

Before the
Federal Communications Commission
Washington, DC

In the Matter of:)
Closed Captioning of Video)
Programming) CG Docket No. 05-231
Telecommunications for the) PRM11CG
Deaf, Inc. Petition for)
Rulemaking)

Reply Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)
American Association of the Deaf-Blind (AADB)
Speech Communication Assistance by Telephone (SCT)
Technology Access Program at Gallaudet University (TAP)

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Blake E. Reid
Counsel to TDI
blake.reid@colorado.edu
303.492.0548

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Contact: Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Andrew Phillips, Policy Counsel • andrew.phillips@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Hearing Loss Association of America (HLAA)

Anna Gilmore Hall, Executive Director • AGilmoreHall@Hearingloss.org
Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Association of Late-Deafened Adults (ALDA)

Dave Litman, President • aldaprez2014@gmail.com
Contact: Brenda Estes • bestes@endependence.org
8038 Macintosh Lane, Suite 2, Rockford, IL 61107
www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Contact: Mark Hill, President • president@cpado.org
2025 SE Pine Street, Apt. #302, Portland, OR 97216
503.468.1219
www.cpado.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Cheryl Heppner, Vice Chair • CHEppner@nvrc.org
3951 Pender Drive, Suite 130, Fairfax, VA 22030

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Contact: Sheri A. Farinha, Vice Chair • SFarinha@norcalcenter.org
4708 Roseville Rd, Ste. 111, North Highlands, CA 95670
916.349.7500

American Association of the Deaf-Blind (AADB)

Contact: Randall Pope, President • randy.pope@aadb.org
PO Box 8064, Silver Spring, MD 20907

Speech Communications Assistance by Telephone (SCT)

Bob Segalman, President • drsts@comcast.net
515 P Street Apt # 207, Sacramento, CA 95814

Technology Access Program at Gallaudet University (TAP)

Contact: Christian Vogler, Ph.D., Director • christian.vogler@gallaudet.edu
Department of Communications Studies
SLCC 1116, Gallaudet University
800 Florida Avenue NE, Washington, DC 20002
202.250.2795
tap.gallaudet.edu

Summary

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the American Association of the Deaf-Blind (AADB), and Speech Communication Assistance by Telephone (SCT), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP) commend the Commission’s continuing attention to the critical issue of closed caption quality.

In response to comments filed in response to the second portion of the Commission’s *FNPRM* in this proceeding, we urge the Commission to consider the extent to which the responsibility issues it is considering in the first portion of the *FNPRM* will reduce the obligations on VPDs. Toward that end, we urge the Commission to ensure that VPDs’ remaining pass-through and customer service obligations meet the highest of standards, including routine technical equipment checks, robust outage reporting, and rapid and comprehensive resolution of consumer complaints, including beginning-to-end contact with consumers even for complaints about problems that are not their responsibility. We also urge the Commission to press forward with robust improvements to caption quality for live and near-live programming, including early audio delivery for captioners, a narrowed scope of near-live programming, and caption improvement obligations for re-fed live and near-live programming. Because the record in this proceeding fails to establish any reasonable basis or concrete evidence to continue the Commission’s existing categorical exemptions, we reiterate our call for the Commission to eliminate or substantially narrow them. Finally, we urge the Commission to ensure robust technical standards and to address related issues raised in the comments.

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Discussion

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the American Association of the Deaf-Blind (AADB), and Speech Communication Assistance by Telephone (SCT), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP), respectfully reply to comments on the *Further Notice of Proposed Rulemaking* (“FNPRM”) in the above-referenced docket.¹

At the outset, we commend the continued commitment of many of our industry colleagues, including the National Association of Broadcasters (NAB), the National Cable & Telecommunications Association (NCTA), the Consumer Electronics Association (CEA), and Verizon to continuing the steady march toward higher-quality and more ubiquitous captions.² While we acknowledge their concerns over the difficulty of

¹ *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 05-231, PRM11CG, 29 FCC Rcd. 2221 (Feb. 24, 2014) (“*Quality Order*” and “*FNPRM*”), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0313/FCC-14-12A1.pdf.

