

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby replies to the comments filed² in response to the Federal Communications Commission’s (FCC or Commission) *Second Further Notice of Proposed Rulemaking*.³ The record shows that imposing an obligation on video programming providers (VPPs) to file closed captioning certifications will fail to enhance the quality of captions and impose unnecessary burdens. Moreover, yet another abrupt shift in captioning rules only serves to discourage industry investment in effective captioning solutions. The Commission should therefore allow the recently-adopted Best Practices to take effect and work with industry to improve captioning quality before making any determination that mandatory certification filings will make a meaningful difference for consumers.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² Unless otherwise noted, all comments cited in this document were filed in CG Docket No. 05-231 on January 20, 2015.

³ *Closed Captioning of Video Programming, Second Further Notice of Proposed Rulemaking*, CG Docket 05-231, FCC 14-206 (Dec. 15, 2014) (Further Notice).

I. VPPS SHOULD NOT BE REQUIRED TO FILE CERTIFICATIONS

The Commission's rules and the Best Practices do not require video programming distributors (VPDs) to collect certifications from VPPs, but provide incentives for VPDs to use their "best efforts" to obtain these certifications.⁴ Similarly, under the VPP Best Practices, video programmers must certify to VPDs if they wish to take advantage of the benefits of the Best Practices.⁵ VPPs who chose not to utilize Best Practices forsake the benefits of the Best Practices regime. They are not, as TDI implies, somehow excused from the FCC's captioning obligations.

Despite provisions of the Best Practices specifically addressing VPP certifications, TDI asserts that VPPs should be required to file certifications and contact information with the FCC to "enable the Commission to proactively identify the party responsible for captioning problems that are not under the direct control of a VPD and initiate swift resolution and enforcement action if necessary."⁶ TDI, however, neglects to explain how the FCC would identify which party is at fault for captioning problems simply by looking at 1) a registry, 2) a formal complaint or 3) an informal complaint. Rather, the party responsible for any actual captioning errors will only be made clear

⁴ See 47 C.F.R. § 79.1(j). If a VPD is unable to obtain a certification despite its best efforts and reports the VPP to the FCC, "no sanctions will be imposed on the VPD as a result of any captioning violations that are outside the control of the VPD." *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, 29 FCC Rcd. 2221, ¶ 55 (2014) (Order).

⁵ 47 C.F.R. § 79.1(k)(1)(iv).

⁶ Comments of Telecommunications for the Deaf and Hard of Hearing, *et al.*, at 3 (TDI Comments). As NAB explained in our initial comments, broadcasters, as VPDs, already file their contact information with the FCC. Comments of the National Association of Broadcasters at 2 (NAB Comments). Neither consumers nor the FCC need additional information from broadcasters in their roles as VPDs because the "benefits" would be redundant. 47 C.F.R. § 79.1(i).

after a VPD determines the cause of the problem – its own network, the VPP or neither, as captioning issues also result from receivers or consumer equipment.⁷ Contact information in a registry will not help the FCC or VPDs discover the cause of real-world captioning problems. NAB further notes that if a VPD determines that a VPP caused a captioning issue VPDs are well positioned to work with VPPs to remedy the problem given their contractual privity.

Even TDI acknowledges that consumers expect the VPD to be the point of contact for captioning complaints.⁸ Requiring VPPs to file certifications with the FCC, however, will increase consumer calls to VPPs, with the unrealistic expectation of the same customer service and abilities to address consumer complaints as VPDs. The Commission previously rejected this approach,⁹ and other commenters agree with NAB that encouraging viewers with captioning concerns to call entities removed from consumer contact, such as non-broadcast VPPs, will not benefit consumers.¹⁰ The FCC should seek to avoid the unnecessary consumer confusion and delay in resolving

⁷ Consumer actions, such as incorrect receiver configuration, can also cause captioning problems. Broadcasters often work with engineers to help over-the-air consumers at their homes with problems with accessibility issues.

⁸ TDI Comments at 4 (“Because consumers have a direct relationship with VPDs and will continue to rely on them to resolve many captioning problems even if the Commission shifts some captioning responsibility to video programmers . . .”).

⁹ *Order*, ¶ 51 (“Because VPDs are the entities that provide video programming directly to customers’ homes, keeping them in the chain of responsibility will provide consumers an entity to which they can address their complaints, and which can assist in identifying other entities responsible for the captioning quality errors”).

¹⁰ See Comments of the National Telecommunications and Cable Association at 3 (“Finally, there is no basis for the government to require certifications of compliance from entities even further removed from consumers – those entities such as program providers or owners that supply programming to program networks.”) (NCTA Comments).

captioning issues that would result from requiring VPPs to file certifications and contact information.

