

**Georgia Tech**  **Center for Advanced Communications Policy**

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Atlanta, Georgia 30332

**VIA ECFS**

March 4, 2022

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
TW-A325  
Washington D.C. 20554

**Re: Media Bureau Seeks to Refresh The Record On Accessibility Rules For Closed Captioning Display Settings Under The Television Decoder Circuitry Act [MB Docket No. 12-108]**

Dear Ms. Dortch:

Enclosed for filing in the above-referenced Public Notice are reply comments of Georgia Tech's Center for Advanced Communications Policy (CACP).

Should you have any questions concerning this filing, please do not hesitate to contact me via email at [salimah@cacp.gatech.edu](mailto:salimah@cacp.gatech.edu).

Respectfully submitted,



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Senior Policy Analyst  
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Enclosure

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**MEDIA BUREAU SEEKS TO REFRESH THE RECORD ON ACCESSIBILITY RULES  
FOR CLOSED CAPTIONING DISPLAY SETTINGS UNDER THE TELEVISION  
DECODER CIRCUITRY ACT**

**MB Docket No. 12-108**

REPLY COMMENTS OF  
GEORGIA INSTITUTE OF TECHNOLOGY (GEORGIA TECH), CENTER FOR  
ADVANCED COMMUNICATIONS POLICY (CACP)

The Georgia Institute of Technology's Center for Advanced Communications Policy (CACP) hereby submits reply comments to the above-referenced Public Notice seeking comment on accessibility rules for closed captioning display. CACP is recognized at the state and national level as a neutral authority that monitors and assesses technical developments, identifies future options, and provides insights into legislative and regulatory issues. CACP engages in several broad approaches to explore the impact of technology on society. A key overarching objective of CACP is to understand the social impact of digital technologies, domestically and internationally, by conducting objective, evidence-based research, analysis, and development. Center activities provide the foundation for assessing and analyzing issues that inform our contribution to federal rulemaking, input into public sector policy-making processes, and generation of technical guidance for business and industry.

Research activities range from foundational social science research, providing evidence-based input for policy formation and regulatory filings, to applied policy research analysis and innovation studies to inform the development, implementation, and adoption of a wide range of information and communication technologies. Lab-based studies focus on the intersection of technology and the user: accessibility and usability studies, user testing, and human factors analysis, all of which help industry better understand the needs of a wide range of users, especially the aging and people with disabilities.

Regarding the latter, over the past 20 years, subject matter experts at CACP have been involved with research and regulatory issues concerning accessible technologies and services, conducting research and development in the domain of communications access, equity, and

inclusion. Recently, CACP conducted a COVID-19 Information Access Survey. Understanding that communications to the older adults and people with disabilities may be insufficient in terms of channels used and message content accessibility; with early messaging about COVID-19 focusing on its severity for older populations and those with underlying conditions, the survey sought to answer, "Did those most vulnerable to COVID-19 receive timely and accessible emergency information and messaging?" The survey contained 38 open and closed-ended questions divided into three sections that covered:

1. Perceptions of the Novel Coronavirus Disease (COVID-19) as a threat, how and when respondents first heard of COVID-19, preferences for receiving COVID-19 information, **and any barriers experienced in accessing COVID-19 information;**
2. Protective actions taken in response to the COVID-19 information received; and
3. Demographics.

The comments respectfully submitted below are based, in part, on the results of the accessibility barriers portion of the survey and the subject matter expertise of CACP developed over the past 20 plus years.

**Reply to comments made by the Accessibility Advocacy and Research Organizations, NCTA-Internet & Television Association, and the Consumer Technology Association.**

**Legal Authority**

As stated in the Public Notice, Section 303(u)(1a) currently requires digital apparatus "designed to receive and play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming."<sup>1</sup> If the digital apparatus has this function as required by law, then the ability to access this feature should be usable<sup>2</sup> by people

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<sup>1</sup> 47 U.S.C. § 303(u) (1a)

<sup>2</sup> The Federal Communication Commission (FCC) defines "usable" in Section 6.3(1) as "individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities." 47 C.F.R. § 6.3(1).

with hearing disabilities. It is reasonable to assert that the FCC can require that this feature be physically included on the digital apparatus.

