

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Closed Captioning of Internet  
Protocol-Delivered Video Programming:  
Implementation of the Twenty-First Century  
Communications and Video Accessibility  
Act of 2010

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) MB Docket No. 11-154  
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**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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## EXECUTIVE SUMMARY

Television broadcasters fully support the goal of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) and the *Notice of Proposed Rulemaking (NPRM)* to better enable individuals who are deaf or hard of hearing to view video programming delivered using Internet Protocol (IP). The goal of broadcasters is to deliver captions effectively on all covered platforms, and to work consistently toward a positive, pro-consumer online video viewing experience with no degradation when compared to television. NAB has filed comments, and now reply comments, in this proceeding to assist the Commission to establish a workable regulatory regime that implements the requirements of the CVAA and increases access to online programming by all Americans, including those who are deaf and hard of hearing.

The record developed in this proceeding reveals the numerous complexities of IP delivery of video programming. In light of time and statutory constraints imposed by the CVAA and the complexity of the issues raised by the record in this proceeding, NAB urges the Commission to focus its resources on adopting rules and policies tailored to the specific requirements of the CVAA, rather than considering additional proposals that are outside the scope of the CVAA's mandates at this time. In adopting regulations, the Commission must afford sufficient flexibility to accommodate technical and operational differences between the mature traditional television and the rapidly evolving IP-based delivery of programming. It should avoid adopting rules that raise additional barriers to the deployment of video programming in the Internet environment. At the same time, the rules must be sufficiently clear to provide certainty to all sectors in the industry. Finally, it will be necessary to provide industry participants sufficient time to comply with new rules adopted in this proceeding.

Specifically, the record provides ample support for the Commission to:

- Place the burden of compliance on the entity that is closest to the end user and allow parties to allocate underlying responsibility among themselves, and endorse a marketplace “mechanism” for industry to share information regarding captioned programming;
- Apply the rules only to full-length, English- or Spanish-language, U.S. programming that is neither consumer-generated nor consumer-distributed;
- Adopt a workable definition of near-live programming supported by industry and disabilities groups and harmonized with the video description rules;
- Adopt SMPTE-TT as the standard interchange format for IP captioning in order to simplify and streamline the captioning process; and
- Adopt complaint procedures largely parallel to existing procedures for television complaints.

Some commenters offer proposals that exceed the scope of the CVAA and otherwise do not make sense for the Commission to address in the short statutory timelines the agency faces. NAB therefore urges the Commission to focus now on the main tasks before the agency and to defer action on certain aspects of the

implementation that need not be resolved immediately. The Commission should not even attempt to address in this proceeding issues or proposals that are entirely outside of the scope of the CVAA.

Finally, the record unequivocally establishes that broadcasters and other parties will need sufficient time to comply with new captioning requirements. Many local broadcasters will be unable to comply with the timelines proposed by the Commission, and therefore, rather than risk enforcement action, will have no choice but to reduce or even eliminate the local content they post or stream online. To avoid this loss of programming content, NAB recommends the Commission provide an additional six months to all stations to comply with the captioning requirements for live, near-live, and prerecorded, unedited programming. In lieu of a phased-in approach based on the distinction between networks and stations, NAB would support an overall extension of deadlines applicable to all parties.

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**REPLY COMMENTS OF  
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**I. INTRODUCTION**

The National Association of Broadcasters (NAB)<sup>1</sup> submits these reply comments in response to the comments filed in the above-captioned proceeding.<sup>2</sup> As NAB has explained, television broadcasters fully support the goal of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)<sup>3</sup> and the *NPRM* to better

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<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Notice of Proposed Rulemaking, FCC 11-138 (rel. Sept. 19, 2011) (*NPRM*).

<sup>3</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of Title 47 of the United States Code) (CVAA). The law was enacted on Oct. 8, 2010 (S. 3304, 111<sup>th</sup> Cong.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010, to make technical corrections to the CVAA and the CVAA's amendments to the Communications Act of 1934. Section 202(b) of the CVAA requires the FCC to implement regulations requiring closed captioning on video programming delivered using Internet Protocol (IP) that previously was published or exhibited on television with

enable individuals who are deaf or hard of hearing to view video programming that is delivered using Internet Protocol (IP). The goal of NAB's members is to deliver captions effectively on all covered platforms, and to work consistently toward a positive, pro-consumer online video viewing experience with no degradation when compared to television (TV). NAB has filed comments,<sup>4</sup> and now reply comments, in this proceeding to assist the Commission to establish a workable regulatory regime that implements the requirements of the CVAA and increases access to online programming by all Americans, including the deaf and hard of hearing.

The record developed in this proceeding reveals the numerous complexities of IP delivery of video programming. Because of these complexities, the Commission's implementation of Section 202(b)-(c)<sup>5</sup> and Section 203<sup>6</sup> will require significant technical coordination among broadcasters, other programmers, multichannel video programming distributors (MVPDs), manufacturers, software developers, website hosts, content delivery networks (CDNs), and numerous other entities. IP-based delivery of video programming occurs within a multi-dimensional programming distribution ecosystem that is still evolving and thus gives rise to many novel issues. In light of time and statutory constraints imposed by the CVAA and the complexity of the issues raised by the record in this proceeding, NAB urges the Commission to focus its resources on adopting rules and policies tailored to the specific requirements of the CVAA, rather

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captions. Section 203 expands the number of devices that are required to be capable of decoding and displaying closed captioning, video description, and emergency information requirements.

<sup>4</sup> Comments of National Association of Broadcasters, MB Docket No. 11-154 (filed Oct. 18, 2011) (NAB Comments or Comments).

<sup>5</sup> CVAA, § 202(b)-(c), codified at 47 U.S.C. § 613.

<sup>6</sup> *Id.*, § 203, codified at 47 U.S.C. § 613.

than considering at this time additional proposals that are outside of the scope of the CVAA's mandates. In adopting regulations, the Commission must maintain sufficient flexibility to accommodate technical and operational differences between mature, traditional TV and the rapidly evolving, IP-based delivery of programming. The Commission also should avoid adopting rules that raise barriers to the highly-demanded distribution of valuable news, emergency and entertainment programming in the Internet environment. At the same time, the rules adopted here must establish sufficient clarity to provide certainty to all sectors in the industry. Finally, to benefit consumers and serve the goals of the CVAA, the Commission must provide industry participants sufficient time to comply with new rules adopted in this proceeding.

**II. THE COMMISSION'S ACTIONS IN THIS PROCEEDING SHOULD BE LIMITED TO THE SPECIFIC REQUIREMENTS OF THE CVAA**

*A. THE RECORD IN THIS PROCEEDING UNDERSCORES THE COMPLEXITY OF THE INTERNET VIDEO ECOSYSTEM AND THE RESULTING NEED FOR REGULATORY CAUTION AND FLEXIBILITY*

As NAB explained in its Comments, the delivery of broadcast video programming via IP presents business, technical, and operational challenges that necessarily affect accessibility.<sup>7</sup> Online distribution of video involves many more entities than distribution of video programming by broadcasters or cable providers, and the IP video distribution ecosystem includes entities that are outside of the Commission's jurisdiction. The Commission's IP closed captioning rules will have far reaching implications for current and future video delivery practices on the Internet, not all of which are easily foreseeable. As a result, the Commission should carefully consider its actions in this proceeding. As discussed in more detail herein, the Commission should refrain from

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<sup>7</sup> See, generally, NAB Comments at 7-10.

initially adopting policies and regulations beyond those expressly required by the CVAA, and should provide industry participants appropriate time to adjust to, and comply with, any new regulations.

The complexity NAB describes in its Comments<sup>8</sup> is further underscored in comments filed by participants in various segments of the IP-based video distribution chain.<sup>9</sup> For example, DIRECTV, Inc. (DIRECTV) highlights its lack of end-to-end control over the programming and devices involved in its delivery of IP video programming.<sup>10</sup> Specifically, DIRECTV notes that it “controls only some part of the ‘transaction’ in which the user receives her programming” and that “[s]uch scenarios are becoming even more common, and require the cooperation of many different stakeholders to ensure proper captioning performance.”<sup>11</sup> In addition, Microsoft Corporation (Microsoft) notes that video programming distributors (VPDs) and video programming providers (VPPs) will have to engineer new software and hardware to enable the delivery of captioning for IP programming to consumers, and that this process will take time and necessitate

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<sup>8</sup> NAB Comments at 7-9.

<sup>9</sup> See, e.g., Comments of the National Cable & Telecommunications Association, MB Docket No. 11-154, at 2 (filed Oct. 18, 2011) (NCTA Comments); Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Hearing Loss Association of America, Communication Services for the Deaf, Cerebral Palsy and Deaf Organization, Technology Access Program at Gallaudet University, IT-RERC at Trace Center, University of Wisconsin-Madison, MB Docket No. 11-154, at 5-6 (filed Oct. 18, 2011) (TDI Comments); Comments of Rovi Corporation, MB Docket No. 11-154, at 2-3 (filed Oct. 18, 2011) (Rovi Comments).

<sup>10</sup> Comments of DIRECTV, Inc., MB Docket No. 11-154, at 5 (filed Oct. 18, 2011) (DIRECTV Comments).

