

**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

REPLY COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

The initial comments make clear that, consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010's ("Accessibility Act" or CVAA) clear language and intent, video programming distributors ("video distributors" or VPDs) and video programming providers ("video providers" or VPPs) have an important, but inherently limited, role in providing close captions on IP-delivered programming. The ultimate closed captioning responsibility lies with the video programming owners, who originate the content. Video providers' and distributors' responsibility is to render or pass-through closed captioning they receive from the video programming owners ("content owners" or VPOs). As it has proposed to do, the Commission should adopt rules that reflect this division of responsibilities. The Commission also should reject calls for specific technical standards; ensure that software is considered part of the "apparatus" for purposes of Section 203 of the Accessibility Act; ensure

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

that any requirements for mobile devices are narrowly tailored; adopt the same exemption process used for television closed captioning; and adopt reasonable implementation deadlines.

I. Captioning responsibility rests with content owners; video programming providers and distributors are responsible only for passing through closed captions.

The Accessibility Act explicitly recognizes that video distributors and providers are responsible only for “the rendering or pass through of closed captions.”² The statutory language reflects Congress’s intent that responsibility lies with the content owners to provide any required closed captioning.³ The Commission properly adhered to the statutory direction by proposing “to require VPOs to send program files to VPDs/VPPs with all required captions,” and to require video distributors and providers only “to enable ‘the rendering or pass through’ of all required closed captions.”⁴ Although Congress did not specifically explain what “rendering or pass through” is to mean, the Commission appropriately concluded that “Congress meant that VPDs/VPPs must ensure that closed captions are transmitted appropriately.”⁵

Although many commenters supported the Commission’s proposal, several would have the Commission ignore the clear language of the statute and impose more far-reaching requirements on distributors and providers. The Motion Picture Association of America, for example, would have the Commission apply the current television closed captioning rules to IP-

² 47 USC 613 (c)(2)(D)(vi).

³ Senate Report 111-386 at 13 (“Video programming owners must make certain that any closed captioning and video description required under this section is provided in a manner that conforms to the technical standards, protocols and procedures established by the Commission.”)

⁴ *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, 26 FCC Rcd 13734, ¶ 16 (2011) (“NPRM”).

⁵ NPRM, ¶ 16, n.67.

delivered programming, as would Telecommunications for the Deaf and Hard of Hearing *et al.* (“TDI”).⁶ Those rules that currently apply in the television context get it backwards, placing on the distributors the responsibility of ensuring that content includes required captions, instead of on the content originators, even though the distributors lack control over the creation of the closed captions. But not only are those rules poor policy, they also were not promulgated under a statute that explicitly limits the video distributors and providers’ responsibility to passing through the closed captions they receive from content owners.

TDI argues that captioning responsibility should lie with the video distributors and providers because consumers have direct relationships with them and not with content owners and suggests that this will simplify identification of the responsible party when video is not properly captioned.⁷ But this approach again ignores the statute. The Accessibility Act gives the Commission explicit authority over content owners and also to establish an enforcement mechanism. Consumers will still be able to contact their video distributor or provider to inquire or complain about an absence of closed captions, and the video distributors and providers will still have processes they must follow to carry out their responsibilities and to address consumer complaints. But consumers will also have the opportunity under the new statute to seek enforcement against a content owner that fails to properly caption its programming, and the content owner will fall squarely within the Commission’s jurisdiction for these purposes. Consumers therefore do not have to have a direct relationship with content owners in order to seek redress.

⁶ See Motion Picture Association of America Comments at 2; TDI Comments at 7.

⁷ See TDI Comments at 7-9.

The television closed captioning rules are not a model that the Commission should want to duplicate. They assign responsibility to the wrong party. And, here, the Commission has no reason to duplicate those rules, because the entities responsible for generating closed captioning fall within the Commission’s jurisdiction under the new law. The Commission properly proposes to assign content owners the responsibility of ensuring that required closed captions are present on IP-delivered programming, and properly proposes to limit video distributors and providers’ responsibility to passing through those closed captions.

