

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

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

REPLY COMMENTS OF DISH NETWORK L.L.C.

I. INTRODUCTION AND SUMMARY

DISH Network L.L.C. (“DISH Network”) files these reply comments in response to the Notice of Proposed Rulemaking (“*Notice*”)¹ issued in this proceeding to implement the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), which requires that the Commission revise its regulations to mandate closed captioning on certain video programming delivered using Internet protocol (“IP”). DISH Network supports the statute’s goal of making IP-delivered video programming more accessible to consumers who are deaf or hard of hearing. Any framework for mandating captions for IP-delivered video, however, must account for the complexity and diversity of the online video ecosystem today, which spans multiple providers, user interferences, and devices. As AT&T observes “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.”²

¹ 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*, FCC 11-138 (rel. Sept. 19, 2011) (“*Notice*”).

² AT&T Comments at 3.

With these concerns in mind, DISH Network urges the Commission to (i) ensure that it allocates appropriate responsibility to the parties best able to develop and offer captioning—the video programming creators; (ii) offer maximum flexibility in implementing Section 203 of the CVAA by, among other things, offering a safe harbor through use of the widely-adopted Society of Motion Picture and Television Engineers Time Text (“SMPTE-TT”) standard; (iii) extend the compliance timeline to at least 24 months for all industry participants; and (iv) exempt from any new IP-delivered video captioning requirements devices that enable consumers to “placeshift” video content from their home set-top boxes, if those devices already present captions to the attached user display.

II. PRIMARY RESPONSIBILITY FOR IP-DELIVERED VIDEO CLOSED CAPTIONING MUST LIE WITH PROGRAMMERS AND CONTENT OWNERS

DISH Network generally agrees with the Commission’s proposal to define the terms video programming distributor (“VPD”) and video programming provider (“VPP”) to have the same meaning: “any entity that makes available directly to the end user video programming through a distribution method that uses IP;” and to define the term video programming owner (“VPO”) as “any person or entity that owns the copyright of the video programming delivered to the end user through a distribution method that uses IP.”³ These definitions facilitate assignment of responsibility for creating captions to the parties best able to do so, *i.e.*, the authors or creators of the content. This arrangement, moreover, is familiar and well-understood, given that the traditional TV closed captioning regime similarly requires programmers to provide

³ Notice ¶ 15.

captions using the EIA-708 standard for digital television. This understanding of the CVAA's fundamental framework is shared by many parties in the record.⁴

To ensure that all participants in the IP video ecosystem understand their respective obligations, DISH Network urges the Commission to clarify that the obligation of VPDs/VPPs is limited to rendering or passing through caption content sent by the VPO. DISH Network supports AT&T's view that CVAA Sections 202(b) and 203 "set up a clear division of responsibility between the VPO, the VPP/VPD, and the apparatus provider," and that the VPP's/VPD's role is limited to "using good faith to identify programming that contains closed captions using the mechanism created by the Commission and rendering or passing through closed captioning information provided to it by VPOs."⁵

DISH Network also agrees that VPDs/VPPs should not have the duty to ensure that VPOs have provided all required captions before offering IP-delivered content to their subscribers.⁶ To facilitate this requirement, DISH Network supports the *Notice*'s proposal that VPOs be required to send the required caption files to the VPP/VPD along with the program files, or else provide a certification that captions are not required.⁷ This allocation of responsibilities is important, because the CVAA mandates closed captioning only for some IP-delivered video. In particular, under Section 202(b), IP video closed captioning support will only be required for IP-delivered video programming that was shown on television with captions after the effective date of the

⁴ See, e.g., DIRECTV Comments at 7; Google, Inc. Comments at 7; Starz Entertainment Comments at 2-4; Verizon and Verizon Wireless Comments at 2-3.

⁵ AT&T Comments at 5.

⁶ See, e.g., DIRECTV Comments at 10; NCTA Comments at 14-15.

