

Report and Recommendations
of
Disability Access Working Group

Consumer Advisory Committee,
Federal Communications Commission

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I. TV Captioning

A. Quality Issues Petition

Closed captions provide a critical link to news, entertainment and emergency television programming for persons who are deaf or hard of hearing. In July 2004, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America (formerly known as Self Help for Hard of Hearing People, Inc.), the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network ("Petitioners") filed a petition for rulemaking asking the Federal Communications Commission ("FCC") to improve TV captioning by strengthening quality standards and implementing additional oversight and enforcement of video programmers. The FCC initiated a proceeding on July 21, 2005 to examine its closed captioning rules. Consumers will gain numerous benefits if the FCC adopts the Petitioners' recommendations.

The Petitioners requested that procedures be adopted to ensure the technical quality of captioning. Examples of the technical problems that occur include captioning that turns off before the end of national network programming, absent captioning for programming labeled as captioned, and missing, scrambled or otherwise unintelligible captions. Unfortunately, the current rules have not ensured that captions are delivered complete and intact, and the Petitioners suggested additional rules that require programmers to actively monitor captioning for technical issues and to prohibit programmers from counting error-filled programming as captioned. The Petitioners also asked the FCC to adopt rules imposing non-technical quality standards to ensure the accuracy of transcription, spelling, grammar, placement, and identification of nonverbal sounds, among other factors that are critical to the full enjoyment of video programming by persons who rely on captioning.

Additionally, the Petitioners urged the FCC to adopt rules to better enforce the captioning rules. They asked that the existing consumer complaint process be streamlined by shortening broadcasters' response time, requiring video programmers to post contact information for captioning complaints on their websites and on the FCC website, and by adopting a standard complaint form. By adopting these enforcement measures, consumers would be able to have any technical issues resolved more promptly, given that programmers and distributors apparently have not had market pressures to quickly remedy problems. Moreover, Petitioners' complaint recommendations would allow consumers to more readily report technical and non-technical issues and to follow-up on the response status. The current system has frustrated consumers because programmers and distributors "pass the buck" and are often non-responsive, unless a

complaint is eventually directed to the appropriate person to handle captioning issues.

The Petitioners further requested that programming providers be required to file reports verifying their compliance with the FCC's captioning benchmarks and that the FCC conduct compliance audits to determine programmers' compliance. As of January 1, 2006, 100% of new non-exempt programming is required to be captioned. In addition, 30% of analog programming recorded before January 1, 1998 and 30% of digital programming recorded before July 1, 2002 (i.e., pre-rule programming) is required to be captioned. Consumers do not easily have the ability to monitor programming to determine whether a particular provider has met the captioning requirements, and consumers should not have such a burden. On the other hand, providers are in the best position to verify that the benchmarks are met because the current rules obligate providers to meet the captioning requirements. Reporting would assure accountability and assist the FCC with monitoring compliance. Moreover, conducting audits would allow the FCC to remedy any failure to meet the benchmark going forward. Both reporting and audits will help ensure a smooth transition as the FCC and the providers look towards the next benchmark on January 1, 2008 when 75% of pre-rule programming is required to be captioned.

The Petitioners recommended that the FCC establish fines for violations of the captioning rules. A base forfeiture amount would create an incentive for video programming distributors and providers to comply the FCC's rules more than the current marketplace incentives. Experience has shown that the marketplace has not ensured compliance with the captioning benchmarks, even as more technically-advanced methods of transmitting programming, such as digital television, has become more prevalent.

Congress recognized that closed captioning is vital to deaf or hard of hearing individuals, with respect to quality of life and safety issues, when it required video programming be captioned, and the FCC implemented rules to increase the availability of closed captioning. Equally important, children who are deaf or hard of hearing rely heavily on this accessibility tool to develop literacy skills at the earliest possible age. Both Congress and the FCC's efforts have helped to ensure that the millions of Americans who are deaf, hard of hearing, late deafened, or deaf-blind have access to video programming. But, additional captioning standards and enhanced enforcement measures are needed, and the Petitioners' requests will help ensure full access to video programming.

