



January 3, 2012

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communication, MB Docket No. 11-154

Dear Ms. Dortch:

On December 30, the undersigned of the National Association of Broadcasters (NAB) met with Erin McGrath, Acting Legal Advisor, Media, in the Office of Commissioner McDowell.

The purpose of the meeting was to discuss the rules governing the implementation of Internet Protocol Captioning, MB Docket No. 11-154. We reiterated our position that the instant proceeding presents novel questions about an extremely complex and evolving programming distribution ecosystem.¹ As such, as the Commission implements the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), it must be careful to afford broadcasters sufficient flexibility to continue to innovate their multiplatform video programming and avoid stifling such innovation as an unintended consequence of any new rule. *Id.*

We also discussed the allocation of responsibility, and noted that to be consistent with Congressional intent, as well as to be practicable, the Commission should place the burden of compliance on the entity that is closest to the end user. *Id.* at 11. We also noted that the CVAA legislative history explicitly contemplates IP captioning regulations apply only to full-length programming.² Moreover, full-length programming should be defined as programming

¹ See Comments of the National Association of Broadcasters, 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, Oct. 28, 2011 at pp. 3-6 (NAB Comments).

² H.R. Rep. No. 111-563, at 30 (2010) ("The Committee intends ...for the regulations to apply to full-length programming and not to video clips or outtakes.").

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created for viewing as a whole on television, such as an episode of a television series, a sporting event, a news program, or a movie, and subsequently posted online. Multiple segments, of a full length-program, if posted together for sequential viewing and composing the entire program would constitute full-length programming. NAB Comments at pp.12-13. We also emphasized the rules should only apply to programming aired on television in the U.S. in English and in Spanish. *Id.* at 13.

We reiterated our concern that the Commission's proposal to require certifications to be provided in the case of all programming that is not captioned, as well any proposed requirements to updated such certifications for any change in captioning statues, place a substantial economic and resource cost on broadcasters and other video programming owners (VPOs). *Id.* at 26. We expressed our desire to work with the Commission to strike an appropriate balance for archival content.

We discussed potential exemptions for "consumer distributed" programming and "consumer generated" programming, as well as captioning quality as contemplated in the July 12, 2011 Video Programming Accessibility Advisory Committee Report. *Id.* at pp.14-15. We urged the Commission not to adopt a base forfeiture at this time, rather, as the Commission has done in the past when implementing a completely novel set of mandates, the agency should use its early enforcement efforts here as a means of educating regulated entities about their new obligations and guiding them through the practical issues in satisfying the mandates. *Id.* at pp. 32-34.

Finally, the VPAAC correctly concluded that a standard interchange format should be specified to content providers to encode closed captions before they distribute it, and the VPAAC specifically recommended the Society of Motion Picture and Television Engineers (SMPTE) Timed Text (SMPTE-TT) standard for this purpose.³ The Commission should follow this recommendation, or at a minimum, recognize that an entity that delivers online captioning based on SMPTE-TT has met its obligation under the CVAA and the Commission's rules. NAB Comments at 31.

³ 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) at ¶ 39 (citing July 12, 2011 VPAAC Report at 17).

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Please direct any questions regarding these matters to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by the name 'Bobeck' in a cursive script.

Ann West Bobeck
Senior VP and Deputy General Counsel
Legal and Regulatory Affairs

cc: Erin McGrath