

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

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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EXECUTIVE SUMMARY

The National Association of Broadcasters (NAB) strongly supports increasing accessibility of broadcast content to all individuals, including those deaf and hard-of-hearing. Broadcasters are industry leaders in providing important local news and content in an accessible manner to individuals with disabilities. This includes the voluntary provisioning of captioning of Internet protocol (IP) – delivered video clips. Despite numerous continuing challenges, including technical difficulties and the lack of automated captioning technology, broadcasters are working to improve the quality of captioning of online video clips. In addition, broadcasters have assigned staff and hired vendors in an effort to increase the amount of online clips voluntarily captioned. Broadcasters have undertaken this voluntary captioning of online clips at the same time that they are devoting significant resources to meeting mandated accessibility requirements regarding archiving, video description and emergency information. As described in our comments, both networks and local stations have made impressive gains in captioning online video clips in an effort to provide additional information to consumers.

While continuing to invest in new technologies to find a quality automated technical solution, broadcasters currently rely on many different processes and vendors to caption video clips. The Commission should refrain from mandating captioning of online video clips while technologies are under development to automatically encode high quality video captions. Current clip captioning systems suffer from technical failures and developing automated systems have accuracy and other quality problems.

Attempts to mandate clip captioning before the development of a reliable captioning technology will prove to be counterproductive to the Commission's goals.

The Commission correctly decided in its previous and well-reasoned decision that Congress did not intend for the FCC's rules to mandate the captioning of IP-delivered video clips. The Commission's original decision regarding the inapplicability of the Twenty-First Century Communications and Video Accessibility Act (CVAA) to online video clips was consistent with Congressional intent. No party has presented any basis for overturning the Commission's thorough, and appropriate, conclusion – a conclusion buttressed by clear statements in the CVAA's legislative history. It must therefore decline inappropriate reconsideration of this issue.

In particular, Telecommunications for the Deaf and Hard of Hearing, Inc.'s (collectively, TDI) deficient Reconsideration Petition and late-filed Supplement provide no basis for a change of course by the Commission. TDI's Petition not only suffers from procedural defects but also is factually misleading. TDI's arguments can perhaps best be summarized as a complaint about uncaptioned IP-delivered programming, much of which was not even required to be captioned when the Petition and Supplement were filed.

As broadcasters' continue their voluntary efforts to caption clips, and innovative captioning technologies continue to be developed, the Commission should refrain from mandating the captioning of IP-delivered video clips. Overall, great progress has been made and will continue to be made in improving accessibility of all video programming.

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**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION.

The National Association of Broadcasters (NAB)¹ fully supports the efforts of the Commission to better enable deaf and hard-of-hearing individuals to view video programming previously aired on TV when it subsequently is delivered using Internet protocol (IP). NAB's members have worked hard to comply with captioning requirements and continue to do so. In a short time frame, broadcasters and other affected parties have developed and deployed an entirely new and very complex regime for distributing captioned IP-delivered content for new, archived and live-streamed programming.

Overall, NAB believes that great progress has been made in accessibility since the passage of the Twenty-First Century Communications and Video Accessibility Act

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.

(CVAA).² The Commission's multiple implementation rulemakings and the highest level of industry engagement have gone a long way to implement the vision of the CVAA. In these comments, NAB responds to the *Public Notice* on the specific issue of IP captioning of video clips.³ Certain parties, including Telecommunications for the Deaf and Hard of Hearing, Inc. (collectively, TDI),⁴ have continued to focus on this narrow category of content excluded from the CVAA's mandates and, appropriately, from the Commission's implementing rules. As part of broadcasters' efforts to provide greater accessibility of content in the IP ecosystem, NAB welcomes this opportunity to update the record on the voluntary provision of captioning of video clips.

² 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). The law was enacted on Oct. 8, 2010 (S. 3304, 111th 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 of video programming delivered using Internet Protocol (IP) that previously was published or exhibited on television with 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.

³ Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips, *Public Notice*, MB Docket No. 11-154 (rel. Dec. 13, 2013).

⁴ See, e.g., TDI Petition for Reconsideration of the Commission's Report and Order (filed Apr. 27, 2012) (TDI Petition or Petition); TDI Motion for Leave to Supplement Petition for Reconsideration, accompanying Report on the State of Closed Captioning of Internet Protocol-Delivered Video Programming (filed May 16, 2013) (TDI Supplement or Supplement).

