

January 12, 2012

via electronic filing

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

RE: Notice of *Ex Parte* Presentation
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 Tuesday, January 10, 2012, Jim House, Outreach Coordinator for CEPIN at Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), Shane Feldman, Chief Operating Officer, National Association for the Deaf (NAD), Andrew Phillips, Policy Attorney, NAD, Dr. Christian Vogler, Director Technology Access Program, Gallaudet University, Lise Hamlin, Director of Public Policy, Hearing Loss Association of America, and Blake Reid, Staff Attorney, Institute for Public Representation (IPR) (collectively "Consumer Groups") met with Jessica Almond, Special Counsel, Office of Chairman Genachowski to discuss the above-referenced matter.

We expressed our extreme disappointment with the possibility that the Commission's would exclude programming segments from the IP captioning rules based on length. The plain language of the CVAA requires the captioning of programming of any length "by, or generally considered comparable to programming provided by a television broadcast station" that has been "published or exhibited on television with captions."¹ The CVAA provides no basis for the Commission to arbitrarily exclude segments of programming from the captioning rules simply because a distributor chooses not to post all related segments online. We urged the Commission to reject such an unwarranted departure from the statute, particularly in light of the recent *ex parte* letter from Representative Markey and Senator Pryor, which clarifies that excluding segments would contravene Congressional intent and the Commission's obligations under the statute to ensure equal access to video programming for consumers who are deaf or hard of hearing.² We agree with Rep. Markey and Sen. Pryor that a decision by the Commission not to require the captioning of segments "would deny significant civic, educational and entertainment

¹ 47 U.S.C. § 613(c)(2)(A), (h)(2).

² Letter from Rep. Markey and Sen. Pryor, MB Docket No. 11-154 (Jan. 10, 2012), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753144>

opportunities to millions of Americans with disabilities,”³ and we urged the Commission to avoid this course of action.

In contrast, we were pleased to hear of the Commission’s plans to require captioning of archival video content. We believe that the proposed 24-month period for compliance strikes an appropriate balance between affording accessibility to consumers who are deaf and hard of hearing and industry members’ need for time to transition captions from television to IP delivery. We also are sympathetic to the need for an initial grace period between when archival programming is first aired on television with captions after the effective date of the Commission’s rules and when it must be captioned for IP delivery. We emphasized, however, the need to eventually phase out any such grace period to ensure that industry members develop the workflows necessary to coordinate their television and IP delivery systems to facilitate simultaneous captioning of archival content. Equal access to both television and IP-delivered video programming is an essential civil right for Americans who are deaf and hard of hearing, and any initial grace period must eventually sunset to ensure that those Americans are not treated as second-class citizens with respect to IP-delivered programming.

We also discussed several issues related to interconnection mechanisms such as HDMI. While we are pleased that the Commission plans to ensure that all set-top boxes, including fixed-media devices such as Blu-ray and DVD players, are capable of rendering captions, we believe that interconnection mechanisms must evolve to permit the pass-through of captions for rendering on televisions and other display devices. Display-based caption rendering is essential to permit users to customize their captioning experience, particularly for users who are deafblind or otherwise visually impaired. We understand that groups involved with the development of the HDMI standard have committed to facilitating pass-through of captions in future iterations of HDMI-based equipment, and we urged the Commission to hold those groups, and others involved in the development of interconnection mechanisms, accountable for developing pass-through functionality.

Finally, we expressed our disappointment that the Commission’s definition of “apparatus” under section 203 will not extend to non-native software. We understand, however, that either application providers or video providers and distributors will remain responsible for including captioning capability for applications that facilitate the delivery of video programming over IP. We also encouraged the Commission to consider devices manufactured before the effective date of the Commission’s rules to be subject to the Commission’s rules if they receive software updates following the effective date.

³ *Id.*

Respectfully submitted,

/s/

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