<sup>11</sup> *Id.* at 6.

experimentation and trial and error.<sup>12</sup> Other commenters similarly discuss how the delivery of video programming over IP is complicated by the variety of services, devices, and applications that are involved.<sup>13</sup>

Thus, the record makes clear that IP-based delivery of captioned programming is a far more complicated and less mature undertaking than the delivery of traditional TV captioning. There are more steps and participants involved in the process, and the IP video ecosystem is evolving at a rapid pace. As a result, compliance with IP captioning rules will require a significant degree of communication and cooperation among the various stakeholders involved with the delivery of IP video. Taking this into account, the Commission should refrain from merely applying the technical rules applicable to traditional TV captioning to IP-delivered programming. Instead, the Commission should adopt flexible rules and provide a sufficient time period for affected parties to establish proper relationships, processes, and plans to develop and deploy appropriate compliance mechanisms.

***B. ALLOCATION OF COMPLIANCE RESPONSIBILITIES SHOULD REFLECT THE COMPLEXITIES OF THE ECOSYSTEM AND PARTIES SHOULD SHARE INFORMATION REGARDING CAPTIONING VIA A MARKETPLACE MECHANISM***

The Commission should take into account the complicated nature of delivery for Internet video as it determines how to allocate captioning responsibilities among various

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<sup>12</sup> Comments of Microsoft Corporation, MB Docket No. 11-154, at 19 (filed Oct. 18, 2011) (Microsoft Comments).

<sup>13</sup> See Comments of AT&T, MB Docket No. 11-154, at 3 (filed Oct. 18, 2011) (“Each combination of network, service, device, operating system, and application will have unique technical constraints and functionalities that may require a customized solution.”) (AT&T Comments); Comments of CTIA—The Wireless Association®, MB Docket No. 11-154, at 4, 7 (filed Oct. 18, 2011) (CTIA Comments); Comments of HDMI Licensing, LLC, MB Docket No. 11-154, at 4-5 (filed Oct. 18, 2011) (HDMI Comments).

parties. As NAB has explained, the solution that is most consistent with Congress's intent and most likely to ensure a practical, workable allocation is to place the burden of compliance on the entity that is closest to the end user<sup>14</sup> and allow parties to allocate underlying responsibility amongst themselves.<sup>15</sup> Thus, the Commission should not adopt the proposals of commenters who seek to place virtually all responsibility for captioning compliance on VPOs, with merely pass-through responsibility placed on MVPDs and other distributors.<sup>16</sup> Nor should VPDs/VPPs bear exclusive captioning

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<sup>14</sup> See NAB Comments at 11, citing CVAA, § 202(b)(iii). In some instances, the entity closest to the end user will be a broadcaster or other programmer acting as a VPD/VPP for its own content; in most instances, it will be a VPD/VPP to whom a programmer has provided content for distribution. See Comments of the Motion Picture Association of America, Inc., MB Docket No. 11-154, at 3-4 (filed Oct. 18, 2011) (proposing that the entity that distributes content to end users be responsible for ensuring that the content includes captions, and noting that the entity that owns the copyright cannot always bear responsibility for captioning, as there may be multiple production companies, separate copyrights for individual components of a work, differing distribution rights for different media, or other constraints) (MPAA Comments). As DIRECTV notes, in some cases the same party must bear the responsibilities applicable to both the Video Program Owner (VPO) and VPP/VPD. DIRECTV Comments at 8.

<sup>15</sup> See NAB Comments at 11, citing *Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272, 3286-87 ¶¶ 27-28 (1997) (*Closed Captioning Order*) (placing the responsibility for captioning traditional television programming on the distributors to end users, based on the assumption that distributors and program providers or producers would work together to devise an efficient allocation of responsibility, a process that has worked exceptionally well for more than a decade).

<sup>16</sup> For example, the American Cable Association (ACA) incorrectly characterizes the *NPRM* as "consistent with the statute" in proposing to "place the primary responsibility on the programming owners to send program files to VPDs with all required captions, while limiting programming distributor obligations to enabling 'the rendering or pass-through' of all required captions to the end user." Comments of American Cable Association, MB Docket No. 11-154, at 13-14 (filed Oct. 18, 2011) (ACA Comments). Similarly, AT&T overstates the statutory distinction in requirements to be placed on VPOs and VPPs/VPDs, arguing that the CVAA "limits the VPP's/VPD's role to using good faith to identify programming that contains closed captions using the mechanism created by the Commission and rendering or passing through closed captioning information provided to it by VPOs." AT&T Comments at 5. See *also* DIRECTV

responsibility, as proposed by TDI;<sup>17</sup> clearly, Congress intended for VPOs to bear some direct responsibility under the law, and NAB recognizes this fact. Further, it would be ineffective and inefficient for the Commission to attempt to hold *both* an underlying programmer and an unaffiliated distributor responsible for compliance. Placing the burden on the entity closest to the end user while encouraging parties in the distribution chain to appropriately allocate responsibilities amongst themselves based on private contract is the most appropriate and practical approach.

In connection with questions of allocating responsibilities, the Commission has asked what “mechanism” it should establish to “make available to [VPPs and VPDs] information on video programming subject to the [CVAA] on an ongoing basis.”<sup>18</sup> As the record demonstrates, the statute does not require the Commission to insert itself into complex business relationships by creating a *regulatory* mechanism. In fact, a regulatory approach, such as the certification process proposed in the *NPRM*, would be impractical, costly, and time consuming.<sup>19</sup> Accordingly, NAB agrees with TDI that the FCC’s mechanism for information on video programming subject to the CVAA should not micromanage the arrangements between VPDs/VPPs, VPOs, and other distribution

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Comments at 9-10, Comments of Google Inc., MB Docket No. 11-154, at 7 (filed Oct. 18, 2011) (Google Comments).

<sup>17</sup> TDI Comments at 7-9.

<sup>18</sup> 47 U.S.C. § 613(c)(2)(D)(v); *NPRM*, ¶ 34, n.112.

<sup>19</sup> *NPRM*, ¶¶ 35-36. As NAB has explained in detail, the Commission’s proposal to require certifications to be provided in the case of all programming that is not captioned, as well as to update such certifications within a short time frame upon any change in captioning status of the underlying programming, is unworkable. NAB Comments at 26-28. It would impose a substantial economic and resource cost on broadcasters and other VPOs, thereby upsetting the intended CVAA balance between promoting accessibility and limiting burdensome requirements unnecessary to promote such accessibility.

entities.<sup>20</sup> Instead, the FCC should endorse a marketplace mechanism that reflects and can more nimbly accommodate complexities. The Commission should leave the mechanics of compliance with the CVAA to the programmers and distributors to work out among themselves by contract, perhaps by directing VPOs, VPPs, and VPDs to develop or expand upon business relationships that are clear regarding responsibility for captioning.<sup>21</sup>

Moreover, as NCTA states, “[the proposed] program-by-program certification and associated recordkeeping requirement would be extremely burdensome and impractical. The rules for [TV] captioning do not require anything approaching the program-by-program certification proposal for Internet captioning. And the Commission has never required program networks to provide detailed information about the basis for a program not being captioned.”<sup>22</sup> ACA agrees that “[i]f adopted, the proposed program-by-program certification mechanism, together with the requirement that certifications be retained by the VPD as long as the programming is made available to end users would impose a highly burdensome and potentially unlimited document retention program for all VPDs.”<sup>23</sup> Thus, although the Commission’s suggestions for

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<sup>20</sup> See TDI Comments at 28-29.

<sup>21</sup> See *id.* at 29-30 (arguing that the Commission should focus on allowing VPDs/VPPs to obtain accurate captioning information, irrespective of the process, and noting that this could be achieved “via private arrangements.”). For example, as the Commission notes, private contractual mechanisms could “obligate the contracting VPO to provide all required captions for IP delivery, while requiring the contracting VPD/VPP to enable the rendering or pass through of all such captions to the end user.” *NPRM*, n. 121.

<sup>22</sup> NCTA Comments at 13.

<sup>23</sup> ACA Comments at 16. Some parties nonetheless support certification. See AT&T Comments at 6-7; Google Comments at 8; Comments of Verizon and Verizon Wireless, MB Docket No. 11-154, at 4 (filed Oct. 18, 2011) (Verizon Comments). These parties ignore the extreme burden that a certification mechanism would entail for VPOs.

appropriate “mechanisms” represent a well-intentioned attempt to satisfy a statutory mandate, the Commission can adopt rules that require less but accomplish far more than the *NPRM* proposals.<sup>24</sup>

Similarly, the Commission should not establish a database for information regarding captioned programming.<sup>25</sup> As NAB has noted, the information currently collected by companies such as Rovi and Tribune Media Services does not capture all of the information that a VPO would need to take into account to determine whether to provide a VPD/VPP with captioned programming for online distribution. Indeed, Rovi has explained to the Commission in this proceeding that large, integrated VPOs frequently operate separate broadcast and licensing businesses, which may create structural obstacles to each business’s knowing when particular content is transmitted

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Further, as DIRECTV correctly notes, there is no need for certification to demonstrate compliance. DIRECTV Comments at 9. NAB, however, disagrees with DIRECTV that certifications could be used for programming without captions that is no longer exempt from captioning requirements and that the Commission should require VPOs to provide VPDs/VPPs new program files with all required captions whenever previously non-captioned IP-delivered programming becomes subject to the captioning requirements. DIRECTV Comments at 9-10. These requirements would be overly complicated to follow and would add a tremendous burden to VPOs. The Commission should instead rely on marketplace mechanisms in which parties can privately allocate responsibility in a more efficient manner.

