

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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

**COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA,
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
AND THE NATIONAL ASSOCIATION OF BROADCASTERS
IN SUPPORT OF DIMA PETITION
FOR TEMPORARY PARTIAL EXEMPTION OR LIMITED WAIVER**

Dated: June 6, 2012

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The Motion Picture Association of America,¹ The National Cable & Telecommunications Association² and the National Association of Broadcasters³ (hereinafter “Associations”) respectfully submit these comments in support of the petition submitted to the Commission by the Digital Media Association (“DiMA”) on May 8, 2012. The DiMA petition requests a temporary exemption or waiver through January 1, 2014 from the requirement in Section

¹ The Motion Picture Association of America, Inc. (MPAA) serves as the voice and advocate of the American motion picture, home video and television industries from its offices in Los Angeles and Washington, D.C. Its members include: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

² NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

³ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

79.4(c)(2)(i) of the Commission’s Rules for all video programming distributors (“VPDs”) to implement Section 79.103(c).⁴ Sections 79.103(c) and 79.4(c)(2)(i), part of the Commission’s recent regulations implementing the Twenty-First Century Communications and Video Accessibility Act (“CVAA”),⁵ require both hardware manufacturers and video programming distributors of Internet-delivered video content that offer applications, plug-ins or hardware to consumers to offer a set of mandatory technical controls (the “Enhanced Captioning Features” or “Enhanced Features”) that permit consumers to manipulate the appearance of captions.⁶

The Associations, whose members operate multiple VPDs covered by the new regulations, agree with DiMA that the implementation of the Enhanced Features detailed in Section 79.103(c) “will take substantial time and be extremely difficult to accomplish in the short timeframe set by the Commission.”⁷ Accordingly, for the reasons set forth below, the Associations join in DiMA’s request for a temporary partial exemption or limited waiver, until January 1, 2014, of the requirement set forth in Section 79.4(c)(2)(i) for VPDs to implement Section 79.103(c). This exemption or waiver will allow VPDs the same amount of time as apparatus manufacturers to implement the Enhanced Captioning Features.

I. INTRODUCTION AND SUMMARY

The Associations support the closed captioning of full length television programming delivered via the Internet, and indeed a number of VPDs already provide captions. The industry is working hard to ensure that captioned television programs can be viewed with captions online

⁴ 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, Petition for Temporary Partial Exemption or Limited Waiver (filed May 8, 2012) (“DiMA Petition”).

⁵ Pub. L. No. 111-260 (2010).

⁶ See 47 C.F.R. § 79.103(c). See also 47 C.F.R. § 79.4(c)(2)(i).

⁷ DiMA Petition at 10.

in the timeframe established by the FCC rules. Notably, the Associations are not requesting an exemption or waiver with respect to the deadlines for basic online captioning functionality. The current unrealistic deadline for implementing the complete set of Enhanced Features, however, does not serve the best interests of consumers.

In the television captioning environment, the ability to manipulate captions using enhanced functionality is typically found in the set-top box or television set itself. In those situations, the program provider is able to send captions in a way that facilitates a consumer's ability to use the functionality embedded in those devices. In the online environment, however, the ability to manipulate captions with Enhanced Features can occur at different points depending on the platform on which the online program is being viewed.

The FCC's rules erroneously anticipate that apparatus manufacturers will face more challenges implementing the Enhanced Features than VPDs that use applications and plug-ins to distribute their content, and offer the former significantly more time to come into compliance. While hardware manufacturers have until January 1, 2014 to implement the Enhanced Features, video programming distributors only have until the first software upgrade after September 30, 2012 to begin making those features available in applications or plug-ins that they provide to consumers.⁸ This much more aggressive timeframe for VPDs is unrealistic, and there is no reason to expect that the task assigned to VPDs is any easier to achieve than that required of device manufacturers.

