

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Application of the IP Closed Captioning Rules ) MB Docket No. 11-154  
to Video Clips )

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)<sup>1</sup> hereby submits its comments in response to the *Public Notice* in the above-referenced proceeding.<sup>2</sup> Pursuant to the Media Bureau’s request in the *Public Notice*, we provide updated information herein regarding the cable industry’s closed captioning of online video clips.

**INTRODUCTION**

The Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) required the Federal Communications Commission to adopt rules for “the provision of closed captioning on video programming delivered using Internet Protocol that was published or exhibited on television with captions after the effective date . . . .”<sup>3</sup> Those rules excluded online video clips or outtakes of the video programming that appeared with captioning on

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$210 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 27 million customers.

<sup>2</sup> FCC, Public Notice, *Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips*, MB Dkt. No. 11-154, DA 13-2392 (rel. Dec. 13, 2013) (“*Public Notice*”).

<sup>3</sup> Pub. L. No. 111-260, § 202(b), 124 Stat. 2751, 2770 (2010).

television.<sup>4</sup> However, the Commission “encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips . . . .”<sup>5</sup>

Cable programming networks have made significant strides in voluntarily making this online programming available with captions. These efforts have significantly increased the variety and quantity of clipped news material available with captioning online. And the industry continues to explore technological developments that hopefully will make providing captions with online clips as possible as the repurposing of captioned full length television programming over the Internet.

That time is not here yet, however, and the captioning of clips online remains a time-consuming and labor-intensive process, and one that is different and more challenging than that used to provide full length captioned television programming online. As explained below, the Commission lacks authority to mandate the captioning of clips online under the CVAA. But, even if it had such authority, the Commission should refrain from adopting any requirement. Instead, the Commission should continue monitoring progress in this area – progress which, as detailed below, has resulted in a significant increase in the amount of news clips available online with captions.

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<sup>4</sup> See *In re Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order, 27 FCC Rcd 787 ¶ 44 (2012) (“*IP Captioning Order*”).

<sup>5</sup> *Id.* ¶ 48.

**I. CABLE PROGRAMMERS ARE VOLUNTARILY – AND INCREASINGLY – CAPTIONING VIDEO CLIPS ONLINE.**

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Just two years ago, the Commission adopted rules implementing the online captioning requirements of the CVAA.<sup>6</sup> The rules are becoming fully effective on a graduated schedule, with deadlines ranging from September 30, 2012 for pre-recorded video programming not edited for Internet distribution, through March 30 of this year for “archival” programming.<sup>7</sup> In the short time since the Commission adopted online captioning rules, vast amounts of full-length captioned television programming have been made available online, with more being added on a daily basis. Among these many online options are captioned full-length news programming.<sup>8</sup> And, as described below, cable programmers are voluntarily – and increasingly – providing captions with video clips posted on their websites.

**A. Clips, Especially News Clips, Are Increasingly Being Made Available Online With Captions.**

In the *IP Captioning Order*, the Commission determined that the rules implementing the online captioning provisions of the CVAA should apply only to full-length programming.<sup>9</sup> The Commission specifically excluded clips, defined as “excerpts of full-length video programming” from the rules.<sup>10</sup> At the same time, the Commission encouraged covered entities “to provide closed captions for IP-delivered video clips where they are able to do so,” and emphasized the

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<sup>6</sup> See generally *id.*

<sup>7</sup> See *id.* ¶¶ 51-60.

<sup>8</sup> For example, some cable news programmers are providing a live stream of their captioned programming online to authenticated subscribers. See, e.g. Xfinity, Live TV, at <http://xfinity.comcast.net/watch-live-tv/> (listing several cable news networks that are available for live streaming online, including Fox News, CNN, HLN, MSNBC, CNBC, Fox Business, and BBC World News) (last visited Feb. 3, 2014). C-SPAN’s web streams and large amounts of its library programming are available with captions. In addition, captioned full-length news programs accessible on demand are increasingly being posted online. Moreover, it is often the case that video clips of news content available online are accompanied by textual information that contains either a transcript of the audio, or an article that conveys the same key information provided in the video clip.

<sup>9</sup> *IP Captioning Order* ¶ 44.