² See, e.g., *Comments of NAB*, CG Docket No. 05-231, PRM11CG, at 1-3 (July 9, 2014) (“*NAB Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373782>; *Comments of NCTA*, CG Docket No. 05-231, PRM11CG, at 1 (July 9, 2014) (“*NCTA Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373851>; *Comments of CEA*, CG Docket No. 05-231, PRM11CG, at 1 (July 9, 2014) (“*CEA Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373843>; *Comments of Verizon*, CG Docket No. 05-231, PRM11CG, at 1 (July 9, 2014) (“*Verizon Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373880>.

complying with increasingly comprehensive provision, quality, and technical standards for captions, we note that the path to the promise of equal access to video programming will be paved with the stones of their efforts—efforts that we celebrate but cannot deem complete until viewers who are deaf or hard of hearing can access programming on equal terms with their hearing counterparts.

Toward that end, we urge the Commission to consider the reduced burden on video programming distributors (“VPDs”) that will result from shifting responsibility for caption provision and quality to other entities in the video programming chain. In that light, the Commission should not hesitate to impose high standards for VPDs’ remaining pass-through and customer service obligations. We also reiterate our calls for the Commission to adopt additional standards to improve caption quality for live and near-live programming, to reduce or dramatically narrow existing categorical exemptions, and to ensure that high-quality captions exist on top of a robust technical framework that ensures they can be rendered in a way that ensures equal access for viewers who are deaf or hard of hearing.

I. Shifting caption provision and quality responsibility from VPDs to programmers or VPOs would dramatically reduce the captioning obligations on VPDs and cast doubt on any concerns about bolstering their remaining pass-through and customer service responsibilities.

As Verizon alludes, it and many other VPDs have increasingly pushed the Commission to adopt a shift away from a VPD-centric captioning responsibility model for one that places the primary responsibility for the provision and quality of captions on video programmers or video programming owners (“VPOs”), leaving VPDs responsible for passing through captions and providing customer service for captioning-related issues, such as handling caption-related complaints.³ While we have raised concern over the

³ See *Verizon Comments* at 2-3.

impact of such a shift on consumers who are deaf or hard of hearing, we expressed tentative support in a recent *ex parte* filing for such a shift on the condition that the Commission ensures that VPDs execute their remaining obligations at the highest of standards.⁴

Such a shift would dramatically reduce the captioning obligations on VPDs. As a result, the Commission should discount the concerns raised by some commenters that bolstering VPDs' core remaining pass-through and customer service obligations will be overly burdensome. While we acknowledge a level of merit in holding entities other than VPDs responsible for captioning provision and quality, VPDs must retain a high level of responsibility for basic pass-through and customer service responsibilities to ensure that their customers who are deaf or hard of hearing are not disenfranchised.

II. The Commission should hold VPDs to high standards for technical equipment checks, outage reporting, and resolution of consumer complaints.

To meet these basic responsibilities, we endorsed a variety of modest compliance proposals in our comments, including routine technical equipment checks, outage reporting requirements, and expeditious and consumer-friendly practices for handling complaints.⁵ We are disappointed that many of our VPD colleagues have reflexively opposed many of these proposals even in light of their push to shift captioning provision and quality responsibilities to other entities. Because their opposition is unjustified, we again urge the Commission to adopt basic compliance measures to ensure that consumers

⁴ *Ex Parte of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 1-4 (Aug. 4, 2014) (“*Consumer Groups Responsibility Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521750124>.

⁵ *Comments of TDI, et al.*, CG Docket No. 05-231, PRM11CG, at 7-13 (July 9, 2014) (“*Consumer Groups Comments*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373906>.

who are deaf or hard of hearing can access captions on equal terms and resolve problems quickly and easily.

First, we again urge the Commission to require VPDs to check equipment necessary to pass through captions on the same periodic basis that they check equipment used to pass through audio, thereby treating captions with the same care as their audible counterparts.⁶ This proposal is consistent with Verizon's and AT&T's calls for flexibility in performing equipment checks.⁷ While we acknowledge that VPDs may approach equipment checks differently, we simply urge the Commission to require that VPDs take the same care with captions that they do with audio and to demonstrate that they have done so in the case of captioning problems.

