

January 9, 2012

**VIA ELECTRONIC FILING**

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

RE: Notice of *Ex Parte* Meeting  
**MB Docket No. 11-154**

Dear Ms. Dortch:

On Friday, January 6, 2011, Jim House, Outreach Coordinator for CEPIN at Telecommunications for the Deaf and Hard of Hearing Inc. (TDI); Dr. Christian Vogler, Director Technology Access Program, Gallaudet University; Lise Hamlin, Director of Public Policy, Hearing Loss Association of America; Blake Reid, Staff Attorney, Institute for Public Representation (IPR); Andrew Phillips, Policy Attorney, National Association of the Deaf (NAD); (collectively “Consumer Groups”) met with Dave Grimaldi, Chief of Staff & Media Legal Advisor, Office of Commissioner Clyburn to discuss the above referenced matter.

We expressed concern that the exclusion of “video clips” from the Commission’s IP captioning rules, in conjunction with an overbroad definition of the term, could result in the exclusion of important programming from the scope of the captioning mandates of the 21st Century Communications and Video Accessibility Act (CVAA). Contrary to industry assertions, we do not believe that Congress intended to create a new class of uncaptioned “video clips” in the context of Internet protocol (IP)-delivered video programming. We urged the Commission not to adopt rules that would arbitrarily exclude captions for fully-featured programming segments simply because they are delivered via IP on an individual, per-segment basis rather than delivered collectively in the same sequence as on television.

We noted the concession of the National Association of Broadcasters (NAB) that individual segments of a single television program must be captioned if posted online in the same sequence as they are exhibited on television.<sup>1</sup> We pointed out, however, that there are no sound technological or legal reasons to waive the CVAA’s captioning requirements simply because an IP distributor chooses to post fewer than all of the segments online, or in a different order than on television. To do so would permit IP distributors to trivially circumvent the CVAA’s requirements simply by withholding a short segment of a program from IP delivery or rearranging the order of the program’s segments—a result surely at odds with Congress’s intent in enacting the CVAA.

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<sup>1</sup> See NAB Notice of *Ex Parte* Communication in MB Docket No. 11-154 (Jan 5, 2012), <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016879550>.

The text of the CVAA plainly requires fully-featured segments of programming that are “by, or generally considered comparable to programming provided by a television broadcast station,” to be captioned.<sup>2</sup> Accordingly, the Commission’s rules need not address the terms “video clips” or “full-length programming,” which do not appear anywhere in the text of the CVAA.

To the extent the Commission believes that the references in the CVAA’s legislative history to the terms “video clips” and “full-length programming” warrant mention in the rules, we encourage the Commission to explain that the Senate and House Committees merely intended to clarify existing limitations of the scope of the captioning rules, not to impose new limitations. More specifically, consumer-generated videos and excerpts of programs used by television providers for advertising purposes, both colloquially referred to as “video clips,” are excluded from the scope of “video programming” subject to the Commission’s captioning rules. Accordingly, the Committees’ expressed desires for the FCC’s rules “to apply to full-length programming and not to video clips” are best explained as clarifications that the CVAA would not require the captioning of consumer-generated videos or advertisements not captioned on television.<sup>3</sup> With respect to “video clips” used for advertising purposes, we urge the Commission to distinguish such uncaptioned “clips,” which include short, promotional excerpts of programming designed to entice a viewer to later view the “clipped” program to which they refer, from “segments”—fully-featured portions of programming, such as news reports, that are demarcated on television by commercial breaks or other contextual switches and can be viewed from beginning to end without reference to preceding or subsequent segments—which must be captioned.

We also stressed the need for the Commission’s rules to cover archival content that is re-aired after the rules’ effective date. We acknowledged that a limited phase-in period to achieve full captioning compliance for archival content may be warranted, but noted that a period of longer than 24 months would be inappropriate in light of the 6-, 12-, and 18-month deadlines agreed upon by industry and consumer representatives in the VPAAC Report.<sup>4</sup> We further acknowledged that a temporary grace period between when programming is published or exhibited on television with captions and when it must be captioned if delivered via IP, ideally no longer than ten days, would be appropriate to afford industry members the opportunity to develop workflows for ensuring that IP-delivered content already online is rapidly captioned as soon as it is published or exhibited on TV with captions. We strongly stressed, however, that any such rules allowing such a grace period must have a reasonable sunset date—we recommend one year—to ensure the rapid and diligent development of appropriate workflows for IP captioning. We emphasized the importance of equal access to consumers who are deaf

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<sup>2</sup> 47 U.S.C. § 613(h)(2).

<sup>3</sup> S. Rep. No. 111-386 (2010); H.R. Rep No. 111-563 (2010).

<sup>4</sup> See VIDEO PROGRAMMING ACCESSIBILITY COMMITTEE, FEDERAL COMMUNICATIONS COMMISSION, First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Closed Captioning of Video Programming Delivered Using Internet Protocol (July 12, 2011).

and hard of hearing under the CVAA, and noted that a permanent grace period would render such consumers second-class citizens in the digital video world.

Finally, we referred to the Computer Prompting & Captioning Co.'s (CPC) December 19th *ex parte* filing explaining the ease of extracting captions from a television program that has been aired and converting closed caption data to the web.<sup>5</sup>

Respectfully submitted,

/s/

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cc: Dave Grimaldi, Commissioner Clyburn's Office

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<sup>5</sup> See CPC Notice of *Ex Parte* Communication in MB Docket No. 11-154 (Dec 19, 2011), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751167>.