This ruling is particularly salient as Section 303(u)1c asserts that digital apparatus must "have the capability to decode and make available emergency information [...] in a manner that is accessible to individuals who are blind or visually impaired."<sup>3</sup> As our respondents illustrate in our COVID-19 emergency response survey, this information is not currently widely decoded and readily available for emergency information. Thus, **we agree with Accessibility Advocacy and Research Organizations who assert that the Commission has the appropriate authority under Section 303(u)(1) of the Communications Act "to require caption display settings to be readily accessible" (p. 11). We further suggest that closed captioning activation and customization be accessed via a dedicated button on the device.**

The NCTA-The Internet & Television Association (NCTA) shared their members' efforts towards greater accessibility for closed captioning display settings. They argue that since they are already excelling in this area, it is unnecessary to mandate additional rules.<sup>4</sup> Although we commend their efforts, we disagree that additional rules are unnecessary. As stated in the Public Notice, "the Commission has received consumer complaints regarding user interfaces and the difficulty of adjusting closed captioning settings" (p.2). Of note, the cited grievances are dated 2020, illustrating the persistence of these concerns despite developments in the provision of closed captioning controls. Perhaps the tenacity of the issue is related to the lack of ubiquity across programming providers, or there might not be a critical mass of customers with hearing disabilities that subscribe to the television services exemplified in NCTA's comments, or perhaps it is a lack of outreach explaining the availability of these services. In all likelihood, it is some combination of all three, speaking to the limited *usability* of the available closed captioning controls in that product information may not be reaching the intended audience.

The Second Report and Order adopted a rule that "multichannel video programming distributors ("MVPDs"), as well as manufacturers, are required to ensure that the contact office or person listed on their website can answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing

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<sup>3</sup> 47 C.F.R. § 6.3(l)(c).

<sup>4</sup> NCTA. (2022). Comments filed in response to FCC *In the Matter of Accessibility of User Interfaces and Video Programming Guides and Menus* [MB Docket No. 12-108]. Available at [https://ecfsapi.fcc.gov/file/1021796299894/CTA\\_CC\\_Display\\_Settings\\_PN\\_Comments.pdf](https://ecfsapi.fcc.gov/file/1021796299894/CTA_CC_Display_Settings_PN_Comments.pdf)

consumers to a place where they can locate information about how to activate and use accessibility features."<sup>5</sup> A respondent to the COVID-19 Information Access Survey shared, "*[it] would be helpful to get information about live captioning apps and services. I got a new android device so I could use Google Live Transcribe. I tried several apps on iPhone, and many have issues. GLT imperfect, but best available. I use this at my doctor's office. As a healthcare provider, there are no acceptable/secure apps that I can use with my patients if they don't have one on their phone.*"

**Individuals with disabilities, or interested stakeholders, should not have to scour the manufacturers' website for information about device accessibility.** This is illustrative of the need for a customer service line that enables users to discuss accessibility features and receive help in accessing the same.

Respondents were also asked, "Do you have any suggestions about improving how you receive and access COVID-19 information?" Some respondents detailed how the closed captioning was a challenge, suggesting that greater efforts are required. A survey respondent shared, "*The TV and online captioning is very uneven, sometimes it's OK, but usually, information is missing.*" This participant highlights issues with several closed captioning modes, which reiterates the need for closed captioning settings on the apparatus to help close these gaps. Another participant shared, "*I like to use the close captioning on my TV*" while other participants discussed issues with "consistent accessibility (e.g., captioning of all news/media)." These statements show that progress in closed captioning settings is uneven, and although NCTA members are setting the standard, other entities and manufacturers may not be keeping appropriate pace. **Based on these qualitative responses and our quantitative finding that 1/3 of respondents indicated issues with closed captioning on televised and internet news, we recommend that information regarding the closed captioning activation and display setting customization be more prominent and more widely disseminated.**