Second, we reiterate our call for the Commission to adopt the modest outage reporting requirements outlined in our comments.⁸ Unfortunately, our VPD colleagues have opposed such requirements with a hodgepodge of inconsistent rationales. Verizon, for example, implausibly asserts that it is *impossible* for viewers to experience standalone captioning outages—a contention undermined by the implicit concessions of NCTA and AT&T that caption outages are both possible and observable.⁹

While we acknowledge AT&T's and NCTA's concerns that observing and reporting outages in real-time is not a trivial task, outage reporting will both inform viewers there is a problem unrelated to their own video equipment and bring that problem to the Commission's attention—making more likely that the problem will be resolved expediently. Moreover, Verizon's complaint that outage reporting will not provide any benefits simply because the Commission can get the same information from investigating

⁶ *Id.* at 7-8.

⁷ See *Verizon Comments* at 3-4; *AT&T Comments* at 2-4.

⁸ *Consumer Groups Comments* at 10-11.

⁹ See *Verizon Comments* at 5-6; *AT&T Comments* at 4-5; *NCTA Comments* at 12-13.

complaints ignores the realities that (a) consumers do not undertake the burden of filing a complaint every time there is a problem and (b) finding the root cause of problems through investigation is time-consuming and burdensome for the Commission. Requiring VPDs to proactively supplement complaints with information about known outages is a sensible belt-and-suspenders approach that will ensure the expedient resolution of critical problems facing those VPDs' customers who are deaf or hard of hearing.

Third, we again urge the Commission to adopt improved procedures for resolving complaints, including where a VPD receives a complaint about a problem for which it is not responsible, and providing complaint information.¹⁰ In particular, the Commission should codify the best practices proposed by NCTA, despite NCTA's unexplained opposition to codifying them.¹¹ As NCTA and Verizon both emphasize, these practices are informed by and consistent with industry practice—and should impose minimal compliance burdens as a result.¹²

We also note AT&T's support for the Commission's common-sense proposal to require VPDs to submit contact information directly to the VPD Registry.¹³ We urge the Commission, however, to reject AT&T's call to limit the posting of contact information to VPD websites. While such a limitation might make sense for IP-based video services because their viewers are likely to have Internet access, many viewers of traditional VPD platforms do not have Internet access or do not interact regularly with VPDs via the web, and it would deny those consumers access to critical customer support to allow VPDs to omit contact information from paper bills and other materials.¹⁴ And AT&T's complaint

¹⁰ *Consumer Groups Comments* at 8-10, 11-13.

¹¹ *See NCTA Comments* at 10-11.

¹² *See id.; Verizon Comments* at 4-5.

¹³ *AT&T Comments* at 7.

¹⁴ *See id.* at 8.

that non-captioning inquires predominate communications to the e-mail addresses and phone numbers dedicated to captioning suggests little more than a need for VPDs to design their billing materials more carefully to ensure that all their customers, including those *without* disabilities, can reach the appropriate person to resolve their concerns.¹⁵

Finally, we urge the Commission to reject NCTA’s proposal to allow VPDs to “return any misdirected captioning complaints directly to consumers, providing the name and address of the correct party to whom the complaint should be sent.”¹⁶ We remind NCTA that there is *no such thing* as a “misdirected” complaint from a consumer to a VPD about problems with the service that consumer is receiving—even if those problems are not ultimately the VPD’s legal responsibility. And while we agree with Verizon that the Commission should accept a wide range of consent from consumers to forward complaints along, we strongly disagree with the proposition that forwarding a complaint should absolve a VPD of any future responsibility.¹⁷

Indeed, the primary “reason for the initially-contacted distributor to remain in the middle between the responsible distributor or programmer and the consumer” is that the complaining consumer is the initially-contacted VPD’s *customer*, who regularly pays the VPD substantial fees (or the use of the public spectrum) for access to the programming in dispute.¹⁸ As we outlined in our recent *ex parte*, we believe VPDs must remain the primary point of contact throughout the complaint resolution process, and incorporate that *ex parte* by reference here.¹⁹

¹⁵ *See id.* at 7-8.

¹⁶ *See NCTA Comments* at 11-12

¹⁷ *See Verizon Comments* at 9-10.

¹⁸ *See id.* at 10.

¹⁹ *Consumer Groups Responsibility Ex Parte* at 2-3.