⁸ See *In re Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order, FCC 12-9, at Appendix B (rel. Jan. 13, 2012) (the "*IP Order*"). Compare 47 C.F.R. § 79.4(b)(1), requiring VPDs to caption a portion of programming by the date six months after publication of the regulations, and 47 C.F.R. § 79.4(c)(2)(i), requiring VPDs to offer Enhanced Features in applications, plug-ins, or devices, with 47 C.F.R. § 79.104(a)-(b), requiring apparatus manufacturers to implement the Enhanced Features by January 1, 2014. The Commission has indicated that software is required to begin complying with the *IP Order* whenever such software is "deployed" after the effective date. See *IP Order* at ¶ 53. VPD-provided hardware shares the January 1, 2014 deadline for other types of hardware.

Depending on the specific distribution model and/or technology used, a typical video programming distributor relies on multiple different platform operators, who may actually control the player used to deliver and render the programming to the consumer. That VPD also may rely on the products of half a dozen or more third party providers of software and services to develop and design the operating systems, browsers, applications, interfaces and plug-ins used to make online programming available to consumers. Even in situations where the VPD primarily relies on software as part of its distribution model, there is always some hardware element involved in the distribution chain – often one not within the control of the VPD, such as a desktop computer or mobile device. While individual VPDs have some power to shape the services they purchase, they often do not have the ability or the contractual privity to control the development schedules of platform operators, independent software vendors or device manufacturers. VPDs cannot force these third parties to meet unrealistic deadlines. Moreover, since many VPDs use different versions of a given software vendor’s product, there may be a logistical bottleneck as all clamor to have their respective customized video players modified, further impeding progress. Ultimately, VPDs who primarily use software to deliver video content to the consumer face at least as many challenges in implementing the Enhanced Features as apparatus manufacturers who deliver that same content via hardware. Yet the Commission has granted apparatus manufacturers substantially more time to redesign their products.

Moreover, participants in the video programming industry did not have reason to anticipate either this expedited roll-out or the disparate treatment between hardware-based and software-based distribution technologies. The Commission’s advisory committee in these matters, the Video Programming Accessibility Advisory Committee (VPAAC), which authored a report intended to guide the FCC’s decision-making (the “VPAAC First Report”), explicitly did

not recommend specific deadlines for Enhanced Captioning Features. Similarly, the VPAAC First Report did not recommend treating VPDs and device manufacturers differently with respect to the Enhanced Features. The VPAAC found only that “the timing for availability of the user-controlled feature set is in dispute.”⁹ Because many VPAAC members suggested that it would not be feasible to implement the Enhanced Features within a compressed time frame, the VPAAC First Report listed the question of the appropriate timing for their implementation as “[u]nresolved.”¹⁰

In short, the current deadline confronting VPDs is both impracticable and inequitable, and will ultimately frustrate consumer expectations. The Associations urge the Commission to grant DiMA’s request and give VPDs the same amount of time to implement the Enhanced Captioning Features that the FCC has offered to apparatus manufacturers.

II. VIDEO PROGRAMMING DISTRIBUTORS FACE SUBSTANTIAL TECHNICAL DIFFICULTIES IN IMPLEMENTING ENHANCED CAPTIONING FEATURES, AND WILL REQUIRE AS MUCH TIME AS APPARATUS MANUFACTURERS TO COMPLETE THE TASK

Section 79.4(c)(2)(i) requires VPDs to implement the following Enhanced Captioning Features, laid out in Section 79.103(c), within video applications, plug-ins or devices that they provide to consumers to deliver online video content:

- 1) *Presentation.* All apparatus shall implement captioning such that the caption text may be displayed within one or separate caption windows and supporting the following modes: text that appears all at once (pop-on), text that scrolls up as new text appears (roll-up), and text where each new letter or word is displayed as it arrives (paint-on).

⁹ 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, at 34 (2011) (“VPAAC FIRST REPORT”).

