

**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)

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

The National Cable & Telecommunications Association (NCTA)¹ hereby replies to the comments filed in response to the *Public Notice* in the above-referenced proceeding.²

INTRODUCTION

NCTA’s initial comments showed that the availability of captioned material online is increasing dramatically. The industry has worked hard – on an aggressive timeline – to meet the Commission’s deadlines for captioning video programming online. And industry has gone above and beyond the Commission’s formal requirements in order to voluntarily provide a significant amount of captioned news clips online.

The record also demonstrates the difficulties with captioning clips for use online. Unlike full-length television programs that contain captions that typically can be repurposed for online use, clips for the most part must be captioned from scratch. While the industry continues to explore new ways to improve and streamline the process, captioning clips remains a time-consuming and costly endeavor. Determining which clips are best suited for captioning is precisely the sort of decision best left to individual program providers.

¹ 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.

² FCC, Public Notice, *Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips*, 28 FCC Rcd 16699 (2013) (“*Public Notice*”).

The Media Bureau should report that the record shows consumers are *not* “denied access to critical areas of video programming due to the lack of captioning of IP-delivered video clips.”³ Rather, despite the difficulties involved, industry is making significant progress in voluntarily captioning video clips posted online. The petition for reconsideration should be denied and the Commission should not extend its online captioning rules to clips.

I. THE COMMENTS SHOW THAT THE COMMISSION SHOULD NOT REQUIRE ONLINE CLIPS TO BE CAPTIONED.

A. The Commission was Correct in its Initial Determinations to Read the CVAA to Exclude Online Clips.

The Commission determined in the *IP Captioning Order* to apply the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) online captioning requirement to full-length programming that appeared on television with captions.⁴ That determination is consistent with the language of the CVAA and its legislative history.⁵ As several commenters stressed, the Commission lacks authority under the CVAA to mandate the captioning of clips online.⁶ 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.”⁷ Video clips do not satisfy this definition. Rather, as the Digital Media Association (“DiMA”) points out, the CVAA defines

³ *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) (“*IP Captioning Recon Order*”).

⁴ *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*”); *see also IP Captioning Recon Order* ¶ 30 (declining to extend the captioning rules to clips pending further review).

⁵ *See* NCTA Comments at 7 & n.26 (quoting 47 U.S.C. § 713(c)(2)(A) (as amended by CVAA § 202(b)); *id.* at 7 & n.22 (quoting the CVAA legislative history). Unless otherwise indicated, comments cited herein were filed in MB Dkt. No. 11-154 on February 3, 2014.

⁶ *See id.* at 2, 7; DIRECTV Comments at 1; NAB Comments at ii, 12-14; DiMA Comments at 2-5.

⁷ NCTA Comments at 7, n.26 (quoting 47 U.S.C. § 713(c)(2)(A) (as amended by CVAA § 202(b)).

“video programming” as “programming by, or generally considered comparable to programming provided by a television broadcast station . . . ,” and “because video clips cannot be found on a television broadcast station, it would be unreasonable for the Commission to declare that video clips are ‘video programming’ subject to the online captioning rules.”⁸ Indeed, as we previously explained, online clips 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.⁹

Moreover, as many commenters pointed out,¹⁰ the Commission’s decision to not mandate captioning of online clips is consistent with the legislative history that states that Congress “intends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes.”¹¹

B. There Is No Need to Mandate that Online Clips be Captioned.

1. Significant Amounts of Online Clips are Being Captioned Voluntarily.

Even if the Commission has authority to regulate the captioning of online clips, it should refrain from doing so. The record shows that regulation is unnecessary since an abundance of video programming online is being provided with captions,¹² including clips that are voluntarily

⁸ DiMA Comments at 2-3.

⁹ NCTA Comments at 6. In addition, certain types of news content posted online may never have been shown on television at all, including clips that are raw or bonus footage, web-exclusive content, or content that is not distributed domestically other than online. *See id.* at 4, n.15.

¹⁰ *See* DiMA Comments at 4; NAB Comments at 13-14; DIRECTV Comments at 2. According to DiMA, “[t]he fact that Congress identified that it may revisit the issue [of captioning clips] does not provide the Commission with authority to act on its own to impose a captioning obligation on video clips.” DiMA Comments at 5.

¹¹ *IP Captioning Order* ¶ 48 (citing Senate Committee Report at 13-14 (emphasis added); House Committee Report at 30 (emphasis added)).