III. The Commission should adopt minimum standards for live and near-live caption quality.

In addition to supporting modest pass-through and customer-service obligations for VPDs, we continue to support basic measures to further improve the quality of captions. In particular, we outlined support in our comments for minimum standards to address synchronicity, cutoff, and Electronic Newsroom (ENT) issues in live captions and to curtail the overuse of live captions by requiring offline captioning where possible.

²⁰Unfortunately, many of our industry colleagues have again met these modest proposals with reflexive opposition.

First, NAB and NCTA raise a mélange of hyperbolic objections to the possibility of addressing pervasive synchronicity issues by sensibly providing captioners audio slightly in advance.²¹ More particularly, NAB and NCTA variously claim that such a delay would risk delaying emergency information, interfere with Digital Video Recorder (DVR) functionality, “intrude on important newsroom judgments,” or even “end the practice of providing truly live programming on television.”²²

We are disappointed that NAB and NCTA have cavalierly invoked these serious concerns in such an inapposite context. Indeed, it is *because* we share NAB’s and NCTA’s members’ passion for live television that we seek to address the pervasive problems with live captioning that deny viewers who are deaf or hard of hearing equal access to it. We neither propose nor support the imposition of a substantial delay that would endanger lives, interfere with the critical role of television in the dissemination of news and other important content, interfere with editorial discretion, or break the functionality of DVR

²⁰ *Consumer Groups Comments* at 1-7.

²¹ *NAB Comments* at 3-4; *NCTA Comments* at 2-3.

²² *NAB Comments* at 3-6; *NCTA Comments* at 3-4.

equipment that many viewers, including those who are deaf or hard of hearing, have come to use and enjoy.

Rather, we merely support the imposition of an *exceedingly minor delay*—on the order of no more than a few seconds—to ensure that captioners can allow viewers who are deaf or hard of hearing to accurately experience program content on the same terms as everyone else. As NCTA admits, such a delay is not a new or particularly controversial idea—some VPDs already delay the display of live programming under a variety of circumstances.²³ Doing so for captioning purposes would not interfere with VPDs’ ability to broadcast whatever content they want, whenever they want—it would merely require them to do so on equal terms.

Moreover, a delay on the order of seconds would not interfere with DVR functionality any more than the routine practice of VPDs not conforming their programming *precisely*—i.e., to the second—to program guide information. Nor would a delay hinder solutions that many consumers already must undertake, such as starting recording slightly in advance and extending it slightly longer than the program guide’s duration. We would not object to programmers disabling such a delay in true emergency circumstances where even a several second delay is untenable and supplementing it with other means of accessibility conveying critical information pursuant to Rule 79.2.²⁴ And we firmly believe that NAB’s and NCTA’s members can resolve any technical challenges if the Commission provides appropriate regulatory incentives for them to do so.

We are also disappointed that industry commenters were quick to dismiss the Commission’s proposals for addressing the cut-off of live captions at the end of a program without providing any alternative suggestions for addressing the problem. Of course, we

²³ *NCTA Comments* at 3.

²⁴ *See generally* 47 C.F.R. § 79.2.

agree with NAB and NCTA that addressing synchronicity issues with live captioning would obviate the cut-off problem altogether, and that doing so would be an ideal solution.²⁵ However, NAB and NCTA argue in virtually the same breath that meaningfully addressing those synchronicity issues is difficult or impossible, at least in the near term.²⁶ In parallel with addressing synchronicity issues more generally, it is critical that industry and the Commission devise a meaningful near-term solution to address the cut-off problem. Again, we believe that providing advance delivery of audio to captioners is an ideal method for addressing the cut-off problem *and* improving synchronicity issues more generally.²⁷

Of course, we believe the best way to avoid problems with live captioning is to avoid its use in favor of offline captioning wherever logistically possible, including for refeed program content. Unfortunately, NAB and NCTA urge the Commission to afford programmers *carte blanche* to use live captioning instead of offline captioning for virtually any reason.²⁸ NCTA pointedly claims that “a programmer’s choice to use [live] captioning should not be constrained”—even, apparently, where the use of offline captioning is possible and would afford viewers who are deaf or hard of hearing substantially improved access to a program.²⁹ NAB similarly suggests that programmers should retain “editorial discretion” to use live captioning at their convenience, rather than out of unavoidable necessity.³⁰ NAB also claims that improving captions for refeed live and near-live programming “could be prohibitively expensive,” without providing any comprehensive economic data that would even begin to justify its position.