⁷ See *Notice* ¶¶ 16, 35.

new regulations.⁸ VPOs, as opposed to any other stakeholder, are the only ones in a position to know whether their programming has been aired on television after the effective date of the rules, and therefore falls within the CVAA’s captioning requirement.⁹ Accordingly, DISH Network agrees with DIRECTV that the CVAA provides that VPOs are “directly subject to the statutory mandate” and thus “it would be both unnecessary and unduly burdensome to impose a duplicative requirement on VPDs/VPPs to confirm that VPOs have performed as required.”¹⁰ DISH Network also agrees with Google that VPPs/VPDs are already well-equipped to receive program files and render or pass through captions, but these same systems are not able to “review video content, determine whether it is required to be captioned or exempt, and then create and add captions.”¹¹ For the Commission to impose additional obligations on the VPP/VPD with respect to ensuring other parties’ compliance appears to exceed to scope of granted authority under the CVAA.¹²

The Commission should also be sensitive to compliance challenges associated with older, non-captioned video content in a VPP/VPD’s online video library. For example, DISH Network’s IP-delivered video offerings could include a movie that is not subject to IP captioning requirements at the time it was added to the online video lineup, but the relevant VPO later decides to add captions to that movie and show it on TV. DISH Network agrees with NCTA that the CVAA is not intended to “require that other copies of video content that may have been

⁸ *See Notice* ¶ 9.

⁹ *Id.* ¶ 35 (“We presume that VPOs are in the best position to know if captions are required for a particular program”).

¹⁰ DIRECTV Comments at 10-11.

¹¹ Google, Inc. Comments at 7.

¹² AT&T Comments at 7.

posted online before the television airing be replaced with newly captioned copies.”¹³ The simplest solution to this problem is the approach suggested by the Motion Picture Association of America (“MPAA”), which is for the Commission to craft an exception to IP-delivered video closed captioning rules for “television content that is already available for consumer viewing via a web site or online service prior to the date the new rules go into effect, but that may air subsequently on television with captions.”¹⁴ Such an exemption would be very helpful in simplifying compliance burdens on VPPs/VPDs, because the alternative could require tracking in real-time whether video programming already part of a content library has been re-aired on TV somewhere in the United States with captions.

Even if the Commission does not adopt the MPAA approach, it should make clear that the VPO is responsible for notifying VPPs/VPDs that a piece of content has become subject to IP-delivered video closed captioning rules, and supplying the updated, captioned version. DIRECTV concurs with this view, arguing that “the Commission should require VPOs to provide VPDs/VPPs new program files with all required captions whenever previously non-captioned IP-delivered programming becomes subject to the CVAA’s captioning requirement.”¹⁵ As Google correctly notes, “VPOs can best assert their control over the public display or performance of their work by creating and adding the closed captions that necessarily accompany such work.”¹⁶

DISH Network also agrees with the Commission’s tentative conclusion that the CVAA imposes captioning requirements only on full-length video programming that was published or

¹³ NCTA Comments at 19.

¹⁴ MPAA Comments at 8.

¹⁵ DIRECTV Comments at 10.

¹⁶ Google, Inc. Comments at 7.

exhibited on television in the United States.¹⁷ This distinction is important for several reasons. First, the CVAA’s grant of jurisdiction appears to provide the Commission authority only over TV programming exhibited on TV in the United States. Second, compliance burdens across all parties, including VPOs and VPPs/VPDs, would too burdensome if IP captioning obligations could be triggered by the programming lineups in countries anywhere in the world. Finally, to the extent programs are shown with captions in non-English-speaking countries, the captions provided likely would be foreign language and thus could not be re-used used by VPPs/VPDs in the U.S. to meet their IP-delivered video captioning requirements.¹⁸

III. THE COMMISSION SHOULD MAXIMIZE FLEXIBILITY IN IMPLEMENTING SECTION 203

Section 203 of the CVAA requires the Commission, for the first time, to ensure that “certain apparatus are capable of rendering, passing through, or otherwise permitting the display of closed captions for end users.”¹⁹ Because the nature of online video programming and the devices used to enable it are evolving at such a rapid pace, the Commission should facilitate industry compliance with its Section 203 rules by adopting safe harbors and needed flexibility in implementing the law’s requirements.

To ensure the quality of captioning as online video programming evolves, the Commission should, as it proposed in the *Notice*, avoid technical mandates. Instead, it should adopt the Society of Motion Picture and Television Engineers Time Text (“SMPTE-TT”) standard as a safe harbor for the interchange standard and the delivery standard for consumer

¹⁷ *Notice* ¶ 22.

¹⁸ *See* Microsoft Corporation Comments at 4.

