

December 10, 2013

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: Notice of *Ex Parte* Presentation
Television Closed Captioning Quality
CG Docket No. 05-231 · PRM-11-CG**

Dear Ms. Dortch,

On December 6, 2013, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips of the National Association of the Deaf (NAD), Lise Hamlin of the Hearing Loss Association of America (HLAA), and Cheryl Heppner of the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (collectively, “Consumer Groups”), Dr. Christian Vogler of the Technology Access Program at Gallaudet University (TAP), and Blake Reid of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC) discussed the above-referenced matters with Kris Monteith, Greg Hlibok, Karen Peltz Strauss, Eliot Greenwald, Suzy Rosen Singleton and Caitlin Vogus of the Consumer and Governmental Affairs Bureau and Mary Beth Murphy, Diana Sokolow, and Steve Broeckaert of the Media Bureau.

The deaf and hard of hearing community has urged the Commission for more than 16 years to realize the promise of the Telecommunications Act of 1996 by ensuring the high quality of closed captions for television programming.¹ The Consumer Groups deeply appreciate Chairman Wheeler’s commitment to making caption quality a high priority and the hard work of the staff in the Consumer and Governmental Affairs and Media Bureaus to finally make quality standards a reality.

Consistent with numerous petitions, comments and ex parte filings over the past decade, the Consumer Groups urged the Commission to adopt specific, measurable standards for non-technical aspects of captioning, including completeness (i.e., verbatim captions of spoken dialogue and audible events), accuracy, readability, and synchronicity, and technical aspects including, proper encoding, pass-through, and transmission.² These

¹ See, e.g., *Closed Captioning and Video Description of Video Programming*, Report and Order, 13

² E.g., *Petition for Rulemaking of TDI, et al.*, RM-11065 (July 23, 2004), <http://apps.fcc.gov/ecfs/comment/view?id=5511440137>; *Petition for Rulemaking of TDI, et al.*, PRM-11-CG (Jan. 27, 2011), <http://apps.fcc.gov/ecfs/comment/view?id=6016167106>; Reply

standards are necessary to vindicate the 1996 Act’s requirement that video programming be made “fully accessible” through the provision of closed captions.³

Addressing a recent proposal for members of the industry to rely on “best practices” for captions, Consumer Groups noted that the ultimate quality of captions delivered to consumers, and not the process by which they are created, is the only logical and acceptable metric for the Commission to review in determining whether captions in fact facilitate the accessibility required by the 1996 Act.⁴ That entities follow some particular process to create captions for a program cannot cure the program’s inaccessibility if the process ultimately results in poor-quality captions.

Moreover, as members of the Bureaus noted, voluntary adherence to best practices cannot substitute for the Commission’s adoption of enforceable quality standards.⁵ More than 16 years ago, the Commission urged the development of “voluntary industry guidelines” to ensure caption quality.⁶ The industry’s failure to take this basic commitment seriously—despite repeated pleas from the deaf and hard of hearing community to address pervasive quality problems—is proof that voluntary action is insufficient and that quality standards are necessary to fulfill the 1996 Act’s promise.

The Consumer Groups nevertheless agreed with the members of the Bureaus that working with members of the industry to help identify best practices for closed captioning could help provide useful guidance to content producers, broadcasters, multi-channel video programming distributors, and captioners (“MVPDs”) for achieving high-quality closed captions. In particular, Consumer Groups agreed that identifying best practices could be used to establish a set of mitigating factors to be considered in enforcing violations of quality standards.

Comments of TDI, et al., CG Docket No. 05-231 (Dec. 16, 2005), <http://apps.fcc.gov/ecfs/document/view?id=6518190176>; *Comments of TDI, et al.*, CG Docket No. 05-231 (Nov. 24, 2010), <http://apps.fcc.gov/ecfs/document/view?id=7020921539>; *Ex Parte of TDI, et al.*, CG Docket No. 05-231 (June 1, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021683941>; *Ex Parte of TDI, et al.*, CG Docket No. 05-231 and PRM-CG-11 (July 26, 2013) (additional dockets omitted), <http://apps.fcc.gov/ecfs/document/view?id=7520933996>.

³ See Pub. L. 104-104, 110 Stat. 56 § 305 (Communications Act of 1934 § 713(b)(1), 47 U.S.C. § 613(b)(1)).

⁴ See *Ex Parte of CBS Corp.*, CG Docket No. 05-231 (Nov. 25, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7520959573>.

⁵ *Contra id.* at 1 (“We noted that each sector should craft its own practices—and that these practices in lieu of government rules serve as the standards.”).

⁶ *Closed Captioning Order*, 13 FCC Rcd at 3375, ¶ 224.

This limited, temporary “safe harbor” would not substitute for quality standards, but might alleviate sanctions for or even excuse an initial violation of the quality standards where a responsible entity undertook best practices to create and deliver the captions, such as including adherence to the quality standards in a contract between a captioner and video programmer. The safe harbor, however, would require the responsible entity to take immediate remedial action and would not excuse subsequent violations of the quality standards.

Consumer Groups also agreed with the members of the Bureaus that maintaining comprehensive documentation and recordkeeping would be critical for violators of the quality standards to take advantage of the safe harbor. Consumer Groups additionally urged the Commission to adopt compliance reporting requirements and baseline forfeitures to ensure that entities cannot treat non-compliance as a cost of doing business.

Finally, Consumer Groups urged the Commission to press ahead with a phase-out of its rules that currently permit the use of the Electronic Newsroom Technique (“ENT”) in smaller markets.⁷ The Bureau staff noted a pending proposal from the National Association of Broadcasters (NAB) that would purportedly improve the quality of ENT and/or supplement it with live captioning for unscripted portions of news programming and emergency information.⁸ NAB has yet to provide the Consumer Groups with the details of the proposal, so the Groups cannot yet offer comment.

Again, Consumer Groups appreciate the Commission’s hard work on this critical matter, and stand ready to provide further input as the process moves toward a final set of quality standards. Consumer Groups also stand ready to work with industry representatives on the development of quality standards and best practices for captioning.

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Please let me know if you have any questions regarding this filing.

⁷ See 47 C.F.R. § 79.1(e)(3).

⁸ The proposal is alluded to in NAB’s recent *ex parte* filing. *Ex parte of NAB*, CG Docket No. 05-231, ET Docket No. 99-254, MB Docket No. 11-154 (Dec. 9, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7520961152>.

Respectfully submitted,

/s/

Blake E. Reid

Director, Samuelson-Glushko
Technology Law & Policy Clinic

Assistant Clinical Professor, Colorado Law
blake.reid@colorado.edu • 303.492.0548

CC: Meeting attendees

Maria Kirby, Office of Chairman Wheeler

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

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Cheryl Heppner, Vice Chair • CHeppner@nvrc.org

3951 Pender Drive, Suite 130, Fairfax, VA 22030

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