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Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Ex Parte Notice – MB Docket No. 11-154; CG Docket No. 05-231

Dear Ms. Dortch:

On May 20, 2014, the undersigned, along with colleagues Corey Downs and Christina Anthony of CBS Interactive; Andrea Simon and Tim DeLaney of Showtime; and Mark Turits, Nicholas Poser and John Bagwell of CBS Television met with Mary Beth Murphy, Steven Broeckaert, Diana Sokolow, Alison Neplokh and Jeffrey Neumann of the Media Bureau; Kris Monteith, Karen Peltz Strauss, Gregory Hlibok, Suzy Rosen Singleton, Caitlin Vogus and Elaine Gardner of the Consumer and Government Affairs Bureau; and Susan Aaron of the Office of General Counsel to discuss issues in the above-noted proceedings.

We noted at the outset that CBS and Showtime, along with its majority-owned Smithsonian Channel, are motivated to make their television programming accessible to the widest audience possible – not only because it is the right thing to do, but because it is the nature of our industry to do so. In fact, providing accessibility on a voluntary basis can be a brand differentiator, one that brings a larger audience to our content.

As the FCC considers mandating the captioning of video clips delivered by Internet Protocol (IP) taken from full-length programming that previously aired on

television with captions, we urged the Commission to consider the increased work flow, human resources and time that will have to be devoted to compliance with any additional obligations. We demonstrated the process for transferring even just “straight lift” clips (continuous, linear excerpts) from captioned television programs to the online platform, nothing that it is not a mere cut-and-paste exercise. Despite the augmented work flow and time involved in moving these clips from television to IP, we offered that complying with an obligation to caption most “straight lift” clips for distribution can be achieved within a reasonable, phased-in time-frame.

We then described the fast and furious nature of the online world, where the race to post certain types of audio-video materials on the Internet can make or break the competitive edge of a programmer. As an example, we cited the game-winning basket in a championship basketball game. While we may have the exclusive rights to broadcast that game on television, it is possible that fans in the stadium could shoot their own video and post it online, or that an unauthorized posting of our own programming could occur and not be taken down for several days. Another example is a late-breaking news or emergency situation. It is critical that programmers televising live or near-live content be the first to post clips from that content online, particularly for those clips that may generate significant buzz and go “viral”. This is not important simply to help build a programmer’s solid “first-to-the-news” reputation, but it is also important from an accessibility perspective. If a clip goes viral and generates a large number of views over time, it is important that it be a version controlled by the station, which can augment the clip with online captions once they are generated.

Accordingly, we requested that these types of “straight lift” clips from captioned live or near-live television programs be permitted a grace period before they must be captioned online. A grace period of several hours would permit us to immediately post such a straight lift clip online, then to marry the clip with proper captions and then to replace the uncaptioned clip (in those online locations that are under control) with one that is accessible – most likely even before the content goes viral. Without such a grace period for this type of straight-lift clip, we would have to delay posting our clip until it could be properly captioned, and in the meantime an un-captioned clip of the same event posted unlawfully by a third party or by a third party not subject to the captioning rules may go viral and may never appear online with captions.

In sum, we emphasized that requiring captioning of any video clip delivered by IP other than a “straight lift” clip from a captioned television program would not result in the public interest benefits that might be anticipated and, instead, would result in a regulatory nightmare for programmers, distributors and consumers. Not only would requiring online captioning of every little snippet of video that aired on television with captions defeat the meaning of “video clip” as used in the FCC rules, but it would divert the industry’s resources away from providing our audiences with accessibility to the heart and substance of our content. It could also have the effect of discouraging some programming owners from posting clips that would otherwise be made available, which would not be the public interest.

We also addressed the severe burden that would be created if the numerous preview or promotional clips that are posted online to create consumer interest in upcoming broadcast programs were required to be captioned once the programming was broadcast with captions. We explained that often the caption files for programs have

not yet been created when such previews/promotions are posted online. To track down and caption such "advance clips" would be a costly and inefficient use of resources for many cases. And in many cases, it would also create an anomalous situation in which the very same promotion drawn from material contained in the program that is to be broadcast would not have to be captioned on television, but would have to be captioned online, and only after the greatest part of its promotional value had ended.

Finally, we discussed the MVPD proposal to shift liability of TV captioning away from the end distributor and onto the programmers. Such a shift, we argued, would not make sense. We have found that it is most frequently the case that the remedy for the closed-captioning problem is within the control of the end distributor – a distributor transmission problem or a problem with distributor-leased equipment to the home. We explained that consumers, who pay their MVPDs each month, should be able to call or email a named designated contact person who works with the MVPD to resolve consumer captioning issues, who will then initiate a thorough check of the MVPD's operations and equipment and, if necessary, follow up the chain with a contact person at the next link of the chain. We expressed hope that our collective goal throughout the television program chain is to resolve the consumers' issues and not shift liability.

Respectfully submitted,

cc: (by email)
Mary Beth Murphy
Steven Broeckaert
Diana Sokolow
Alison Neplokh
Jeffrey Neumann
Kris Monteith
Karen Peltz Strauss
Gregory Hlibok
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Caitlin Bogus
Elaine Gardner
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