



The WALT DISNEY Company

Susan L. Fox  
Vice President  
Government Relations

June 18, 2014

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

Re: Closed Captioning of IP-Delivered Video Clips  
MB Docket No. 11-154  
Notice of Ex Parte Communications

Dear Ms. Dortch:

On Monday June 16, the undersigned spoke by telephone with Maria Kirby (Legal Advisor to Chairman Wheeler), along with Jennifer Kirkwood (Senior Director Affiliate Business Operations, ESPN). We discussed a number of issues around captioning of online short video or “clips.”

Both Ms. Kirkwood and Ms. Fox stressed at the outset that The Walt Disney Company, ABC and ESPN work very hard to ensure that their programming is accessible to viewers. Apart from any FCC requirement, Disney is and will continue to be committed to providing closed captioning for our viewers.

Ms. Kirkwood explained that ESPN has been working for some time to caption some amount of online short-video or video clips. Currently, ESPN’s decisions as to what short video or clips to caption are based on the long-term value and expected life span of the clips to be captioned – the goal being that those clips likely to be of most long-term interest to viewers are those that will be captioned (whether or not the clip or video appeared on television). Currently, ESPN uses a third-party vendor for this work and the turn-around time for the captioning process is approximately 24 hours. However, Ms. Kirkwood stressed that it is very hard to draw broad conclusions about whether such a time frame is feasible for the much-higher volume of captioning that would be involved if the FCC adopts a broad online clip captioning requirement. Ms. Fox and Ms. Kirkwood both stressed that any timing requirement or safe harbor time limit set by the FCC should permit programmers to provide a number of important defenses, including delays that may occur during time periods of high volume, technical or transmission problems, or vendor delays.

Ms. Fox also noted the high-volume of clips currently being distributed and captioned by ABC News and the ABC Owned Television Stations. Across the eight ABCOTV stations, ABCOTV currently posts thousands of clips a week, the vast majority of which are



captioned. This captioning effort has been made possible because the stations have worked the last several years to reconfigure their work flow processes so that on-air captions are retained and carried throughout the station processing and then can be re-distributed online. Given the significant time line for reconfiguring the entire content distribution process, Ms. Fox and Ms. Kirkwood stressed that the key aspect in crafting a *realistic* regime would be a long implementation period so that stations and programmers (both big and small) could budget for and undertake such a reconfiguration.

We stressed a few other points.

- First, ABC OTV does not currently caption digital-only short-form/clip content or clip/short-form content that is posted in advance of any airing on-air. Some of this content is raw video that is not aired on television and other content is video that is shot with hand-held cameras or even iPhones. To caption this content would require a completely new work stream. Moreover, much of the content posted before broadcast is *not* the same content that later airs on television (or it is longer raw video feeds that are significantly edited or shortened for broadcast). Therefore, the FCC should make very clear that any such content is not part of any FCC online captioning requirement that – under the CVAA – is legally linked to the on-air exhibition of content.
- Second, Ms. Fox noted that often a short video posted online may include a “sound bite” or a small portion of a news video that may be used later in a news story aired on television, but if the overall content is not the same, then the earlier online version should not be covered by any FCC online captioning requirement (again, since the CVAA requirement is legally linked to the television exhibition of content). Similarly, with respect to sports, Ms. Kirkwood noted that some digital-only content will of course contain portions of the same video that may appear on television (e.g., portions of a game aired or covered by ESPN), but if the digital-only content is not the same as the on-air content, it should not be covered by any captioning requirement. Ms. Fox also noted that third-party content or links to third-party content on station or programmer websites should be exempted from any captioning requirements.
- Third, with respect to captioning quality, Ms. Fox noted that once an entity reconfigures its processes to retain and tie all captions from on-air to online, the quality of online clip or short-form video captioning is the same as the quality of the on-air captioning. For example, although ABCOTV strives for the highest quality in captioning, because ABCOTV retains news captions when news clips are subsequently distributed online, the captioning is the same and therefore the FCC’s quality expectation should be the same (e.g., there may be some delays in the captioning and the online captioning should be treated as “live” captioning if the on-air captioning was live).
- Fourth, to the extent that the FCC proposes or encourages technological fixes or the development of new technology for captioning content, the FCC should recognize the technological limitations of any new technology. For example, ABC has started to



experiment with and use some voice recognition technology (e.g., for digital-only content). We are hopeful to have greater implementation of voice recognition technology as it continues to improve. However, given that the technology is still evolving, the FCC should make clear that stations and programmers starting to use such new technologies should not be held to the same captioning standards that apply to on-air content (especially for any new categories of captioning that require a new work stream). For example, the FCC could consider adopting a quality safe harbor for entities using the best available voice recognition technology.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L. Fox". The signature is fluid and cursive, with a large initial "S" and "F".

Susan L. Fox

cc: Maria Kirby