¹⁰ *Id.*

- 2) *Character color.* All apparatus shall implement captioning such that characters may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for characters and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan.
- 3) *Character opacity.* All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of captioned text and select between opaque and semi-transparent opacities.
- 4) *Character size.* All apparatus shall implement captioning such that users are provided with the ability to vary the size of captioned text and shall provide a range of such sizes from 50% of the default character size to 200% of the default character size.
- 5) *Fonts.* All apparatus shall implement captioning such that fonts are available to implement the eight fonts required by CEA-708 and § 79.102(k). Users must be provided with the ability to assign the fonts included on their apparatus as the default font for each of the eight styles contained in § 79.102(k).
- 6) *Caption background color and opacity.* All apparatus shall implement captioning such that the caption background may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for the caption background and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan. All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of the caption background and select between opaque, semi-transparent, and transparent background opacities.
- 7) *Character edge attributes.* All apparatus shall implement captioning such that character edge attributes may be displayed and users are provided the ability to select character edge attributes including: no edge attribute, raised edges, depressed edges, uniform edges, and drop shadowed edges.
- 8) *Caption window color.* All apparatus shall implement captioning such that the caption window color may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for the caption window and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan. All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of the caption window and select between opaque, semi-transparent, and transparent background opacities.
- 9) *Language.* All apparatus must implement the ability to select between caption tracks in additional languages when such tracks are present and provide the

ability for the user to select simplified or reduced captions when such captions are available and identify such a caption track as “easy reader.”

10) *Preview and setting retention.* All apparatus must provide the ability for the user to preview default and user selection of the caption features required by this section, and must retain such settings as the default caption configuration until changed by the user.¹¹

Given the technical complexity of implementing this long list of required features and the attenuated relationships that VPDs have with many of the platform operators, software providers, and device manufacturers in the IP closed captioning ecosystem, there is no basis for concluding that the vast majority of VPDs will be able to implement the Enhanced Features in less time than apparatus manufacturers.¹²

A. Multiple Platform Operators, Third Party Software Providers and Device Manufacturers Are Situated Between VPDs and Consumers, and VPDs Have Little Control Over the Many Obstacles Those Entities Face in Implementing Enhanced Captioning Features

Today, Internet delivery of video content to consumers is comprised of two broad categories of services: browser-based websites and applications.¹³ While on the surface these categories may appear distinct, in fact there is little practical difference between them. In either case, as the DiMA petition notes, a variety of parties play a role in the transmission of video content between the owner of that content and individual users.

Even with respect to the simple viewing of a video within a web browser, the VPAAC First Report listed:

- the content provider, who makes video programming available for delivery to the consumer via the Internet;

¹¹ 47 C.F.R. § 79.103(c).

¹² Some VPDs, due to the unique attributes of their specific delivery implementations, may be able to roll out the Enhanced Features at some point earlier than January 1, 2014.

¹³ This of course excludes traditional MVPD services delivered by an IP distribution method, which the Commission concluded are subject to the FCC’s traditional television captioning rules. *See IP Order* at ¶ 12.

- the programming distributor, who transmits the content;
- the Web server, which supplies the video programming in a format that is acceptable to the user's browser configuration;
- the consumer's Internet-connected device containing a Web browser that natively supports video or has been configured with plug-ins necessary to render audio, video, and captions; [and]
- the user interface offered by the consumer's device for the purpose of controlling the display of closed captioning.¹⁴

If anything, this list understates the number of parties involved in the transmission process. The fourth bullet, for example, can involve components and software designed by a variety of other parties:

- the manufacturer of the device hardware (e.g., a laptop computer);
- the developer of the operating system (e.g., Microsoft, Apple, or Android);
- the developer of the Web browser (e.g., Firefox or Explorer); and
- the developer of the plug-in required to render audio, video and captions (e.g., Adobe Flash or Microsoft Silverlight).

In the event that additional ancillary plug-ins are required to view content, even more parties could become involved. And in the case of applications – whether on general purpose computers or mobile devices – the number of entities grows further to include platform operators, related device manufacturers, and their various software vendors. As a result, half a dozen or more independent entities may be situated between the programming distributor and the consumer, and each of these separate entities is involved to some extent in the rendering of captions.

