

June 5, 2014

*via electronic filing*

Marlene H. Dortch  
Secretary, Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: Closed Captioning of IP-Delivered Video Clips · MB Docket No. 11-154**

Dear Ms. Dortch,

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP) respectfully respond to several recent *ex parte* filings regarding the captioning of Internet Protocol (IP)-delivered video clips in the above referenced docket.

We again commend the Commission’s progress toward eliminating the loophole exempting video clips delivered via Internet Protocol (“IP”) from the Commission’s IP captioning rules under the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).<sup>1</sup> This progress is consistent with Commissioner Rosenworcel’s recent acknowledgment that the Commission’s 2012 *IP Captioning Order* “fell short for television video clips”—which the Commission “need[s] to fix”:

[O]ur accessibility policies must be about more than just how we watch now—they must be about the future. And the future of viewing, for all of us, including the deaf and hard of hearing, will involve more than gathering around the traditional television screen for programs of uniform 30- or 60-minute length. It will involve many screens, with more television programming sliced and diced into smaller increments, for later viewing online.<sup>2</sup>

The omission of video clips from the Commission’s rules has led to widespread frustration in the deaf and hard of hearing community over the inability to access even programming that specifically appropriates features of deaf culture, such as a recent American Sign

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<sup>1</sup> See 47 C.F.R. § 79.4(a)(2).

<sup>2</sup> *Caption Quality Order*, Statement of Commissioner Jessica Rosenworcel, at 1, available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0224/FCC-14-12A4.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0224/FCC-14-12A4.pdf).

Language “rap battle” on Jimmy Kimmel Live delivered online with no captions.<sup>3</sup> Prompt action to cover video clips will help serve to remedy this inequity and fulfill the promise of equal access embedded in the CVAA and Telecommunications Act of 1996.

Contrary to the contention of the National Cable & Telecommunications Association (NCTA), the CVAA’s requirements apply to all “video programming delivered using Internet protocol that was published or exhibited on television with captions” and are not limited to only IP-delivered programs “able to use repurposed captioning from the television program.”<sup>4</sup> The unsubstantiated possibility that television captions cannot be reused in certain rare cases does not make recaptioning impossible or relieve video programmers of their obligations to make their programs accessible when delivered via IP—an impractical and unfair proposition with no basis in the CVAA’s text.

Moreover, NCTA’s conclusory claim that “technology allowing for automated repurposing of television captions is not yet commercially available” is not consistent with the record in this proceeding, which is replete with evidence that repurposing captions, including for clips of all types, is possible using existing technology.<sup>5</sup> A leading captioning technology developer notes “that there are now software solutions to edit a video clip from a full program for [I]nternet delivery that will preserve closed caption data as well as convert it to [I]nternet captioning files.”<sup>6</sup> Another leading captioning company agrees, noting that “many [video] providers are currently captioning clips independent of the caption company, using new technologies” and that “that captioning clips is very much like any other caption job.”<sup>7</sup>

Nevertheless, we acknowledge the concerns of NCTA and others that some programmers may need more time to integrate processes for handling clips into their workflows.<sup>8</sup> While we believe that coverage of clips is long-overdue, we again note our

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<sup>3</sup> *E.g.*, *Ex Parte of Adam Jarashow*, at 1 (May 5, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521113503>.

<sup>4</sup> Compare 47 U.S.C. § 613(c)(2)(A) with *Ex Parte of the National Cable & Telecommunications Association (NCTA)*, at 1 (May 28, 2014) (“*NCTA Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521153131>.

<sup>5</sup> *NCTA Ex Parte* at 1.

<sup>6</sup> *Ex Parte of Giovanni Galvez* (Apr. 2, 2014) (“*Galvez Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521096764>; see also *Ex Parte of Computer Prompting & Captioning Co. (CPC)* (Dec. 19, 2011), available at <http://apps.fcc.gov/ecfs/document/view?id=7021751167>.

<sup>7</sup> *Ex Parte of VITAC* (Apr. 3, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521097082>.