²⁵ See *NAB Comments* at 8; *NCTA Comments* at 4-5.

²⁶ See, e.g., *NAB Comments* at 8; *NCTA Comments* at 3.

²⁷ *Consumer Groups* at 3-4.

²⁸ See *NAB Comments* at 8-13; *NCTA Comments* at 5-6.

²⁹ See *NCTA Comments* at 5.

³⁰ See *NAB Comments* at 8-9.

We continue to believe that live captioning should be permitted only where offline captioning is truly unachievable or economically burdensome, not where live captioning would merely be more convenient or less expensive.³¹ Thus, in lieu of specific evidence that our proposals are unworkable or presentation of reasonable alternatives, we reiterate our call for the Commission to narrow the definition of near-live programming and require offline recaptioning for refed live and near-live content.³²

Finally, we reiterate our call for the Commission to harmonize the application of its new ENT standards for non-broadcast programming.³³ NCTA suggests that cable operators “pre-script” nearly all of their local news, meaning that the new ENT standards would impose virtually no burden on non-broadcast VPDs and programmers.³⁴ NCTA offers no justification for delaying the extension of the new standards other than vague and anecdotal claims of “dramatic and deleterious impact[s]”—claims that should be rejected in the absence of systemic evidence that modest improvements to standards will pose any serious hardships to *all* non-broadcast entities.

IV. The Commission should eliminate or dramatically narrow categorical captioning exemptions.

Improvements to the quality of captions will go unrealized if programming is not subject to captioning rules in the first instance. For more than a decade, the deaf and hard hearing community has called for the Commission to examine the continuing need for the categorical exemptions to its captioning rules, consistent with Section 713(d)(1)’s obvious requirement that the Commission premise such exemptions on evidence of actual economic burden.³⁵ Indeed, industry commenters seeking the continuation of such

³¹ See *Consumer Groups Comments* at 4-6.

³² See *id.*

³³ See *id.* at 6-7.

³⁴ See *NCTA Comments* at 7-8.

³⁵ See 47 U.S.C. § 613(d)(1); *Consumer Groups Comments* at 14.

exemptions must bear the burden of demonstrating their necessity in light of the modern realities of the video programming ecosystem and the numerous advances in captioning technology in the 15 years since the Commission originally promulgated the exemptions.

Instead of undertaking serious efforts to describe the actual, current economic impact of the Commission’s captioning rules on the video programming industry and suggesting narrowly tailored exemptions that would address those impacts, several commenters in this proceeding appear to take the unreasonable position that the current captioning exemptions should exist in perpetuity simply because Commission determined they were appropriate before the turn of the last century.³⁶ However, the comments filed in this proceeding provide virtually no concrete evidence or systemic data that would warrant the continuation of any of the categorical exemptions under examination. For example:

- NAB argues that the late-night programming exemption is necessary because advertising revenue for such programming is “miniscule.”³⁷ NCTA similarly argues that the costs of captioning late-night captioning “must be spread over few viewers.”³⁸ But neither offers any comprehensive, systemic data about the cost of captioning late-night programming versus the revenue resulting from such programs, much less any evidence remotely suggesting that the elimination of the late-night programming exemption would force programming off-the-air. NCTA even argues that the vast majority of late night programming is re-run television and movie content that is *already* captioned—a point that, if true, would suggest

³⁶ See, e.g., *NAB Comments* at 15 (“The Commission has no basis for removing exemptions and unduly burdening program providers . . .”); *NCTA Comments* at 12-3 (“After careful consideration in a rulemaking proceeding . . . , the Commission established the current categories of exemptions at issue . . .”).

³⁷ *NAB Comments* at 16.