B. Applications for Review

The Disability Access Working Group requests that the Consumer Advisory Committee support two Applications for Review filed with the FCC regarding

captioning. On October 12, 2006, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, National Association of the Deaf, Hearing Loss Association of America, Association for Late Deafened Adults, American Association of People with Disabilities, and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("Parties") filed an Application for Review, requesting that the FCC rescind the Anglers Exemption Order issued by the Chief of the Consumer & Governmental Affairs Bureau ("Bureau") and all 297 grants of exemption based on the Bureau's order. The Anglers Exemption Order granted two petitions for exemption from the FCC's captioning requirements and declared that the Bureau would be inclined to grant petitions for waiver filed by non-profit organizations that do not receive compensation for airing their programming and that represent that they may terminate or substantially curtail their programming or curtail other activities important to their mission.

The Parties' Application for Review describes how the Bureau improperly created a new class of programming that is categorically exempt from the closed captioning requirements without conducting an appropriate rulemaking proceeding. The Bureau also committed a number of procedural errors when it granted 297 exemption petitions based on the Anglers Exemption Order, including failing to comply with the Commission's rule to put petitions for exemption on public notice, failing to justify each waiver of the public notice rule, and failing to conduct an undue burden analysis on each petition before granting an exemption. Thus, the Parties requested, in addition to the rescission of the Anglers Exemption Order and all 297 grants of exemption based on it, that the FCC require the Bureau to individually review each undue burden exemption petition to determine if an undue burden will result before granting such petition and require the Bureau to place all current and future exemption petitions on public notice.

On August 14, 2006, the National Association for the Deaf ("NAD") and other petitioners filed an Application for Review of the FCC's Public Notice released on August 7, 2006, which attempted to clarify the obligation of video programming distributors to make emergency information accessible to persons with hearing disabilities using closed captioning. The Public Notice stated that the FCC would not consider any lack of captioning that "results from a de minimus or reasonable failure to caption emergency information [by a video programmer], so long as critical emergency information is provided through some method of visual presentation." The NAD Application for Review describes how the FCC failed to conduct an appropriate rulemaking proceeding and improperly created the de minimus exemption, created a new "reasonable failure" standard, and relieved all video programmers, including those that are required to provide real-time caption of their live news programming. NAD and the other petitions requested that

that the FCC withdraw the clarification contained in the Public Notice and to clarify that video programming providers otherwise required to provide, and those who are providing, real-time captioning of their live news programming must use captioning to make their emergency programming visually accessible to people with hearing loss. Once the FCC rescinds this clarification, this action would have a favorable impact on the proposed revisions of the nationwide Emergency Alert System, which will allow it to remain flexible and compatible with new and emerging technologies.

C. Request for Action from CAC:

a) The Consumer Advisory Committee supports TDI et al's petition for rulemaking on TV captioning quality issues, and commends the FCC for its recent proceeding on this petition. The CAC respectfully requests that the FCC take formal action soon on the petition.

(This recommendation was passed with 2 dissenting votes NCTA and NAB)

b) The Consumer Advisory Committee respectfully requests that the FCC reconsiders its recent action on captioning exemptions and emergency information broadcasts.

1) The CAC requests that the FCC rescind the Anglers Exemption Order and all 297 grants of exemption based on it, and require that the Consumer and Governmental Affairs Bureau individually review each undue burden exemption petition to determine if an undue burden will result before granting such petition. The CAC also requests that the Bureau be instructed to place all current and future exemption petitions on public notice.

2) The CAC requests that the FCC withdraw the August 7, 2006 clarification notice, and reclarify that video programming producers/distributors otherwise required to provide, and those who are providing, real-time captioning of their live news programming must use captioning to make their emergency programming visually accessible to people with hearing loss.

(This recommendation passed with 1 dissenting vote (NAB) and 3 abstentions (NCTA, T-Mobile, CTIA).)

