

June 14, 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
CG Docket Nos. 03-123, 05-231, 10-51, and 10-213
MB Docket No. 11-154
PS Docket Nos. 10-255 and 11-153
WT Docket No. 10-254

Dear Ms. Dortch:

On Tuesday, June 12, 2012, Jim House, Outreach Coordinator for CEPIN at Telecommunications for the Deaf and Hard of Hearing Inc., Lise Hamlin, Director of Public Policy, Hearing Loss Association of America, Dr. Christian Vogler, Director Technology Access Program, Gallaudet University, Blake Reid, Staff Attorney, Institute for Public Representation, and Andrew Phillips, Policy Attorney, National Association of the Deaf (collectively “Consumer Groups”) met with Commissioner Jessica Rosenworcel and Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel to discuss accessible video programming and accessible communications.

Accessible Video Programming

The Consumer Group representatives discussed our petition for reconsideration of the IP Closed Captioning Order where we urged the Commission to reconsider its decision to exclude “video clips” from the captioning requirements for IP-delivered programming.¹ We noted that the plain language of the Twenty-First Communications and Video Accessibility Act of 2010 (“CVAA”) requires “video clips” to be captioned and that mentions of “video clips” in the CVAA’s legislative history are best explained, if at all, as references to exemptions to the captioning rules under both the CVAA itself, including the consumer-generated media exemption, and the exemptions in the Commission’s television rules for various short forms of programming. We expressed grave concern that many mainstream news and entertainments outlets routinely distribute many uncaptioned “video clips” online, which will remain inaccessible to deaf and hard of hearing people unless the Commission acts quickly to close the “video clips” loophole.

¹ *Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al.*, MB Docket No. 11-154 (April 27, 2012).

The representatives also addressed the two DiMA petitions for waiver of the Commission's caption rendering and CEA-708 obligations for Video Programming Distributors ("VPDs").² We urge the Commission to reject both petitions because they constitute a gross abuse of administrative process, impermissibly attempting to bend the Commission's individualized waiver process to seek a blanket waiver for the entire industry. Because nearly all IP-delivered video must be rendered on devices, plug-ins, or applications provided by VPDs, extending the deadlines for rendering would effectively vitiate the six-, twelve-, and eighteen-month deadlines carefully negotiated by the industry and consumer representatives on the Video Programming Accessibility Advisory Committee ("VPAAC") and undo the Commission's careful deliberation and implementation of the captioning requirements for VPDs in this proceeding. CEA-708 features have been successfully implemented by industry members in the past, and therefore are feasible. These features are incredibly important to deaf and hard of hearing viewers, particularly viewers who are deaf-blind or who are both deaf or hard of hearing and visually impaired, who often must be able to manipulate captions to be able to view them properly.

Moreover, we indicated our opposition to the reconsideration sought by the Consumer Electronics Association ("CEA") of the Commission's decisions regarding the scope of apparatuses covered under section 203 of the CVAA.³ We also addressed CEA's request to clarify that the January 1, 2014 date for manufacturers to comply with the requirements of section 203 refers to the date that apparatuses are manufactured, rather than the date that devices are imported or sold. We noted that consumers may rightfully expect, based on the Commission's order in this proceeding, that the January 1, 2014 refers to the date that accessible apparatuses will be made available for sale, and that the presence of noncompliant apparatuses on store shelves at that point may lead to serious consumer confusion. We discussed the possibility of manufacturers labeling products to communicate to consumers which devices are compliant or noncompliant after January 1, 2014.

Finally, we discussed closed captioning on television and our petitions asking the Commission to re-visit some of the categorical exemptions for closed captioning on TV as well as our petition asking for TV closed captioning quality standards.⁴ After all, what is access when the quality is not good enough to fully understand the program?

² *Petitions for Temporary Partial Exemption or Limited Waiver of Digital Media Association (DiMA)*, MB Docket No. 11-154 (May 8, 2012).

³ *Petition for Reconsideration of the Consumer Electronics Association (CEA)*, MB Docket No. 11-154 (April 30, 2012)..

⁴ See *Petition for Rulemaking; In the Matter of Closed Captioning of Video Programming-Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, CG Docket No. 05-231 (Jul. 23, 2004), <http://apps.fcc.gov/ecfs/document/view?id=6516288095>; See also *Petition for Rulemaking; In the Matter of Telecommunications for the Deaf and Hard of Hearing, Inc. et al. Petition to Amend the Commission's Rules to Eliminate Class Exemptions*, CG Docket No. PRM11CG (Jan. 27, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021027462>.

Accessible Communications

The Consumer Group representatives raised concerns about pending petitions for waiver from the Advanced Communications Services (“ACS”) requirements from the Entertainment Software Association (ESA)⁵ and the CEA.⁶ The ESA is asking for a broad and lengthy waiver for video game equipment, service and software under the notion that ACS is not a primary purpose of game play and that the ACS features and functions are designed merely to support game play.⁷ The representatives explained that spoken communication has become an integral part of game play and as a result, deaf and hard of hearing people have been left behind and unable to fully participate in many games, especially with team play in multiplayer games. Further, it’s not only the actual game play where spoken communication happens between players, but it also takes place before and after the games such as chat rooms where gamers “hang out.” Similarly, the CEA petition asks to waive Internet Protocol-enabled television sets (“IPTVs”) and Internet Protocol-enabled digital video players (“IPDVPs”) from the ACS requirements alleging that ACS is not a primary purpose. However, the representatives noted that technology is quickly evolving and many products that used to have one primary purpose now have many – for instance, smart phones are not only phones, but are used to send electronic messages, video conference, and search the Internet. The evolution we’ve seen with smart phones is now happening with televisions as many are increasingly connected to the Internet and provide video conferencing capabilities, VoIP, email, and more. The purpose of the CVAA was to bridge the digital divide for people with disabilities and as televisions and digital video players become multi-purpose equipment at the center of peoples’ homes. It would defeat the purpose of the CVAA if children and adults with disabilities are unable to access ACS on these devices. In the ACS order, the Commission recognized that many products and services have multiple or co-primary purposes and Consumer Group representatives believe that there is no question whether ACS is a primary purpose in gaming equipment, service, and software as well as IPTVs and IPDVPs.⁸