It is important to underscore that in either a browser-based website scenario or an application scenario, an individual VPD may have little direct control over many of the links in this chain. Specifically, there are several layers of software that permit basic Internet

¹⁴ VPAAC FIRST REPORT, at 20.

accessibility and display that are chosen by the user or device manufacturer. For software operating at these layers, a VPD is unlikely to influence the choices made by the software provider. Both operating system manufacturers (such as Microsoft and Apple) and Web browser manufacturers (such as Google and Mozilla) maintain substantial control over how video display applications ultimately function. Apple, for instance, periodically alters the uniform set of specifications for all apps in its app store that run on its iOS operating system. VPDs typically have little or no say in that set of specifications, even though Apple's choices have a tremendous effect on how individual VPD apps are designed.

Ultimately, this means that any changes to implement new functionalities, such as the Enhanced Features, require the collaboration of many entities in the distribution chain. Websites and applications developed by VPDs are reliant on the functionalities of the underlying platforms, software and devices. As a result, these websites and applications are effectively tethered to the production cycles and timelines of the platforms, software and devices used to view them. It is in no small part for this reason that the current deadline for VPD-provided applications and plug-ins is not realistic. The deadline creates an artificial distinction between VPDs and apparatus manufacturers, who have been given significantly more time to achieve the same ends.

B. The Process of Updating Applications and Plug-ins Involves Several Complex But Necessary Steps

In order for VPD-provided applications and plug-ins to be updated to include the Enhanced Features, several complex but necessary steps must first be completed. From concept to implementation, these include: (1) user interface design; (2) software development; (3) compliance checks against different platform and device requirements; (4) quality assurance review; (5) beta cycle and usability testing; and (6) release management (*e.g.*, creating FAQs to help end users). The length of time involved for each step will vary significantly depending on

the specific platform, software or device involved, but in total the whole process can take up to 24 months. Moreover, it must be replicated for each specific implementation of a given application or plug-in (*i.e.*, for each platform on which a given application appears).

Within each of these steps, a number of factors may complicate and extend the process. For example, the Associations' members often deploy customized video streaming software platforms, which adds significant complexity. Rather than rely on off-the-shelf versions of common video plug-in platforms, such as Adobe Flash and Microsoft Silverlight, VPDs often commission customized versions in order to differentiate the display and features of their video content. As a result, VPDs such as those owned by the Associations' members (and other VPDs unrelated to device manufacturers) usually do not have direct contractual privity with the broader software platform design team whose product provides the underlying base upon which that custom code runs. This base software platform requires as many changes as the custom code, if not more, to implement the Enhanced Features. Yet an individual VPD has little or no say over the development of that platform, which must meet the needs of innumerable applications, customized and non-customized, for VPDs and non-VPDs alike.

Additional market considerations also affect the length of the process to update applications and plug-ins. As discussed *supra*, companies at a variety of levels – the custom video player adapters, the platform designers and operators, and the operating system and browser manufacturers – almost certainly need to make changes to their software in order to support the Enhanced Features. These changes require engineers with highly specific skills. However, as the DiMA petition notes, “[d]emand for these individuals far outstrips supply,” and no amount of investment in closed captioning can create developers who do not already exist.¹⁵

¹⁵ DiMA Petition at 9.

Even if sufficient numbers of developers were found, there are significant security and consumer welfare benefits to avoiding a rushed development process: most notably, fewer bugs within pieces of software and between pieces of software.¹⁶

Indeed, the intricacy and importance of the testing process in this incredibly diverse ecosystem is itself enough to make implementation on a short schedule exceedingly risky and difficult. Because each VPD uses individually customized versions of common software platforms such as Adobe Flash,¹⁷ the task of making software platforms caption-friendly is immensely complex. The designers of the base Adobe platform may need to account for dozens of different client implementations on top of half a dozen operating systems using dozens of different browsers interacting with hundreds of other pieces of software. The permutations are virtually limitless. A solution that might work for one movie studio's or programming network's video player may not work for another's player, even if both are based on Adobe Flash. As a result, any changes that need to be made at the software platform layer may have to go through a lengthy, intensive testing process to ensure that the new features work correctly, particularly when they are being implemented in conjunction with different platforms and devices. Absent this type of rigorous testing and quality control, consumers may be frustrated to the extent that these new functionalities do not operate as intended.

