



June 9, 2014

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communications, MB Docket No. 11-154

Dear Ms. Dortch:

On Thursday, June 5, 2014, Justin Faulb, Kelly Williams and the undersigned of the National Association of Broadcasters (NAB), and Kathleen Kirby of Wiley Rein, LLP, met with Rosaline Crawford, Greg Hlibok, Suzy Rosen Singleton and Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau, and Steven Broeckaert, Michelle Carey, Armen Madinians, Mary Beth Murphy, Jeffrey Neumann and Diana Sokolow of the Media Bureau.

The purpose of the meeting was to discuss NAB's position regarding the captioning of Internet protocol-delivered video clips. NAB reiterated, consistent with its comments in the record,¹ that the Commission lacks the authority to regulate the captioning of online video clips. NAB also stated that onerous, expedited regulatory obligations are unwise because of the significant challenges associated with captioning IP-delivered online video clips at this time. While the industry is working diligently to solve these difficult problems, an efficient, cost-effective, and high-quality online video clip captioning solution does not currently exist.

NAB reminded the Commission that we share the same goals – namely the improved accessibility and distribution of important broadcaster news, emergency information, and entertainment content. We stressed broadcasters' voluntary captioning of an increasing number of clips, particularly news. We remain concerned that an additional obligation to caption all online video clips, however, could have the unintended effect of chilling the creation and distribution of important news information via clips.

¹ See Comments of the National Association of Broadcasters at 11, MB Docket No. 11-154 (Feb. 3, 2014); Reply Comments of the National Association of Broadcasters at 2, MB Docket No. 11-154 (Mar. 5, 2014).

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Given the practical difficulties and resources that would need to be expended to find and replace clips already online before any new rules' effective date – clips that the Commission previously said were not subject to the IP captioning rules – should the Commission move forward and adopt rules on video clips, those rules must be prospective only. Moreover, we agree with NCTA that rules should only apply to the following: (1) “straight lift clips” (2) longer than 15 seconds (3) aired by a video programming owner (“VPO”) and posted by that same VPO after the program airs on television with captions (4) that are available on that VPO’s website or made available through the VPO’s applications (“apps”).²

Any rule must exclude “advance” clips from a captioning obligation, and should leave to the reasonable judgment of a licensee or programmer as to whether an “advance” clip retains value such that replacing it with a captioned version makes sense after the program airs on television with captions. Any regulatory requirement to track and replace “advance” clips would present an extraordinary resource burden and would act as a deterrent to providing these types of clips online in the first instance. It is not reasonable for the Commission to expect that these clips can be simply replaced online within a very short time frame (under 24 hours). There are numerous journalistic and editorial reasons (e.g., linking, aggregating) why one version of a clip (uncaptioned) may be retained on a programmer’s website while an additional or different version may also be added (but not substituted) after that clip has been televised.

In our discussion with Commission staff on the possibility of a waiver process, we noted the majority of local stations would need regulatory relief until an automated captioning video clip solution comes to market. Thus, the burden on both station and FCC resources makes a case-by-case waiver process impractical.

NAB urged the FCC to make clear that licensees or programmers cannot be held responsible for compliance with online captioning obligations (including captioning quality) for clips that are not within their immediate control. Third-party websites, by definition, operate independently and licensees and programmers have no control over a clip once it leaves the programmer’s website. Ensuring that online video clip captions play correctly, with quality at least equal to that shown on television, is difficult enough given the many variables that exist with online video vendors, different Internet browsers, and content delivery networks. Expecting the same level of quality when the clip is controlled by a third-party is unreasonable. Further, holding a licensee or programmer responsible when it has little or no ability to

² See Letter from Diane B. Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene Dortch, Secretary, FCC, MB Dkt. No. 11-154 at 3 (June 3, 2014).

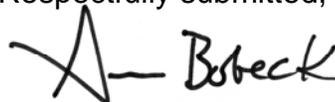
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correct problems on third-party websites in the event captioning errors do arise is inherently problematic.

Finally, with respect to timeframes, NAB reiterated that the process of creating the necessary technology, including automation, is a challenging one. If the FCC decides to move forward, NAB remains concerned about an aggressive implementation timeframe involving any period of less than two years. NAB agrees with NCTA that the initial benchmark should be a two/three year benchmark with video clip captions involving "straight lift" clips with embedded or time-coded captions on a two year timeframe, and other clips without embedded captions on a three year timeframe.³ We look forward to continued dialog with Commission on this issue. NAB and the FCC share the same overall goal, but the FCC must enable licensees to succeed by adopting, if it acts, reasonable and achievable timeframes.

Please direct any questions regarding these matters to the undersigned.

Respectfully submitted,



Ann West Bobeck
Senior VP and Deputy General
Counsel

cc: Karen Peltz Strauss
Greg Hlibok
Suzy Rosen Singleton
Mary Beth Murphy
Rosaline Crawford
Diana Sokolow
Steven Broeckert
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Jeffrey Neumann
Armen Madinians

³ *Id.* at 4.