II. "Effective Communication"

A. Introduction

Although there are frequent references in federal regulations to "effective communication", including Titles I & III of the Americans with Disabilities Act (ADA), there appears to be no clear definition. It can only be inferred through an examination of ADA case law.

The Consumer Advisory Committee (CAC) recognizes the leadership and responsiveness the FCC has shown on disability access issues and seeks the support of the FCC to coordinate efforts with other appropriate federal agencies, particularly the U.S. Department of Justice, to adopt a definition of "effective communication" as it applies to their respective disability access regulations.

B. Proposed Definition of "Effective Communication":

Effective Communication: The ability of two or more parties to participate fully and equally in a conversation or event, each is able to communicate both expressively and receptively, clearly and accurately through the use of appropriate auxiliary aids and services. In determining what type of auxiliary aid and/or service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

Appropriate auxiliary aids and services include, but are not limited to: qualified sign language interpreters, qualified oral or sign transliterators, video remote interpreting, communication access real time transcription (CART), telephone handset amplifiers, hearing aid compatible assistive listening devices and/or systems, hearing aid compatible telephones, open and closed captioning, telecommunications devices for deaf persons (TDDs), and videotext displays.

C. Case Law

The proposed definition of 'effective communication' draws on extensive ADA case law.

As just a few examples of the many available see the following Settlement Agreements between the U.S. (Department of Justice) and the following defendants:

Portable Practical Educational Preparation, Inc.

Santa Clara County Superior Court

Youth Services International, Inc.

Ray Hand, Ph.D.

Cypress Gardens Theme Park, Inc.

Dimensions Health Corporation dba Laurel Regional Hospital

Advanced Eye Care Associates and AECA Medical, PLLC

Nevada State Welfare Division

Midway Realty Corporation

Carson Long Military Institute

D. Request for Action from CAC:

The Consumer Advisory Committee formally endorses the definition of "effective communication", and requests that the FCC takes the lead in promoting this initiative with other appropriate federal agencies.

(This recommendation passed with 1 abstention (NAB)).

III. Web Captioning Interoperability

Streaming and downloadable video on the web is experiencing a tremendous rise in popularity. Years of experimentation followed by increases in bandwidth and CPU power have led to availability of a wide variety of on-demand and live TV programming via the Internet. The Wall Street Journal reports video web sites now draw users in numbers that rival those of cable or satellite companies. The wide range of programming includes first-run or original programs that have not previously aired on any other outlet, consumer-created content, current television content, evergreen television content, movie trailers, downloadable movies, music videos and much more.

Taking a look at the content available on a few popular sites, it is immediately apparent that there isn't a standard format for online video content. Among AOL, YouTube, Google and Apple's iTunes, evidence of every major online media format can be seen. This list includes Microsoft's Windows Media Player, Adobe's Flash technology, RealPlayer and Apple's QuickTime. Each of these media players has a different text format for captions, and different ways of embedding the caption track and displaying captions to the user.

While the creation of a widely accepted industry standard or specification for "timed text" is well underway at the W3C, a large number of issues still remain to be addressed. Some of the issues to be dealt with include: where does caption creation fit in to the production and delivery processes for online video; how does a site repurpose captions originally produced for a television broadcast; how are captions integrated into complex and largely automated content management systems; how is live material captioned; who is responsible for captioning original online media; and many additional questions about the process and presentation to the consumer.

At the time of this writing, captioned media on the web can only be found on a very small percentage of websites, including some content on AOL, Google, and PBS.org. Though captions can be created or reformatted with existing technology and new tools are emerging, widely used video encoding tools do not currently support captioning, caption authoring tools are very limited, and there is limited expertise available to assist with the wide range of issues that must be addressed in order to provide captions in an efficient, cost-effective manner. Despite the rapid evolution of Internet technologies, enabling closed captions on web-based media is at the same point where captions for TV broadcasts were in the early 1970s.