II. The Commission should refrain from mandating specific technical standards.

Many of the commenters addressing technical standards agree with the Commission’s proposal not to adopt specific technical standards at this time. DIRECTV, for example, notes the “lack of industry consensus on technological standards,” and “agrees with the Commission’s conclusion that allowing the market to continue to develop one or more appropriate formats will foster the maximum amount of technology innovation and ultimately lead to the most robust solution.”⁸

Although the VPAAC proposed SMPTE-TT as the standard, the initial comments demonstrate that the industry has not yet agreed upon a specific standard. Nevertheless, some commenters argue that the Commission should adopt SMPTE-TT as a baseline standard.⁹ The Commission should adhere to its proposed approach and not adopt a particular standard at this

⁸ DIRECTV Comments at 1, 12. *See also* AT&T Comments at 4-5, Google Comments at 4, HDMI Licensing Comments at 5.

⁹ *See* Consumer Electronics Association Comments at 6-7; Motion Picture Association of America Comments at 10; Larry Goldberg, National Center for Accessible Media Comments at 3; Starz Comments at 5.

time, “to foster the maximum amount of technological innovation.”¹⁰ If and when a consensus emerges in support of one or more specific standards, the industry standards bodies likely will take steps to recognize as much, and the Commission should then recognize that any provider that implements the standards those bodies develop to be in compliance with the Commission’s regulations. But in the meantime, the Commission should continue to encourage innovation by not choosing a particular standard at this early stage in IP captioning’s development.

III. The Commission should define “apparatus” to include software.

The comments diverge widely on the question of whether “apparatus,” for purposes of Section 203 of the Accessibility Act, includes software. Some commenters, like Microsoft, TechAmerica, and the Consumer Electronics Association, argue that the term “apparatus” does not include software.¹¹ Others, including Verizon, take the opposite position, arguing that the definition of apparatus must include software.¹² Those who argue against including software in the definition ignore the fact that software is an integral part of the process of displaying closed captions, and that if the software in a particular device cannot support closed captions, the user will not be able to view them. As the National Center for Accessible Media explains,

In virtually every device that supports Internet-delivered media today, a variety of interconnected software enables reception and proper display of that video. In very few, if any, situations does hardware alone serve as the enabler of reception, unlike in traditional analog television.

The same is true of technology enabled to display captions on Internet-delivered video today and in the future. Unlike the original line-21 caption-decoder chips, caption

¹⁰ NPRM ¶ 40.

¹¹ See Microsoft Comments at 10-11, TechAmerica Comments at 4, Consumer Electronics Association Comments at 11-12, 18.

¹² See Verizon Comments at 6-7, AT&T Comments at 16-17.

reception and display will be handled by software and thus must be considered as part of the definition of apparatus as implied by the language and intent of the CVAA.¹³

Verizon explained in its comments that some end users use preloaded software that video distributors and providers provide to view IP-based programming, and others use software or applications that the end user downloads or installs post-purchase. AT&T explains that “[t]o the extent software is considered an ‘apparatus’ for the purposes of Section 203, the relevant software is the underlying media player of a device.”¹⁴ To the extent an end user actually uses that built-in, preloaded media player to view programming, AT&T is correct that it is the relevant software. But many end users install their own media players and other software obtained from third parties, usually over the Internet. In those cases, where the preloaded media player is not part of the end user’s viewing experience, the downloaded application is the relevant software. And because it must support closed captions in order for the end user to view them, that software must be included in the definition of “apparatus.”

IV. Any requirements for mobile devices should be carefully tailored to avoid hindering development of a still nascent market.

CTIA argues that, because the marketplace for mobile video is still in its early stages, the Commission should exempt mobile service providers and manufacturers from complying with Sections 202 and 203 at this time, should waive the requirement to incorporate closed captioning on many mobile devices, and should consider the technical and operational challenges associated with closed captioning on mobile devices.

CTIA presents many facts and issues that the Commission should take into consideration as it formulates its rules. CTIA is correct that “American mobile subscribers are just beginning

¹³ National Center for Accessible Media Comments at 2.

