

August 20, 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 Nos. 11-154 and 12-108**

Dear Ms. Dortch:

On Thursday, August 16, 2012, Claude Stout of the Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Dr. Christian Vogler of the Technology Access Program (TAP) at Gallaudet University, Lise Hamlin of the Hearing Loss Association of America (HLAA), Blake Reid of the Institute for Public Representation (IPR) at Georgetown Law, and Shane Feldman and Andrew Phillips of the National Association for the Deaf (NAD) (collectively, “the Consumer Groups”) met with Michelle Carey, Mary Beth Murphy, Diana Sokolow, Jeffrey Neumann, Brendan Murray of the Media Bureau (MB) and Karen Peltz Strauss, Rosaline Crawford and Eliot Greenwald of the Consumer and Governmental Affairs Bureau (CGB) to discuss the current rulemaking on the Second VPAAC report<sup>1</sup> as well as the need to subject apparatus manufacturers to timing or synchronization obligations.

The Consumer Groups reiterated our concerns about the Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) (“VPAAC Second Report”). The Consumer Groups believe that to meet the CVAA goal of providing access to user interfaces on digital apparatus and on-screen menus and guides on navigation devices, the Commission should recommend that each feature and function of a device/application that can be performed using audible feedback should be able to be performed using visual feedback and vice versa. Such accessibility should apply to all features and functions and not only those that are arbitrarily categorized as “essential” as recommended in the VPAAC Second Report – a recommendation that has no basis in the CVAA and with which our very own representative on the VPAAC disagreed. We believe that no feature or function is non-essential.

The Consumer Groups expressed disagreement with the recommendation in the VPAAC Second Report that all content creators, providers, programmers, and device manufacturers adopt

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<sup>1</sup> *In the Matter of Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Public Notice, DA 12-635 (rel. Apr. 24, 2012) (“Public Notice” or “PN”).

the term “Closed Captioning” to describe all services whereby audio portions of a video program are displayed as text. There are various terms used to describe different kinds of textual access to audio portions of a video program such as closed captioning, subtitles, and subtitles for the deaf and hard of hearing. These terms have different meanings and to merge them all into one term loses the important meaning of each term. For instance, subtitles usually refers to the text access most commonly associated with foreign films which usually do not include audible non-spoken information or sound effects, such as a phone ringing or a car starting. Closed captions and subtitles for the deaf and hard of hearing tend to include all spoken and nonverbal aural information. Adopting these recommendations would also be inconsistent with the IP Closed Captioning Order.<sup>2</sup> This is yet another recommendation which our VPAAC representative disagreed with but was included in the final report as a recommendation on behalf of the entire committee.

The Consumer Groups stressed that the closed captioning control should be available and accessible at all times. A device or apparatus cannot be considered accessible if only part of the device or apparatus is accessible or it is only accessible at certain times. Many video players only allow users to enable the closed captioning following commercials, advertisements or previews and right before the main program. This means that individuals who are deaf or hard of hearing cannot enable closed captions to access these supplemental parts if they are closed captioned. We also explained the need for users to be able to identify which programs are closed captioned or not prior to viewing the program. Oftentimes it is not clear which programs are accessible, and as a result, individuals who are deaf or hard of hearing have to play each program just to see if it’s accessible. In some cases, this can mean watching 30 seconds to 1 minute worth of advertising before finding out that the program itself is inaccessible. This lack of information about which programs are accessible and which are not is a barrier to access because individuals who are deaf or hard of hearing cannot easily find accessible programs. Such identification is low cost and will also help the Commission verify data about closed captioning compliance.

Additionally, the Consumer Groups explained that the term “reasonably comparable” should be taken on a functional basis. In the comments, some members of the industry advocate for maximum flexibility in interpreting the term “reasonably comparable” and say the Commission should not use an “identical” or “equivalent” standard. However, they did not give examples of what this means. We are very concerned that the industry will unreasonably stretch the term “reasonably comparable” to become a loose standard unless there is some reasonably clear guidance. In our reply to comments, we highlighted three possible tests of what is “reasonably comparable:”

1. A reasonably comparable method should not cause the user to have to carry out a greater number of actions, or to open menus or otherwise have to search for or navigate to find the controls used for access to closed captions.

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<sup>2</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-154, at ¶ 100, January 13, 2012 (“IP Captioning Order”).

2. When looking at devices with a volume control, the user should be able to also use a “reasonably comparable” control to access closed captions.
3. If the volume control were to be moved to the same location as the “reasonably comparable” control used to access the closed captions, it should not elicit user complaints as to being confusing, hard to find, or inconvenient to operate.

The goal of these tests is to ensure that the closed caption controls are not hidden among a maze of menus but are easily accessible by users. Further, we were asked about devices such as Apple TV where there is no volume control for comparison purposes. We explained that in situations where there is no volume control, the closed captioning control should still be easily accessible by the user. In situations where one controls the volume on a separate device, the closed captioning controls need to be either easily controllable either on the device itself or passed through to another device, such as television set, with the capability of rendering them.

In addition to discussing the accessibility of closed captioning user interfaces, the Consumer Groups discussed the need to subject apparatus manufacturers to timing or synchronization obligations under Section 203 of the CVAA. In the IP Captioning Order, the Commission declined to impose specific timing requirements on the manufacturers of video programming apparatuses despite requiring video programming distributors (VPDs) to ensure that timing data is encoded and maintained throughout the captioning interchange and delivery system.<sup>3</sup> Absent a timing obligation on device manufacturers, efforts to encode captions with proper timing and synchronization at the programming source and efforts by VPDs to maintain that timing and synchronization throughout the caption interchange and delivery system may be for naught. This issue was addressed in our April 27, 2012 petition for reconsideration.<sup>4</sup> We also filed an ex parte on July 20, 2012 with actual examples of situations where captions became unsynchronized entirely as a result of an apparatus not rendering the captions at the correct time relative to their encoding with the video.<sup>5</sup> In our ex parte, we included a video demo of captions coming unsynchronized on an iPad. Dr. Vogler explained that his experiment controlled for other variables such as differently-encoded captions, Internet bandwidth, and other concerns. We discussed how closed caption formats have time stamps and noted that it is technically feasible to be sure that the captions are rendered at the appropriate time. The VPDs, as well as device manufacturers who distribute their own video players should have no excuse for not ensuring the synchronization of captions with the video, analogous to how they undertake efforts to synchronize audio and video. If device manufactures are not required to render captions according to the timing data included with the video, captions may be displayed out of sync with the video and audio, even if they are properly synchronized at the time of encoding and synchronization is maintained throughout the caption interchange and delivery system.

We appreciated the opportunity to meet with the MB and the Disability Rights Office to discuss this important issue.

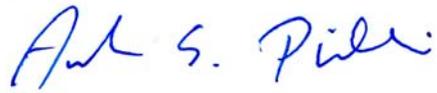
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<sup>3</sup> IP Captioning Order at ¶ 112.

<sup>4</sup> Consumer Groups Petition for Reconsideration of the Commission’s Report and Order, MB Docket No. 11-154 (Apr. 27, 1983), <http://apps.fcc.gov/ecfs/document/view?id=7021914512>.

<sup>5</sup> National Association of the Deaf, et al Ex Parte Filing, MB Docket No. 11-154 (Jul. 20, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021991164>.

Respectfully submitted,



Andrew S. Phillips, Esq.  
Policy Counsel

cc: Michelle Carey (MB)  
Mary Beth Murphy (MB)  
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Jeffrey Neumann (MB)  
Brendan Murray (MB)  
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