A. Experience to date

Experience to date highlights several major barriers that need to be addressed to promote wide-scale availability of captioned video on the Internet, particularly in a commercial environment. These barriers to be addressed include:

- 1) Internet production units of broadcast and cable networks prepare the content for streaming before the content is captioned. For example, field packages produced for TV networks' nightly newscasts are often streamed before they air. As a result, Internet portals receive the video asset too far up stream in the content production workflow to exploit captions created for live broadcasts. This scenario prevents widespread availability of captioned videos, as it forces an internet portal like AOL to manually caption content produced by a third party, and creates the need to prioritize the types of content that will be captioned. The likely delay between the time a video is published to the web and the time when captions are available is another reality that warrants consideration.
- 2) Lack of information on the whereabouts of existing caption files when broadcast content is repurposed for the Internet. There is an increasing amount of "video on demand" products online that allow people to view archives of current or old TV series, movies, music videos, short films, etc. It is very likely that most of the content has been captioned. Unfortunately there isn't a central database that Internet portals or content partners can search to locate the caption agency who captioned a particular season of a show. The content provider may not always be the content producer or the entity responsible for captioning the content for television.
- 3) Need for a common delivery protocol. Commercial Internet portals receive video from many of the same content providers (broadcast and cable networks, etc.). Internet production units are generally fairly automated so delivering multiple text formats to multiple portals is not feasible. Collaboration between portals and content providers is necessary to develop the best approach to ensure efficient, cost-effective delivery of caption data.

B. Where video on the net is heading

Today there's an increasing amount of video being deployed on cell phones, iPods and other portable devices. Delivering captioned video on these platforms will introduce additional challenges. Collaboration between Internet portals, content producers, device manufacturers, developers of encoding tools and the advocacy community will be critical to achieve full access to streaming media across all platforms.

C. Request for Action from CAC:

This information is passed on to FCC staff and the next Consumer Advisory Committee for further consideration. No formal action is needed at this time.

IV. IP-Enabled Services

A. Introduction

IP-enabled services can provide significant benefits for people with disabilities, including older Americans. But past failures of the competitive marketplace to provide accessibility to these populations indicate that the only way that people with disabilities will truly reap the benefits of these services is if the FCC mandates their accessibility. If IP-enabled services and technologies are not required to be accessible, the likely lack of access to these products and services that will result will impose ever-increasing barriers in daily living, negatively affect employment, and prevent people with disabilities, and many others, from enjoying the communications access to which they have become accustomed.

The need to formally mandate access to IP-enabled services is already evidenced by a number of real and potential accessibility problems, including, but not limited to matters concerning TTY and hearing aid compatibility, accessible user interfaces, 7-1-1 relay access, and access to emergency centers. Equally important is the need to ensure that new and evolving IP-enabled service offerings are usable by and interoperable for people with disabilities. The Commission has more than ample authority under both its universal service obligation and its ancillary jurisdiction to address these disability issues.

IP-borne communications services use software-based approaches that can readily be tailored to resolve many, if not all potential access barriers. But to be effective and non-burdensome, access solutions need to be incorporated when these services are first being designed and developed. If the FCC and consequently, industry wait too long, retrofitting these services to include these features later on could become very time and resource

intensive. In deciding which IP-enabled services are to be covered by disability access regulations, we urge the Commission to discard its current distinctions between telecommunications and information services. As the Commission notes, increasingly, we are seeing a continuum of products that are capable of transporting conversation over a variety of platforms. There will be no clear breaks in this continuum and at times, it will be difficult or even impossible to determine where a particular product or service begins and where it ends. Artificially separating IP-enabled services into telecommunications or information service categories based on their underlying technology will cause serious accessibility gaps and confusion for consumers, and result in a very uneven playing field for companies who may end up following different rules for nearly identical services that happen to be provided over different transmission protocols. Such a distinction was perhaps once helpful but has outlived its usefulness.

Further, we believe that the Commission should focus on function, not form, in determining its regulatory framework, at least for disability access and other social policy objectives. Specifically, to the extent that IP-enabled services are used to achieve communications that are functionally similar to or provide a substitute for those achieved via traditional telephony services, the services – as well as the products that are used with them – should have mandates for accessibility. This should hold true regardless of the form (text, video, or voice) or the transmission media (PSTN, IP, wireless, cable, or satellite) that these communications travel over.

