

August 4, 2014

via electronic filing

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: Closed Caption Quality • CG Docket No. 05-231 • PRM11CG

Dear Ms. Dortch,

On July 31, 2014, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips of the National Association of the Deaf (NAD), and Lise Hamlin of the Hearing Loss Association of America (HLAA), collectively, “Consumer Groups,” and I met with Kris Monteith, Karen Peltz Strauss, and Caitlin Vogus of the Consumer and Governmental Affairs Bureau, Greg Hlibok, Suzy Rosen Singleton, and Eliot Greenwald of the Disability Rights Office, and Susan Aaron of the Office of General Counsel about the above-referenced matter.

We emphasized our overarching support for the Commission’s efforts to ensure that *some* entity bears full responsibility for compliance with the closed captioning provision and quality rules.¹ We reiterated our concern, however, over the Commission’s plans to shift from its long-standing video programming distributor (“VPD”)-centric responsibility model, which we fear could overcomplicate the resolution of complaints, lead to finger-pointing over caption problems, and overwhelm the Commission’s enforcement resources—particularly for the rules applying to the basic provision of captions.² Because consumers lack a private right of action to address violations of the Commission’s captioning rules, the Commission’s ability to address those violations is the sole remedy available for consumers—and thus is a paramount responsibility that the Commission must take the utmost care not to compromise.³

Nevertheless, we acknowledged the enforcement gaps under Rule 79.1(g)(6) & (j)(1) that prevent the Commission from enforcing violations of the provision and quality rules

¹ See *Comments of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 1-3 (Apr. 28, 2014) (“*Consumer Groups FNPRM Part 1 Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521100403>.

² See *id.* at 3-8; *Reply Comments of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 2-7, 8 (May 27, 2014) (“*Consumer Groups FNPRM Part 1 Reply Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521152476>.

³ See 47 U.S.C. § 613(j).

where a video programming distributor is not responsible for the underlying problem.⁴ We also acknowledge that having disparate responsibility schemes for the provision and quality rules may be untenable, particularly when it is not clear at the outset whether a complaint implicates a violation of the provision or quality rules.

Thus, if the Commission ultimately concludes that extending responsibility for the caption provision and quality rules beyond VPDs to video programmers or video programming owners (“VPOs”) will better facilitate high-quality captioning, aid the complaint process, and facilitate robust enforcement against violations of the rules, we would tentatively support such a shift *if*:

- **VPDs remain the primary point of contact for captioning complaints directed to VPDs from their receipt to their resolution**, even where an investigation reveals that another party is responsible for the underlying captioning problem. Consumers receive access to video programming from VPDs in exchange for substantial fees for cable and satellite programming and the use of the public airwaves for broadcast programming. VPDs must ensure that consumers have equal access to the programming they distribute and owe an obligation to consumers to assist in the resolution of captioning problems even where they are not directly responsible.⁵
- **The Commission continues to require VPDs to seek certification from video programmers and VPOs that programs are captioned in accordance with the rules.** A VPD’s willful indifference to captioning problems, regardless of whether they are within the VPD’s control, should constitute a violation of the rules. The Commission should also require VPDs to present compliance certifications to consumers in response to complaints.
- **The Commission commits to robust and vigorous enforcement of violations of the rules** under the new responsibility scheme to ensure that all entities in the distribution chain have adequate incentives to comply.
- **The Commission ensures that the additional complexity of a divided responsibility scheme process is accompanied by additional transparency measures** to ensure that consumers understand what is happening after they file a complaint. In particular, the Commission must require VPDs to disclose the identities of other entities it believes are responsible for captioning

⁴ See 47 C.F.R. § 79.1(g)(6), (j)(1).

⁵ Where a consumer directs a complaint to the Commission describing a problem outside of a VPD’s control, the Commission should nevertheless notify the VPD of the complaint and keep the VPD in the loop for the duration of the investigation.

problems not just to the Commission, but to the public.⁶ The Commission could, for example, add non-compliant video programmers and VPOs to the VPD contact registry. The Commission should also ensure that aggregate information about complaints and their status, including VPDs, programmers, programs, and captioners that are repeat sources of problems, is available to the public via Commissioner Pai’s “dashboard” proposal or a similar mechanism.⁷

- **The Commission ensures that VPDs cannot disenfranchise consumers under the guise of protecting their privacy rights.** We noted our concern that VPDs will attempt to leverage their statutory obligation to protect confidential consumer information to avoid forwarding complaints to the responsibility party.⁸ It would be particularly absurd to read a statute designed to *protect consumers* to hinder their ability to take steps to resolve captioning problems. Thus, the Commission must forbid VPDs from simply passing the buck to consumers to refile a complaint with a video programmer or VPO when the VPD believes it is not responsible. Instead, the Commission should require VPDs to undertake all reasonable efforts to obtain a consumer’s consent to forward a complaint, including proactively seeking advance consent if the consumer files a complaint through a web form or via telephone, and allow consumers to consent in the least burdensome manner possible, such as simply answering “Yes” to an e-mail or telephone request for consent.

Finally, we expressed concern over the proposal of the National Cable & Telecommunications Association (NCTA) to extend the “compliance ladder” construct to the context of captioning quality.⁹ While we support the development of “action plans” to remedy structural issues in the provision of captions, we do not believe it is necessary for the Commission to identify a pattern or a trend of non-compliance, afford a 30-day window to respond, and identify *further* evidence of a pattern or trend before requiring an action plan.

⁶ See *Reply of TDI, et al.*, MB Docket No. 11-154, Complaint # 12-C00454509-1, at 3-4 (Dec. 11, 2013) (describing the efforts of a VPD to conceal the identities of allegedly responsible VPOs from the public), available at <http://apps.fcc.gov/ecfs/document/view?id=7520961650>.

⁷ See *Comments of TDI, et al.* CG Docket No. 05-231, PRM11CG, at 9-10 (July 9, 2014) (“*Consumer Groups FNPRM Part 2 Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373906>.

⁸ See *id.* at 11-13.

⁹ See *Comments of NCTA*, CG Docket No. 05-231, at 2-3 (Apr. 28, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521100316>.

We acknowledge that some VPDs, video programmers, and VPOs may encounter initial difficulty in adapting to the caption quality rules and would support the imposition of an action plan after a single pattern or trend of non-compliance, followed by enforcement action in the face of evidence that the underlying problem has not been resolved. However, we believe there is no principled reason for the Commission to refrain from enforcement until *three* patterns or trends of serious non-compliance have occurred, which would unnecessarily depress incentives for high-quality captioning by affording what amounts to a “get out of jail free” card for an initial violation of the rules.

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Please don't hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

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CC: Meeting attendees