As far as the Associations are aware, even though a number of platform operators, software vendors, and service providers have put in place certain basic captioning functionality, no technology intermediary or VPD to date has been able to implement the full set of Enhanced Captioning Features. These controls, which require captioning to be rendered in complex ways,

¹⁶ *Id.*

represent an entirely different approach to online closed captioning than that taken by VPDs to date in their wholly voluntary attempts to bring their content to a wider base of consumers. As a result, many platform operators, software vendors and service providers are beginning their efforts to implement the Enhanced Features from scratch.¹⁸

VPDs have only a limited ability to control any of these complexities and cannot demand that their vendors speed up production, because production is often governed by matters beyond even those vendors' control. While individual VPDs have some power to shape the products and services that they purchase, they cannot alter the fundamental characteristics of the marketplace or force vendors to meet impracticable deadlines. Nor can VPDs simply change vendors mid-stream if a given company is not being responsive. Websites and applications are written to work with specific software in mind and would need to be completely reworked to operate with different products, at great delay and cost to all involved, including consumers, for whom the launch of new and innovative services would be pushed back. In sum, certain fundamental steps are necessary to update applications and plug-ins used as part of any IP video distribution platform. To ensure the quality and proper functioning of the Enhanced Features, these key steps cannot be streamlined or eliminated. To do so would negatively impact the very consumers that the requirements were designed to serve.

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¹⁷ As third party software manufacturers, vendors such as Adobe are not directly regulated by the Commission's rules, yet play a significant role in how video programming is distributed via the Internet.

¹⁸ Moreover, the personnel and technical experts who work at VPD companies who are responsible for addressing Enhanced Feature implementation are the same individuals who already are fully occupied with efforts to meet other aggressive IP closed captioning deadlines (i.e., ensuring that prerecorded, live and archival programming will be made available by the Commission's deadlines).

C. It Would Be Both Unreasonable and Disadvantageous to Consumers to Give VPDs Less Time for Implementation Than Apparatus Manufacturers

As a result of the interconnected nature of the online video distribution ecosystem, and the critical development steps needed to ensure consumer expectations are not frustrated, VPDs cannot be expected to require their software vendors to customize their products in less than half the time that device manufacturers have been provided. Apparatus manufacturers do have to integrate hardware with their custom software. However, they do so in a production context that they themselves control much more closely than the average third party VPD, who lacks privity with or direct control over platform operators, software vendors or device manufacturers. Apparatus manufacturers are more likely to have their own teams of designers directly involved in customizing a software platform. They also are more likely to control the streaming software installation process on their devices and are more likely to be able to restrict additional, potentially incompatible software that consumers place on those devices. In other words, apparatus manufacturers have the type of end-to-end control that VPDs simply do not possess.

Maintaining different deadlines for apparatus manufacturers and VPDs providing applications and plug-ins also is inappropriate because both parties may rely on the same underlying software platforms to stream and render video. Apparatus manufacturers may use customized or embedded software that runs on their specialized hardware, but they sometimes source that software from many of the same vendors who offer it to VPDs. As a result, it makes little practical sense for the FCC to rely on divergent deadlines. In many cases, the same software vendors are receiving the same requests to implement the Enhanced Features from both hardware manufacturers and VPDs reliant on software as part of their delivery to consumers. There is no reason to hold VPDs to a stricter deadline for implementing the same changes in the latter case.