Moreover, in defining the functionalities that should be subject to accessibility obligations, the Commission should recognize that people with disabilities have, and will continue to benefit from, the use of text and video as conversational media, and will at times employ a combination of two or all three of these formats, in their communications. The actual mandates for accessibility should ensure the redundancy of these modes. For example, where voice is used for a particular communication, deaf and hard of hearing people should have the option of using text. The converse – being able to use audio where there is ordinarily text – is equally critical to the blind community.

Finally, mandates need to be in place to require IP providers to help support telecommunications relay services and universal service programs. Without this financial support, there is a real threat to the viability of these vital services as telecommunication migrates to IP.

The need to formally mandate access to IP-enabled services is already evidenced by the following accessibility problems, some of which already exist, and some of which will inevitably arise with the introduction of IP-enabled services if there are no mandates to prevent them from occurring:

B. TTY Compatibility and Accessibility

There are a number of TTY compatibility issues. First, a jack for the direct connection of an external analog device (and in particular a TTY) may be unavailable on the Internet phone in an office or home environment. Even if a connection can be made, there are still concerns about the extent to which the TTY transmissions can be effectively carried over IP-enabled services. Specifically, when audio signals such as speech and TTY tones are broken up into packets to travel over the Internet, some packet loss occurs. However, TTY garbling can occur even at the low levels of packet loss and other transmission errors that are acceptable for voice (e.g. 1-2% error rates). When this occurs, the incoming TTY messages can be unintelligible.

Just as IP voice telephony products can talk to analog voice telephony products, IP text communications need to support compatibility with analog TTY products. Within the IP environment, there also needs to be a common protocol for text that is easily combined with other media. Further, there needs to be coordination among the many standards-setting activities directed at these problems. Unless a clear path forward is determined through an FCC rule, interoperability and international harmonization on this issue are at risk.

C. Hearing Aid Compatibility

The Hearing Aid Compatibility Act of 1988 requires all telephones to be compatible with hearing aids. The FCC has very strict rules requiring wireline and some wireless telephones used with the PSTN to be hearing aid compatible. Newer types of equipment used to access IP-enabled voice communication services must be similarly accessible by people who use hearing aids and cochlear implants.

D. Call Signaling

Essential to interpersonal telecommunication is the ability to signal to another person that "I'm calling you." Today an individual who uses a TTY on the PSTN or an analog port on a PBX can simply hook up a flashing ring indicator to a telephone line to be alerted to incoming calls. IP-enabled services need to be constructed so that they can similarly activate a visual signal – or vibrating signal if the application is worn – for people who cannot hear rings and message announcements.

E. Speech Quality

Speech compression is commonly used in IP-enabled transmissions as a means for achieving efficiency and cost savings. But people who are hard of hearing, especially those with severe hearing loss, may find it more difficult to understand speech that has been greatly compressed. Packet loss effects

and packet loss concealment solutions may also have a more adverse effect on hard of hearing people than on hearing people. And if speech quality is lower with some IP telephony applications, the use of these applications could also present a problem for people who have a difficult time making their speech understood by others. This would include people with speech disabilities, as well as people who are deaf or hard of hearing and who use voice carry-over or hearing carryover.

F. 7-1-1 Relay Access

Where IP technologies are used as a substitute for traditional telephony, it is critical for IP providers to similarly provide 7-1-1 relay access, lest the benefits bestowed by this national number disappear.

IP-Enabled Services Must be Both Usable and Interoperable for People with Disabilities: Guidelines for User Materials of IP-Enabled Services

Just as it is critical to require access to IP-enabled services, so too will mandates be necessary to ensure that people with disabilities are able to “use” these services. More specifically, the FCC’s Section 255 rules incorporate specific guidelines requiring telecommunications carriers to provide accessible product information, including user and installation guides, and accessible technical support services, including consumer hotlines, repair and billing services. When IP technologies replace traditional telecommunications networks, it will be necessary to similarly mandate accessible user guides, customer support centers, and other forms of consumer assistance to facilitate the use of IP-enabled services. In addition, in the future, we may not have directory assistance services in their current form. As other ways of providing the general public with information about how to contact each other emerge, these new methods – more than likely to be IP-based – will also need to be accessible by people with disabilities.