³⁸ *NCTA Comments* at 18-19.

there is no need for the exemption.³⁹ Finally, instead of explaining how providing the viewers who are deaf or hard of hearing equal access to the remaining uncaptioned programming would constitute an economic burden, NCTA suggests that those viewers should simply turn to other sources of captioned programming.⁴⁰

- NAB and NCTA dispense with any pretense that captioning advertising would impose a meaningful economic burden, pointing instead to the Commission’s determination that advertising is “ancillary” to “main programming content.”⁴¹ As NAB concedes, this is an economically absurd argument belied by the reality that “any business would be smart to caption its commercials to ensure the message received by all consumers”—including the tens of millions of Americans who are deaf or hard of hearing—particularly in light of the minimal cost of captioning advertisements that generally run no longer than 30 seconds.⁴²
- NAB and NCTA fail to provide any economic data about the impact of a captioning requirement for interstitial, promotional, and PSA content. Instead, NAB and NCTA essentially claim that the Commission should continue to exempt that content from its captioning requirements because captioning it would be logistically inconvenient, because the content is less important than the primary video programming it promotes, and because it has a short shelf-life—rationales that neither speak to the actual economic impact of captioning such

³⁹ *Id.* at 18.

⁴⁰ *Id.* at 19.

⁴¹ *NAB Comments* at 18-19; *NCTA Comments* at 21-22.

⁴² *See NAB Comments* at 17-19. NAB argues that all captioners charge for captioning services in 30- or 60-minute increments, including for 30-second commercials; even if this is true, however, NAB does not explain why it is unable to contract for the captioning of short commercials in bulk. *See id.* at 17 & n.30.

programming or justify denying access to viewers who are deaf or hard of hearing.⁴³

- NAB and NCTA similarly fail to provide any responsive economic data that would justify the continuation of the \$3 million revenue exemption at its current level. NAB concludes, without explanation, that stations with revenue below \$3 million “are small stations” and “cannot afford to caption.”⁴⁴ NCTA notes that “certain types of captioning remain costly” and that “inflation has reduced the relative value of the \$3 million cap by roughly a third,” but does not even attempt to justify the \$3 million threshold as anything more than an arbitrary figure or establish a meaningful relationship between the threshold and the actual, current cost of captioning or revenue streams of entities in the video programming ecosystem.⁴⁵
- NAB and NCTA variously cite to vague, speculative grounds for retaining the exemption for locally produced and distributed non-news programming and with no repeat value, such as the allegedly “fragile economic support system[s]” and “small operating budgets” of the programmers that create this content.⁴⁶ While

⁴³ See *NAB Comments* at 20-21; *NCTA Comments* at 16-18.

⁴⁴ See *NAB Comments* at 22. NAB also apparently believes that the \$3 million exemption is justified because of some aspect of multicast programming, which we confess is not clear to us from NAB’s comments. See *NAB Comments* at 23-24. Nevertheless, we note that \$3 million is nearly twenty times the highest average multicast annual revenue in any market—around \$150,000, according to NAB’s data. See *NAB Comments* at 23. To whatever extent NAB believes that the average revenue of multicast stations should somehow bear on the continued existence of a revenue exemption—a point which we neither follow nor concede—it is completely unclear to us how the fact that multicast stations take in an average of \$150,000 in annual revenue could justify leaving the threshold for the exemption at \$3 million.

⁴⁵ See *NCTA Comments* at 19-20.

⁴⁶ See *NAB Comments* at 19-20; *NCTA Comments* at 20-21. Gray Television, Inc. similarly cites to vague and conclusory rationales and anecdotal examples of local programming,

we are sympathetic to this concern, neither NAB nor NCTA provides any systemic data about the economics of local programming or any evidence that requiring captioning would impose an untenable, across-the-board economic burden.

- Finally, NCTA argues that the Commission should perpetuate the 4-year new network exemption because some new networks take several years to break even.⁴⁷ However, NCTA does not even attempt to establish that this is universally true—a fact that makes the current exemption—one that applies to *all* new networks, no matter how successful—legally untenable. Nor does NCTA explain how networks that take years to break even can acceptably operate at a (presumably significant) loss but not absorb the modest additional cost of captioning. NCTA also fails to explain for why the significant sources of capital that presumably bankroll the operations of new networks *until* they break even cannot also support the cost of captioning. The fact that exempting new networks from captioning requirements for several years undoubtedly produces an incidental financial benefit for their investors in no way establishes that requiring captions would impose an economic burden or even impact investment in new networks—or justify denying viewers who are deaf or hard of hearing equal access to new programming.

unsupported by systemic data, as a basis for perpetuating a variety of exemptions. *See generally Comments of Gray Television, Inc.*, CG Docket No. 05-231, PRM11CG, (July 9, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521373642>. Neither NAB, NCTA, nor Gray seriously attempts to address the particularly pernicious impact of systemically denying viewers who are deaf or hard of hearing access to local content nor explain why the individual exemption process available to the subset of local programmers for whom captioning would actually impose an economic burden is insufficient to address their concerns.