¹⁹ *Notice* ¶3; Pub. L. No. 111-260, § 203(a)-(b), (d).

video players.²⁰ While SMPTE-TT would not be the only means for compliance, its use as a safe harbor would provide certainty and clarity to stakeholders. Adoption of SMPTE-TT should facilitate compliance, because use of the standard could help avoid an outcome where content providers have “to write code to respond to a variety of differing captioning formats,” which “will introduce additional time lag, complexity and cost before more widespread and consistent deployment of online video with captions can be achieved.”²¹ This approach, moreover, is consistent with Congressional intent to provide “maximum flexibility” to entities required to comply with CVAA’s mandates.²²

Another reason for proceeding cautiously is pointed out by CTIA – The Wireless Association: it is an open question whether closed captioning is possible across a wide range of mobile devices.²³ Congress itself took care to carve out exceptions where captioning may not be “technically feasible” or implementation may not be “achievable.” Consequently, the Commission should (a) broadly interpret the exceptions to avoid prematurely bringing certain apparatus with the reach of the requirements²⁴; (b) limit the reach of its implementing rules to apparatus that are “designed” to receive, play back or record video programming;²⁵ (c) reasonably and flexibly interpret whether compliance is “achievable”²⁶ and if captioning is

²⁰ Video Programming Accessibility Advisory Committee, First Report on the 21st Century Communications and Video Accessibility Act of 2010 – Closed Captioning of Video Programming Delivered Using Internet Protocol, at 26 (rel. July 12, 2011); MPAA Comments at 10-11; CEA Comments at 5-6; Starz Entertainment Comments at 5.

²¹ NCTA Comments at 6.

²² H.R. Rep. No. 111-563, at 31 (2010); TIA Comments at 11.

²³ CTIA Comments at 14-18.

²⁴ *Id.* at 16-18.

²⁵ CEA Comments at 10-13; TIA Comments at 9-10.

²⁶ CEA Comments at 14-15; TIA Comments at 11-14.

“technically feasible”²⁷; and (d) flexibly grant waivers.²⁸ Flexibility is critically important in this early phase of CVAA implementation.

IV. STAKEHOLDERS WILL NEED ADDITIONAL TIME TO SUPPORT CLOSED CAPTIONING FOR IP-DELIVERED VIDEO PROGRAMMING

DISH Network agrees with several commenters that more time is needed for all stakeholders to come into compliance with the new rules, and certainly more than the proposed four-part phased-in compliance schedule.²⁹ DISH Network agrees with DIRECTV that a single compliance deadline is a more sensible approach than the three-tier phase in proposed in the *Notice*.³⁰ DISH Network also concurs with AT&T’s view that the end goal of offering closed captioning for online video is “complicated by the wide variety of different technologies, applications, and services that constitute IP video,” constituting a complex ecosystem for which “one-size-fits-all solutions will not work.”³¹ As a result, the Commission should heed the recommendation of several commenters to allow at least 24 months before any IP-delivered video closed captioning requirements are in effect.³²

²⁷ CTIA Comments at 15-16

²⁸ CEA Comments at 16-18; CTIA Comments at 11-14; TIA Comments at 9-11.

²⁹ *See Notice* ¶ 28.

³⁰ DIRECTV Comments at 13 (arguing that “Commission should not adopt three timelines with respect to three kinds of programming” because such an approach “likely create confusion among consumers and create false expectations for captioning capabilities that would vary over a range of IP-delivery paradigms”).

³¹ AT&T Comments at i.

³² *See, e.g.*, AT&T Comments at 13; DIRECTV Comments at 2; Microsoft Corporation Comments at 18.

V. THE RULES SHOULD NOT APPLY TO CERTAIN TYPES OF CONSUMER ELECTRONICS DEVICES THAT PLACE-SHIFT CONTENT FROM A SET-TOP BOX

The Commission should clarify that consumer electronics devices that enable viewers to time-shift and place-shift content over the open Internet will not be covered by the rules, if those devices already enable captions to be displayed on the attached user display. Sling Media, a subsidiary of EchoStar Corporation, brings the home television experience to the computing and mobile device screens by creating a point-to-point connection between the set-top box in the home and a remote computing device. This “place-shifting” functionality relies on the broadband Internet connection to the set-top box, which in turn allows the subscriber to view her home television on a computer screen, iPhone, or other device. The Commission should refrain from imposing any additional captioning obligations on these types of products, because the consumer, controlling the set-top box remotely, may turn on captions using the set-top box’s internal features. Those captions are then “opened” at the set-top box and placed into the video stream that is place-shifted over the open Internet to the consumer’s device. Given that closed captioning for video place-shifted through devices like Sling is already enabled through the device’s current technology, there is no need to overlay additional regulations promulgated under the CVAA to Sling’s products, or to other products that offer similar functionality.

VI. CONCLUSION

DISH Network looks forward to working with the Commission to develop a sensible framework to carry out the CVAA’s goal of making new video delivery technologies more accessible while preserving enough flexibility to enable the industry to continue innovating in this rapidly evolving space.

Respectfully submitted,

/s/

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