The Consumer Technology Association (CTA) argues in their comments that the Television Decoder Circuitry Act (TDCA) as codified in Sections 303(u) and 330(b) of the Communications Act does not "provide a legal basis for imposing the proposed closed captioning

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<sup>5</sup> Second Further Notice of Proposed Rulemaking. Accessibility of User Interfaces, and Video Programming Guides and Menus, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914, 13932-35, para 2 (2015)

display" (p. 7)<sup>6</sup>. They further assert that there is "no legal basis for such requirements in the CVAA or other legislation. We disagree.

To ensure that people with disabilities can access television services, the CVAA imposes various obligations on manufacturers of video devices. If achievable and technically feasible, video devices of any size that receive, playback or record video programming simultaneously with sound must decode and make secondary audio streams available to provide audio description and aural access to emergency information, and have built in circuitry to display closed captions, the latter a considerable expansion of the Television Decoder Circuitry Act's thirteen-inch screen limitation.<sup>7</sup>

Further, the National Association of the Deaf (NAD) v. Netflix ruling sets a legal precedent for making closed captioning accessible on streaming videos. In this case, Judge Ponsor ruled that

It would be irrational to conclude that places of public accommodation are limited to actual physical structures. In a society in which business is increasingly conducted online, excluding businesses that sell services through the internet from the ADA would run afoul of the purpose of the ADA. It would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to other members of the general public.<sup>8</sup>

Places of public accommodation have been interpreted by the court to include digital companies and their products. As such, if people who are deaf and hard of hearing have a diminished quality of experience when consuming digital media because they cannot readily configure captions settings, then in accordance with ADA protections, action should be taken to remedy the differential quality of experience based on disability status.

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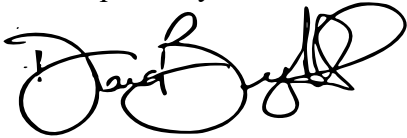
<sup>6</sup> The Consumer Technology Association. (2022). Comments filed in response to FCC *In the Matter of Accessibility of User Interfaces and Video Programming Guides and Menus* [MB Docket No. 12-108]. Available at [https://ecfsapi.fcc.gov/file/1021796299894/CTA\\_CC\\_Display\\_Settings\\_PN\\_Comments.pdf](https://ecfsapi.fcc.gov/file/1021796299894/CTA_CC_Display_Settings_PN_Comments.pdf)

<sup>7</sup> Strauss, K. P. (2021). Access, Inclusion, and Innovation in Wireless Communications Technologies: Before and After the Twenty-First Century Communications and Video Accessibility Act. In *Proceedings of the Wireless RERC State of Technology Forum*, p. 27. Available at [https://www.wirelessrerc.gatech.edu/sites/default/files/proceedings\\_of\\_the\\_2021\\_wireless\\_rerc\\_state\\_of\\_technology\\_forum.pdf](https://www.wirelessrerc.gatech.edu/sites/default/files/proceedings_of_the_2021_wireless_rerc_state_of_technology_forum.pdf)

<sup>8</sup> "C.A. No. 11-CV-30168-MAP." *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, (D. Mass. 2012)

**In closing**, although this request for comments inquired about the general usability of captioning, our reply comments seek to highlight the importance of people with hearing disabilities to readily press a closed captioning button to customize the captioning display; thereby improving the user experience. Our participants show that viable information is lost when they cannot readily access the captioning option. Based on our argument set forth above, we contend that the FCC has the legal authority to promulgate rules that improve the accessibility and usability of closed captioning display settings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dara Bright" followed by a flourish that likely represents "and Salimah LaForce".

Dara Bright, and  
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Dated this 4<sup>th</sup> day of March 2022