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Barbara S. Esbin
Admitted in the District of Columbia

January 10, 2012

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: American Cable Association (“ACA”) Notice of Ex Parte Presentation; *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.

Dear Ms. Dortch:

On January 6, 2012, the undersigned, counsel to the American Cable Association (“ACA”), met via teleconference with Erin McGrath, Acting Legal Advisor, Media, Office of Commissioner McDowell. Participants discussed ACA’s position, reflected in its comments and reply comments filed in response to the Notice of Proposed Rulemaking in the above captioned rulemaking.¹

On behalf of ACA, the undersigned urged the Commission to follow the statutory directive to impose Internet protocol (“IP”) closed captioning responsibility on both video programming providers and distributors (“VPPs/VPDs”) and video programming owners (“VPOs”).² That is, consistent with the statutory language, VPPs/VPDs be deemed in compliance with the IP closed captioning

¹ *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*, Notice of Proposed Rulemaking, MB Docket No. 11-154, FCC 11-138 (rel. Sept. 19, 2011).

² *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; Comments of the American Cable Association, MB Docket No. 11-154, at 6-12 (filed Oct. 18, 2011) (“ACA Comments”); *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; Reply Comments of the American Cable Association, MB Docket No. 11-154, at 2-15 (filed Nov. 1, 2011) (“ACA Reply Comments”). See *Ex Parte* Letter from Barbara S. Esbin, Counsel for American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission, 2-3 (Nov. 7, 2011) (available in MB Doc. No. 11-154) (reiterating ACA’s call for clarity in the definition of video programming providers and distributors subject to IP closed captioning requirements so that requirements apply solely to VPPs/VPDs distributing programming using Internet protocol over the Internet).

requirements if they enable the “rendering” or “pass through” of captions, whereas VPOs bear responsibility for including closed captions in all covered programming.³

The undersigned also reiterated ACA’s position that the Commission exclude from IP captioning obligations broadband Internet access service providers (“ISPs”) in their capacity as ISPs.⁴ Participants also discussed the mechanism to be established by the Commission to make information about video programming that is subject to the rules available to VPPs/VPDs on an ongoing basis. I reiterated ACA’s position that the Commission should not require program-by-program certification, or require keeping voluminous records for an indefinite period of time, to avoid placing severe and disproportionately burdensome document retention obligations on small providers.⁵

Finally, participants discussed the need for the Commission to avoid imposing burdensome complaint procedures in an area that is “new terrain for the Commission” and the industry.⁶ In this regard, I made the point that the Commission should consider the proposal of NCTA that it focus its initial IP closed captioning implementation efforts on establishing a workable set of rules that will enable VPOs and VPPs/VPDs, respectively, to identify, caption, and enable the rendering or pass through of captions where Congress intended and refrain from entertaining complaints alleging non-compliance during the initial roll-out of these rules.⁷

Please contact me if you should have questions or concerns about these matters.

In accordance with Section 1.1206 of the Commission’s rules, one copy of this letter is being filed electronically via ECFS, and one delivered via email to each of the meeting participants listed below.

Sincerely,


Barbara S. Esbin

cc (via email): Erin McGrath

³ ACA Comments at 6-7, 13-15; ACA Reply Comments at 16-19.

⁴ ACA Comments at 8 n.22; ACA Reply Comments at 19-20.

⁵ ACA Comments at 15-17.

⁶ ACA Comments at 17-19.

⁷ See NCTA Comments at 21-22. See also *In the Matter of 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; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, Report and Order, CG Docket No. 10-213; WT Docket No. 96-198; CG Docket No. 10-145, 26 FCC Rcd 14557 at ¶¶ 107, 110 (establishing a 2-year phase-in period for the new rules prior to entertaining complaints for non-compliance).