<sup>8</sup> *NCTA Ex Parte* at 1; *Ex Parte of Hulu, LLC*, at 2 (Apr. 1, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521096537>; *Ex Parte of CBS Corp.*, at 1-2

support for a reasonable phase-in period.<sup>9</sup> We note that this approach appears to have at least tentative support from NCTA and CBS for “straight lift” clips—i.e., “continuous, linear excerpts.”<sup>10</sup>

We also believe that both “montage” programming—containing several clips of captioned television programming assembled together into a montage—should be covered.<sup>11</sup> There is little evidence on the record demonstrating montages pose particular difficulties for captioning, and certainly not enough to justify excluding them from the coverage of the Commission’s rules. However, if programmers are able to demonstrate that captioning montages requires additional workflow modifications above and beyond “straight clips,” we would not oppose a slightly longer phase-in period to accommodate.

From our meetings with programmers, we understand that there is also concern over “mashup” programming, which includes clips of captioned television programming interspersed with other video that has not been shown on television with captions. We believe that the portions of mashups that have been shown on television with captions are unequivocally covered by the CVAA and should be captioned—a process that should be made easier by the possibility of repurposing such captions. We also urge the Commission to strongly encourage programmers to caption mashup programming in its entirety.

We understand that there is also concern over time-sensitive video clips, such as highlights from sporting events and breaking news coverage, that programmers wish to publish online as soon as possible to increase the likelihood of attaining increased advertising revenue from a clip going viral. However, we believe that viewers who are deaf or hard of hearing have a right to access critical programming on equal terms as everyone else, and we again urge the Commission to maintain for video clips its requirement for full-length programming that programming be captioned as soon as it is made available for IP delivery.<sup>12</sup>

Should the Commission nevertheless choose to permit a limited grace period during which programmers can post certain time-sensitive programming without captions, we would urge the Commission to require such programming to be captioned as soon as

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(May 22, 2014) (“*CBS Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521150747>.

<sup>9</sup> See *Ex Parte of TDI, et al.*, at (Mar. 28, 2014) (“*Consumer Groups Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521095864>.

<sup>10</sup> See *NCTA Ex Parte* at 1; *CBS Ex Parte* at 2.

<sup>11</sup> See *Ex Parte of DIRECTV* (May 9, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521120613>.

<sup>12</sup> See, e.g., 47 C.F.R. § 79.4(b).

technically possible, and in no case longer than one hour.<sup>13</sup> We would further urge the Commission to narrowly circumscribe the definition of such programming to avoid affording a *de facto* grace period for all programming; we have no doubt that VPOs believe that most of their programming is “time-sensitive,” but that belief cannot warrant treating people who are deaf or hard of hearing as second-class citizens when it comes to all IP-delivered video clips—a result that would plainly contravene Congress’s intent in enacting the CVAA.

We would also urge the Commission to solicit on an ongoing basis rigorous technical evidence of how long a grace period is actually necessary to facilitate the posting of captions—a period that is sure to decline and likely to disappear as technology improves over the coming months.<sup>14</sup> To that end, we would encourage the Commission to build-in an automatic sunset for any grace period that could not be extended without rigorous evidence of its ongoing necessity.

Again, we also urge the Commission to require captioning for archival video clips first posted to the Internet before they are published or exhibited on television.<sup>15</sup> While we acknowledge that it may take time to update the clips to include captions once television exhibition has triggered the CVAA’s requirements, diligent and preemptive effort should minimize any grace period afforded by the Commission. We believe that a period on the order of hours and not days should suffice in all cases, and we would oppose any period longer than 24 hours.

Lastly, we urge the Commission to ensure that its responsibility scheme for full-length programming extends to video clips. In particular, the Commission should ensure, at a minimum, that video programming owners are responsible for sending video clips with high-quality captions to distributors, which the Commission should require to enable the rendering or pass-through of captions to end-users.<sup>16</sup> Doing so will ensure that consumers who are deaf or hard of hearing can access video clips through the distributors and devices of their choice, consistent with Congressional intent.

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Please don’t hesitate to contact me if you have any questions regarding this filing.

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<sup>13</sup> We believe that the “several hour” period requested by CBS would be too long. *See CBS Ex Parte* at 2.

<sup>14</sup> *See Galvez Ex Parte* at 1 (“[S]oftware solutions for editing video and captions have recently become available on the market due to an overwhelming response from the industry regarding new [I]nternet captioning requirements.”).

<sup>15</sup> *Consumer Groups Ex Parte* at 6-7.

<sup>16</sup> *See* 47 C.F.R. § 79.4(c)(1)-(2).

Respectfully submitted,

/s/

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