<sup>24</sup> Irrespective of whether the Commission adopts a regulatory “mechanism” or allows parties to establish a mechanism via contract and practice, the Commission should not require the retroactive distribution of IP captions for programming that was not aired on TV with captions, if such programming later is captioned on TV. A VPO should not have to update its distribution of the program or be responsible for ensuring that distributors use the newly captioned version. Rather, revising archival content should remain a business issue between programmers and distributors. Over time, market forces and the availability of versions put online after the effective date will increase the amount of content with captions. In the meantime, the Commission should simply encourage parties to update programming with captions whenever possible.

<sup>25</sup> *NPRM*, ¶ 38.

to consumers.<sup>26</sup> Other businesses license content from creators or other licensors for non-broadcast distribution and are not likely to know when or whether the content they are selling is aired on TV.<sup>27</sup> A database is not necessary, and it would be counterproductive and costly to create, manage, and maintain.<sup>28</sup> It also is not clear how the database would identify any later-captioned version of a program and address rights issues and other important aspects of distribution. Moreover, it goes well beyond the scope of the statute to propose that VPOs and others be required to provide all necessary information to a third party, who would then take responsibility for administering it. Further, a database would not, at least in the near term, provide the type of direct consumer assistance sought by TDI.<sup>29</sup> In addition to the challenges attendant to a database to be used by industry, generating information that can be used by consumers would add a layer of technical and administrative complexity that would be unworkable and unnecessary. As NAB discussed in its initial Comments, the expansion of information available to consumers could be revisited after some experience with the basic captioning obligation, but it would be premature now, particularly in light of the statutory deadline.

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<sup>26</sup> Rovi Comments at 2-3.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> See, e.g., MPAA Comments at 9, Comments of Digital Media Association, MB Docket No. 11-154, at 6 (filed Oct. 18, 2011) (DMA Comments).

<sup>29</sup> See TDI Comments at 30 (arguing that the Commission should require VPDs/VPPs to provide consumers with accurate information about which videos are captioned and if a video is not captioned, why not).

C. *THE SCOPE OF COVERED PROGRAMMING SHOULD BE LIMITED TO FULL-LENGTH, ENGLISH- OR SPANISH-LANGUAGE PROGRAMMING THAT WAS AIRED ON TELEVISION IN THE U.S.*

1. ONLY FULL-LENGTH PROGRAMMING SHOULD BE SUBJECT TO THE IP CAPTIONING RULES

Nothing in the record provides any basis for the Commission to expand the scope of covered programming beyond the common-sense definition of full-length programming. As explained in NAB's Comments, the legislative history of the CVAA is clear that captioning regulations should apply only to full-length programming.<sup>30</sup> The suggestion by various commenters that "clips" of any length should be covered by the captioning rules is wholly inconsistent with Congress's intent. For example, TDI expresses concern that consumers who are deaf or hard of hearing will not have access to cutting-edge short-form programming. Therefore, TDI argues that the definition of "video clips" should be limited to videos no longer than 30 seconds in duration that contain only promotional materials and advertisements for other programming.<sup>31</sup> This proposal is not consistent with the statute or the legislative history. TDI is correct in part that "the rise of Internet-delivered video ... has led to a rise in conceptually and thematically complete short-form programming with durations of mere minutes or even seconds."<sup>32</sup> However, such developments are happening primarily in online-only video, not with respect to programming aired initially on television and then repurposed for the Internet. Therefore, TDI's reliance on the existence of short-form web-based

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<sup>30</sup> See NAB Comments at 12, citing H.R. REP. No. 111-563, at 30 (2010) ("The Committee intends ... for the regulations to apply to full-length programming and not to video clips or outtakes.").

<sup>31</sup> TDI Comments at 19.

<sup>32</sup> *Id.*

programming to support its request is misplaced. Web-based programming that was never previously broadcast on television is irrelevant to the adoption by the Commission of definitions under the IP captioning rules.

Similarly, DIRECTV's proposal to define video clips to include promotional materials composed of one or more sections of a larger work, not exceeding one quarter of the overall length of the video, is unworkable and inconsistent with the statute.<sup>33</sup> It is not practical to apply a maximum time or percentage of programming to define a clip, and attempting to do so would create numerous technical and business challenges for parties subject to the captioning rules.<sup>34</sup> In addition, there would be substantial production costs and technical delays associated with any requirement to caption an excerpt of a full-length program.<sup>35</sup>

As articulated in NAB's Comments, full-length programming is programming that is created for viewing as a whole *on television*, such as an episode of a TV series, a sporting event, a news program, or a movie, and that is subsequently posted online.<sup>36</sup> Only a complete version of programming that is previously aired in its entirety on TV and that subsequently is posted online should be covered under the rules.<sup>37</sup>

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<sup>33</sup> DIRECTV Comments at 9.

<sup>34</sup> See TDI Comments at 17-18; DIRECTV Comments at 8-9.

<sup>35</sup> NAB Comments at 12.

<sup>36</sup> *Id.*

<sup>37</sup> See MPAA Comments at 10, Microsoft Comments at 3-4.

NAB fully agrees with TDI that if an entire program is distributed in segmented form in the same place at the same time, it is full-length programming.<sup>38</sup> Specifically, if a programmer or distributor seeks to “present traditional longer-duration full-length programming by splitting it into pieces to overcome technological size and bandwidth constraints,” and such pieces all are posted online in the same place at the same time, then such programming should constitute full-length programming.<sup>39</sup> There is no basis for the assumption of TDI and others that broadcasters and other industry participants will seek to “split up full-length programming into short segments to avoid captioning requirements.”<sup>40</sup> Moreover, such an assumption is inconsistent with the longstanding track record of high-quality captioning established by NAB’s members in the television arena.

2. ONLY PROGRAMMING TELEVIEWED IN THE UNITED STATES IN ENGLISH OR SPANISH SHOULD BE SUBJECT TO THE IP CAPTIONING RULES

Applying a similar common sense approach, and with a focus on the intent of the CVAA, the Commission should clarify that the captioning rules will cover only programming that was distributed on television *in the United States* before being posted online.<sup>41</sup> The Commission has acknowledged TDI’s assertion that the CVAA contains no express limitation requiring application of the CVAA’s IP captioning requirements only to programming published or exhibited on television in the United States.<sup>42</sup>

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<sup>38</sup> See TDI Comments at 18. See *also* NAB Comments at 12 (“Multiple segments of a full-length program, if posted together for sequential viewing and composing the entire program would constitute full-length programming.”).

<sup>39</sup> See TDI Comments at 20.

<sup>40</sup> *Id.*

<sup>41</sup> NAB Comments at 13.

<sup>42</sup> See TDI Comments at 21.

However, unlike TDI, which asserts that this lack of such a limitation in the CVAA signals that the IP captioning requirements should apply to foreign broadcasts, the Commission recognizes that its implementing rules only should apply to IP programming expressly covered by the CVAA. It would be beyond the scope of the statute and completely impracticable for the rules to cover programming that was not aired in the United States but instead was aired only in a foreign country prior to online posting.<sup>43</sup> The Commission recognizes in the *NPRM* that different captioning standards in foreign countries would make it challenging to caption such programming for online distribution in the United States.<sup>44</sup> Thus, the Commission should not adopt any such requirement, especially given the very short time frame available to the Commission and affected parties to implement IP captioning.<sup>45</sup> Similarly, it would be too complex and costly at this stage to apply captioning rules to any programming that is not initially aired on U.S. television in English or Spanish.<sup>46</sup>

*D. THERE IS NO BASIS TO EXTEND THE RULES TO CONSUMER-DISTRIBUTED PROGRAMMING*

NAB explained in its Comments that in some cases consumers may distribute portions of TV programming online in a manner that is authorized by a VPO or VPP/VPD but that is not in any way under the control of the VPO or VPP/VPD.<sup>47</sup> Similarly, Eternal Word Television Network, Inc. (Eternal Word) recognizes that consumers in some cases may have a limited ability to distribute programming without

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<sup>43</sup> See *id.*

<sup>44</sup> See *NPRM*, ¶ 22.

<sup>45</sup> See Microsoft Comments at 4, NCTA Comments at 20, DIRECTV Comments at 9.

<sup>46</sup> NAB Comments at 13.

<sup>47</sup> *Id.* at 13-14.

the permission of a VPO, such as for the narrow purpose of “fair use” under the copyright laws.<sup>48</sup> Although the underlying VPO content in these instances technically is not consumer-generated content, it more closely resembles consumer-generated programming than the full-length video programming covered by the CVAA and therefore, like consumer-generated programming, should not be subject to the CVAA’s IP captioning requirements. Simply put, a VPO or VPP/VPD cannot reasonably bear any responsibility for captioning programming where it has no control over the distribution of the programming and no realistic ability to identify or contract with the party who has such control. Thus, such content should not be subject to the captioning requirements.

