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October 22, 2013

The Honorable Mignon Clyburn, Chairwoman  
The Honorable Ajit Pai, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108, Notice of Proposed Rulemaking (FCC 13-77)*

Dear Chairwoman Clyburn, and Commissioners Rosenworcel and Pai,

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) submits this letter in support of the efforts of Montgomery County, MD, the United States Conference of Mayors, the National Association of Counties, the National Association of Telecommunications Officers and Advisors, the Alliance for Communications Democracy, and others who have called on the Commission to require onscreen video programming guides to carry program information for all programming, including programming developed by local communities for their public, educational and government (“PEG”) access cable channels. While this letter focuses on assuring we have program and information accessibility for PEG channels, we respectfully ask that the FCC makes the decision to cover *all* channels.

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) is a national coalition consisting of twelve regular members with the national consumer organizations of, by, and for the deaf and hard of hearing, and four affiliate members from the nonprofit/business sectors. The twelve national consumer organizations are: Alexander Graham Bell Association for the Deaf and Hard of Hearing (AGBell), American Association of the Deaf-Blind (AADB), Association of Late-Deafened Adults (ALDA), Deaf and Hard of Hearing in Government (DHHIG), Deaf Seniors of America (DSA), American Society for Deaf Children (ASDC), Cerebral Palsy and Deaf Organization (CPADO), Gallaudet University Alumni Association

(GUAA), Hearing Loss Association of America (HLAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), and Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI). The four affiliate members are: American Deafness and Rehabilitation Association (ADARA), Communication Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), and Registry of Interpreters for the Deaf, Inc. (RID).

Failure to impose such an obligation fails to meet community needs, especially the needs for those of us in communities who have special accessibility needs, the very communities that Congress sought protect with passage of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The record in this proceeding contains numerous examples of programming produced by and for the disability community that cannot be found by users because the multichannel video program distributors (MVPDs) do not provide channel names, program names, program information or accessibility features for this programming.<sup>1</sup>

We believe the Commission has direct authority under the CVAA to require cable operators to include high level channel and program descriptions or titles, as well as a symbol identifying the programs with accessibility options (captioning and video description) on their onscreen video programming guides. By enacting the CVAA, Congress has already decided that user interfaces and video programming guides and menus are essential to making video services accessible and it has given the Commission direct responsibility to make them accessible. At a minimum this authority allows the Commission to require that MVPDs provide information about accessibility options for local programs and channels in onscreen video programming guides. However, we also believe that the Commission has authority, or could exercise ancillary authority, to require programming description information in programming guides for all local programs and channels because the Commission is authorized to make essential functions such as “Channel / Program Selection” and “Display Channel / Program Information” accessible. To make this accessibility meaningful, the onscreen video programming guides should include a minimum level of program and channel information. The Commission also has broad authority to use its expertise to interpret ambiguous terms in a statute.

The Video Programming Accessibility Advisory Committee (VPAAC) identified “Channel / Program Selection” and “Display Channel / Program Information” as among the essential functions covered by CVAA,<sup>2</sup> and also expressed concern that “[o]ften it is impossible to determine the accessibility of a program (whether it provides captioning or video description)

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<sup>1</sup> See, e.g., Reply Comments of Pittsfield Community Television, Massachusetts which produces the AD-Lib program which promoted independent living for people with disabilities and also simulcasts programming in cooperation with the Radio for the Blind the local broadcast station; Reply Comments of CTN (Ann Arbor, Michigan) which cablecasts monthly Disability Issue Commission meetings; and Reply Comments of WHCTV of West Hartford Connecticut, which provides locally produced programs featuring people with disabilities, including “Mr. Pops Neighborhood,” a youth program produced by a blind reverend, and program series by the West Hartford Advisory Committee for Persons with Disabilities that provides specifically tailored information for the disability community about emergency preparedness and how to vote. Overall, at least 77 filings representing 250 local cable channels in 23 states were submitted noting that half of the top 25 MVPDs did not provide information about the program accessibility features, program names or descriptions, or channel names on the MVPD systems.

<sup>2</sup> Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus (April 9, 2012) (“Report”) at 8.

until after watching a set of previews and/or advertisements. This can lead to frustration on the part of users dependent on such capabilities as they attempt to locate programming that meets their accessibility needs.”<sup>3</sup>

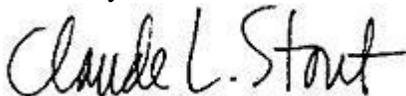
The VPAAC further found that “[a] more accessible and usable solution for deaf or hard of hearing and blind or vision impaired users would provide clear identification of the accessibility options that are available for a program *prior to viewing, such as labeling the program as having captions and/or video description within the mechanism used to display channel / program information.*”<sup>4</sup> We urge the Commission to adopt this approach and note that it is even more difficult to locate programming that meets viewers’ accessibility needs if neither the name of the program nor the accessibility label is included on the video programming guide.

It is our understanding that where program descriptions and accessibility information are made available by PEG program producers, this information is not universally provided in onscreen video program guides of cable operators. Viewers, therefore, cannot determine from the video programming guide what programs are and are not accessible. Thus, viewers with visual or auditory disabilities cannot make meaningful video program choices.

Therefore, we urge the Commission to adopt rules that would require video programming guides and menus which display channel and program information include, for all channels, high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options (captioning and video description).

Thank you for the opportunity to submit these comments.

Sincerely,



Claude L. Stout

Chair

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

cc: Cheryl Heppner, Vice Chair, Deaf and Hard of Hearing Consumer Advocacy Network  
Andrew Phillips, Secretary-Treasurer, Deaf and Hard of Hearing Consumer Advocacy Network  
Lise Hamlin, Director, Public Policy, Hearing Loss Association of America  
Blake E. Reid, TDI Counsel and Clinical Law Professor, Samuelson-Glushko Technology Law and Policy Clinic, University of Colorado, Boulder  
Dave Grimaldi, Chief Counsel and Senior Legal Advisor, Office of Chairwoman Clyburn  
Sarah Whitesell, Legal Advisor, Media, Office of Chairwoman Clyburn  
David Goldman, Senior Legal Advisor, Office of Commissioner Rosenworcel

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<sup>3</sup> Report at 18.

<sup>4</sup> *Id.* (emphasis added).

Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel  
Matthew Berry, Chief of Staff, Office of Commissioner Pai  
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