¹² *See* NCTA Comments at 3-5.

captioned.¹³ The National Association of Broadcasters (“NAB”) explained that “broadcasters have worked diligently to build captioning for online video clips into their workflows to ensure that their online video content is as accessible as possible.”¹⁴ DiMA described that its members “play a central role in making available closed captioned video programming . . . [and that] these efforts extend beyond the requirements of the IP closed captioning rules.”¹⁵

Although the Commission’s rules implementing the online captioning provisions of the CVAA apply only to full-length video programming aired on television with captions, the Commission encouraged covered entities to go beyond the letter of the law to voluntarily provide captions with online clips of captioned television news programming.¹⁶ NCTA’s comments showed that the cable industry has answered that call.¹⁷ Likewise, NAB reported that the “broadcast industry has responded to the Commission’s encouragement to voluntarily act.”¹⁸

Indeed, the study contained in comments filed by Telecommunications for the Deaf and Hard of Hearing, Inc. *et al.* (collectively “TDI”), confirms the wide availability of captioned news clips online. Specifically, TDI found that the majority of news clips it observed – 57% – included captions.¹⁹ This represents a significant increase from its findings just 9 months earlier that 23% of news clips were captioned.²⁰ Thus, TDI’s filings evidence more than a two-fold

¹³ For example, a substantial number of clips taken from NBC Universal’s coverage of the 2014 Sochi Olympics were voluntarily captioned when made available online.

¹⁴ NAB Comments at 3.

¹⁵ DiMA Comments at 1.

¹⁶ See NCTA Comments at 3-4 (citing *IP Captioning Order* ¶ 46); NAB Comments at 11.

¹⁷ See NCTA Comments at 3-5.

¹⁸ NAB Comments at 12.

¹⁹ TDI Comments at 8. TDI explained that it made these observations from October 29, 2013 through November 30, 2013. See *id.* at 4.

²⁰ See *id.* at 2 (explaining that “observations of critical news programming were uncaptioned . . . 77% of the time for video clips”). TDI explained that it made its earlier set of observations from January 20, 2013 through April 18, 2013. See TDI Report, MB Dkt. No. 11-154 at 1-2 (filed May 16, 2013).

increase in the amount of news clips voluntarily captioned online in less than a year.²¹ The figures reported by TDI specific to the major cable news programmers (CNN, Fox News, and MSNBC) are even more impressive, with over 67% of news clips being observed with captions.²² In fact, the study may well understate the availability of captioned clips. TDI sweeps within its study material that was never shown on television with captions, including clips from programming televised only internationally, clips of “web extras” that may supplement programming aired on television, and clips never aired on television and provided on, for example, the websites of major newspapers.²³

In short, TDI’s statement that “it is clear that the Commission’s expectations that voluntary captioning would rise to make video clips accessible has not come to fruition”²⁴ is belied by its own evidence. Regulation is not needed to ensure access to a wide variety of captioned clips online.

2. The Commission Must Preserve Flexibility for Program Providers to Determine Whether to Caption Online Clips.

Although many entities are working to voluntarily provide captions on video clips online, the record makes clear that captioning online video clips presents unique challenges, exceeding those encountered when providing captioned full-length material online. The record shows that

²¹ TDI also makes assertions about the purported lack of captioning for certain video content – so-called “segments” – it deems as already subject to the captioning rules. *See* TDI Comments at 10. The online captioning rules apply to full-length programming, defined as “video programming that appears on television and is distributed to end users, *substantially in its entirety*, via Internet protocol, excluding video clips or outtakes.” 47 C.F.R. § 79.4(a)(2); *see also* *IP Captioning Order* ¶¶ 44-45. TDI’s definition of “segment” is created out of whole cloth and is not based on the Commission’s rules. As such, TDI’s observations on “segments” are inherently unreliable and say nothing about regulatory compliance.

²² *See* TDI Comments, Observation Data, at 7-13.

²³ *See, e.g.*, TDI Comments, Observation Data, at 18 (including data regarding *WSJ Live* from Hulu).