*E. THE COMMISSION SHOULD ADOPT A WORKABLE DEFINITION OF NEAR-LIVE PROGRAMMING SUPPORTED BY INDUSTRY AND DISABILITIES GROUPS AND CONSISTENT WITH THE VIDEO DESCRIPTION RULES*

The *NPRM* proposes to define near-live programming as “video programming that is substantively recorded and produced within 12 hours of its distribution to television viewers.”<sup>49</sup> In its Comments, NAB recommends that the Commission adopt the same definition for the term “near-live” as it recently adopted in the video description rules—*i.e.*, programming that is produced from start to finish within 24 hours of being published or exhibited on television.<sup>50</sup>

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<sup>48</sup> Letter from Michael P. Warsaw, President & Chief Executive Officer, Eternal Word Television Network, Inc., to Julius Genachowski, Chairman, FCC, *et al.*, dated Oct. 18, 2011, at 3 (filed in MB Docket No. 11-154) (EWTN Comments).

<sup>49</sup> *NPRM*, ¶ 26.

<sup>50</sup> See 47 C.F.R. § 79.3(a)(7); see also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11866 ¶ 40 (2011) (*Video Description Order*).

TDI agrees. TDI recommends that near-live be defined as

“programming that was produced within 24 hours of being shown on television,” thus eliminating the term “substantively” from the Commission’s proposed definition but increasing the 12-hour time limit to 24 hours. This compromise should serve to avoid potential confusion stemming from a nebulous percentage threshold for program production or vagueness surrounding the term “substantially” and harmonizes the definition of the term in this context with the Commission’s definition of the term in the context of video description.<sup>51</sup>

NAB supports this sensible compromise definition as a reasonable and workable approach with respect to both video description and IP captioning. While there may be differences between the production times needed for video description and closed captioning, they are not sufficient to warrant the adoption of separate definitions of the term “near-live” in these two related contexts.<sup>52</sup> Instead, the definition of “near-live” in this context is more appropriately harmonized with the definition already adopted by the Commission for video description.

*F. NEITHER THE STATUTE NOR THE RECORD SUPPORTS ADOPTION OF AN IP CAPTIONING QUALITY STANDARD*

Broadcasters strive to deliver high-quality captioning to audiences that rely on captions, and broadcasters will continue to do so for online programming. NAB believes that consumers should be able to experience high-quality captioning online just as they currently do on television. Nevertheless, FCC codification of a quality standard would be inappropriate for a several reasons.

The Video Programming Accessibility Advisory Committee (VPAAC) recommends that “[e]fforts towards improving the overall quality of captioned content

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<sup>51</sup> TDI Comments at 23 (citation omitted).

<sup>52</sup> In addition, to the extent that captioning can be done live, it no longer qualifies as “near-live” captioning. Instead, it is live captioning, which should be subject to different rules. See *NPRM*, ¶ 26 n.92.

[be] encouraged,” but notably refrains from proposing a quality mandate.<sup>53</sup> The VPAAC’s suggestion to encourage “efforts” to improve captioning merely is an aspirational recommendation and clearly is not the basis for a particular level of “quality” to be codified. Further, NAB has explained that the recommendations of the VPAAC go beyond the scope of the CVAA.<sup>54</sup> A more flexible approach than that suggested by the VPAAC will enable broadcasters to ensure a satisfactory user experience by efficiently utilizing appropriate technologies given their individualized circumstances.

The record provides strong support for adopting such a flexible approach to ensuring high-quality captioning, rather than mandating rigid quality standards. For example, commenters have noted that the “best efforts” nature of IP delivery<sup>55</sup> and the range and variety of devices and applications used to view online content<sup>56</sup> are inconsistent with, and add tremendous complexity to, the implementation of a detailed, mandatory quality standard.<sup>57</sup> While some commenters support the establishment of minimum technical requirements, which NAB does not, even these commenters

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<sup>53</sup> See First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Closed Captioning of Video Programming Delivered Using Internet Protocol, July 12, 2011, *available at* [http://transition.fcc.gov/cgb/dro/VPAAC/First\\_VPAAC\\_Report\\_to\\_the\\_FCC\\_7-11-11\\_FINAL.pdf](http://transition.fcc.gov/cgb/dro/VPAAC/First_VPAAC_Report_to_the_FCC_7-11-11_FINAL.pdf), at 14 (VPAAC Report).

<sup>54</sup> See NAB Comments at 16-17.

<sup>55</sup> See AT&T Comments at 10-11.

<sup>56</sup> See MPAA Comments at 12; Microsoft Comments at 14.

<sup>57</sup> Further, NCTA suggests that the Commission lacks the authority to impose performance objectives. See NCTA Comments at 15.

recognize the potential harm of requiring IP captioning to be “at least the same” quality as TV captioning.<sup>58</sup>

Proposals to impose quality standards, mandate performance objectives, or require IP captioning to have the same feature set or quality as television captioning<sup>59</sup> are technically impractical, would be unrealistic in light of tight statutory timelines, impose overly burdensome costs, and are completely outside the scope of the CVAA. In fact, the adoption of such regulations may inhibit the very ability of many broadcasters to provide content online. As NAB and others have made clear, online programming providers will best be able to provide high-quality captioning to consumers if broadcasters are provided with sufficient flexibility to innovate and adapt such captioning to their particular online environments. The Commission should not impose performance objectives or standards which may constrain such innovation and thereby hinder broadcasters’ ability to provide programming over the Internet, thus ultimately disserving all consumers.

The Commission also is not obligated to, and should not, conduct an overarching review of captioning quality for IP-based programming relative to the quality of captioning required under previous Commission rules, as one commenter suggests.<sup>60</sup> Such a comprehensive evaluation is beyond the scope of this proceeding and the

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<sup>58</sup> See Comments of the Consumer Electronics Association, MB Docket No. 11-154, at 4-5 (filed Oct. 18, 2011) (CEA Comments).

<sup>59</sup> See DIRECTV Comments at 8; Google Comments at 8; TDI Comments at 9-12; Letter from Mark J. Golden, Executive Director and Chief Executive Officer, National Court Reporters Association, to Marlene H. Dortch, Secretary, FCC, dated Oct. 18, 2011, at 2 (filed in MB Docket No. 11-154) (NCR Comments); Comments of the Carl and Ruth Shapiro Family National Center for Accessible Media (NCAM) at WGBH, MB Docket No. 11-154, at 2 (filed Oct. 18, 2011) (NCAM Comments).

<sup>60</sup> See NCR Comments at 3.

CVAA's requirements, would be arduous and burdensome, and is impractical given the Commission's tight statutory deadline for implementing new rules. Broadcasters already strive to deliver high-quality television captioning to audiences and will continue to do so with respect to programming offered online.

Finally, the Commission must also continue to be sensitive to copyright issues and the constraints they present. NCR and TDI mistakenly assert that the Commission should ignore the copyright concerns of VPDs/VPPs and mandate the alteration of copyrighted content. NCR suggests that inaccurate captioning is not protected by copyright and can be altered without liability for copyright violations, but offers no support for this assertion.<sup>61</sup> Similarly, TDI argues that the alteration of captions constitutes a "non-infringing fair use of the video."<sup>62</sup> NAB disagrees with these commenters and urges the Commission to disregard these flawed arguments. In fact, such alterations may be deemed derivative works.<sup>63</sup> A federal agency such as the Commission should not insert itself into a private copyright matter by mandating that one entity (here, a VPD/VPP) alter the copyrighted content of another entity (a VPO).

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<sup>61</sup> *Id.* at 2. NCR also argues that VPOs/VPPs/VPDs may be violating the Commission's "quality and accuracy" rules by failing to correct inaccurate captions. *Id.* at 2-3. However, the Commission has never adopted any quality or accuracy rules with respect to captioning.

<sup>62</sup> TDI Comments at 12-13.

<sup>63</sup> See NAB Comments at 17. This is particularly the case because of the case-by-case approach that courts traditionally have taken with respect to determining what constitutes "fair use" or a derivative work. Any blanket assumption regarding these issues made by the Commission would be inconsistent with the courts' approach.

G. *A STRAIGHTFOWARD PROCESS TO PETITION FOR EXEMPTIONS AND THE ESTABLISHMENT OF CERTAIN CATEGORICAL EXEMPTIONS WILL PROVIDE NEEDED CLARITY IN A NEW REGULATORY REGIME*

The record supports the Commission’s proposal to establish a process by which VPOs and VPPs may request an entity-specific or program-specific full or partial exemption from the IP captioning rules if compliance would be economically burdensome.<sup>64</sup> It also supports the adoption of categorical exemptions, including the extension to IP captioning of certain categorical exemptions applicable to television.<sup>65</sup> In addition to NAB, commenters generally agree that the Commission is required by the CVAA to exempt programmers and/or programming from the IP captioning requirements to the extent that application of the requirements would be economically burdensome. Those few commenters that express contrary views fail to take into account the CVAA’s statutory mandates and the likely public interest harms that would flow from a decision by the Commission not to offer targeted and categorical exemptions.