G. Interoperability

As new providers enter the IP arena in their individual quests to improve and expand upon our nation’s communications networks, each is likely to independently introduce an array of services designed to win over consumers. But in the effort to get a jump on the marketplace, some companies may ignore the need to make their products and services interoperable with those of their competitors. The result can be confusion and disorder for consumers, especially those with disabilities, who may find they are able to contact some individuals over a service they have purchased, but not other individuals from that very same service. The deaf and hard of hearing population has already seen this occur with respect to instant messaging, and to video relay services which has had the effect of

causing a technical division of the user communities because they cannot communicate directly with each other..

As consumers with disabilities become increasingly dependent on IP-enabled technologies that cross various transmission methods and providers, it is critical for the FCC to have in place mandates that require providers to make their networks and equipment interoperable with other networks and equipment providing the same function. Just as today's telephone system over the PSTN provides seamless communications for all Americans, so too should the IP-based communication networks (including video relay services) of the future be seamless for its users. This will be especially important for national security reasons. All Americans need the confidence of knowing that in the event of an emergency or national crisis, they will be able to contact necessary authorities and locate loved ones, regardless of the networks that they use.

H. Telecommunications Services vs. Information Services

IP services should be categorized based on its functionality.

IP services today, and of the future, will integrate voice, video and data capabilities in a way that makes it increasingly difficult to distinguish among these various services. And as noted above, the integration of IP-enabled services into various types of home devices will continue to blur characteristics of the equipment used to access these services.

Artificially separating IP-enabled services into categories based on underlying technologies alone would not only cause serious accessibility gaps but also lead to much confusion for consumers and a very uneven playing field for companies who may be providing nearly identical services over different transmission protocols. Not knowing the extent to which one could expect to have access, and not knowing the extent to which access must be provided, consumers and providers would be left in the dark as to where accessibility begins and where it ends.

We cannot continue to carve up what are becoming indistinguishable communications functions into artificial categories. If we do, services with virtually identical functions may or may not have to be accessible, depending solely on the technology used to carry them or the networks used to interconnect them.

It's not too hard to imagine situations where the products or services during parts of a conversation are covered but where coverage stops before the conversation could be completed. For example, companies are now developing phones that can change from cellular operation to WiFi operation as an individual enters a building or a home. If regulatory coverage were based on distinguishing telephony from information services, phone calls could switch from telecommunications services to an information services as

people walked from their cars into their houses – and become inaccessible. Unless assured that products and services throughout an exchange are covered by the FCC’s disability protections, people with disabilities will not be able to initiate calls or make connections to their destinations with any degree of confidence.

The FCC recognizes that “the nature of IP-enabled services may well render the rationales animating the regulatory regime that now govern communications services inapplicable here, and that the disparate regulatory treatment assigned to providers of ‘telecommunications services’ and ‘information services’ might well be inappropriate in the context of IP-enabled services.”

We believe it is time for the Commission to discard its original delineations – ones which were based on a change in the form and content of the information sent and the underlying transmission method – and to replace those delineations with a test that is based on the functionality of the service at issue – at least for disability access and other “stated public policy goals.”

We urge the application of disability protections to a newly defined class of services – one which is premised not solely on the PSTN nor the Internet – but which turns on the extent to which it is intended to enable individuals to communicate with one another, in a manner that substitutes for and builds upon the functions of traditional telephony. The definition should be one that includes simultaneous, instantaneous communications characteristics of traditional telephony, but which encompasses paging, text messaging, and other text or video services that may already be covered under Section 255. The definition adopted must also be broad enough to encompass enhanced functionalities or use of a provider’s centralized server if needed to facilitate disability access.

