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August 18, 2014

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

*Re: CG Docket No. 05-231*

On August 14, 2014, Anne Lucey and Mark Turits with CBS Corporation, Jared Sher with 21st Century Fox, Inc., Susan Mort with Time Warner Inc., and the undersigned met with Karen Peltz Strauss, Gregory Hlibok, Eliot Greenwald, Caitlin Vogus, and Suzy Rosen Singleton from the Consumer and Governmental Affairs Bureau, and with Diana Sokolow from the Media Bureau, to discuss the appropriate entity to bear responsibility for closed captions made available to the public by traditional video programming distributors (*e.g.*, broadcasters and multichannel video programming distributors (“MVPDs”)).

We began the meeting by stating that these companies, which collectively own and operate many of the leading cable and television networks, *agree completely with the consumer groups on this important principle*: MVPDs have an ongoing relationship with the customer and thus are in the best position to handle and resolve any closed captioning complaints.<sup>1</sup> Notably, those companies which own broadcast stations stated complete agreement that those entities should bear sole responsibility for resolving any complaint, and argued further that MVPDs when they are the distributor also should have sole responsibility for resolving any closed captioning complaints. Ultimately, the parties explained that the Commission should leave liability with the “last link” in the distribution chain, as it has been since the advent of captioning rules.

We pointed to the many policy reasons supporting this conclusion, including that MVPDS have an ongoing billing and customer care relationship with the subscriber; that the vast majority of complaints are resolved by the MVPD since the faults typically occur once programming reaches MVPDs’ facilities, including thousands of headends and millions of miles of cable plant and set-top boxes; and most importantly, that shifting the burden to video

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<sup>1</sup> See Comments of CBS Corporation, 21st Century Fox, Inc., Time Warner Inc., Viacom Inc., The Walt Disney Company, and Scripps Networks Interactive, Inc., CG Docket No. 05-231 (filed Apr. 28, 2014).

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programming owners will *not* shorten the dispute process but rather will lengthen it because reallocating liability will make everyone -- front-line MVPD staff and front-line cable network staff -- more conscious of enforcement and liability risk, and therefore more litigation-minded and less willing to cooperate. The parties made clear that the Commission can wish otherwise but the reality of possible enforcement proceedings and penalties will make all the parties less oriented to problem solving and that consumers will be worse off.

The parties then discussed the enforcement process and which entities have the ability to control captions, particularly the quality thereof, since there was some confusion around the various business arrangements. We explained that a carriage agreement between an MVPD and a cable programmer gives the MVPD the necessary legal rights to ensure that the Commission's captioning requirements are met. It is simply irrelevant whether the MVPD has privity with the owner of content. In the broadcast context, the Commission has long imposed caption obligations on broadcast stations even though local stations frequently lack privity with the content owner. In this and other contexts, the Commission routinely imposes obligations on entities and relies on their downstream contractual relationships to accomplish its regulatory objective.<sup>2</sup> That is what the Commission has done with respect to MVPDs since the captioning rules first were put in place and there is no legal or public interest rationale for changing course now.

Finally, we urged the Commission to require MVPDs to execute their *current* responsibilities instead of relieving them of obligations and, in essence, rewarding subpar performance by some entities. In that context, we urged the Commission to require best practices, such as checking the set-top box model used by the customer for potential captioning issues; monitoring the programming network identified in the complaint for any issues; checking the processing equipment at the video distribution facility to identify whether the captioning issue originated with the programming itself or as a result of the MVPD's processing of the program transport stream; checking the subscriber's premises to ensure that there are no issues that might interfere with the pass-through of captioning; and closing the loop with the consumer. We emphasized that these steps will improve significantly the subscriber's experience, but shifting the burden has a strong potential to harm subscriber's experience.

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<sup>2</sup> See, e.g., *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct*, 20 FCC Rcd 14096 ¶ 7 (2005) (the Commission imposed requirements on U.S. carriers to renegotiate, withhold payment to foreign carriers, or restrict U.S. carriers from paying a specific rate with the goal of ensuring competitive pricing by international carriers). See also *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999) (upholding a similar regime against a challenge that the Commission was focusing its requirements on the wrong target in the chain).

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The Commission should follow its own precedent, and the recommendation of the consumer groups, and maintain its current caption responsibility.

Respectfully submitted,

/s/

Gerard J. Waldron

cc: Karen Peltz Strauss  
Gregory Hlibok  
Eliot Greenwald  
Caitlin Vogus  
Suzy Rosen Singleton  
Diana Sokolow