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<sup>64</sup> *Id.* at 22-23. NAB also supports the comments of NCTA and Verizon Communications, Inc., its regulated, wholly owned subsidiaries, and Verizon Wireless (collectively, Verizon) regarding the appropriate interpretation of the “economically burdensome” standard set forth in the CVAA. See Verizon Comments at 5 (arguing that the “economically burdensome” standard “is a somewhat lower standard than ‘undue burden’” and requires a “less substantial showing to justify an exemption”); NCTA Comments at 16-17 (noting that “economically burdensome” standard is “broader” and “has been interpreted to consider factors in addition to those under the ‘undue burden’ standard”).

<sup>65</sup> NAB Comments at 23-25.

1. THE COMMISSION SHOULD CODIFY PROCEDURES TO ENABLE PARTIES TO PETITION FOR ENTITY-SPECIFIC AND PROGRAMMING-SPECIFIC EXEMPTIONS

Section 202(c) of the CVAA requires the Commission to permit VPPs and VPOs to seek exemptions from the IP captioning requirements when compliance is “economically burdensome” and mandates the Commission to use certain procedures when addressing such exemption petitions.<sup>66</sup> To properly effectuate this congressional mandate, the Commission should codify its proposal to adopt procedures to request individualized entity-specific and programming-specific exemptions requests. By contrast, the Commission expressly should decline to adopt a “strong presumption against such petitions” and to “summarily dismiss exemption petitions that do not make a heightened *prima facie* showing of economic burden,” both of which were proposed by TDI.<sup>67</sup>

As an initial matter, neither TDI request is consistent with the CVAA’s unambiguous Section 202(c) statutory mandate. Congress could have included in the CVAA a heightened pleading requirement if it had intended for the Commission to adopt one, but Congress did not do so. In addition, TDI completely fails to offer any support

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<sup>66</sup> See CVAA, § 202(c) (modifying 47 U.S.C. § 713(d) to state that “a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome. During the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section. The Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.”); see *also* CTIA Comments at 4 (“The Commission has clear authority under the CVAA to exempt classes of service providers or manufacturers from the Act’s requirements.”).

<sup>67</sup> TDI Comments at 25-26.

for the lone assertion that it makes in an effort to justify its request—*i.e.*, that “the nature and cost of [IP] captions are likely non-burdensome by virtue of the program’s publication or exhibition with captions on television.”<sup>68</sup> This determination should be made on a case-by-case basis by the Commission based on the facts set forth in specific exemption petitions.

Further, TDI’s assertion is inaccurate. As explained above, compared to traditional broadcast TV, IP-based video delivery is a nascent ecosystem. The varied and evolving technologies used for IP video delivery and IP captioning are markedly different than the mature and stable technologies used for broadcast television and closed captioning of broadcast programming. In addition, a wide variety of entities may be involved in the distribution of online video, some of whom are not part of the distribution chain for traditional TV. As a result, inserting IP captioning into TV programming that was captioned when broadcast imposes real costs on VPOs and VPPs/VPDs and in some circumstances these costs will be economically burdensome.

## 2. THE COMMISSION SHOULD ESTABLISH CATEGORICAL EXEMPTIONS

In addition to establishing a process by which parties may seek individualized exemptions, the Commission should adopt a number of categorical exemptions that will take effect along with the new captioning rules. Specifically, NAB and other commenters support application of many of the same categorical exemptions that apply to TV captioning in the online context. NAB and others have identified the public harms that will result if the Commission declines to extend the television exemptions to IP

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<sup>68</sup> *Id.* at 25.

captioning.<sup>69</sup> Specifically, broadcasters may be forced to cease voluntarily captioning TV programming when not required to do so under one of the TV exemptions; in addition, broadcasters that continue to voluntarily caption exempt TV programming may refrain from distributing the programming online.<sup>70</sup> According to Eternal World,

[p]rogrammers exempt under the old rules may remove voluntary closed captioning from television and online in order to remain exempt. Or, an exempt programmer may refuse to put televised programs that had closed captioning online because it is not exempt. Nobody wants that result. Instead, the exemption should be uniform across all media so that the voluntarily closed captioned material may be distributed as broadly as the programmer can manage.<sup>71</sup>

NAB therefore urges the Commission to adopt policies that encourage greater IP captioning. This will better serve the public interest.

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<sup>69</sup> See, e.g., NAB Comments at 23-25; Verizon Comments at 4-5 (“The Commission proposes an exemption process that follows the rules used for television closed captioning. Verizon agrees that no purpose is served by having two different exemption processes – one for television captioning and one for IP – and that the Commission should base its IP captioning exemption process on the existing television captioning process.”) (citation omitted); EWTN Comments at 2 (proposing that “[p]rogrammers exempt under Section 79.1(d)12 should be similarly exempt under the new rules”); NCTA Comments at 17 (“[I]t is ... important to specifically incorporate the existing [television] exemptions into the online captioning rules.”); see also 47 C.F.R. § 79.1(d).

<sup>70</sup> See EWTN Comments at 2 (“Programmers exempt under Section 79.1(d)12 should be similarly exempt under the new rules, too, *so that they may voluntarily provide closed captioning without waiving their exemption.*”) (emphasis added); see also MPAA Comments at 8 (noting that “the Commission intends to balance the interests of consumers against the concern that overly burdensome standards may cause distributors to refrain from posting videos online”) (internal citations and quotations omitted); CTIA Comments at 12 (citing *Closed Captioning Order* 13 FCC Rcd at 3346 ¶ 154 (1997) for the proposition that the Commission does not intend captioning requirements “to inhibit new sources of video programming due to [its] interest in fostering diversity in video programming”).

<sup>71</sup> EWTN Comments at 2; see also NCTA Comments at 18 (“It also does not follow that programming voluntarily captioned for television should be required to be captioned online. This additional cost and burden could provide disincentives to caption at all if the program were to later be posted online. Therefore, the obligation to provide programming with captions online should only apply to programming that is required to be captioned on television.”) (citations omitted).

Moreover, the Commission should provide a procedure for seeking additional categorical exemptions from the IP captioning rules in the future. This will prevent the Commission from having to devote its limited resources to address multiple individualized petitions, each of which requests a substantially similar exemption. To the extent that the Commission is amenable to granting the requested exemption, doing so on a categorical basis is a more efficient approach than requiring each potentially impacted party to file a separate petition.

*H. THE COMMISSION SHOULD ADOPT A STANDARD INTERCHANGE FORMAT FOR IP CAPTIONING*

The 45 members of the VPAAC, representing all aspects of the video programming and distribution industry, arrived at the correct consensus: SMPTE-TT should be adopted as the standard interchange format used to encode IP captioning.<sup>72</sup> Similarly, the vast majority of commenters support adoption of SMPTE-TT, arguing that a standard interchange format would simplify and streamline the captioning process.<sup>73</sup> For example, Starz Entertainment, LLC (Starz) states that a single standard would “establish predictable and reliable interactions among participants in the IP-content delivery chain.”<sup>74</sup> As Starz points out, the data carried in a captioning stream is

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<sup>72</sup> See *NPRM*, ¶ 39 (citing VPAAC Report at 17).

<sup>73</sup> Certain commenters suggest that the Commission adopt SMPTE-TT as a baseline or safe harbor standard to be implemented by all parties, but that the Commission also permit other standards to be used. See DMA Comments at 7; Microsoft Comments at 16; NCAM Comments at 3; MPAA Comments at 10 (proposing a “default” standard that would apply if private negotiations are unsuccessful). If the Commission declines to adopt a standard notwithstanding the substantial record support for SMPTE-TT, the Commission at a minimum should state that a party that uses SMPTE-TT in a manner consistent with the standard is presumed to be in compliance with the rules (*i.e.*, use of SMPTE-TT should be designated a “safe harbor” for purposes of the captioning rules).

<sup>74</sup> Comments of Starz Entertainment, LLC, MB Docket No. 11-154, at 4 (filed Oct. 18, 2011) (Starz Comments).

relatively simplistic. Therefore, permitting multiple encoding options will reduce the speed and reliability of IP captioning without offering any concomitant benefits.<sup>75</sup>

Importantly, as NCTA notes, the VPAAC's proposed IP captioning deployment timeline presupposes the use of a single format for authoring captions. By contrast, requiring VPDs to encode content using multiple captioning formats would "introduce additional time lag, complexity and cost" to the distribution of online video.<sup>76</sup> In addition, Rovi explains that a SMPTE-TT mandate would minimize the obstacles and development time necessary for the IP-based distribution of captioned content.<sup>77</sup> Microsoft elaborates on this sentiment, noting that the lack of an established standard would deny device manufacturers the regulatory certainty and clarity needed to achieve timely compliance.<sup>78</sup> The Digital Media Association, which represents "leading companies in online distribution of video content," similarly comments that the FCC's proposal to leave the issue of technical standards to marketplace negotiations "denies industry needed certainty."<sup>79</sup> The Commission should carefully consider this broad consensus regarding the benefits of establishing a single interface standard.

In addition, none of the commenters who support the adoption of a single interchange standard (or a baseline/safe-harbor standard) oppose the use of SMPTE-TT. To the contrary, more commenters than not support the VPAAC's conclusion that

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<sup>75</sup> *Id.* at 4-5.

<sup>76</sup> NCTA Comments at 6.

<sup>77</sup> Rovi Comments at 6-7.

<sup>78</sup> Microsoft Comments at 16.

