

December 11, 2013

Susan Kimmel, Deputy Chief, Disability Rights Office  
Consumer and Governmental Affairs Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Informal Complaint Alleging Violation of the Commission's Internet  
Protocol Closed Captioning Rules by Amazon.com, Inc.  
Complaint # 12-C00454509-1**

Dear Ms. Kimmel,

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), the Hearing Loss Association of America (HLAA), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this second reply to a second response from Amazon.com, Inc. ("Amazon") regarding the Consumer Groups' December 20, 2012 informal complaint alleging violations of the Commission's Internet Protocol ("IP") closed captioning rules, 47 C.F.R. § 79.4.<sup>1</sup>

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<sup>1</sup> The following documents have been filed with the Commission regarding this complaint:

- Informal Complaint of TDI, et al. (Dec. 20, 2012) ("*Consumer Groups Complaint*");
- Letter from Gerard J. Waldron and Lindsey L. Tonsager, Counsel for Amazon.com, Inc., to the Consumer and Governmental Affairs Bureau (Feb. 14, 2013) ("*First Amazon Response*");
- Letter from TDI, et al. to the Consumer and Governmental Affairs Bureau (Apr. 17, 2013) ("*First Consumer Groups Reply*"); and
- Letter from Gerard J. Waldron and Lindsey L. Tonsager, Counsel for Amazon.com, Inc., to the Consumer and Governmental Affairs Bureau and Redacted Attachment with VPO Names and Contact Information (Sept. 6, 2013) ("*Second Amazon Response*").

In its second response, Amazon largely rehashes arguments from its first response of Feb. 14, 2013, including:

- That Amazon’s failures to provide compliant captions should be excused as *de minimis*;<sup>2</sup>
- That vaguely specified post-violation remedial measures should justify further violations of the Commission’s rules;<sup>3</sup> and
- That Amazon can delay the provision of captions for days or weeks at a time in the name of correcting quality problems caused by the failure of Amazon and its video programming owner (“VPO”) partners to agree upon and utilize a functional and reliable caption delivery mechanism.<sup>4</sup>

As our first reply to Amazon explains in detail, these arguments—and others initially advanced by Amazon but not defended here—are meritless. Rather than repeat our rebuttal, we incorporate our first reply by reference.<sup>5</sup> Amazon’s second response also admits to multiple additional violations of the Commission’s rules identified in our reply, including delays in providing required captions of up to nine days.<sup>6</sup> Thus, we reiterate our recommendation that the Commission grant injunctive relief requiring Amazon to immediately comply with the IP closed captioning rules, establish daily base forfeitures for subsequent violations of the rules by Amazon, and issue a forfeiture sufficiently large to make clear that non-compliance with the Commission’s rules is not simply an acceptable cost of doing business.<sup>7</sup>

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<sup>2</sup> See, e.g., *Second Amazon Response* at 2, 4, 5-7; *First Amazon Response* at 10.

<sup>3</sup> See, e.g., *Second Amazon Response* at 1-4; *First Amazon Response* at 10-12.

<sup>4</sup> See, e.g., *Second Amazon Response* at 7-11; *First Amazon Response* at 6-10.

<sup>5</sup> See generally *First Consumer Groups Reply*.

<sup>6</sup> See *Second Amazon Response* at 5-7 (noting that three programs were provided without captions for up to three days due to “pipeline errors” and that six programs were provided without captions for up to nine days due to a “Digital Asset Storage (“DAS”) download error”).

<sup>7</sup> See *First Consumer Groups Reply* at 2.

Additionally, the redacted listing of VPOs Amazon believes responsible for some of the aforementioned rule violations fails to meet the spirit, if not the letter, of Amazon’s obligation to “indicate the identity and contact information” of allegedly responsible VPOs.<sup>8</sup> While we are confident that the Commission will investigate the identified VPOs and pursue appropriate remedies, the Commission’s confidentiality measures are not intended to protect the identities of parties who violate their obligations to make their programming accessible from public scrutiny.

Amazon’s conclusory insistence that the VPOs’ identities are “confidential commercial information,” along with citationless references to the Communications Act, the Freedom of Information Act, the Commission’s rules, and unnamed “other statutes, regulations, and rules,” provide no basis for confidential treatment of the identities.<sup>9</sup> While the cursory nature of Amazon’s contentions makes anything more than a speculative response impossible, it should suffice to note that Rule 0.459 requires requests for confidential treatment to provide a variety of information that are germane to, but missing from, Amazon’s request.<sup>10</sup> For example, Amazon does not explain how the disclosure of the mere identity of a partnering VPO could result in “substantial competitive harm” to Amazon or certify that the identities of its VPO partners are not already available to the public—even though Amazon routinely discloses the television networks and movie studios from which it sources its programming.<sup>11</sup> Accordingly, we

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<sup>8</sup> See *Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order, MB Docket No. 11-154, 27 FCC Rcd. 787, 820, ¶ 51 (Jan. 13, 2012).

<sup>9</sup> See *Second Amazon Response* at 5.

<sup>10</sup> See 47 C.F.R. § 0.459(b).

<sup>11</sup> See 47 C.F.R. § 0.459(b)(5), (7). For example, Amazon attributes a delay in the provision of captions for the fourth episode of the second season of *Revenge* to “late delivery by VPO.” *First Amazon Response*, Appendix, at 4. Amazon’s page for the program openly discloses that the episode was provided by the ABC network. *Revenge Season 2, Ep. 4 “Intuition,”* [http://www.amazon.com/gp/product/B009UR2OJO/ref=dv\\_dp\\_ep4](http://www.amazon.com/gp/product/B009UR2OJO/ref=dv_dp_ep4) (last visited Dec. 11, 2013). Moreover, the Copyright Office’s publicly available registration

reiterate our request that the Commission compel Amazon to reveal the identities of VPOs it believes to be responsible for violations of the Commission's closed captioning rules.<sup>12</sup>

Respectfully submitted,



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Blake E. Reid  
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December 11, 2013

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records confirm that Disney Enterprises, Inc. and ABC Studios are the copyright claimant and author of the episode, respectively, and that one or both of those organizations is likely the VPO. Public Catalog, U.S. Copyright Office, [http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?v1=1&ti=1,1&Search\\_Arg=revenge%20intuition&Search\\_Code=TALL&CNT=25&PID=8vTs2RQ\\_zavQip0WgpLjsH7nAL&SEQ=20131211162459&SID=1](http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?v1=1&ti=1,1&Search_Arg=revenge%20intuition&Search_Code=TALL&CNT=25&PID=8vTs2RQ_zavQip0WgpLjsH7nAL&SEQ=20131211162459&SID=1) (last visited Dec. 11, 2013).

<sup>12</sup> See *First Consumer Groups Reply* at 2.

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**Certificate of Service**

I, Blake E. Reid, do hereby certify that, on December 11, 2013, a copy of the foregoing was served by first class U.S. mail, postage prepaid, and e-mail upon:

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Blake E. Reid  
December 11, 2013