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January 27, 2014

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Docket No. 05-231, Closed Captioning

Dear Ms. Dortch:

On January 23, 2014, Rick Chessen, Senior Vice President, Law & Regulatory Policy; Jill Luckett, Senior Vice President, Program Network Policy; Andy Scott, Vice President, Engineering; and I, of the National Cable & Telecommunications Association, met with the following FCC staff: Kris Monteith, Steve Broeckaert, Eliot Greenwald, Greg Hlibok, Mary Beth Murphy, Suzy Rosen Singleton, Diana Sokolow, Karen Peltz Strauss, and Caitlin Vogus. On January 24, 2014, Jill Luckett, Andy Scott and I met (by telephone) with Susan Aaron, Michelle Carey and the FCC staff listed above. Ann Bobeck, Kelly Williams and Justin Faulb, all from the National Association of Broadcasters, were also in attendance at both meetings. A substantially similar draft of the attached “Best Practices for Television Quality Captioning” (hereinafter, “Best Practices”) was distributed at the meeting.

We discussed how the creation and delivery of high-quality closed captions is not solely within the control of any one entity and often requires coordination and execution among many connected parties in the video delivery chain, including video programmers, caption service providers, equipment manufacturers, multichannel video distributors, broadcasters and consumers. Given that fact, we noted that the Best Practices identify meaningful steps that video distributors, programmers and broadcast stations can voluntarily take to promote quality captions along the entire program delivery path – from when programming is first captioned to when it reaches the consumer. They not only identify strategies that can help yield consumer benefits, but also promote the development of strategies to promptly identify and resolve captioning issues when they inevitably occur. We further expressed our belief that in the absence of rules a significant number of industry participants would certify their intent to follow such Best Practices by no later than January 1, 2015.

While we expressed our belief that the publication and promotion of these Best Practices among industry participants would promote the provision of high-quality captioning without the need for regulation, we also discussed how compliance with these Best Practices could form the basis for an effective “safe harbor” that would satisfy FCC rules and facilitate the creation and distribution of quality captions. Specifically, we noted that the goals of achieving high-quality captions would be best served by mechanisms that focus on promoting operational prospective improvement and remediation, and not enforcement efforts seeking fines and forfeitures.

The existing captioning rules framework could be slightly modified to incorporate a safe harbor for those entities certifying compliance with the Best Practices. We proposed that MVPDs could rely on widely-available certifications from video programmers as to those programmers’ compliance either with the programmer Best Practices or the new FCC caption quality rules. We also explained that cable operators and programmers would like to be apprised of individual complaints that contain sufficient specific information about a particular customer’s captioning concern and therefore proposed that the Commission continue to forward those types of specific complaints to the relevant entities (without requiring a specific FCC-mandated response). However, we suggested that entities should only be required to respond to the FCC in the case of complaints demonstrating an alleged “pattern or trend” of failure to comply with the rules. We also urged the Commission not to hold MVPDs certifying to the MVPD Best Practices accountable for quality issues over which they have no control. We proposed that MVPDs adhering to the MVPD Best Practices should be responsible for forwarding a “pattern or trend” complaint to a non-certifying program network but should not be liable for that network’s violation of the caption quality rules. And we proposed that the Commission forward captioning complaints involving broadcast stations directly to those stations.

We continue to believe that the best approach to achieving the Commission’s objectives in this rulemaking is by encouraging a best practices framework under which MVPDs, programmers, and other entities in the captioning ecosystem work cooperatively to improve caption quality and address issues that may arise from time to time. We also reiterate that, under our proposed Best Practices, there is a built-in mechanism to have annual meetings with all stakeholders, including representatives from industry, consumer groups, and the Commission, to assess progress on implementation of the Best Practices and areas for possible improvement. This provides further evidence of industry’s good-faith efforts to achieve the Commission’s caption quality goals.

Respectfully submitted,

/s/ **Diane B. Burstein**

Diane B. Burstein

Attachment

cc: K. Monteith

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S. Aaron

S. Broeckaert

M. Carey

E. Greenwald

G. Hlibok

M. Murphy

S. Singleton

D. Sokolow

K. Strauss

C. Vogus

Industry Best Practices for Quality Television Captioning

Key Terms. The following definitions represent a common understanding of key terms for purposes of these Best Practices.

- o *Offline captioning:* Offline captioning is authored and combined with programming before it airs, and provides the highest quality captions in terms of accuracy, completeness, timing and placement as compared to other captioning methods identified below. Certain quality control measures may be employed that are not available or feasible for real-time or live display captioning.
- o *Real-time captioning:* Real-time captioning is authored and combined with programming simultaneously with the program's broadcast. The quality of the captions depends on several factors, including the content of the program, the captioner's level of expertise, preparation time before initial live broadcast, and the reliability of the technical systems needed to author, transmit and display the captions during the program.
- o *Live display captioning:* Live display captioning utilizes a completed program script or an almost-completed program to create a caption file that is combined with the program simultaneously with its broadcast, which allows for higher quality captions than are possible with real-time captioning. Live display captioning requires a caption service provider to receive a fully complete program asset sufficiently in advance of the initial broadcast to create and distribute the caption file. The type of program, program content, and production factors may also affect whether live display captioning can be employed.
- o *Video programmers:* Video programmers refer to multichannel video programmers, broadcast television networks and broadcast television stations (when acting in their capacity as program producers).
- o *Video programming distributors:* Video programming distributors refer to multichannel video programming distributors and broadcast television stations (when acting in their capacity as programming distributors).
- o *Effective date:* These best practices will go into effect on January 1, 2015 and apply to programs captioned after that date.