Ultimately, consumers will be the ones disadvantaged if the Commission maintains the existing deadline for VPD-provided applications and plug-ins. As noted above, a rushed implementation deadline for applications and plug-ins would substantially increase the chances that the Enhanced Features will not work properly, frustrating consumer expectations. Moreover, in many instances, VPDs rely on the platform operators themselves and/or device manufacturers to perform the delivery and rendering of captions.¹⁹ Those VPDs' services will not have Enhanced Features until those entities are able to come into compliance, even though VPDs will be passing through basic captions in compliance with Commission's scheduled deadlines.

Although the Commission has said clearly that VPDs will not be held responsible where they pass through captions to unrelated devices that control the display of the captions for consumers,²⁰ in the near term those consumers will be very confused about why those features are not available and which entity is responsible. As a result, there likely will be a substantial number of complaints to the Commission until the device deadline has passed, which would divert Commission resources as well as those of industry participants who otherwise would focus those resources on closed captioning implementation. This consumer confusion and diversion of resources could be avoided by harmonizing the two deadlines for Enhanced Feature compliance. The Commission should avoid all of these unintended consequences by granting DiMA's request and deferring the deadline for VPD-provided applications and plug-ins until January 1, 2014.

¹⁹ Implementation of the Enhanced Features at the device level for certain platforms can be particularly advantageous for consumers, as it allows them to program their preferred setting one time for all relevant websites, applications, or services.

²⁰ See *IP Order* at ¶ 27 n.128 (“We note that if the VPD is reasonably relying on the captioning display functionality in a device over which it has no control to display captions, the VPD has no liability to the extent that the captioning functionality on the device fails or operates improperly”).

III. NEITHER THE VPAAC FIRST REPORT NOR THE RECORD OF THIS PROCEEDING PROVIDED ANY INDICATION THAT THE COMMISSION WOULD ADOPT AN EXPEDITED 6-MONTH SCHEDULE FOR VPDS TO IMPLEMENT ENHANCED CAPTIONING FEATURES

In the CVAA, Congress required the Commission to recruit “individuals who have the technical knowledge and engineering expertise to serve on the [VPAAC] in the fulfillment of its duties”²¹ Nothing in the VPAAC First Report supports establishing different Enhanced Feature implementation deadlines for apparatus manufacturers and developers of consumer-facing software. The “Technical Requirements” section of the report explains a few distinctions between typical hardware and software streaming online video use cases.²² The report, however, also notes that the “[e]lements of the system are similar” in both cases,²³ and the report thus refers often to technical solutions for “applications and devices” together.²⁴ Indeed, as described above, the video players used in proprietary hardware devices and those used within browser plug-ins on laptops and smartphones often share the same underlying software platform. In the eyes of the VPAAC, device-specific online video players and browser or app-based online video players are both simply “Internet-connected media players” that “must support . . . the performance objectives”²⁵ It should not be surprising, then, that the schedule of compliance deadlines proposed in the VPAAC First Report lays out a single set of dates for captioning

²¹ CVAA § 201(b).

²² See VPAAC FIRST REPORT, at 18-20 (describing use cases for delivery of content directly to a consumer video player and unmanaged delivery to a web browser).

²³ *Id.* at 20.

²⁴ See *id.* at 17 (“The use of a single interchange format does not imply that there should be one single standard for delivery of the captioned programming to the devices and applications that consumers use to display the content.”); *id.* (“[D]istributors of programs and services must . . . ensure that any reformatting performed before delivery to end users (consumers) is supported by the applications and devices”); *id.* at 20 (describing a use case in which content is “decoded and rendered by a managed device or application”).