⁴⁷ *Id.* at 14-16.

It should go without saying that perpetually denying viewers who are deaf or hard of hearing the civil right of equal access to video programming on the basis of a thin economic record gathered more than 15 years ago—a virtual eternity in the evolution of technology and the video programming ecosystem—would be a profound miscarriage of the Commission’s responsibilities under the Telecommunications Act of 1996 and the Twenty-First Century Communications and Video Accessibility Act. In the complete absence of any substantive new economic evidence in this proceeding that would warrant the continuation of the exemptions at issue, we reiterate our call for the Commission to eliminate or significantly narrow them.⁴⁸

V. The Commission should take action to address existing problems with and futureproof its technical standards

Finally, high-quality, ubiquitous captions must rest on a solid underlying technical framework that ensures their ultimate rendering facilitates equal access.

First, we acknowledge NAB’s and NCTA’s observations that all DTV content should be available with CEA-608-compliant captions included within a CEA-708-compliant caption stream, enabling viewers to customize the display of the captions on CEA-708-capable devices.⁴⁹ However, we routinely receive reports that users are unable to utilize CEA-708 features on their CEA-708 compatible DTVs when they receive CEA-608-style captions. It is unclear to us whether these issues are a result of device-level rendering problems or problems in the way the captions are encoded and distributed. Regardless, we urge the Commission and our industry colleagues to investigate this problem and adopt policies that mitigate its recurrence.

Second, we acknowledge and agree with CEA’s observation that video receivers are not the source of the caption obstructions related to overlapping text in video content and

⁴⁸ See *Consumer Groups Comments* at 14-18.

⁴⁹ See *NAB Comments* at 24-25; *NCTA Comments* at 22-23.

closed captions with transparent backgrounds.⁵⁰ However, we note that receivers can cause obstructions by overlaying their own on-screen displays, such as volume and channel indicators, menus, and other options in a way that obstructs captions. Because receivers are responsible for decoding and rendering captions and therefore know where the rendered captions will appear on screen, the Commission should encourage receiver manufacturers to ensure that their own on-screen displays do not obstruct underlying captions.

Finally, we agree with the optimism of NAB, NCTA, and CEA that the unique challenges of providing captions for 3D and UltraHD programming will not be overly complicated to overcome.⁵¹ We believe that the Commission need not deeply intervene in the details of ongoing standards-setting processes in those areas, but we reiterate our call for the Commission to set forth basic functional requirements to ensure that these formats accommodate captions from the outset as they permeate the market.⁵² In particular, we reiterate our call for the Commission to require that 3D scenes do not obstruct captions and users can manipulate caption depth in real-time for 3D programming to correct any depth-related problems on the fly.⁵³

Respectfully submitted,

/s/

Blake E. Reid
Counsel to TDI

blake.reid@colorado.edu
303.492.0548

⁵⁰ *CEA Comments* at 2.

⁵¹ *See NAB Comments* at 25-26; *NCTA Comments* at 23; *CEA Comments* at 3-4.

⁵² *See Consumer Groups Comments* at 20-22.

⁵³ *See id.* at 21

Cc:

Maria Kirby, Office of Chairman Wheeler

Adonis Hoffman, Office of Commissioner Clyburn

Clint Odom, Office of Commissioner Rosenworcel

Matthew Berry, Office of Commissioner Pai

Courtney Reinhard, Office of Commissioner O'Rielly

Kris Monteith, Consumer and Governmental Affairs Bureau

Karen Peltz Strauss, Consumer and Governmental Affairs Bureau

Greg Hlibok, Consumer and Governmental Affairs Bureau

Eliot Greenwald, Consumer and Governmental Affairs Bureau

Caitlin Vogus, Consumer and Governmental Affairs Bureau

Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau

Michelle Carey, Media Bureau

Mary Beth Murphy, Media Bureau

Steven Broeckaert, Media Bureau

Diana Sokolow, Media Bureau