Best Practices for Video Programmers

Agreements with Captioning Services. Video programmers adopting Best Practices will take the following actions to promote the provision of high quality television closed captions through new or renewed agreements with caption service providers:

- o Performance requirements. Include performance requirements designed to promote the creation of high quality closed captions for video programming comparable to those described in the Captioning Vendor Best Practices.¹
- o Verification. Include a means of verifying compliance with such provisions such as through periodic spot checks of captioned programming.
- o Training. Include provisions designed to ensure that caption service providers' employees and contractors who provide caption services have received appropriate training and that there is oversight of individual captioners' performance.

Operational Best Practices. Video programmers adopting Best Practices will take the following actions to promote the delivery of high quality television captions through improved operations:

- o Preparation Materials. To the extent available, provide caption service providers with advance access to preparation materials such as show scripts, lists of proper names (people and places), and song lyrics used in the program, as well as to any dress rehearsal or rundown that is available and relevant.
- o Quality Audio. Make commercially reasonable efforts to provide caption service providers with access to a high quality program audio signal to promote accurate transcription and minimize latency.
- o Captioning for Pre-recorded Programming.
 - Ensure that pre-recorded programs, excluding programs that initially aired with real-time captions, are captioned offline before air except when, in the exercise of a programmer's commercially reasonable judgment, circumstances require real-time or live display captioning. Examples of commercially reasonable exceptions may include instances when (1) a program is delivered late, (2) there are technical problems with the caption file, (3) changes must be made to later network feeds,

¹ Ex parte letter filed by the National Captioning Institute (attaching Captioning Vendor suggested Best Practices), CG Docket No. 05-231 (filed Jan. 10, 2014).

or (4) there are proprietary considerations. In addition, it would be commercially reasonable for a video programmer to choose to use real-time or live-display captioning procedures for pre-recorded shows such as news magazines, news entertainment, and some reality shows, which are typically available only hours before they air. Similarly, it would be commercially reasonable for video programming networks or channels that have pre-recorded programs but also live programming, to use real-time captioning for all content (including pre-recorded programs) to allow for immediate captioning of events or breaking news stories that interrupt scheduled programming.

- Make reasonable efforts to employ live display captioning instead of real-time captioning for pre-recorded programs if the complete asset can be delivered to the caption service provider in sufficient time prior to airing.

Monitoring and Remedial Best Practices. Video programmers adopting Best Practices will take the following actions aimed at improving prompt identification and remediation of captioning errors when they occur:

- Pre-Air Monitoring of Offline Captions. As part of the overall pre-air quality control process for television programs, conduct periodic checks of offline captions on pre-recorded programs to determine the presence of captions.
- Real-time Monitoring of Captions. Monitor television program streams at point of origination (e.g., monitors located at the network master control point or electronic monitoring) to determine presence of captions.
- Programmer and Caption Service Provider Contacts. Provide to caption service providers appropriate staff contacts who can assist in resolving captioning issues. Make caption service provider contact information readily available in master control or other centralized location, and contact caption service provider promptly if there is a caption loss or obvious compromise of captions.
- Recording of Captioning Issues. Maintain log of reported captioning issues, including date, time of day, program title, and description of the issue. Beginning 1 year after effective date, such log should reflect a log of reported captioning issues from the prior year.
- Troubleshooting Protocol. Develop procedures for troubleshooting consumer captioning complaints within the distribution chain, including identifying relevant points of contact, and work to promptly resolve captioning issues, if possible.

- o Accuracy Spot Checks. Within 30 days following notification of a pattern or trend of complaints from the FCC, conduct spot checks of television program captions to assess caption quality and address any ongoing concerns.

Certification Procedures for Video Programmers. Video programmers adopting Best Practices will certify to video programming distributors that they adhere to Best Practices for Video Programmers, and will make such certifications widely available to distributors, for example, by posting on affiliate websites.

Best Practices for Video Programming Distributors (MVPDs and Broadcast Stations)

MVPD Testing of Equipment. MVPDs following Best Practices will take the following actions:

- o Caption Pass-Through Checking. On not less than an annual basis, check at the master headend, the satellite uplink, the satellite downlink or other appropriate location to ensure that applicable equipment is properly passing through closed captions received from a representative sample of programmers.
- o Set-top Box Testing. Test new set-top box models prior to deployment to ensure compliance with closed captioning requirements.
- o Recordkeeping. Maintain records sufficient to show that equipment and new set-top box models have been checked in accordance with above commitments.

Broadcast Station Testing of Equipment. Broadcast stations adopting Best Practices will take the following actions:

- o Equipment Tests. Regularly test applicable equipment to ensure equipment is working properly to maintain compliance with closed captioning requirements.
- o Recordkeeping. Maintain records sufficient to show that equipment has been checked in accordance with the above commitment.

Resolution of closed captioning complaints. Video programming distributors adopting Best Practices will take the following actions designed to improve the prompt resolution of consumers' captioning concerns:

- o Consumer care awareness and training. Provide a consumer support and escalation process for captioning issues and provide targeted information or conduct training for

customer care agents or television station personnel, as appropriate, to help with and assist in the resolution of caption quality and other captioning support issues.

- o Identification and remediation of recurring captioning issues. Make reasonable efforts to identify consumer complaints received about captioning issues and periodically review these complaints to attempt to identify and resolve recurring captioning problems.

Implementation and Review of Best Practices

- o Dialog and Review. Ongoing dialog among interested parties can help assess the industry's progress in implementing the Best Practices and their impact on caption quality for TV programs, as well as promote better understanding of issues relevant to caption quality. Trade associations will sponsor an annual conference with distributors, programmers, caption service providers, representatives of the deaf and hard of hearing community and other interested parties to review the state of caption quality on television, and to discuss developments in captioning technology and other issues of concern.