²⁵ *Id.* at 14.

requirements and says nothing about creating different deadlines for Enhanced Feature compliance based on the type of distribution technology.²⁶

As it happens, the VPAAC First Report does not even include proposed deadlines for implementation of the Enhanced Features. Rather, the report takes care to note that “[u]ser settings [like the Enhanced Features] are new to players which support Internet-delivered video, and will require time and effort to implement.”²⁷ While the report lays out a schedule of proposed deadlines for the provision of basic captioning of prerecorded, near-live, live, and edited-for-Internet programming,²⁸ the VPAAC specifically states that those deadlines are not intended to provide a timeline for the roll-out of Enhanced Features:

A related issue is the timeline for roll-out of to-be-agreed-upon user-controlled required features (those that match the present set of user controls available in HDTV/CEA-708). One group suggested that a minimum of 24 months from issuance of final rules is needed for build-out of the software and hardware to accomplish this task. Others felt this was too long a period to wait and could result in an unacceptable gap for the consumer between basic captions and the eventual full-featured set. An agreed-upon schedule for the implementation of basic captioning is included in this report; only *the timing for availability of the user-controlled feature set is in dispute*.²⁹

As this passage suggests, the challenges of user control implementation were made clear during the VPAAC meetings. While the constituent member VPDs of the Associations fully intend to collaborate with platform operators, software vendors, and device manufacturers to bring the full Enhanced Features functionality to consumers as quickly as possible, the 6-month deadline for

²⁶ See *id.* at 29-30.

²⁷ *Id.* at 14.

²⁸ See *id.* at 29-30.

²⁹ See *id.* at 34 (emphasis supplied).

this functionality in VPD-provided applications and plug-ins contemplated by the current rule is not workable.³⁰

Indeed, had VPDs been aware that the Commission was contemplating adoption of such a deadline, they would have expressed concerns earlier during the rulemaking process. The *Notice of Proposed Rulemaking* in this proceeding, however, did not propose to regulate VPDs in this manner – the only discussion of Enhanced Features relates to apparatus manufacturers under Section 203 of the CVAA.³¹ As a result, VPDs had no notice that they would be subject to a more stringent deadline for applications and plug-ins. This action was not supported by the VPAAC First Report, nor was it suggested on the record in this proceeding, as DiMA has noted.³² As such, industry had no reason to anticipate this course of action. Because the difficulty of compliance makes these deadlines impracticable (as demonstrated above), VPDs and the intermediaries that support their services certainly would have registered their concerns earlier had the deadline for implementing the Enhanced Features been at issue before the adoption of the new rules.

³⁰ The Commission has indicated that VPDs who provide software are only required to begin complying with the Enhanced Features upon first deployment after the effective date of the new rules. *See IP Order* at ¶ 53. This post-effective-date-deployment criterion is intended to prevent VPDs from being compelled to release new versions of software if they did not otherwise intend to do so, but the Commission has stated that it “will consider *upgrades* to VPD software to be new applications.” *See IP Order* at ¶ 53 n. 227 (emphasis supplied). Given that providers regularly upgrade their software to provide consumers with new features and experiences, strict adherence to the Sept. 30, 2012 deadline effectively would force VPDs to delay offering upgrades to consumers until they could resolve all of the complexities attendant to implementing the Enhanced Features. It would hardly serve the public interest, however, to deny consumers the benefits of *any* new features and products simply because the volume of work to roll out *all* of the Enhanced Features cannot be completed within six months.

³¹ *See In re Closed Captioning of Internet Protocol-Delivered Video Programming*, Notice of Proposed Rulemaking, 26 FCC Rcd 13734, 13762-63 (2011).

³² DiMA Petition, at 5-6.

IV. CONCLUSION

In sum, the Associations urge the Commission to grant DiMA's request and give VPDs the same realistic amount of time to implement the Enhanced Features that it has provided to apparatus manufacturers. VPDs are dependent on too many intermediaries to be able to ensure that this functionality is put into place on the current schedule. While the Associations and their constituent member VPDs support the closed captioning of IP-delivered full length television programming for all consumers, impracticable deadlines for implementation of the Commission's regulations will actually prove harmful if consumers are subjected to incomplete, inoperable or unreliable software. These overly aggressive deadlines for Enhanced Captioning Features do not serve the public interest.

Respectfully submitted,

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