

Ex Parte

June 13, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application of the IP Closed Captioning Rules to Video Clips; MB Docket No. 11-154

Dear Ms. Dortch:

NCTA and NAB continue to believe that the Commission does not have authority to regulate the captioning of online clips.¹ However, if the Commission were to regulate online clips, any rules must be limited and tailored to avoid imposing significant burdens on programmers or broadcasters that might lead to fewer clips being posted online.² Specifically, as described in NCTA's June 9, 2014 ex parte letter, any rules should limit a program network's or broadcaster's responsibility to certain situations where the network or broadcaster both airs the program on television with captions and exhibits clips from that television program on its own website or its own application ("app").³ To clarify, coverage of the rule would not depend on whether the programmer or broadcaster is the owner of the program it airs on its network; rather, the programmer or broadcaster need only have the right to exhibit the program on its network with captions and to post program clips on its own website.

Per a request from Commission staff, NCTA and NAB jointly propose the following formulation for coverage of any clips rule.

Broadcast

The clips rule would apply:

To any person or entity that (a) exhibits the television program with captions on television broadcast licensees' linear channels, (b) has the rights to exhibit a clip of that program with captions via internet protocol, and (c) when that person or entity makes the clip available via a

¹ 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 3, 2014) ("*NCTA June 3 Letter*"); NCTA Comments at 7; NCTA Reply Comments at 2-3.

² See 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 9, 2014); *NCTA June 3 Letter* at 2.

³ See *id.*

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website or application operated solely by a broadcast licensee and/or the broadcast network on which the television program with captions was shown.

Nonbroadcast

The clips rule would apply:

To any person or entity that (a) exhibits the television program with captions on its nonbroadcast linear network, (b) has the rights to exhibit a clip of that program with captions via internet protocol, and (c) when that person or entity makes the clip available via a website or application operated solely by the linear nonbroadcast network on which the television program with captions was shown.

Such a limitation recognizes that broadcast, nonbroadcast program networks and television licensees should only be responsible in situations where they have control over both the airing of the captioned television program and the posting of the clip online. Any other approach would impose significant administrative and compliance burdens that would not serve the public interest.

Respectfully submitted,

/s/ Diane B. Burstein

Diane B. Burstein

/s/ Ann West Bobeck

Ann West Bobeck

cc: Michelle Carey
Mary Beth Murphy