<sup>10</sup> *Id.*

importance of providing captions with news clips.<sup>11</sup> Last summer, in the *IP Captioning Reconsideration Order*, the Commission committed to “monitor industry actions with respect to captioning of video clips” and asked the Media Bureau to seek comment on the issue in six months.<sup>12</sup> To that end, the Media Bureau now seeks updated information regarding the closed captioning of online video clips.<sup>13</sup>

The Commission has attached particular importance to the captioning of news clips, noting that “[i]t is particularly important that news content, which plays the vital role of ensuring an informed citizenry, be made accessible to all citizens.”<sup>14</sup> Even though providing captions on news clips presents particular challenges, cable programmers strive to prioritize the captioning of news clips online and have increasingly done so where it is feasible.<sup>15</sup> Some cable programmers – for example, MSNBC and Fox News – endeavor to caption virtually all news clips on their websites. CNN, for its part, is captioning a significant portion of clips extracted from its on-air news programming, and is continually implementing technology to caption more.

Local cable news operations are working to find solutions to provide captioned news clips online by repurposing captions generated by the electronic newsroom technique (“ENT”) captions for use in online clips. While not in widespread use today, over time this may be a promising solution for cable local news operations that use ENT captioning.

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<sup>11</sup> *Id.* ¶ 46.

<sup>12</sup> *In re Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785 ¶ 30 (2013) (“*Captioning Order on Reconsideration*”).

<sup>13</sup> *See generally Public Notice.*

<sup>14</sup> *IP Captioning Order* ¶ 48.

<sup>15</sup> Certain types of news content posted online may not include captions for a variety of reasons. For example, programming clips posted online may be raw or bonus footage from affiliates of larger news operations. Such clips will likely never be shown on television and typically do not contain captions when provided to cable news networks.

While priority has been given to captioning news, cable programmers are voluntarily captioning an increasing number of clips of entertainment programming as well. For example, The Walt Disney Company focuses on captioning online clips at its news and entertainment websites that are most in demand by consumers, and that provide “evergreen” content that consumers may repeatedly view.<sup>16</sup> All new clips of top rated comedy shows *The Daily Show*, *Colbert Report*, and *South Park* are captioned at Viacom websites. As noted below, many cable programming companies are exploring whether future technological developments will increase their ability to repurpose the captions from full-length television programming to provide captioned online clips. The amount of captioned clips online can be expected to continue to grow as technological improvements help to make this a more seamless process than it is today.

**B. Captioning Clips Requires Extra Work and Expense.**

The *Public Notice* seeks comment on what is required in order to caption online video clips.<sup>17</sup> Many cable programmers, especially those that provide news, are dedicating significant resources, in time, expense, and personnel, to implement online captioning.<sup>18</sup> As previously explained to the Commission, complicated work flow and technical issues typically remain with providing captions for clips posted online.<sup>19</sup> While technology has developed to enable full-length television programming that airs with captions to be repurposed for use online, video programming distributors often cannot simply reuse caption files from a television program

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<sup>16</sup> For example, more than 90% of all short-form content on ABCfamily.com is provided with closed captions.

<sup>17</sup> See *Public Notice* at 3.

<sup>18</sup> For example, it is typical for several departments at a particular entity to coordinate to ensure that online captioning goals are being implemented, including programming production teams, legal personnel, engineers, etc.

<sup>19</sup> See, e.g., Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, filed in MB Dkt. No. 11-154 at 2 (June 11, 2012); NAB Opposition to Petitions for Reconsideration at 14-15 (filed June 7, 2012).

when video clips are created. Today captions for online clips are typically reauthored from scratch, a process that requires time and expense.<sup>20</sup>

In addition, several other characteristics of video clips typically mean that the caption file (if one exists) cannot be repurposed for use online. For example, video clips that are posted online often have not been published or exhibited on television with captions in the same form as the clip. Rather, video clips are created separately for online distribution, in some cases even before a full-length program has aired on television with captions. In other cases, video clips may contain non-sequential footage taken from different parts of a full-length television program, resulting in the use of scattered footage that does not align with the caption file that accompanied the full-length program shown on television.

Cable programmers are exploring the possibility of different solutions, including software- or cloud-based solutions that might be implemented to improve the process of repurposing captions accompanying the full-length television program for use in clips online. Finding solutions to these issues is a significant undertaking that cannot be achieved overnight. While progress continues to be made, captioning online clips today remains expensive and logistically challenging.<sup>21</sup>

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<sup>20</sup> Indeed, the manual process involved in captioning even a few minutes of footage for online viewing can take hours. Moreover, when captions for content are needed in an expedited fashion, the costs involved increase significantly.