II. THE ECOSYSTEM FOR ONLINE CAPTIONED VIDEO CLIPS IS GROWING, AND CONTINUES TO IMPROVE AND EVOLVE.

A. Despite Technological And Other Challenges, Broadcasters Are Captioning Online Video Clips Without A FCC Requirement.

Since the adoption of the CVAA, broadcasters have worked diligently to build captioning for online video clips into their workflows to ensure that their online video content is as accessible as possible. As explained in detail below, the current lack of automated technology and various other technological challenges make captioning online video clips a significant and costly undertaking. Broadcasters, however, remain committed to captioning as much online video clip content as possible, and they are working toward this goal in the absence of a government mandate. Broadcasters have made great strides providing captioned online video clips, especially news clips, at the same time as they have implemented other resource-intensive CVAA obligations.

More specifically, broadcasters are currently assigning staff and hiring outside vendors to increase captioning on video clips, especially news video clips. Given technical complexities, however, there are substantial production costs and delays associated with captioning an excerpt of a full-length program. For example, some stations post news stories ahead of airtime. In such cases, the same story is only captioned as it is later aired on television (either with real-time captioning or through the use of Electronic Newsroom Technique (ENT)) as part of a full newscast. News programs may also be streamed “nearly simultaneously” with captions or as part of “pre-recorded” content in its entirety. In this complex cycle, it may be very difficult for a local station to identify, encode, and then re-post excerpts of its local news.⁵

⁵ The Commission should note that both the workflow and the technology used for live streaming programming are substantively different than that used to support archived

The many other obligations mandated by the Commission and the CVAA, including the obligations regarding archiving, video description, and accessibility of emergency information, also impact the ability of broadcasters to quickly ensure the captioning of online video clips.⁶ The same staff or individuals responsible for these other CVAA obligations are also tasked with captioning online video clips. Broadcasters generally do not have the resources to add station personnel to caption online video clips. Staff on hand must work with outside vendors to accomplish this, in addition to their other duties. Despite these limitations on staff time and station resources, broadcasters have nonetheless pushed forward to caption an increasing amount of online video clips. NAB further notes that the costs of captioning clips are not insignificant,⁷ and that stations in markets of all sizes caption at least some of their online video clips regardless of these costs.⁸

video clips. In fact, broadcasters routinely utilize separate vendors for these services. Likewise, captioning these two distinct IP-based services requires different skill sets. Thus, at present, broadcasters that both stream and clip their news in the IP-environment cannot achieve economies of scale for these services.

⁶ See, e.g., Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, Report and Order, 26 FCC Rcd. 11847 (2011) (archival content must be captioned beginning March 30, 2014). See also 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, Report and Order, 27 FCC Rcd. 787, ¶ 34 (2012) (*IP Captioning Order*); Accessible Emergency Information, And Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 4871, ¶¶ 11-38 (2013).

⁷ The cost of captioning short-form IP video, including news clips, depends on numerous variables, including type and number of contracted vendors, equipment used, web host services, station and/or network personnel, as well as contracted personnel that manually encode closed captioning in the IP environment. A general industry rule of thumb is that, in the IP environment, using current technology, it requires over 15

Another factor that directly affects the cost and level of resources needed for online video clip captioning is the fact that no automated software currently exists that can encode high quality captions for online video clips. Broadcast consumers expect online video clip captions to be at least equal in quality to the captions included on programs broadcast over-the-air. Current automated software, although improving, does not meet that threshold and often fails. As a consequence, outside vendors must be hired, and station staff assigned, to ensure that captioning on video clips is properly encoded.

Broadcasters take their public interest obligations very seriously and want to ensure that their valuable local news and other content are available to all interested viewers. In this regard, we observe that online video clips are not offered in a vacuum. The important local content broadcasters provide online is almost always located on the same page as a video clip. For example, a news video clip will be hosted on a page with a corresponding web article explaining the news.⁹ The relevant information thus is readily available to parties in multiple different formats, whether or not all online video clips are currently captioned. As part of serving the public interest, broadcasters, as discussed below, are moreover currently relying upon a myriad of processes to voluntarily create captioned online video clips in increasing amounts.

minutes of manual labor to properly reformat and encode closed captions (for e.g. timing and position) for every 2 minutes of short-form IP content.

⁸ Some small market stations report that they can only afford to caption clips online if owned and subsidized by a larger market station, given the cost of clip captioning and the lack of revenue from online video clips.

