



December 2, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Entities Subject to Section 202(b) and Their Obligations
Written Ex Parte Submission – MB Docket No. 11-154

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission’s rules, the National Association of the Deaf (“NAD”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), the Hearing Loss Association of America (“HLAA”), the Technology Access Program at Gallaudet University (“TAP”), the Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), and Cerebral Palsy and Deaf Organization (“CPADO”) file this ex parte communication to address further entities subject to Section 202(b) and their obligations 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 (“CVAA”), Media Bureau docket no. 11-154.¹

Upon review of ex parte submissions and discussions, we are concerned about the responsibilities of Video Programming Owners (“VPOs”), Video Programming Distributors (“VPDs”), and Video Programming Providers (“VPPs”) for captioning Internet protocol (IP)-delivered video programming under section 202(b) of the CVAA.² In our comments and reply comments, we explained that VPDs and VPPs, as the primary point of contact for consumers, should bear the exclusive responsibility for captioning Internet-delivered videos rather than VPOs. We believe that the language of the CVAA enables the Commission to continue holding distributors exclusively responsible for captioning failures on IP-delivered video as it has done

¹ Closed Captioning of Internet Protocol-Delivered Video Programming; Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 76 Fed. Reg. 59,963 (proposed Sept. 19, 2011) (to be codified at 47 C.F.R. pt. 15, 79).

² On December 1, 2011 Angela Campbell and Blake Reid of the Georgetown Institute for Public Representation, Jim House of TDI, and Shane Feldman and Andrew Phillips of NAD discussed concerns about the responsibilities of VPOs, VPDs, and VPPs with Karen Peltz Strauss, Eliot Greenwald, and Rosaline Crawford of the Consumer and Governmental Affairs Bureau. On December 2, 2011 Blake Reid, Jim House, and Andrew Phillips continued this discussion with Eliot Greenwald. The Consumer Representatives explained our concerns which are outlined in this document.

for similar failures on television. In particular, we believe that the CVAA does not *require* the Commission to implement a safe harbor for VPPs and VPDs who pass through or render caption files, but merely offers the Commission the ability to “*consider*” such an option.³

We believe that leaving responsibility in the hands of VPPs and VPDs for captioning of Internet-protocol-delivered content would be best for both consumers and the Commission—because it would provide for rapid and straightforward enforcement where violations of the captioning rules occur—and for industry—because it would permit flexible arrangements among VPOs, VPPs, and VPDs to facilitate the most efficient implementation of captions.

Nevertheless, to the extent that the Commission interprets the CVAA to require a safe harbor for VPPs and VPDs who pass through or render caption files, we believe that captioning responsibility logically must rest at the feet of VPOs and their licensees and sublicensees. Any other result would leave no entity responsible for captioning in the first instance, thus thwarting Congress’s obvious intent in enacting section 202(b). Accordingly, we would support a decision by the Commission to make VPOs and their licensees and sublicensees responsible for captioning IP-delivered video programming to the extent the CVAA does not permit placing that responsibility with VPPs or VPDs.

We further express our disagreement with the assertion of the Motion Picture of Association of America (“MPAA”) that placing captioning responsibility with VPOs would raise constitutional concerns.⁴ While the MPAA’s legal assertions in this regard are too vague to permit any specific response, we believe that requiring VPOs to provide caption video programming that has already been captioned for publication or exhibition on television raises no constitutionally cognizable concerns. We urge the Commission to reject the MPAA’s assertions to the contrary, and wish to explicitly state our disapproval of and disagreement with the implication that Consumer Groups share the MPAA’s views in this regard.⁵

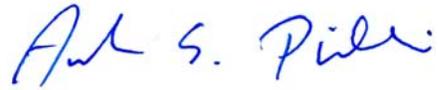
Thank you for your consideration.

³ See Twenty-First Century Communications and Video Accessibility Act of 2010, P.L. 111-260, 124 Stat 2751 at § 202(b) (2010) (“The regulations prescribed under this paragraph . . . shall consider that the 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 using the mechanism created in (v)”).

⁴ See MPAA Written *Ex Parte* Submission, MB Docket No. 11-154 (November 21, 2011).

⁵ See *id.* at p. 3-4.

Respectfully submitted,



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