<sup>21</sup> The Commission previously exempted interstitial materials and promotional announcements from captioning obligations for similar reasons. *In re Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report & Order, 13 FCC Rcd 3272 ¶ 151 (1997) (finding that “the benefits of captioning interstitial materials and promotional announcements are outweighed by the burdens of captioning such programming . . . the large number of such programs, the brief period from their creation to airing, and their short shelf life make captioning these programs expensive and logistically difficult”).

## II. NEW REGULATIONS ARE UNWARRANTED.

In adopting its initial *IP Captioning Order* one year ago governing online captioning, the Commission quoted the CVAA legislative history, which states that Congress “intends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes,”<sup>22</sup> and applied its new rules solely to full-length programming.<sup>23</sup> Just seven months ago, in the *Captioning Order on Reconsideration*, the Commission stated that “[c]onsumers have expressed particular concern about availability of captioned news clips, which tend to be live or near-live,” and noted that “live or near-live programming only recently became subject to the IP closed captioning requirements on March 30, 2013.”<sup>24</sup>

In the *Public Notice*, the Media Bureau now seeks comment on whether “the Commission should require captioning of IP-delivered video clips.”<sup>25</sup> For the reasons set forth in NCTA’s filings in this docket, the Commission’s authority under the CVAA does not extend to clips.<sup>26</sup> But even if the Commission were to find jurisdiction to require online captioning beyond full-length television programs, it should not exercise it to require captioning of online clips.

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<sup>22</sup> *IP Captioning Order* ¶ 48 (citing Senate Committee Report at 13-14 (emphasis added); House Committee Report at 30 (emphasis added)).

<sup>23</sup> As noted in the *IP Captioning Order*, “a full-length program posted online in multiple segments, to enable consumers to more readily access a particular segment of the program, constitutes full-length programming” and is required to be captioned under the rules. *IP Captioning Order* ¶ 45.

<sup>24</sup> *Captioning Order on Reconsideration* ¶ 30.

<sup>25</sup> *Public Notice* at 2.

<sup>26</sup> See NCTA Opposition to Petitions for Reconsideration at 2-6 (filed June 7, 2012) (explaining that the CVAA does not require all video programming to be captioned online – only “video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date...”, and noting that video clips often do not satisfy that definition, thus, the CVAA “supports the Commission’s common sense decision to apply the requirements to “full-length” programming and not to video clips”); see also NCTA Comments at 20 (filed Oct. 18, 2011) (explaining that Congress only intended the rules to apply to full-length programming); NCTA Reply Comments at 4-5 (filed Nov. 1, 2011) (explaining that Congress intended to exempt “clips” from the rules, and that the definition of “clips” is not tied to the definition of promotional material); see also NAB Opposition to Petitions for Reconsideration at 7-9 (filed June 7, 2012) (explaining that nothing in the CVAA “directs the Commission to implement regulations to require IP captioning for programming other than programming comparable to what is aired on television”).

First, as described above, cable programmers are voluntarily providing increasing amounts of captioned clips online. No problem has been identified that warrants adopting any mandates.

Second, providing captioning for online clips remains a time-consuming and largely manual process. While technological developments promise improvements in this area, they are not here yet. Under the circumstances, regulating in this area would be premature at best.

Third, captioning rules are not yet fully implemented. Companies are devoting significant resources to ensuring that they are providing full-length programming online in compliance with the Commission's rules. Once this initial phase is complete, and the provision of online captioning for full-length programming becomes more routine, companies may well have more capacity to devote to voluntarily captioning additional material.

Finally, premature regulatory mandates for video clips risk producing harmful effects for consumers. Presently, covered entities are posting large amounts of video online – including news content – that provide consumers an array of options to access captioned video programming. Burdening important and timely video content – especially news clips – with premature regulation could chill the posting of clips that might otherwise provide important information to consumers. Meanwhile, as described above,<sup>27</sup> consumers retain the option of obtaining critical captioned news online through various means.

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<sup>27</sup> See *supra* note 8.

**CONCLUSION**

In sum, the cable industry is working hard to voluntarily provide increasingly more captioned video online, including news clips. To that end, significant resources are being dedicated to expedite and improve the process of captioning clips online. The best course forward is to allow this process to continue to develop without additional regulatory mandates.

Respectfully submitted,

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