Protocol conversion that enables TTY formats to be compatible with IP-borne formats – through a provider-supported transcoding server and gateways to other systems – is one example. In other words, if there is a server that provides a functionality similar to the relay service – i.e., converting one format to another without changing the content, then it should not be excluded from the category of services that are covered by the Commission’s accessibility rules.

One needs only to look at the limitations of Section 255 of the Communications Act – a provision that is worded to cover the accessibility of “telecommunications services and products” – to conclude that the outdated distinction between these services and information services makes little sense in today’s technologically advanced society.

The “telecommunications” category of services subsumed in Section 255 did not even cover interactive voice response systems or voice mail, two

services that are virtually ubiquitous in telephone communications and required to complete many calls to businesses and governmental offices.

Rather, as discussed below, the Commission had to use its ancillary jurisdiction in order to pull these services within the reach of Section 255

If the term “telecommunications services” continues to be interpreted as narrowly as it has in the past by the FCC, the disability community will once again be left behind when innovative IP services are rolled out to the general public.

If, on the other hand, a service is covered by the Commission’s disability rules to the extent that the functions of that service enable individuals to converse with one another, in a manner that parallels – though is not necessarily identical to – traditional telecommunications services, individuals with disabilities will be confident that the providers of these services will have an obligation to ensure the accessibility of their offerings. Importantly, providers will also have confidence about which services are covered and can proceed to build access in from the beginning where it is easiest, without fear that their competitors will ignore their own obligations to do so.

It is important to recognize that in defining the functionalities that should be subject to accessibility obligations, the Commission should not limit itself to traditional methods of conveying conversations. For most of the twentieth century, telephone conversations took place via voice, and consequently remained inaccessible to people with hearing disabilities. Newer technologies enable parties to have their choice of conversational mode – voice, text or video. The only difference between these conversations and the traditional voice communications of the past is that now users have the opportunity to communicate in a form that best meets their access needs, whether that is voice, text or video or a combination thereof.

Acknowledgements: Karen Peltz Strauss, Esq.; Dr. Gregg C. Vanderheiden; Dr. Judith E. Harkins;

I. Request for Action from CAC:

This information is passed on to FCC staff and the next Consumer Advisory Committee for further consideration. No formal action is needed at this time.

V. Captioning of High-Definition TV Programming

It is apparent that despite the January 1, 2006 compliance date for 100% captioning, this is not a fact. It is particularly true when discussing broadcasts by cable HD networks and video-on-demand (VOD) content supplied by cable service providers

More and more cable networks are beginning to offer HD broadcasts of their programming. This involves setting up a new network that exclusively broadcasts HD content belonging to the parent network. In some cases, these are truly "new" networks. HDNet began broadcasting in September 2001 and is just beginning to offer captioning. The NFL Network began broadcasting in November 2003, and currently offers no captioned content. In other situations, whether or not the network is "new" is not so clear. UniversalHD, a subsidy of NBC Universal began broadcasting in December 2004. For discussion purposes, this report will specifically refer to the UniversalHD broadcast.

A. To date

UniversalHD has no captioned content. This is true despite the fact that nearly all of the UniversalHD programming is previously captioned NBC content. In addition, this year, UniversalHD simultaneously broadcast three different live events that were aired with captions on the sister USA Network, but not on UniversalHD. Those events were the Winter Olympics, the Westminster Dog Show, and the US Tennis Open.

UniversalHD has not responded to requests as to why they are not providing captioned programming. UniversalHD might possibly interpret themselves as being exempt from the captioning requirements.

B. We respectfully ask the following questions:

1. Are cable HD broadcasts provided separate from existing parent cable networks entitled to the "new network" exemption, i.e.; "(9) Programming on a video programming network for the first four years after it begins operations"?
2. In other words, should UniversalHD be granted a four-year exemption beginning December 2004, or should they be required to immediately provide captioned content? We know of no other NBC Universal channel not currently captioning.
3. Are HD broadcasts provided separate from existing parent cable networks considered part of the parent network, or are they treated as separate channels for the purposes of the following exemption: "Content providers do not have to caption programs if the channels are producing revenues of under \$3,000,000."?

