



June 27, 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 Wednesday, June 25, Jane Mago, Executive Vice President and General Counsel; Ann West Bobeck, Senior Vice President and Deputy General Counsel; Kelly Williams, Senior Director, Engineering and Technology Policy; and the undersigned of the National Association of Broadcasters (NAB) met with Clint Odom, Policy Director, Office of Commissioner Rosenworcel; and Matthew Berry, Chief of Staff, and Daniel Graulich, law clerk, Office of Commissioner Pai. On Thursday, June 26, NAB met with Adonis Hoffman, Chief of Staff and Senior Legal Advisor, Sharon Lin, law clerk, and Laura Arcadipane, law clerk, Office of Commissioner Clyburn; and Courtney Reinhard, Senior Legal Advisor and Chief of Staff, Office of Commissioner O’Rielly. Kelly Williams did not participate in the final meeting. At these meetings we discussed the Federal Communications Commission’s (FCC) proposal to caption online video clips.

NAB noted that we have been working with the FCC to address concerns about the Commission moving forward with rules to require a broadcast licensee or programmer to replace “advance” clips, including “time-sensitive” clips. NAB discussed the practical barriers that a regulatory requirement to track and replace “advance” clips would face. Given the complexity of creating online video clip captions and the resource burden associated with a requirement, the FCC’s proposal may act as a deterrent to providing these types of clips online.<sup>1</sup>

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<sup>1</sup> We also continue to maintain that the Commission lacks the authority to regulate the captioning of online video clips. 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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NAB explained why it is not reasonable to expect that these clips can be readily replaced online within a very short time frame (under 24 hours). If the Commission decides to adopt a shorter timeframe 12 business hours would be an aggressive, but potentially reasonable timeframe if the FCC provides sufficient lead time for the effective date of any requirement (i.e., mid 2017). For many practical reasons, a minimum of 12 hours to replace clips is needed. For example, if a station posts several news clips shortly before the 11 pm news hour, the station may lack overnight personnel at the facility capable of swapping out online content post-production while ensuring that clip captions are correct. Given staff's other obligations associated with running a station, unmanned overnight hours or limited weekend staffing would make any other obligation difficult to achieve. Any 12-hour requirement should include both live and "near-live" video clips for the same reasons that the FCC treats live and "near-live" programming similarly in other CVAA proceedings; there is no reason to separate "near-live" programming from live programming. NAB added that even with broadcaster best efforts, given such an aggressive time-frame and turn-around time, not all broadcasters, especially smaller stations creating clips at the local level, will be able to comply.

To help clarify why a deadline of less than 12-24 hours to replace advance clips is unrealistic, NAB created a flow chart showing the different steps required to create and post a video clip with captions. Although we understand that some parties assert that captioners can turn around captions in a few hours, in reality captioners are rarely involved in the process of creating online video clips with captions. Instead, a different set of vendors capture and extract captions from the broadcast program, re-encode the files for the IP environment, then send the clips, with captions, to content delivery networks and webhost sites. Each of these steps can add a substantial delay to the process, which will continue to exist until an automated solution is developed. The chart is attached.

NAB stressed that any new obligation will be multiplied by several hundred websites and several thousand clips posted every day by video programmers. Any obligation will be further complicated by the fact that 1) many stations must outsource their web content to third-party website vendors, and 2) stations that utilize Electronic Newsroom Technique (ENT) have additional technical hurdles to overcome in posting captioned clips.

Given the sheer amount of clips across the broadcast video universe that would need to be monitored, uploaded, and potentially replaced, imposing a deadline of less than 12-24 hours to replace a clip will, by necessity, artificially limit the number of clips that a licensee can place online. Otherwise, the obligation would swallow the station's resources. The Commission must allot a reasonable amount of time to ensure that a large variety of clips can be monitored, uploaded, and replaced.

NAB also explained that, for the purposes of linking and aggregating, there are journalistic reasons why one version of a clip (uncaptioned) may be retained on a programmer's website at the same time that an additional or different version may be added (but not substituted) after that clip has been televised.

Finally, NAB briefly discussed quality obligations for online captioned clips. For a myriad of reasons the Commission should not apply the same captioning quality standards that it established for televised full-length programming that is subsequently posted online. Further, to allow broadcasters to innovate and continue their work toward a fully automated solution for online clip captions, the FCC should consider adopting a quality safe harbor for entities that utilize the best available voice recognition technology.<sup>2</sup> NAB's arguments were consistent with its previous filings.

Please direct any questions regarding these matters to the undersigned.

Respectfully submitted,



Enclosure

CC: Maria Kirby  
Clint Odom  
Matthew Berry  
Adonis Hoffman  
Courtney Reinhard  
Daniel Graulich  
Sharon Lin  
Laura Arcadipane

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<sup>2</sup> Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, *Report and Order*, 27 FCC Rcd, 287, ¶ 37 (2012) (requiring captions for online full-length programming "of at least the same quality as the television captions provided for that programming.") (R&O). See, Letter from Ann West Bobeck, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 11-154 (June 19, 2014); Letter from Susan Fox, General Counsel, Disney, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 11-154 (June 18, 2014).