⁹ See, e.g., notes 13, 15, and 17 below.

B. Both Network And Local Stations Are Voluntarily Captioning Online Video Clips As A Service To Their Viewers And As A Competitive Tool.

Many broadcasters are captioning their online video clips. It is important to recognize, however, that each network and/or local station uses a slightly different process because there is no simple automated or streamlined video clip captioning system. In an effort to inform the Commission, NAB is providing examples from some of its member stations on their online video captioning successes.

Providing captioned online video clips is a multi-step process for broadcasters. First, the broadcast signal is captured as it airs. As the broadcast signal is captured, generally via a vendor or through the use of a device at the station,¹⁰ the video and audio are encoded for IP-based distribution and the caption data are separated and turned into a separate file.¹¹ Second, an individual at the station reviews the video file and adds metadata related to the clips for the vendor. The metadata includes time stamps and markings showing the beginning and end of each clip. Third, the video content and closed captioning file are transferred to the Web vendor. For these steps, stations may use multiple vendors which often provide the platform, online video player, content storage and other behind-the-scenes support. The vendors may often install physical hardware and encoders onsite at the broadcast station with data inputs to digest the information available.

¹⁰ For example, devices such as Worldnow or Avanto are used at broadcast facilities.

¹¹ For example, many stations use the distribution format exchange profile (.DFXP) file format from the captured content.

One such vendor is NDN. NDN provides over 100,000 online videos and clips to 4,500 different online publishers every month.¹² NDN distributes online video clips for station groups including Media General, Journal Broadcast Group and Tribune. While NDN does not currently support online captioning for video clips, a forthcoming software update is expected to display captions if the caption file is included with the online video clip. The result will be online video clips with captions on 44 of the top 50 newspaper websites in the United States, and on websites as diverse as *The New York Times* and *Huffington Post*. NDN is also working on solutions to provide captions for online video clips that are not distributed with captions. These technological advances will facilitate the captioning of video clips on many television station websites.

Both ABC Network and its owned stations are captioning online video clips. ABC Network captions its broadcast news content when it is distributed online, and nearly all ABC Network news clips posted online include captions.¹³ ABC Network's online clip captioning process requires sending the video file through a vendor. Their vendor ingests the broadcast signal and processes it. At the same time, the vendor ingests the captions from the broadcast signal. After the program is aired, ABC producers send the video file to the vendor with metadata, including timestamps where each clip begins and ends. ABC's vendor marries the captions it ingested from the broadcast signal to the clip sent by ABC producers using the metadata. The vendor then takes the caption file, finds the matching segments from the video file, and re-encodes the video clip with the

¹² See NDN, NEWSINC.COM (last visited Jan. 28, 2014), <http://www.newsinc.com/content>.

¹³ See e.g., ABC7 Eyewitness News Team Coverage, *Article Blast, Polar Vortex Settle Over City, Suburbs*, ABCLOCAL.GO.COM (Jan. 28, 2014), http://abclocal.go.com/wls/story?section=news/local/chicago_news&id=9408444 (last visited Feb. 3, 2014).

caption clip for play on the web. Currently, this process cannot be automated because a person is needed to designate the start and stop time for each clip. Another person is needed to manipulate the files. This process may take up to a few hours to complete. ABC's owned stations caption a large percentage of their online video clips in a process similar to the network process.

Similarly, CBS Network's full-length online programming includes captions. Between online full CBS News programs and clips, and online CBS owned station news clips, CBS news content is captioned online to a great extent. CBS Network continues to look at possibilities with captioned online video clips, especially for news but also for entertainment programming. For example, this winter CBS is captioning *all* material related to its *Amazing Race*, both in long and short-formed content.¹⁴

CBS's owned station websites feature a significant amount of captioned online video clips.¹⁵ CBS owned stations are more likely to post captioned online video clips rather than post an entire newscast for a variety of reasons, including copyright restrictions.¹⁶

NBCUniversal is captioning a substantial portion of online news clips as well. During a recent one-week period, more than 90 percent of the news clips that

¹⁴ This February *Amazing Race* will be featuring a hearing-impaired contestant.

¹⁵ See, e.g., CBS Los Angeles News, Weather & Traffic, *Students Sue Calif. Over Teacher Tenure*, Los Angeles.CBSLocal.com (Jan. 27, 2014), <http://losangeles.cbslocal.com/2014/01/27/students-sue-calif-over-teacher-tenure-seniority-policies/> (last visited Feb. 3, 2014).

