



July 7, 2014

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

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

Dear Ms. Dortch:

On Thursday, July 3, I spoke via telephone Matthew Berry, Chief of Staff, Office of Commissioner Pai, concerning the captioning of video clips online. I reiterated our concerns about the Commission moving forward with rules to require a broadcast licensee or programmer to replace “advance” clips, including “time-sensitive” clips. A 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.<sup>1</sup>

Given the number of clips that need to be monitored, uploaded, and potentially replaced, should the Commission move forward, it must allot a reasonable amount of time to ensure that a large variety of clips are monitored, uploaded, and replaced, without forcing the licensee to limit which content it can publish online because it is unable to comply with an arbitrarily short timeframe.

Moreover, for the purposes of linking and aggregating, there will likely be numerous 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 also be added (but not substituted) after that clip has been televised. Again, should the Commission delineate between “time sensitive” clips, such as breaking news and other advance clips, we strongly urge the Commission to allow a longer time frame for advance clips. Indeed, because

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<sup>1</sup> We 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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many advance clips include promotions and other materials currently not required to be captioned, the Commission may wish to seek comment on the timing of non-“time-sensitive” advanced clips in its forthcoming Further Notice.

As to the quality of online captioned clips, I noted that for a myriad of reasons, it is not reasonable for the Commission to apply the same captioning quality standards that it established for televised full-length programming that is subsequently posted online.<sup>2</sup> First, some programmers may not be able to repurpose televised captions or may be significantly editing captions for purposes of posting an online version of the captioned clip. Second, as noted by the Walt Disney Company, news clips may contain short delays (and thus should be treated as “live” captioning).<sup>3</sup> Third, some synchronicity issues are inherent with video postings, and are wholly outside the control of broadcast licensees. Finally, many broadcasters are actively working on and have invested in technical solutions to advance captioning, including the use of voice recognition technology. NAB agrees with the Walt Disney Company that the FCC should consider adopting a quality safe harbor for entities that utilize the best available voice recognition technology.<sup>4</sup>

Finally, we discussed the obligation on non-licensee or network websites. Broadcasters again argued that the FCC should make clear that licensees or programmers cannot be held responsible for compliance for 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, and meet any applicable quality standards, 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 on a website operated by a third-party is unreasonable. Further, holding a licensee or programmer responsible when it has little or no ability to correct problems on third-party websites in the event captioning errors do arise is inherently problematic.

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<sup>2</sup> In re 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 (2012) at ¶ 37 (requiring captions for online full length programming “of at least the same quality as the television captions provided for that programming.”).

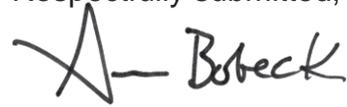
<sup>3</sup> See Letter from Susan L. Fox,, Vice President, Government Relations, The Walt Disney Company, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in MB Docket No. 11-154 at 2 (June 18, 2014).

<sup>4</sup> *Id.* at 3.

Marlene H. Dortch  
July 7, 2014  
Page 3

Please direct any questions regarding these matters to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by the name 'Beck'.

CC: Matthew Berry

Senior VP and Deputy General  
Counsel