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January 31, 2014

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

**Re: CG Docket No. 05-231**

Dear Ms. Dortch:

On January 29<sup>th</sup> and 30<sup>th</sup>, Diane Burstein, Vice President & Deputy General Counsel, Jill Luckett, Senior Vice President, Program Network Policy, and I spoke by telephone with Maria Kirby, Legal Advisor to Chairman Wheeler. She was joined on January 30<sup>th</sup> by Kris Monteith and Karen Peltz Strauss, both of the Consumer & Governmental Affairs Bureau. We discussed the Best Practices filed by NCTA in the above-captioned proceeding, a copy of which is attached.<sup>1</sup>

We explained why the Best Practices would help improve caption quality. Among other things, those program networks volunteering to follow the Video Programmer Best Practices would include performance requirements designed to promote the creation of high quality captions comparable to, even if not identical to, those proposed by the captioning agencies in this docket. We also discussed the importance of retaining needed flexibility for programmers in their commercially reasonable judgment to determine the appropriate method of captioning pre-recorded programming, including using real time captioning under certain limited circumstances.

We also discussed the Best Practices for multichannel video programming distributors (“MVPDs”). We described how cable operators routinely maintain their equipment and how those MVPDs agreeing to the MVPD Best Practices would conduct an extra check – at least annually – to help ensure that captions are being passed through to customers. In addition, we noted the need for a Safe Harbor for those MVPDs adhering to the Best Practices, and supported a modified and appropriately tailored version of the “enforcement ladder” concept presented in the ex parte letter recently filed by the National Association of Broadcasters.<sup>2</sup>

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<sup>1</sup> This copy makes minor changes to, and supersedes, the Best Practices filed on January 27, 2014.

<sup>2</sup> Letter from Ann West Bobeck, NAB, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231 (filed Jan. 23, 2014).

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Finally, we expressed concern about MVPDs' potential liability for carriage of program networks that do not provide certifications of their compliance with the Video Programmer Best Practices or the FCC's new caption quality rules, and urged the Commission to ensure that cable operators are not held responsible for caption quality issues over which they have no control.

Respectfully submitted,

**/s/ Rick Chessen**

Rick Chessen

Enclosure

cc: M. Kirby  
K. Monteith  
K. Strauss

**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.<sup>1</sup>
- 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,

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<sup>1</sup> 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:

- o 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.
- o 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.
- o 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.
- o 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 reported captioning issues from the prior year.
- o 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 reflecting 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 reflecting 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. Maintain consumer support and escalation 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.