments, "VPPs and VPDs must undertake the novel and complex task of programming and engineering new software and hardware needed to display captioning," a process that "necessarily requires time for experimentation and trial and error."[33] In addition to providing the necessary time to develop appropriate technologies and practices, the 24 month implementation schedule is consistent with or shorter than the implementation periods adopted by the Commission in various other instances including the CVAA Advanced Communications Services rules, Digital Television Closed Captioning, E911 Location Accuracy Requirements, V-Chip, and Wireless Hearing Aid Compatibility Rules.[34]

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[31] *See, e.g.*, Comments of the Consumer Electronics Association at 6-7, MB Docket No. 11-154 (filed Oct. 18, 2011) ("CEA Comments"); Microsoft Comments at 17; NCTA Comments at 11.

[32] *See, e.g.*, CEA Comments at 22-23; DIRECTV Comments at 12-14; Microsoft Comments at 19; Verizon Comments at 6.

[33] Microsoft Comments at 19.

[34] *See* CEA Comments at 23-24; DIRECTV Comments at 14.

IV. CONCLUSION

The record in this proceeding confirms that the Commission should approach its implementation of the IP-video closed captioning provisions of the CVAA with the same functionalist and pragmatic philosophy of the CVAA itself. As such, in adopting new rules, the Commission should keep to the division of responsibilities contained in the CVAA, it should ensure that its new rules reflect the diversity of technologies involved in delivering video programming over IP, and it should at all points keep in mind the goals of ensuring sufficient flexibility to innovate while also facilitating widespread accessibility of IP-delivered video programming on a reasonable time frame.

Respectfully submitted,

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