¹⁶ One reason why many broadcast stations only post news clips and not their entire newscast online is that the stations do not own the rights to certain information for online reproductions, such as sports information or music licensing.

were televised on NBC's broadcast network news programs (e.g., The Today Show, NBC Nightly News) or on MSNBC and that were subsequently made available on NBCNews.com, MSNBC.com or Today.com were captioned.¹⁷ Many of NBC's local stations are captioning online video clips as well. While the FOX Network does not air national broadcast network news, a number of FOX affiliated stations offer captioned online video clips.

Broadcast station groups also have worked diligently with their web teams and vendors to incorporate the capturing, encoding and posting of captioned online video clips into their news production workflow. Deployment of IP captioning clips is not without continuing challenges, however. Due to the inherent complexity of the IP-captioning ecosystem (ranging from encoders, to vendors to web/CDN host issues), technical failures do occur. These clip captioning system outages are often caused by technical problems beyond the broadcast station's control. Broadcasters are working with their vendors and other service providers to minimize such occurrences.

Broadcasters understand that online captioning of video clips, particularly online news clips, is important, and they continue to provide more and more online content with captions. This ecosystem is constantly evolving as a variety of vendors are working on proprietary solutions to solving the difficult problems that must be overcome to reliably caption online video clips. The goal is to both automate and streamline the captioning process to ensure greater accessibility and high quality in the captioned product,

¹⁷ See, e.g., TODAY Breaking Overnight, *High Profile Hacker Busted*, TODAY (Jan. 23, 2014), <http://www.today.com/video/today/54154329/#54154329> (last visited Feb. 3, 2014).

irrespective of which service provider or vendor a station is working with to caption its clips.

NAB is also aware that some companies are currently working on computer-automated closed captioning. Its member stations are actively participating in some of these efforts, but due to the requirement that online captions be equal to or better in quality than those shown over-the-air, computer automated (or voice-software recognition) captioning is not yet ready for deployment. Currently, the risk that inaccurate or otherwise poor quality captions are published from a computer currently outweighs their benefits. For example, mistaking “shelter in place” with “do not shelter in place” could have dire results in the event of a dangerous weather occurrence.

Broadcasters strongly urge the Commission to refrain from mandating the captioning of online clips while these technologies are developing. Given the increasing amounts of online video clips being voluntarily captioned and the ongoing technical innovation in this area, a Commission mandate is unwarranted and likely counterproductive. If broadcasters, perhaps particularly smaller ones, were immediately to face FCC complaint procedures and potential enforcement actions for failing to caption online video clips with the requisite quality, this would act as a disincentive to place video clips online, at least until clip captioning technology improves in both quality and reliability. Such a result would not serve consumers.

III. THE COMMISSION SHOULD CONTINUE TO REFRAIN FROM MANDATING THE CAPTIONING OF IP-DELIVERED VIDEO CLIPS.

The Commission properly found in the *IP Captioning Order*¹⁸ that Congress did not intend for the CVAA's IP captioning mandate to cover clips, and it rightly declined to reconsider this decision in the *IP Captioning Reconsideration Order*.¹⁹ As NAB explained in its Opposition to TDI's Petition, TDI did not meet the procedural requirements for reconsideration because it failed to provide any explanation for raising statutory interpretation arguments at that point that had not been raised in the course of the proceeding.²⁰ Nothing in TDI's subsequent untimely attempt to supplement the Petition rectified the procedural defects of the Petition, nor, more importantly, altered the clear intent of Congress to exclude video clips from the rules.

The Commission needs to be clear and consistent regarding the inapplicability of the CVAA and rules to video clips. In the *IP Captioning Order*, the Commission "encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips."²¹

¹⁸ *IP Captioning Order*, ¶¶ 44-48 (concluding that the IP closed captioning requirements apply to full length programming and not to video clips or outtakes).

¹⁹ 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, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 13-84 (rel. June 14, 2013) (*IP Captioning Reconsideration Order* or *Reconsideration Order*).

²⁰ National Association of Broadcasters Opposition to TDI Petition for Reconsideration at ii, 4-5 (filed June 7, 2012) (NAB Opposition).

²¹ *IP Captioning Order*, ¶ 48.

