

February 6, 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: Notice of *Ex Parte* Presentation  
Closed Captioning Quality · CG Docket No. 05-231 · PRM-11-CG**

Dear Ms. Dortch,

On February 4, 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 Blake Reid of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC) discussed pending Commission action in the above-referenced matters with Kris Monteith, Karen Peltz Strauss, Greg Hlibok, Eliot Greenwald, Suzy Rosen Singleton, and Caitlin Vogus of the Consumer and Governmental Affairs Bureau and Steven Broeckaert and Diana Sokolow of the Media Bureau. On the same day, the Groups discussed the same matters with Commissioner Ajit Pai and Jeffrey Neumann and Nicholas Degani of Commissioner Pai’s office.

We commended the Commission’s groundbreaking progress toward implementing closed caption quality standards, an issue that has remained of critical importance to the deaf and hard of hearing community for more than 15 years. We deeply appreciate the hard work of Chairman Wheeler’s office, members of the Bureaus, and our colleagues in the industry for their hard work on shaping an item that will dramatically improve access to video programming for consumers who are deaf or hard of hearing. We also recognize that achieving caption quality will be an ongoing process requiring collaborative action from the Commission, industry, and consumers, and stand ready to assist however we can in paving the road to full and equal access for all Americans. Bearing our strong support for the Commission’s approach to this issue, we offer several modest suggestions that we believe will further the accessibility goals at the core of the Commission’s quality standards.

**ENT.** First, we again urge the Commission to condition the continued use of the Electronic Newsroom Technique (“ENT”) for live programming on the implementation of substantial technological and process improvements by the video programming industry that facilitate the same level of access offered by real-time captioning. In particular, we support the Commission’s review of the state of ENT one year after the

adoption of quality standards. In reviewing the continued use of ENT, the Commission should call upon the industry to provide hard data that demonstrates:

- The extent to which ENT captioning meets the four quality principles of accuracy, completeness, synchronicity, and placement, including metrics for representative samples of programming compared to similar programming captioned in real-time;
- The quantity and percentage of uncaptioned programming, such as unscripted breaking news, that is delivered by stations in markets where ENT is permissible;
- The economic necessity for individual stations to continue using ENT in lieu of real-time captioning;
- The impact of ENT usage on the ability of consumers who are deaf or hard of hearing in markets outside the top 25 to access the unique local programming offered by stations in those markets;<sup>1</sup>
- The extent to which consumers have filed complaints about ENT;
- The state of the market for real-time captioners; and
- Technological progress toward achieving improvements with ENT.

**Complaint Handling and Enforcement.** We are optimistic that the industry will rise to the challenge of the new quality standards with sufficient effort to ensure that complaints will be the exception and not the norm. However, the enforcement and forwarding to video programmers of complaints, in lieu of a private right of action for consumers, has successfully formed the backbone of the Commission’s captioning rules since their inception. We strongly believe that a robust complaint system remains necessary both to facilitate constructive dialogue and communication between programmers and consumers, to ensure that unexpected problems are resolved at an early stage before they languish and disenfranchise more consumers, and to maintain accountability at every level of the captioning ecosystem.

We also support Commissioner Pai’s proposal to provide the public with easily accessible, detailed information about consumer complaints as part of a Commission-wide “dashboard.”<sup>2</sup> This information could provide a useful snapshot of trends and specific problem areas as they arise, such complaint types, particular quality issues, pendency periods, and ultimate resolutions.

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<sup>1</sup> See *Remarks of Commissioner Ajit Pai*, Radio Show Luncheon (Sept. 23, 2013), available at <http://www.fcc.gov/document/commissioner-pai-remarks-radio-show-luncheon>.

<sup>2</sup> See, e.g., *Remarks of Commissioner Ajit Pai*, Federal Communications Bar Association (Feb. 21, 2013), available at <http://www.fcc.gov/document/commissioner-pai-remarks-fcba>.

We also urge the Commission to ensure that the “enforcement ladder” used to measure the safe harbor used by programmers committing to undertake best practices for caption quality is measureable and continues to facilitate ongoing relationships between consumers and programmers and nimble, rapid resolutions of captioning problems. In particular, the Commission should continue to forward all consumer complaints to video programmers and set clear thresholds for non-compliance that can lead to enforcement action where circumstances warrant.

**Offline vs. Real-time Captions.** We urge the Commission to ensure that its quality standards and best practices require the use of high-quality offline captions over lower-quality real-time captions wherever it is feasible to do so. Again, we recommend the use of offline captioning for all programs that are recorded far enough in advance to facilitate its use, and the offline re-captioning of real-time captioned programs that are rebroadcast at a later date.

We also urge the Commission to substantially narrow the class of “commercially reasonable” exceptions proposed by the National Cable & Telecommunications Association (“NCTA”) that would permit the use of real-time captions for prerecorded programming in a variety of circumstances unrelated to the feasibility of offline captioning.<sup>3</sup> We acknowledge that it may be necessary to substitute real-time captions for offline captions in isolated circumstances where unforeseen technical difficulties impose intractable roadblocks to using offline captions or where a program is recorded so close to air that offline captioning is logistically impossible.

However, we are concerned that permitting the use of real-time captions by any station or network that “ha[s] pre-recorded programs, but also live programming, . . . for all content” would effectively permit the use of real-time captioning for almost any program because nearly all stations and networks carry some mix of pre-recorded and live programming.<sup>4</sup> We also note that permitting the use of real-time captions for late-delivered programming might encourage the late delivery of programming.<sup>5</sup> Finally, permitting the use of real-time captioning because of unidentified “proprietary considerations” would effectively afford stations unbridled discretion to use lower-quality real-time captions. Accordingly, we strongly recommend that the Commission eliminate the majority of the “commercially reasonable” exceptions from NCTA’s proposed best practices and replace them with a standard that requires the use of high-quality offline captions wherever feasible.

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<sup>3</sup> See *Ex Parte of NCTA*, CG Docket No. 05-231, Best Practices at 2-3 (Jan. 31, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521070356>.

<sup>4</sup> See *id.* at 3.

<sup>5</sup> See *id.*

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

Respectfully submitted,

/s/

Blake E. Reid

Director, Samuelson-Glushko  
Technology Law & Policy Clinic

blake.reid@colorado.edu • 303.492.0548

Cc:

Meeting attendees

Maria Kirby, Office of Chairman Wheeler