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December 22, 2011

EX PARTE

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

**Re: 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**

Dear Ms. Dortch:

On December 20, 2011, Jill Luckett, Senior Vice President, Program Network Policy, Stephanie Podey, Associate General Counsel, and I, all of the National Cable & Telecommunications Association (“NCTA”), had a conversation via telephone with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon Clyburn, regarding the above-captioned proceeding.

During the call, we emphasized the cable industry’s active involvement in the legislative process, VPAAC, and related working groups, and its commitment to abiding by the schedule proposed in the VPAAC Report and Notice of Proposed Rulemaking for providing material online with captions.¹ We explained, however, that the schedule was based on the industry’s understanding that (1) programmers could use the SMPTE-TT format for online captioning, which would allow television captions to be easily repurposed for captioned material distributed over the Internet and (2) the rules would only apply prospectively. We described the legal reasons why the Commission should only apply its online captioning rules prospectively, and discussed the legislative history of the Act.² We also detailed the practical difficulties that would arise if versions of programming already online without captions prior to the effective date of the rules had to be taken down and replaced with captioned versions. We explained that any proposal to require retroactive application of the rules to material already online without captions should be subject to comment in a further notice of proposed rulemaking.

¹ We also urged that the rules recognize that certain local programming might not be able to be provided online with captions as rapidly as contemplated by the proposed timetable.

² See NCTA Comments at 18-20.

Ms. Marlene H. Dortch

December 22, 2011

Page 2

Finally, consistent with our comments and in light of rapidly changing technologies, we reiterated that the Commission should focus its initial implementation efforts on education and that it should not entertain complaints until a later date.³

Respectfully submitted,

/s/ Diane B. Burstein

Diane B. Burstein

cc: Dave Grimaldi

³ We pointed out that the Commission had adopted a similar approach in implementing the Advanced Communications Services provisions of the CVAA, providing a two year phase-in period prior to entertaining complaints. *See Implementation of Sections 716 and 717 of the Communications Act of 1934 as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 ¶¶ 107, 110 (2011).