The Commission, however, correctly determined that the statute did not cover clips. Now, just over two years later, the Commission appears to be moving away from its correct decision not to mandate the captioning of clips.²²

Nothing, however, in the language of the statute or legislative history has changed. If the Commission has concerns about accessibility of “critical areas of video programming” and news in particular,²³ it should continue to encourage industry to voluntarily caption news programming that does not fall under the rules due to its length. The broadcast industry has responded to the Commission’s encouragement to voluntarily act. As discussed below, the Commission cannot, consistent with Congressional intent, require that all video clips be captioned.

A. The Commission’s Initial Decision To Exclude Video Clips Was Consistent With Congressional Intent And Should Be Upheld.

Nothing in TDI’s Petition or Supplement, nor any factual or legal development since adoption of the *IP Captioning Order*, changes the fact that Congress did not intend that video clips be subject to captioning requirements and the Commission properly declined to do so. NAB agrees with the Commission’s reasoning and conclusion in the *IP Captioning Order*, which defined “video clips” as “excerpts of full-length video programming, consistent with the proposals of some commenters” and

²² The *Reconsideration Order* stated that the Commission “will monitor industry actions with respect to captioning of video clips,” and that it will “defer a final decision on whether to reconsider the issue of whether ‘video clips’ should be covered by the IP closed captioning rules.” *IP Captioning Reconsideration Order*, ¶ 30; *Public Notice* at 2. The *Reconsideration Order* (and by reference the *Public Notice*) also assumed without support that most clips constitute televised news programming. *Id.* The *Public Notice* (at 2) goes further in discussing the state of IP video clips.

²³ *IP Captioning Order*, ¶ 45.

excluded them from the captioning requirements.²⁴ The Commission explained that “this definition is consistent with what consumers commonly think of as ‘video clips,’” and rejected proposals to “limit the definition” to “promotional materials that do not exceed a certain duration or fraction of the program.”²⁵ There is no suggestion in the CVAA or its legislative history that Congress intended to exclude ‘video clips’ only if they are promotional in nature, nor any evidence that Congress sought to exclude only clips of a “certain duration or percentage of the full-length program.”²⁶

As NAB explained in its Opposition, there is no basis to TDI’s argument that the CVAA “unambiguously requires ‘video clips’ to be captioned” and that the Commission thus lacked authority to limit its requirements to “full-length programming,” thereby excluding clips from the captioning rules.²⁷ At most, the statute is silent on the issue. The CVAA may not explicitly exclude video clips from the captioning requirements, but it certainly does not specifically prohibit the Commission from excluding video clips. In this case, the only “unambiguous” reading of the statute with respect to video clips is that the CVAA does not constrain the Commission’s authority to exclude video clips.²⁸

Importantly, the CVAA’s legislative history provides very clear evidence of Congressional intent. The legislative history unequivocally provides that “[t]he Committee intends, at this time, for the regulations to apply to full-length programming

²⁴ *Id.*, ¶ 45. “Full-length programming” is defined as “[v]ideo programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol, excluding video clips or outtakes.” 47 C.F.R. § 79.4(a).

²⁵ *Id.*

²⁶ *Id.*, ¶¶ 45, 47 (internal citations omitted).

²⁷ NAB Opposition at 6.

²⁸ For a more detailed discussion of the terms of the CVAA and the Commission’s authority, see NAB’s Opposition at 6-9 which we incorporate by reference.

and not to *video clips* or outtakes.”²⁹ The Commission appropriately followed this clear direction from Congress.³⁰

B. The Commission Cannot Rely On TDI’s Deficient And Factually Misleading Reconsideration Petition And Supplement As A Basis For Altering Its Implementation Of CVAA’s Requirements.

It is also important that TDI has not explained why it raised statutory interpretation arguments in its Petition that it did not raise through the course of this proceeding. In fact, TDI previously took precisely the opposite position with regard to video clips, acknowledging not only that the Commission had authority to exclude video clips but was directed by Congress to do so.³¹ TDI’s Petition and its late-filed Supplement thus fail to meet the basic requirements for a reconsideration petition under the Commission’s rules.³²

²⁹ S. REP. NO. 111-386 at 13-14; H.R. REP. NO. 111-563 at 30 (together, the Committee Reports) (emphasis added).

³⁰ See, e.g., *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) (the “traditional tools” of statutory construction “include examination of the statute’s text, *legislative history*, and structure”) (emphasis excluded). The CVAA’s legislative history is also more fully addressed in NAB’s Opposition, at 10-13.