¹⁴ AT&T Comments at 16.

to consider their mobile phones as an alternative to traditional video programming distribution mechanisms,”¹⁵ and that video on mobile devices is in its nascent stages. As is often the case with new and developing sectors of the market, regulation can have a chilling effect on innovation and stand in the way of efficient marketplace developments. The Commission should take great care to ensure that any requirements it adopts in this proceeding for mobile devices do not hinder innovation and development.

It is also unclear that closed captioning on mobile devices capable of video playback is technically feasible, which it must be for Section 203’s requirements to apply. At least until the technical feasibility can be determined, CTIA asks that the Commission waive the application of the closed captioning rules to all mobile devices. Verizon agrees with CTIA that “the Commission should determine that it is not yet clear that implementing closed captioning capability on all mobile devices capable of video playback is ‘technically feasible’ on a widespread basis and it is certainly not ‘demonstrably capable of accomplishment.’”¹⁶

V. The Commission should incorporate the existing captioning exemptions.

The NPRM proposes a process that follows the rules used for television closed captioning for obtaining exemptions from closed captioning requirements where compliance would be economically burdensome. The National Cable & Telecommunications Association (NCTA) stresses the importance of “specifically incorporat[ing] the existing exemptions into the online captioning rules.”¹⁷ Similarly, Eternal Word Television Network asks the Commission to duplicate the categorical exemptions in Section 79.1(d)(11) and (12) of the rules governing

¹⁵ CTIA Comments at 3.

¹⁶ CTIA Comments at 16.

¹⁷ NCTA Comments at 17.

television captioning and incorporate them in the new rules regarding captioning for IP-delivered programming.¹⁸ As Verizon explained in its initial comments, it serves no purpose to have two different exemption processes – one for television captioning and one for IP – and Verizon agrees with these commenters that the rules should make clear that the processes are the same.¹⁹

NCTA also explains why the Commission should not change the statutory directive that requires providers of video programming 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. As NCTA explains, “the ‘economically burdensome’ standard has been interpreted to consider factors in addition to those under the ‘undue burden’ standard, and the Commission has traditionally treated the two standards as distinct.”²⁰ Congress clearly chose to use the term “economically burdensome” in this context, and not “undue burden,” and the Commission should adhere to the plain language of the statute.

VI. The Commission should adopt reasonable deadlines.

Several commenters argue that the Commission should adopt more reasonable compliance deadlines. DIRECTV, for example, proposes a single deadline that gives parties twenty-four months to comply would better ensure a smooth transition.²¹ Microsoft, too, argues that longer compliance deadlines are needed because video distributors and providers, and also

¹⁸ See Eternal World Television Network Comments at 2.

¹⁹ See Verizon Comments at 4-5.

²⁰ NCTA Comments at 16.

²¹ See DIRECTV Comments at 13.

manufacturers, must develop novel programming and device capabilities.²² AT&T, the National Association of Broadcasters, NCTA and others all argue for additional compliance time beyond what the NPRM currently proposes.²³ The Commission should take these comments into account and allow a commercially reasonable amount of time – at least twenty-four months -- for affected entities to comply.

CONCLUSION

Verizon is pleased to work with the Commission to implement the Accessibility Act, which Verizon actively supported. As we explained here and in our initial comments, video distributors and providers can receive programming and associated closed captioning from content owners and pass it through to their customers, but the responsibility for ensuring that programming includes required closed captioning lies with the content owners, which originate the content. The Commission's implementing rules should take this into account, and the Commission should modify its proposed rules as necessary in a manner consistent with Verizon's initial and reply comments.

²² See Microsoft Comments at 18-20.

²³ See AT&T Comments at 13-14, National Association of Broadcasters Comments at 18-21, NCTA Comments at 4-10.

Respectfully submitted,

Michael E. Glover
Of Counsel

/s/ Curtis L. Groves
William H. Johnson
Curtis L. Groves
1320 North Courthouse Road
9th Floor
Arlington, VA 22201
(703) 351-3084

*Attorneys for Verizon
and Verizon Wireless*

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