<sup>79</sup> DMA Comments at 7.

SMPTE-TT is the most suitable interchange standard.<sup>80</sup> As NCTA notes, SMPTE-TT is “ideally suited” to this task because it was specifically created to “repurpose captions in TV programming for use on the Internet.”<sup>81</sup> Additionally, SMPTE-TT is compatible with CEA 608/708, the widely implemented standards for analog and digital broadcast television captions,<sup>82</sup> and the record reflects the existing reliance on, and increasing use of, SMPTE-TT.<sup>83</sup>

Only a few commenters oppose the use of a single or baseline standard and, as set forth below, their concerns either are misplaced or actually would be satisfied by adoption of SMPTE-TT. Although DIRECTV agrees with the Commission’s proposal not to require an interchange standard, DIRECTV encourages the Commission to “remain open to implementing [a] consensus” standard if “the comments in this proceeding demonstrate that the industry has coalesced around a standardized approach.”<sup>84</sup>

The only entities who object to adoption of an interchange standard are Google Inc. (Google) and certain consumer groups. When multiple sectors of the industry—

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<sup>80</sup> See CEA Comments at 6-7; DMA Comments at 7; MPAA Comments at 10; NCTA Comments at 6; NCAM Comments at 3; Rovi Comments at 6-7; Starz comments at 5; Comments of TechAmerica, MB Docket No. 11-154, at 3 (filed Oct. 18, 2011) (“The SMPTE-TT standard should be implemented to the fullest extent possible.”) (TechAmerica Comments).

<sup>81</sup> NCTA Comments at 6; see *also* NCAM Comments at 3 (stating that the Commission should designate “SMPTE-TT as the baseline technical standard for programming covered by the CVAA” because it was developed by the “primary parties responsible for initiating creation and delivery of the Internet-based programming covered by the CVAA”).

<sup>82</sup> See Rovi Comments at 6; Starz Comments at 4.

<sup>83</sup> See, e.g., VPAAC Report at 26.

<sup>84</sup> DIRECTV Comments at 12.

including programmers and device manufacturers with substantial experience in providing captioned programming—have coalesced around a standard, a single company should not be permitted to derail its adoption. Google states that a “well-specified and publicly defined” captioning format is needed to support the functions consumers want and that, if no standard is adopted by the Commission, software developers will have the “continued ability to innovate and create new applications for closed captioning.”<sup>85</sup> However, SMPTE-TT is a well-specified and freely available standard. The Society of Motion Picture and Television Engineers (SMPTE), which specified the SMPTE-TT standard, has opened it to the public free of charge.<sup>86</sup> Further, according to SMPTE, the standard would “leave[] plenty of room for innovation [as it is] media-device and media-player agnostic.’ ... [because] it uses a plug-in like framework which ‘enables additions to its core closed-captioning capabilities.’”<sup>87</sup> Thus, SMPTE-TT “leav[es] manufacturers free to develop a wide range of products without worrying about interoperability issues,” thereby permitting manufacturers to focus on innovation rather than on accommodating multiple duplicative interface standards.<sup>88</sup> Furthermore, Google is simply incorrect in its assertion that adoption of a single standard would render much existing content inaccessible.<sup>89</sup> For all these reasons, Google’s concerns

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<sup>85</sup> Google Comments at 3.

<sup>86</sup> See Society of Motion Picture and Television Engineers, Press Release, “SMPTE Makes Closed-Captioning Standard Freely Available, Widening Access to Broadband Video For Individuals With Disabilities,” May 3, 2011, *available at* <https://www.smpete.org/news-events/news-releases/smpete-makes-closed-captioning-standard-freely-available-widening-access-br>.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Google Comments at 5.

are without merit and the Commission should adopt SMPTE-TT to provide guidance and clarity to the industry as it prepares to comply with the new captioning requirements.

Finally, NAB recognizes that the deaf and hard of hearing communities might have concerns regarding adoption of a standard, based on a belief that a single standard would prove limiting. For this reason, TDI advocates that the FCC “articulate quality and functionality standards that interchange formats must support,” rather than adopt a specific standard.<sup>90</sup> TDI focuses on one specific function: the ability to facilitate conversion of CEA 608/708 captions to appropriate web and Internet standards. TDI’s abstract proposal would offer insufficient clarity and guidance to industry compared with the adoption of a single or baseline technical standard. As a result, TDI’s approach would result in confusion and the inefficient use of multiple, incompatible standards. Thus, adoption of their proposal would be counterproductive and would not serve the goals of the CVAA. SMPTE-TT in fact already fully supports the automated conversion of CEA 608 captions to SMPTE-TT format, and work is ongoing to supply a similar mapping from CEA 708 captions.<sup>91</sup>

Despite the misplaced concerns of a handful of commenters, the record overwhelmingly supports the conclusion of the VPAAC. Given the strong record support for the adoption of a single, baseline interchange standard, as well as the acknowledged benefits of the SMPTE-TT format, the Commission should adopt this

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<sup>90</sup> TDI Comments at 3. The Coalition of Organizations for Accessible Technology likewise argued for a focus on principles over particular standards, although they did not elaborate on which principles were important. Reply Comments of Coalition of Organizations for Accessible Technology, MB Docket No. 11-154, at 2 (filed Oct. 26, 2011).

<sup>91</sup> VPAAC Report at 26-27.

standard.<sup>92</sup> Adoption of a single standard will promote device compatibility, regulatory certainty, and the efficient and effective deployment of captioned IP video content for the benefit of consumers. Moreover, the open and flexible SMPTE-TT standard can accomplish these important objectives while fully accommodating future innovations and developments with respect to IP video and devices.

*I. IP CAPTIONING COMPLAINT PROCEDURES SHOULD PARALLEL THOSE FOR TV WHILE ACKNOWLEDGING THE NOVEL CHALLENGES POSED BY ONLINE TECHNOLOGY*

The record now before the Commission provides significant support for establishing a complaint process patterned on procedures that have worked in the traditional TV setting but that also reflects the substantial technological issues posed by closed captioning in the online environment.<sup>93</sup> At the same time, the new online captioning complaint procedures should afford consumers and regulated entities a straightforward path for resolving problems quickly. As suggested in NAB's Comments, the Commission's focus in the opening phase of this new regulatory regime should be

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<sup>92</sup> NAB previously has expressed concern regarding the role of software in delivering captioned IP programming and the possible consequences if software is not covered under the captioning rules. NAB comments at 31. Because software is an integral part of IP captioning technology, the Commission should clarify that captioning software is covered by any newly adopted rules. As NCAM explains:

In virtually every device that supports Internet-delivered media today, a variety of inter-connected software enables reception and proper display of that video. In very few, if any, situations does hardware alone serve as the enabler of reception, unlike in traditional analog television. The same is true of technology enabled to display captions on Internet-delivered video today and in the future. Unlike the original line-21 caption-decoder chips, caption reception and display will be handled by software and thus must be considered as part of the definition of apparatus as implied by the language and intent of the CVAA.

NCAM Comments at 2; *see also* TDI Comments at 43-45; Verizon Comments at 7.

<sup>93</sup> *See, e.g.*, NCTA Comments at 21-22; DIRECTV Comments at 14-15; ACA Comments at 17-19.

two-fold: First, the Commission should foster conditions that will allow for rapid and informal fixes for specific glitches or failures. Second, in the early period of CVAA implementation, the Commission should use its enforcement procedures primarily as a means to educate both regulated entities and consumers about their responsibilities, rights, and reasonable expectations.<sup>94</sup>

Holding VPPs/VPDs to a “zero tolerance” policy will not encourage the type of informal exchanges that are most likely to quickly solve closed captioning problems.<sup>95</sup> Therefore, as a preliminary matter, the FCC should explicitly find that *de minimis* violations do not give rise to enforcement actions. The CVAA specifically provides for a *de minimis* safe harbor against enforcement and the Commission must give meaning to this statutory language.<sup>96</sup> The Commission accordingly should reject TDI’s proposal to restrict this safe harbor to “truly extraordinary, unavoidable circumstances of technical malfunction where a VPP/VPD takes immediate remedial action to restore accessibility

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<sup>94</sup> NAB Comments at 31-34.

<sup>95</sup> For example, in its opening comments, TDI apparently argues that every complaint should automatically trigger an active government enforcement proceeding. TDI goes on to urge that “VPDs/VPPs must not be able to deliver videos without compliant captions and escape liability by adding captions when a consumer files a complaint.” TDI Comments at 34-35. TDI’s proposal would immediately set up an adversarial proceeding that is unlikely to foster creative solutions. TDI is incorrect in asserting that VPPs/VPDs would evade IP captioning requirements in the first instance. It is more likely that captions may be inadvertently missing due to technical errors. A VPD/VPP is more apt to promptly respond to consumer inquiries and correct problems without an adversarial proceeding. Indeed, ensuring the most rapid possible delivery of missing captions is the fundamental point of the CVAA.

<sup>96</sup> Section 202(b) of the CVAA requires the Commission’s regulations to “provide that *de minimis* failure to comply with such regulations by a video programming provider or owner shall not be treated as a violation of the regulations.” 47 U.S.C. § 613(c)(2)(D)(vii).

to consumers.”<sup>97</sup> TDI’s suggested construction would entirely undercut the statute’s *de minimis* enforcement exemption and would constitute an unwarranted limitation on the Commission’s discretion with respect to enforcement matters.

