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February 15, 2013

via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation**

**Closed Captioning of Internet Protocol-Delivered Video
Programming, MB Docket No. 11-154**

**Accessible Emergency Information, and Apparatus Requirements
for Emergency Information and Video Description, MB Docket
No. 12-107**

**Closed Captioning of Video Programming, CG Docket Nos. 05-231
and 06-181 and ET Docket No. 99-254**

TDI, et al. Petition for Rulemaking, PRM11CG

TDI, et al. Petition for Rulemaking, RM-11065

Dear Ms. Dortch:

On February 13, 2013, Jim House of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Dr. Christian Vogler and Tina Smith of the Technology Access Program at Gallaudet University (TAP) and the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA), Cheryl Heppner of the Association of Late-Deafened Adults (ALDA), Lise Hamlin of the Hearing Loss Association of America (HLAA), Andrew Phillips of the National Association for the Deaf (NAD), and Blake Reid, Diana Cohn, Dashiell Milliman-Jarvis, and Margarita Varona of the Institute of Public Representation at Georgetown Law, collectively, "Consumer Groups," met with Eliot Greenwald, Rosaline Crawford, Karen Peltz Strauss, Greg Hlibok, and Suzy Rosen Singleton of the Consumer and Governmental Affairs Bureau ("CGB") and Maria Mullarkey, Diana Sokolow, Jeff Neumann, and Steven Broeckaert of the Media Bureau to discuss matters related to the above-referenced dockets.

Consumer Groups reiterated our agreement with Commission’s ruling that removable media players are apparatuses subject to Section 79.103 of the Commission’s rules, and again urged the Commission to reject the Petition for Reconsideration by the Consumer Electronics Association (“CEA”) seeking a contrary result (“CEA PFR”).¹ We observed that removable media players increasingly include the ability to access IP-delivered video services, thus necessitating the inclusion of closed captioning functionality, and noted that it would be absurd for the Commission to require such players to be only partially accessible.² We noted that many removable media players now lack composite video outputs that would permit the pass-through of closed captions included with fixed media, which is not possible through an HDMI connection, and that it is thereby necessary for such players to include the capability of rendering closed captions.³

We disputed the recent contention of several consumer electronics manufacturers that the need for removable media players to comply with Rule 79.103 is obviated by the inclusion of Subtitles for the Deaf and Hard of Hearing (“SDH”) or the availability of IP-delivered content.⁴ As the Commission correctly concluded in the *IP Captioning Order*, SDH are not an effective substitute for closed captions because they do not support the essential user controls afforded by closed captions.⁵ We also noted that the vast majority of content delivered via removable media is either unavailable for IP delivery or is not subject to the Commission’s IP captioning rules because it has never been published or exhibited on television. We also disputed the manufacturers’ contention, unsupported by any evidence in the record, that exempting removable media players from Rule 79.103 is necessary to avoid increasing manufacturing costs.⁶

¹ See *Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order, 27 FCC Rcd. 787, 845, ¶ 99 (2012) (“*IP Captioning Order*”); Petition for Reconsideration of CEA, MB Docket No. 11-154, at 8-18 (Apr. 30, 2012) (“*CEA PFR*”), <http://apps.fcc.gov/ecfs/document/view?id=7021914799>; Opposition to *CEA PFR* of TDI, et al. MB Docket No. 11-154, at 11-20 (June 7, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021922030>.

² See Notice of *Ex Parte* of NAD, et al. MB Docket No. 11-154, at 5 (Oct. 9, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022032026>.

³ See *IP Captioning Order*, 27 FCC Rcd. at 854-857, ¶¶ 115-119.

⁴ See Notice of *Ex Parte* of Sony Electronics Inc., et al., MB Docket No. 11-154, at 2 (Jan. 25, 2013) (“*Sony Ex Parte*”).

⁵ See *IP Captioning Order*, 27 FCC Rcd. at 846, ¶ 100.

⁶ See *Sony Ex Parte* at 2.

Dr. Vogler explained that he was able to design functional DVD captioning decoder software in only ten days of part-time programming, and that the costs to manufacturers of including closed captioning decoder functionality likely would be minimal or nonexistent, at least where the decoder is implemented in software.⁷ We also noted that concerns over the cost of implementing caption decoder circuitry in television sets proved to be similarly unwarranted.

Pursuant to our reply comments in the Commission's ongoing proceeding regarding video description and emergency information, we urged the Commission to conclude, consistent with the *IP Captioning Order*, that fixed media players are apparatuses subject to 47 U.S.C. § 303(u)(1), to avoid the inconsistent interpretation of Section 303(u)(1) urged by CEA in that proceeding, and to reject the identical argument presented in the *CEA PFR*.⁸ To the extent that the Commission seeks to exclude removable media players from the scope of the emergency information and video description apparatus rules under Section 303(u)(1), it must do pursuant to some other mechanism such as its general waiver authority rather than misconstruing the text of the statute.⁹ We also urged the Commission, consistent with the *IP Captioning Order*, to reject CEA's proposal to exclude apparatuses not "intended" by their manufacturer to play back video programming from the scope of Section 303(u)(1), and to reject the identical argument in the *CEA PFR*.¹⁰

We further urged the Commission to set a compliance deadline for the apparatus rules based on the date of sale to consumers or to require labeling for noncompliant products.¹¹ We also urged the Commission, consistent with the plain text of 47 U.S.C. § 613(g)(2), to extend the emergency information rules to all video programming providers ("VPPs") and video programming distributors ("VPDs") under Rule 79.1, not just broadcasters and multichannel video programming distributors ("MVPDs"), and to reject various proposals that would unduly exempt various classes of apparatuses.¹²

Next, we urged the Commission to explicitly recognize that its rules must ensure that emergency information be accessible to people who are blind

⁷ See Comments of TDI, et al., MB Docket No. 11-154, at 50 & n.70 (Oct. 18, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021715183>.

⁸ See Reply Comments of TDI, et al., MB Docket No. 12-107, at 14-16 (Jan. 7, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022100040>.

⁹ See *id.*

¹⁰ See *id.* at 16-18

¹¹ See *id.* at 18.

¹² See *id.* at 5-14.

or visually impaired *and* deaf and hard of hearing.¹³ To the extent that the Commission believes that the current record in its emergency information proceeding is insufficient to promulgate rules implementing that principle, we suggested that the Commission solicit further comment in a further notice of proposed rulemaking or notice of inquiry.

Finally, we discussed with CGB staff Consumer Groups' continuing concern over outstanding television closed captioning issues in several proceedings, including those raised in Petitions for Rulemaking filed by several of the Consumer Groups in 2004 and 2011.¹⁴ We emphasized the importance of establishing technical and non-technical quality standards for captions, eliminating or curtailing categorical exemptions from the Commission's captioning rules, expeditiously, efficiently, and fairly resolving individual petitions for exemption from the rules, and addressing the Consumer Groups' petition for reconsideration of the *IP Captioning Order*.¹⁵

Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

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¹³ See *id.* at 2-4.

¹⁴ Petition for Rulemaking of TDI, et al., RM-11065, CG Docket No. 05-231, ET Docket No. 99-254 (July 23, 2004), <http://apps.fcc.gov/ecfs/comment/view?id=5511440137>; Petition for Rulemaking of TDI, et al., PRM11CG (Jan. 27, 2011), <http://apps.fcc.gov/ecfs/comment/view?id=6016167106>.

¹⁵ Petition for Reconsideration of TDI, et al., MB Docket No. 11-154 (Apr. 27, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017032686>.

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