This appears to be the only possible justification that UniversalHD would use for not captioning content. It is interesting to note that ESPNHD and TNTHD do provide 100% captioned content, yet they could argue that they are exempt.

Recently HGTV channel, National Geographic channel, and the Food Network channel have all started their sister HD channels. Since we are witnessing more and more cable networks beginning to provide an HD channel, it is imperative that this clarification be issued.

Likewise, much of the content in free and pay VOD is not captioned. This despite the fact that the original broadcast of the programming was captioned. Many VOD first run movies are not captioned. Buyers who depend on captioning need to be aware that they may be paying for non-captioned content.

It is important to remember that deaf and hard of hearing television viewers are paying the same amount for their cable programming as are hearing viewers. Yet, the deaf and hard of hearing do not have 100% access to their programming despite the January 1, 2006 compliance date. In light of the recent FCC action granting of more than 300 caption exemptions to specific programming requests, it is imperative that this clarification be issued in a timely manner. The spirit of the original ruling was to have 100% captioning of video programming by January 1, 2006, with just a few exceptions. With the FCC's help, this objective can be reached.

A letter summarizing the above mentioned points was delivered to Thomas Chandler, Chief of the Disability Rights Office, FCC. Copies were forwarded to Monica Desai, Jay Keithley, Shirley Rooker, and Scott Marshall.

C. Request for Action from CAC:

This information is passed on to FCC staff and the next Consumer Advisory Committee for further consideration. No formal action is needed at this time.

VI. Hearing Aid Compatible Cell Phones (for international calling)

The Consumer Advisory Committee recommends that the FCC consider any technological or other barriers to GSM service providers and their respective manufacturers producing cell phones that are T4/M4 rated.

A. Background

There are four networks but we understand that there are two prime networks, C.D.M.A. and G.S.M.:

Network Coverage, Providers, Max T/M Level Achievable

- 1- CDMA Asia, Mexico, USA Sprint* and Verizon T4/M4
- 2- 2- GSM Europe and the Americas Cingular and T-Mobile T3/M3
- 3- 3- iDEN Not international Nextel* Regulator was unclear.
- 4- TDMA This network is fading away and being replaced by the GSM network.

*This is now one company with two networks.

Effective Sept. 16th, the Federal Communications Commission mandates that cell phone providers offer at least two handset models that have a minimum M3/T3 rating. The M rating (M3 or 4) represents microphone interference on a hearing aid and the T rating (T3 or 4) represents the hearing aid telecoil compatibility level. The higher the rating, the better.

B. Discussion

The CDMA handset technology is able to develop T4/M4 phones. The GSM handset technology could develop T4 phones but not M4 phones. Many of the T3 phones are actually T4 phones but cannot be labeled T4 because the M must be consistent with the T as a matter of standard-setting body requirements. There is currently an amendment pending before the standard-setting body, however, that would allow such labeling. According to the handset manufacturers, an M 4 rating cannot be achieved on a GSM handset at this time.

The following article appeared in the October 17, 2006 issue of New York Times, and highlights why it is important to make international calls.

<http://travel2.nytimes.com/2006/10/10/business/10road.html>

C. Conclusion

An M4/T4 is, currently, only available in the CDMA handset technology and not in GSM. CDMA does not work in Europe. In today's global economy, it is critical for people with hearing loss to have the same opportunities as someone without a hearing loss. In the interests of fully evaluating the impact of this issue, the FCC might consider meeting with GSM handset manufacturers and carriers to better understand any barriers to developing this technology.

D. Request for Action from CAC:

This information is passed on to FCC staff and the next Consumer Advisory Committee for further consideration. No formal action is needed at this time.

Respectfully submitted,

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Note: Three recommendations beginning on page 6 were adopted with dissents and abstentions as noted. No action was taken on the remainder of the report.

Adopted: November 3, 2006