³¹ TDI Reply Comments at 7 (“The legislative history makes clear that Congress intended the Commission to define ‘full-length programming’ in terms of what it is not: namely, programming that is not a ‘video clip’ or an ‘outtake.’ *Accordingly, we urge the Commission to define full-length programming as “any video that is not a video clip or outtake,” and focus on appropriately defining those terms to effectuate Congress’s intent.*”) (emphasis added). Not only did TDI admit that the Commission has authority to exclude video clips, but it made *policy arguments* regarding how video clips should be defined – TDI never asserted that the statutory language of the CVAA controlled the matter. In a subsequent *ex parte* filing, TDI “reiterated the position from [its] comments and reply comments that Congress intended to define ‘full-length programming’ by what it is not – namely, video clips and outtakes,” and accordingly urged the Commission to limit the definition of video clips. See Notice of *Ex Parte* Presentation of TDI and the National Association for the Deaf, MB Docket No. 11-154, at 2 (filed Dec. 15, 2011).

³² See 47 C.F.R. § 1.429(b).

Beyond these deficiencies with its Petition, TDI's filings offer the Commission a hodgepodge of misleading facts, failing to differentiate between content and platforms subject to different compliance requirements and deadlines (some of which have not yet occurred). Accordingly, TDI's Petition may be largely described as a complaint that the video programming industry is not doing something that the industry is not yet required to do.

More specifically, TDI ignores the Commission's careful establishment of different time frames for captioning different types of IP-delivered programming, and its Petition and Supplement lump together program categories where captioning is required by the rules with categories where the rules did not yet apply. For example, programming that has been prerecorded and substantially edited for Internet distribution to the end user was not required to be captioned until the end of September 2013. Some of the uncaptioned "segments" TDI complained of in its May 2013 Supplement may have been substantially edited for Internet distribution and thus were not yet required to be captioned. Similarly, TDI included at least some examples of live/near live programming in its Supplement that aired *before* March 30, 2013 and thus were not yet subject to the rules, as well as some programming for which the air date is unknown. For these reasons, many of TDI's complaints about uncaptioned IP-delivered programming may be wholly misplaced.

In its Supplement, TDI similarly ignored that devices and embedded software that are not associated with a particular Video Programming Distributor (VPD) were not yet

subject to the rules.³³ Any claims that rely on a lack of captioning capability by a device, embedded (non-VPD) software, or browser were therefore clearly premature.

Complaints about uncaptioned IP-delivered programming not yet required to be captioned simply cannot be relied upon as the basis for Commission action. This is particularly true for video clips. The Commission has recognized that implementation of IP closed captioning takes time and is more complicated for certain types of programming. It is unreasonable to hold broadcasters accountable for not yet voluntarily captioning video clips – perhaps the type of Internet-delivered programming most complicated to caption – as they are still in the process of developing and deploying internal processes to provide IP closed captioning, as discussed above.

According to the Commission’s own standard, reconsideration of the clips issue is appropriate only if consumers are “denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips.”³⁴ As outlined above and in our multiple filings in this proceeding, NAB believes there is no legal basis for the Commission to expand the IP captioning rules to include clips. If the Commission nevertheless considers requiring captioning of clips, it should at a minimum remain true to its own standard. No information presented to date by TDI comes close to demonstrating any denial of access to critical areas of video programming. At best, TDI has demonstrated that in the earliest stages of implementation, captioning of IP-delivered programming may have been inconsistent across platforms and/or at times delayed. More likely, TDI has merely shown that certain programming lacked captions due to differing deadlines for content and apparatus.

³³ 47 C.F.R. § 79.103.

³⁴ *IP Captioning Reconsideration Order*, ¶ 30.

IV. CONCLUSION.

NAB pledges to continue to work together with our members, other industry sectors, the Commission, and the disability community to ensure that all broadcast TV viewers can access video programming previously aired on TV when it subsequently is delivered using IP. Given the very recent implementation of the IP captioning rules, the multiple compliance deadlines yet to come, and the complexity of the IP ecosystem, broadcasters are expending significant resources to advance the captioning of video clips of news and other material. At the present stage, the Commission can best serve the interests of the deaf and hard-of-hearing community by working with the industry to address remaining challenges and resolve unexpected problems. The resources and efforts of all parties are better directed toward collaboratively improving IP captions under the existing requirements and not attempting to alter the rules in a way contrary to Congressional intent.

Respectfully submitted,



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