ACA similarly “recommends” that the FCC require VPPs to provide certifications of their compliance with the rules, citing the FCC’s recent *Order* imposing an obligation on VPDs to use best efforts to obtain a captioning quality certification.¹¹ The Commission must see ACA’s request for what it really is -- an attempt to fully and completely shift the compliance burden from VPDs to VPPs. In the *Order*, the Commission balanced the obligation that VPDs undertake best efforts to obtain captioning quality certifications with a requirement that VPPs operating under the Best Practices provide certifications.¹² ACA has provided no basis for overturning this careful balance now. Indeed, the certification obligations under the Best Practices have yet to come into effect. To act before the Best Practices even have a chance to succeed would be arbitrary and capricious.

In any event, those urging the Commission to reverse course and adopt an affirmative filing obligation for VPPs do not explain how the Commission will monitor the compliance of thousands of VPPs. Commenters agree with NAB that VPDs should not be required to monitor and report on VPP compliance.¹³ As NAB discussed in more detail in our comments, VPDs such as broadcasters lack the resources to serve as the FCC’s eyes and ears.¹⁴ Such a requirement would divert VPD resources and personnel

¹¹ Comments of the American Cable Association at 6 (ACA Comments).

¹² *Order*, ¶ 53.

¹³ See Comments of Verizon at 5 (Verizon Comments); Comments of Charter Communications, Inc., *et al.*, at 2-3.

¹⁴ See NAB Comments at 7-8.

away from addressing captioning quality issues and toward acting as the FCC's "enforcer." This result would not serve consumers.

For the reasons stated above and in our initial comments, an affirmative obligation to file closed captioning certifications and/or contact information would unnecessarily burden VPPs and fail to enhance captioning quality, particularly given that the Commission only recently adopted Best Practices specifically designed to improve captioning.¹⁵ The Commission expects the Best Practices to advance high quality captions because they are "designed to both provide the captioning industry with concrete steps it can take to achieve quality captions and to ensure that caption quality problems that do arise are quickly resolved."¹⁶ The Commission should reject ACA's and TDI's premature and needlessly burdensome proposals and give the Best Practices time to fulfill this expectation.¹⁷ The Commission should also avoid frequent, piecemeal changes to its captioning rules because a consistent regulatory regime better enables VPDs and VPPs to invest in captioning solutions.

II. REQUIRING CERTIFICATIONS TO BE FILED IS INCONSISTENT WITH THE PAPERWORK REDUCTION ACT

NAB agrees with NCTA that any affirmative captioning certification filing requirement runs counter to the Paperwork Reduction Act (PRA). Congress enacted

¹⁵ See *Order*, ¶ 58.

¹⁶ *Order*, ¶ 59.

¹⁷ We also note some multichannel video programming distributors (MVPDs) believe that certifications will not be necessary if the FCC modifies closed captioning liability between VPDs and VPPs. See, e.g., Verizon Comments at 4; Comments of DIRECTV, LLC at 3; Comments of Comcast Corp. at 3. If these MVPDs are correct, VPPs should not be forced to waste significant resources to prepare captioning certifications only to have the Commission eliminate, or plans to eliminate, the requirement as part of a rebalancing of liability between VPDs and VPPs.

the PRA to minimize the burdens imposed, especially on small entities, by information collections with limited practical utility.¹⁸ The FCC here would struggle to show it has taken the requisite steps to minimize the burden on VPPs required to file certifications and contact information, especially the smallest ones. Indeed, the Commission would actually be departing from an approach minimizing burdens on all parties (including consumers who now generally contact VPDs only) for one that results in a larger outlay of resources with no ultimate consumer benefit.¹⁹

The FCC's underlying goals – improving captioning and timely resolving captioning issues -- are much better served by allowing VPPs to invest their resources in improving captioning, and allowing VPDs to conserve resources for captioning instead of monitoring and reporting on VPPs. The current system of voluntary certifications provides flexibility to VPPs to meet the FCC's demanding captioning obligations.

III. CONCLUSION

Broadcasters will continue to work to improve closed captioning, and to resolve captioning issues. The Commission can empower broadcasters, and all parties, to

¹⁸ See 44 U.S.C. §§ 3501, et seq. Indeed, the Office of Management and Budget (OMB) has previously prevented the imposition of unnecessary FCC information collections for similar problems. See ICR-OIRA Conclusion, OMB Control No. 3060-0568 (July 9, 2008), *available at* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200804-3060-012#section2_anchor (disapproving a proposed FCC information collection).

¹⁹ Comments of NCTA at 2 (“Requiring certification would impose unnecessary costs on programmers with no corresponding benefit to consumers or the Commission”). The PRA also obligates agencies to avoid “unnecessarily duplicative” information collections. 44 U.S.C. § 3506(c)(3)(B). As NAB previously explained, requiring broadcast VPPs to fill certifications and/or contact information would duplicate information broadcast licensees already file as VPDs.

meet these goals by establishing a predictable regulatory regime that encourages investment in effective captioning solutions. Undermining the recently adopted Best Practices, which have yet to come into effect, by adopting a VPP certification mandate now would be the antithesis of the regulatory predictability that promotes captioning investment and ultimately consumer benefits. The FCC should refrain from applying new obligations that will do little but increase costs for all members of the video ecosystem.

Respectfully submitted,



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