²⁴ TDI Comments at 17.

captioning clips online involves overcoming technical challenges²⁵ and enduring substantial production delays.²⁶ Commenters also provided evidence that captioning clips online is a costly endeavor²⁷ and that any costs and burdens would be multiplied due to the sheer volume of online video clips.²⁸ Although industry players are dedicating significant resources to improving the process of captioning online video clips, it remains the case that “no automated software currently exists that can encode high quality captions for online video clips.”²⁹ As NAB described,

This ecosystem is constantly evolving as a variety of vendors are working on proprietary solutions to solving the difficult problems that must be overcome to reliably caption online video clips. The goal is to both automate and streamline the captioning process to ensure greater accessibility and high quality in the captioned product, irrespective of which service provider or vendor a station is working with to caption its clips.³⁰

As TDI’s filing recognizes, the initial voluntary efforts have been focused on rolling out online news clips with captions.³¹ This makes sense, since online news is the area of most

²⁵ See DiMA Comments at 6 (“[T]he technical challenges of a video clip captioning requirement are particularly acute.”); NAB Comments at 3 (explaining that “the current lack of automated technology and various other technological challenges make captioning online video clips a significant and costly undertaking”); *see also* DIRECTV Comments at 1 (describing why the characteristics of particular live sports video clips it distributes “make captioning highly problematic as a technical matter”).

²⁶ See NAB Comments at 3.

²⁷ See *id.*; NCTA Comments at 6; *see also* DiMA Comments at 2 (explaining that the costs for VPDs “involved in captioning for video clips are not substantially less than for full-length programming because length is not the key factor driving cost”).

²⁸ See DiMA Comments at 6-7 (noting that “some VPDs may have hundreds of thousands, or even millions of video clips in their video catalogues” and that, “[g]iven the difficulty and enormous volume involved, the burdens of compliance [for VPOs] with video clip captioning requirements would be overwhelming”).

²⁹ NAB Comments at 5; *see also* NCTA Comments at 6. TDI criticized the quality of captioning presented in online clips. See TDI Comments at 18-19. Clipped video content posted online suffers from quality issues related to the repurposing of the original captions of the full-length program. Industry is already seeing improvement, and is confident that these issues will be worked out, but the tools currently available remain imperfect.

³⁰ NAB Comments at 9-10.

³¹ See TDI Comments at v (finding that 57% of news clips were captioned).

concern both to the Commission and to consumers.³² But TDI turns this prioritization of news on its head, arguing that this proves why regulation is needed.³³ The record, however, shows otherwise. It demonstrates that as new tools come to the market that will enable programmers to repurpose television captions for online clips more easily, it can be expected that additional clips online would also be able to be captioned in a cost-effective and efficient manner.³⁴

That does not mean that programmers will choose to caption all online clips, nor should it. Different entities face different challenges in captioning clips, depending on the types of programming they post online and the resources available to them.³⁵ Under the circumstances, programmers need flexibility to determine when and how to caption these typically brief extracts of captioned television programming.³⁶

Finally, the Commission must guard against taking premature regulatory action that would risk harmful effects.³⁷ NAB explained that a clips mandate risks acting “as a disincentive to place video clips online.”³⁸ DIRECTV showed that a mandate to caption clips would impact its ability to provide two types of sports highlights video clips in the timely manner expected by

³² See *IP Captioning Order* ¶ 48

³³ See TDI Comments at v (arguing that the “alarmingly high percentage of uncaptioned non-news clips that we observed demonstrates the need for the Commission’s rules to apply to all content types”).

³⁴ See NAB Comments at 9-10.

³⁵ See, e.g., DIRECTV Comments (describing difficulties in captioning particular clips of sports video content); NAB Comments at 3-5 (explaining that different entities may have different challenges based on the type of content and the size of the entity).

³⁶ TDI’s assertions that the “extremely high rates of captioning displayed by some national and local VPDs indicate that widespread captioning of news content is an attainable goal for VPDs and VPOs” and that “[i]f some VPDs and VPOs can deliver all of their content with captions, then there is little reason to expect that other VPDs and VPOs will face technical barriers to doing so” fails to acknowledge the different circumstances faced by individual VPDs and VPOs. See TDI Comments at 18. The industry has not argued that captioning all clips would be a technical impossibility, but that, at these early stages, a regulatory mandate to caption all clips online would present significant burdens and operational challenges.

³⁷ See NCTA Comments at 8 (cautioning the Commission that “[b]urdening 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”).

³⁸ NAB Comments at 10.

its subscribers, essentially destroying the value of those services.³⁹ Moreover, as reflected in the record, consumers often have many other sources to obtain important information online, including full-length news programming and text articles and other news information that frequently accompany news clips online.⁴⁰

CONCLUSION

For the foregoing reasons, the Commission should refrain from mandating that video clips posted online include captions.

Respectfully submitted,

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³⁹ See DIRECTV Comments at 3.

⁴⁰ See NAB Comments at 5; NCTA Comments at 3 & n.8.