Moreover, NAB supports NCTA’s proposal that the Commission refrain from formally processing complaints during the initial roll-out of the rules, which is consistent with NAB’s initial comments.<sup>98</sup> Closed captioning in the IP video context is a new technological challenge for all involved—for the VPPs/VPDs and VPOs who must supply the captions, for the consumers who try to access the captions from a wide array of different hardware and software, and for the Commission staff who will need time and experience to be able to determine which remedial steps are feasible, useful, and reasonable. Until the FCC has had sufficient time to educate itself regarding these issues and evaluate how well various technological fixes actually work, the Commission should concentrate its resources on monitoring private efforts to overcome obstacles to IP captioning and on highlighting the resolutions of any problems that arise, rather than on issuing sanctions.

In addition, NAB joins other commenters in urging the FCC to establish a fixed time frame within which complaints concerning IP video closed captioning must be filed.<sup>99</sup> As AT&T notes, while the IP environment may complicate the application of the 60-day television rule to some extent, it does not warrant elimination of a time restriction altogether.<sup>100</sup> DIRECTV notes that the complexity inherent in IP captioning might weigh

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<sup>97</sup> TDI Comments at 31-32.

<sup>98</sup> NCTA Comments at 21-22.

<sup>99</sup> See, e.g., AT&T Comments at 14-15; DIRECTV Comments at 14-15.

<sup>100</sup> AT&T Comments at 14.

in favor of a shorter time frame, such as 30 days,<sup>101</sup> while NAB previously suggested that the Commission might consider a slightly longer time frame than the 60-day period established for TV closed captioning complaints. Irrespective of the time period the FCC selects, the FCC should heed the urgings of multiple commenters to consider the practical realities of the Internet ecosystem when adopting a complaint deadline. The overall, effective functioning of the Commission's enforcement regime requires the Commission to establish a concrete complaint filing deadline to provide VPPs/VPDs and VPOs business certainty, which has a direct impact on their ability to resolve complaints quickly.<sup>102</sup> The FCC therefore should reject TDI's proposal to eliminate the filing deadline requirement.

NAB agrees with other commenters generally on the need for streamlined complaint procedures that are clear and that encourage informal resolution of problems as early as possible. Thus, for example, the FCC should make plain that the first step in the complaint adjudication process after the filing of a complaint with either the VPP/VPD or the FCC is a period set aside for the VPP/VPD to resolve the problem in conjunction with complainant and without additional Commission oversight or the overhanging threat of a parallel, formal government investigation.<sup>103</sup> TDI provides no logical justification for requiring the Commission to expend its scarce enforcement resources on an unnecessary investigation that may hamper the VPP/VPD's independent efforts to address a complainant's issues.<sup>104</sup> Further, experience in the TV

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<sup>101</sup> DIRECTV Comments at 15.

<sup>102</sup> AT&T Comments at 14-15.

<sup>103</sup> See, e.g., NCTA Comments at 22.

<sup>104</sup> TDI Comments at 34-35.

closed captioning complaint context demonstrates that the mere option of filing a complaint directly with the Commission is more than sufficient to cause VPPs/VPDs to promptly investigate and rectify any captioning problems.<sup>105</sup>

With respect to establishing a minimum base forfeiture, NAB disagrees with TDI that a hard-and-fast benchmark should be established at this time.<sup>106</sup> The Commission instead should give itself and the industry time to view and evaluate the real-world challenges and complexities likely to arise in IP captioning complaint scenarios and then, after a reasonable period to gain such experience, address the need for any minimum forfeiture standard. As of today, the record provides no evidentiary foundation upon which the FCC could build a fair and defensible forfeiture scheme.

For much the same reason, NAB suggests that the Commission refrain from imposing rigid deadlines on the VPPs/VPDs who must respond to complaints or on the FCC staffers who must resolve them. After some period of time overseeing the new IP captioning rules, including the complaint procedures, the FCC is likely to be in a position to set reasonable deadlines, but that is not the case today. The record makes plain that

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<sup>105</sup> NAB's call for the Commission to largely replicate the existing TV closed captioning rules in the online setting includes endorsement of the existing rule, which affords consumers the option of filing a complaint. Under the regulation, the Commission forwards complaints filed with the Commission to the appropriate video programming distributor. See *Closed Captioning of Video Programming*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674, 16684 ¶¶ 23 (2008 *Closed Captioning Order*); 47 C.F.R. § 79.1(g)(2). For a complaint filed with the video programming distributor, the complainant may file a complaint with the Commission if the video programming distributor fails to respond within thirty days, or the response does not satisfy the consumer. See *2008 Closed Captioning Order* at 16684 ¶¶ 24; 47 C.F.R. § 79.1(g)(4) A video programming distributor receiving a complaint regarding programming of a broadcast television licensee, or programming over which the video programming distributor does not exercise editorial control, must forward the complaint to the appropriate party and notify the Commission that it forwarded the complaint. See *2008 Closed Captioning Order* at 16684 ¶¶ 25; 47 C.F.R. § 79.1(g)(3).

<sup>106</sup> TDI Comments at 35-36.

IP-based delivery of video is considerably more challenging and individualized than the delivery of video by the mature and homogenous broadcast, cable, and satellite industries. TDI's suggestion that VPPs/VPDs be required to respond to complaints within 15 days<sup>107</sup> appears likely to be unreasonable in any event due to the time that will be required for the VPPs/VPDs to discuss the matter with the complainant and relevant VPOs and to investigate the transmission path that the complainant relied upon to access the allegedly noncompliant video. Similarly, it seems doubtful that 15 days would allow the Commission's staff sufficient time to investigate and rule upon complaints in every instance.<sup>108</sup>

With respect to the means used for filing complaints concerning online captioning, NAB continues to believe that regulations that mirror the existing rules for television would have multiple benefits. As NAB explained in its initial comments, such rules are well understood, sufficiently expansive in scope, easy to publicize broadly, and have proven effective in the broadcast context.<sup>109</sup> TDI also does not justify its proposal that VPPs/PPDs and VPOs be required to respond to complaints filed in American Sign

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<sup>107</sup> *Id.* at 36-37. TDI's proposed time frame here, which would include a rigid bar preventing the Commission from granting any extensions of time, apparently is justified only by TDI's insistence that the only relevant question for the agency to consider is whether the video is subject to the CVAA or not. *Id.* at 37. This interpretation is inconsistent with the statutory scheme and ignores the real-world complications that are likely to arise when adapting the existing television closed captioning regulations to the IP-based distribution of programming—a new and evolving technological environment.

<sup>108</sup> *Id.* at 37-38. Although NAB always supports prompt Commission resolution of any open proceeding, it is not clear that establishing shot clocks for agency action is always successful. Caution is warranted here, particularly when the issues are novel or difficult.

<sup>109</sup> TDI offers no rationale as to why the FCC should abandon this approach for the considerably more vague "any reasonable means" language set forth in the *Video Description Order*. *Id.* at 38.

Language. This proposal extends well beyond the CVAA's statutory requirements and Congress' intent.<sup>110</sup> In addition, deaf and hard of hearing individuals have numerous methods available to them to submit a complaint, including the use of Telecommunications Relay Services.

NAB also agrees with DIRECTV that complaints should be required at minimum to include identification of the device(s) the consumer used to access the video, as well as the relevant web address and name of the Internet service provider, along with other, more obviously needed data.<sup>111</sup> The provision of this basic information about the technology at issue will help to pinpoint and speed resolution of problems.

In sum, NAB urges the Commission to refrain from promulgating complaint procedures that impose unrealistically demanding mandates that VPPs/VPDs and VPOs may be unable to meet. The end result of any such complaint procedure is more likely to be disappointed and frustrated consumers rather than prompt resolution. The better course is for the Commission to craft IP closed captioning complaint procedures that build on the effectiveness and familiarity of existing television complaint procedures. In addition, the FCC should couple these procedures with an enforcement policy that encourages consumers and VPPs/VPDs to first engage informally to address problems without the potentially stifling overhang of immediate Commission enforcement action. Not only is this approach likely to lead to better results more quickly, it also will conserve the Commission's scarce resources. Finally, the Commission should afford its staff, industry participants, and consumers time to gain

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<sup>110</sup> *Id.* at 39.

<sup>111</sup> DIRECTV Comments at 15.

experience with captioning issues in the online environment before the Commission imposes rigid complaint-processing deadlines and/or sanctions.

### **III. THE RECORD SUPPORTS AN EXTENSION OF TIME FOR BROADCASTERS AND OTHER PARTIES TO COMPLY WITH NEW CAPTIONING REQUIREMENTS**

NAB's members have very serious concerns that the "very aggressive"<sup>112</sup> deadlines proposed in the *NPRM* are insufficient for local broadcasters to prepare to serve viewers of IP-delivered programming who rely on captions. If the Commission adopts the timelines proposed in the *NPRM*, many local broadcasters will not be ready to comply. As a result, rather than risk enforcement action, they may have no choice but to reduce or even eliminate the local content they post or stream online.<sup>113</sup> This result would be particularly harmful to viewers who rely on captions, given that local broadcasters are responsible for a vast amount of local news, emergency information and public affairs video available on the Internet.<sup>114</sup>

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<sup>112</sup> See AT&T Comments at 13-14.