Additionally, the Consumer Group representatives addressed concerns about the direction in which the Commission is headed related to the Video Relay Service (“VRS”) reform rulemaking.⁹ We expressed strong concerns about adopting a per user compensation mechanism because going to a new per user mechanism will shift any issues and problems for consumer use from the general population as a whole to affecting only the deaf and hard of hearing

⁵ *Entertainment Software Association Petition for Waivers of 47 C.F.R. §§ 14.1 et. seq.*, CG Docket No. 10-213 (filed March 21, 2012)(“*ESA Petition*”).

⁶ *Consumer Electronics Association Petition for Waiver*, CG Docket No. 10-213 (filed March 22, 2012).

⁷ See *ESA Petition*.

⁸ *In the Matter of Implementation of Section 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 and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, ¶ 184 (2011).

⁹ *In the Matter of Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123, FCC 11-184 (rel. Dec. 15, 2011) (“*VRS Reform FNPRM*”).

community, even though this community is the constituency intended to be protected by statute. In short, this possible mechanism will most likely encourage VRS providers to focus on low-level users and not those who use and need VRS the most in order to maximize their profits. We believe that the providers will be incentivized to avoid answering calls quickly and providing high-quality service. Additionally, a per user compensation system will require users to be locked in with one provider for a lengthy period of time such as one or two years and disallow users to dial around using a different VRS provider. This is especially dangerous when deaf and hard of hearing users often experience network congestion between themselves and their providers as well as occasional long waits for a Communication Assistant due to unforeseen peaks in VRS traffic to certain providers. The VRS providers do not control their own networks like cellular phone companies and cannot assure that consumers will be able to connect to VRS providers over the open network. This can be especially dangerous when deaf and hard of hearing people need to make important or emergency calls and cannot get through to the one provider they are locked in with.

We also discussed the Commission's current efforts to reduce fraud and expressed our support. However, we cautioned that we cannot forget that deaf and hard of hearing people rely on Telecommunications Relay Service ("TRS") everyday for essential communications. Thus efforts to prevent fraud need to include considerations of the impact on the very consumers who use and rely on TRS. We expressed concerns that the Commission has been slow to allow new providers and types of TRS service into the market which consumers will greatly benefit from such as captioned telephone services on mobile phones, in response to fraud found in other types of TRS services. We also stressed that there are 48 million deaf and hard of hearing Americans, many of whom have been unaware of these services, but who do need to be served. The TRS fund needs to be used to provide functionally equivalent and most efficient telecommunications access to all who need it.

Among other issues discussed, the Consumer Group representatives stressed the need for a good and effective interim 911 access solution for deaf and hard of hearing people. We explained that deaf and hard of hearing people in the year 2012 cannot easily access 911 and must use the relay service to reach 911 centers and it often takes a few minutes to connect to the relay service and then from there to the right 911 call center. During emergencies, time is of essence, and minutes can be the difference between life and death. The representatives believe that the Next Generation 911 solution is 10 to 15 years down the road and that this is far too long to wait for direct 911 access, and instead we need a nationwide direct text-to-911 system immediately. Deaf and hard of hearing people need to be able to send direct text messages to the closest 911 center in any part of our country.¹⁰

The representatives encouraged the Commission to expedite its 2010 Review of Hearing Aid Compatibility rules as many mobile devices are inaccessible to deaf and hard of hearing users and it can be extremely difficult to find a phone that has all the features one wants and is also hearing aid compatible.¹¹ We also stressed concerns about the number of staff in the

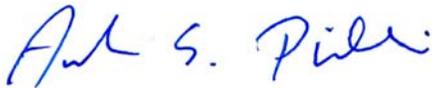
¹⁰ See generally *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Dockets Nos. 11-153 and 10-255.

¹¹ See *In the Matter of Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations*, WT Docket No. 10-254.

Disability Rights Office to handle and work on all the disability related issues currently before the Commission as well as disability access complaints from members of the community. Finally, the representatives discussed the growth in broadband and wireless data caps and the impact on deaf and hard of hearing people who use the Internet for their telecommunications, such as VRS and video conferencing since we need video connections to be able to communicate in American Sign Language as well as lip-read people. Video conferencing just happens to be one of the most data-heavy uses of the Internet and we are afraid that members of our community will be forced to pay high data prices for basic telecommunications access.

The Consumer Groups congratulate Commissioner Rosenworcel on her appointment and look forward to working with her and her staff.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew S. Phillips". The signature is written in a cursive, flowing style.

Andrew S. Phillips, Esq.
Policy Attorney

cc: Commissioner Jessica Rosenworcel
Priscilla Delgado Argeris, Office of Commissioner Rosenworcel