<sup>113</sup> Without an extension, stations may be forced to reduce or eliminate online posting of live or near-simultaneous streaming of content until their captioning capabilities are fully developed. More specifically, live or near-simultaneous streamed programming in particular will be difficult to caption, even if it is distributed online after it airs live on television. Local broadcasters need additional time to ensure that the marketplace can develop and deliver products and services that support IP captioning. See NAB Comments at 20.

<sup>114</sup> See *id.* at 18. In its Comments, NAB suggested that the Commission encourage programmers and distributors to make captioned programming available as soon as possible, and follow the type of ramp-up timeline and phase-in periods that it adopted with respect to TV captioning to allow industry to meet the statutory requirement "in an efficient and practical manner." See NAB Comments at 41 (citing *Closed Captioning Order*, 13 FCC Rcd at 3292-93 ¶ 41).

AT&T correctly urges the Commission to set more reasonable deadlines.<sup>115</sup> This could be accomplished by a phase-in, as discussed in the NAB Comments, or by an extension of all of the deadlines for all covered entities. NAB has suggested that one possible basis for phasing in compliance would be the distinction between network programming and non-network programming.<sup>116</sup> The Commission could adopt the proposals in the *NPRM* with respect to network programming (*i.e.*, programming originated, produced, or distributed for broadcast television by one of the top four commercial broadcast networks). However, for non-network produced/originated (VPO) prerecorded programming not edited for Internet distribution, and for non-network produced/originated (VPO) broadcast programming that is live or near-live,<sup>117</sup> the Commission should afford stations an additional six months (*i.e.*, establish compliance deadline that are 12 months and 18 months, respectively, after publication of an IP-captioning order in the Federal Register). Alternatively, the Commission could adopt a single implementation period for all aspects of this captioning mandate, with a deadline

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<sup>115</sup> See AT&T Comments at 13. TechAmerica also specifically suggests that a six-month deadline for the captioning of programming that is prerecorded and not edited for Internet distribution may be too short. TechAmerica Comments at 2. As NCTA states, more time certainly is warranted if the Commission declines to adopt the SMPTE-TT standard, as the proposed VPAAC deadlines were premised on such an assumption and, without a standard, parties will need additional time to come into compliance. NCTA Comments at 5-6. However, even if the Commission does adopt SMPTE-TT or establish that use of SMPTE-TT creates a safe harbor, the deadlines proposed in the *NPRM* are insufficient for local broadcasters to comply with the captioning requirements.

<sup>116</sup> NAB Comments at 19.

<sup>117</sup> With respect to near-live programming, the Commission should adopt the same definition as for video description—programming that is produced from start to finish within 24 hours of being published or exhibited on television—not 12 hours as proposed in the *NPRM*. See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11866 ¶ 40; 47 C.F.R. 79.3(a)(7).

of at least 18 months, as proposed by Rovi,<sup>118</sup> or 24 months, as proposed by DIRECTV.<sup>119</sup> Importantly, if the Commission determines that it should extend one or more deadlines, it should not grant any extension to VPDs/VPPs that it is not also granted to VPOs, as such a distinction would not make sense and would not serve consumers.<sup>120</sup>

Although TDI urges the Commission to adopt the proposed VPAAC schedule for captioning compliance,<sup>121</sup> the VPAAC's proposed timeline will leave many local broadcasters unable to comply with the rules, ultimately diserving consumers. TDI also requests the prohibition of delays in the captioning of simulcast programming,<sup>122</sup> and encourages the Commission to adopt the same responsibilities for near-live programming as other programming not aired live,<sup>123</sup> so as not to further delay the applicability of the captioning rules to live programming delivered via the Internet.<sup>124</sup> These proposals not only ignore the explicit intent of the CVAA, but could also serve as significant barriers to making additional live and near-live content available over the

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<sup>118</sup> Rovi Comments at 5.

<sup>119</sup> DIRECTV Comments at 12-14.

<sup>120</sup> Digital Media Association and Microsoft unjustifiably request separate compliance deadlines for VPDs/VPPs and VPOs. DMA Comments at 7; Microsoft Comments at 20. Not only does the proposal for different deadlines for VPDs/VPPs and VPOs add no benefit to consumers, but it could also cause significant confusion for consumers who expect, but are unable to find, captions on video programming on the Internet after the compliance deadline for VPOs.

<sup>121</sup> TDI Comments at 24.

<sup>122</sup> *Id.* at 23.

<sup>123</sup> *Id.* at 24.

<sup>124</sup> *Id.* at 28.

Internet, including programming with captions if a VPP/VPD were unsure of its ability to prevent any delay of captioning in simulcast programming available on the Internet.

**IV. IN LIGHT OF TIME AND STATUTORY CONSTRAINTS, THE COMMISSION SHOULD NOT CONSIDER PROPOSALS THAT EXCEED THE SCOPE OF THE CVAA**

NAB understands that there are tight statutory deadlines confronting the Commission in implementing the CVAA. Given these time constraints and the complexities explicitly raised by the statute's various provisions, the FCC should refrain from acting upon any proposals by commenters that are not directly responsive to CVAA mandates. It will be difficult enough for the Commission to address in a timely fashion the many elements of the statute. NAB therefore urges the FCC to focus now on the main tasks before the agency and to defer action on certain aspects of the implementation that need not be resolved immediately.<sup>125</sup> There will be ample other opportunities to address these more discretionary matters. For example, the groundbreaking nature of the law makes it likely that the Commission will revisit its implementation decisions in the future, as commonly occurs with detailed rules designed to effectuate sweeping new legislation.<sup>126</sup>

The Commission should not attempt to address in this proceeding issues or proposals that are entirely outside of the scope of the CVAA. These include, for example, the notion of requiring VPPs/VPDs and VPOs to incorporate specific elements in their website designs, such as a button or icon for accessing closed captioning. The

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<sup>125</sup> See *supra* Sections II.I.

<sup>126</sup> See, e.g., *Digital Television Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220 (2008); *Implementation of the Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

statute gives the FCC no authority to impose web design mandates, and NAB agrees with Microsoft that there are good policy reasons to avoid them.<sup>127</sup> Web design and technology are constantly evolving and improving, and the imposition of a rigid “solution” is liable to thwart innovative upgrades in the future. The Commission is better advised to outline the objectives it wishes VPPs/VPDs to satisfy in providing easy access to captions and then afford VPPs/VPDs reasonable flexibility to meet them.

The Commission also should reject NCAM’s proposal to mandate the development and use of a “data driven mechanism for discovering and tagging covered programming.”<sup>128</sup> The CVAA certainly does not require the use of such technology for policing compliance, nor is there any reason to believe that Congress intended for the Commission to depart from its long-established practice of relying upon complaints in enforcing Commission rules of all kinds. Private entities such as NCAM and others remain free, of course, to use new technologies to conduct their own review of captioning compliance and to file complaints if they discover videos subject to CVAA obligations that fall short of the mark.

Finally, there is no statutory basis for the proposal of TV Guardian, LLC (TV Guardian) that the FCC require language filtering technology in conjunction with online captions or mandate synchronization of closed captioning data with the audio component of a video.<sup>129</sup> The CVAA does not compel the latter, and TV Guardian

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<sup>127</sup> See Microsoft Comments at 8.

<sup>128</sup> NCAM Comments at 3.

<sup>129</sup> Comments of TV Guardian, LLC, MB Docket No. 11-154, at 8, 9-10, 15 (filed Oct. 18, 2011).

plainly concedes that the former is outside the scope of the statute at issue.<sup>130</sup> Indeed, with respect to content filtering mandates, even the statute that TV Guardian cites for support, the Child Safe Viewing Act, is unavailing because it grants the Commission no authority to conduct a rulemaking.<sup>131</sup>

## **V. CONCLUSION**

NAB has been clear throughout this proceeding that the association and its members fully support the goals of the CVAA and are very glad to assist the Commission in its implementation. A workable, sustainable, flexible approach toward the IP captioning requirements will best meet Congress's intent and the needs of those individuals who rely on captions. With sufficient ramp-up time, NAB and its members look forward to working with the Commission, industry, and disabilities access groups to increase the accessibility of online programming, previously aired on TV with captions.

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<sup>130</sup> *Id.* at 5-6, 9-10 (citing to the Child Safe Viewing Act, rather than the CVAA, as support for an expansive proposal that reaches beyond the deaf or hard of hearing to encompass all children, all parents, and anyone who speaks a language other than English as his or her native tongue).

<sup>131</sup> That said, broadcasters deeply value our commitment to America's children and will continue to create quality programming to serve their needs in the digital age. In that arena, the Commission should focus on digital media literacy to empower parents to use the online screening tools and content evaluation services now available in the marketplace, rather than mandating technological requirements that could have adverse, unintended consequences. See Reply Comments of National Association of Broadcasters, MB Docket No. 09-194, at 34-36 (noting the increasing number of parental control technologies available in the marketplace and urging the Commission to focus on a comprehensive media literacy campaign rather than mandating new rating systems or technological requirements that could have adverse, unintended consequences).

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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