

**CONCURRING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips*, MB Docket 11-154

Communications enables connection. That's especially the case for Americans with disabilities. Luckily, we live in a time when our society places a priority on technological inclusion. Today, accessibility is increasingly the norm, rather than the exception.

Credit for this remarkable development belongs in part to Congress and the FCC. In particular, the Commission has made great strides in implementing the Twenty-First Century Communications and Video Accessibility Act (CVAA), which aims to make modern communications services accessible to all Americans with disabilities. I am proud to have worked with my colleagues in a bipartisan manner to implement this important piece of legislation and remain committed to seeing its promise fulfilled.

Pursuant to the Commission's rules, for example, full-length video programming shown on the Internet now must be captioned if it is aired on TV with captions. I applaud video programmers and distributors for their efforts to fulfill this requirement by making their content accessible to deaf and hard-of-hearing Americans. I also thank all of the groups representing Americans with disabilities for their work on these important issues. Without your efforts, we would not be where we are today.

Credit for greater accessibility to communications services also belongs to the private sector. For instance, by all accounts, an ever-increasing number of video clips posted on the Internet are being captioned on a voluntary basis. According to a study entered into the record by consumer groups, the percentage of IP news clips that are captioned grew from just 23 percent in May 2013 to 57 percent in February 2014.¹ This means that the portion of news clips that are captioned has more than doubled in less than a year. That's substantial and meaningful progress. In particular, I applaud NBC, ABC, and Fox News, which have led the way and already caption the vast majority of their news clips.²

Things are improving—and fast. This begs the question whether now is the time for the FCC to impose a new, one-size-fits-all regulatory mandate addressing video clips, one that everyone acknowledges cannot currently be met.

One might answer “yes” on the basis of a detailed determination that the benefits outweigh the costs. But this item contains no cost-benefit analysis. How much will the Commission's new closed captioning rules cost? What impact will those costs have on consumers? And on the benefits side of the ledger, how many video clips will be captioned after the rules begin taking effect in 2016 that otherwise would not have been made accessible? The item makes no effort to answer any of these questions. I asked for a cost-benefit analysis, but it never arrived. High-level rhetoric and appealing slogans are nice, but an administrative agency's rulemaking process demands more.

I am particularly concerned by the item's potential impact on small entities. Rather than incur the costs of captioning video clips, they may stop uploading clips onto the Internet altogether or may limit the number of clips they post. This would reduce the availability of news programming online—an outcome that wouldn't serve anyone's interests. I therefore hope that the Commission will give serious consideration to any waiver petitions filed by small programmers who would find it economically burdensome to comply with our captioning requirements for video clips.

¹ See Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, MB Docket No. 11-154; CG Docket No. 05-231 (Feb. 3, 2014), at 2, 9.

² *Id.* at 10.

My most serious concerns, however, are not with the rules we adopt today. Rather, they are with the Second Further Notice of Proposed Rulemaking (FNPRM). For example, the item requires Internet video clips of live programming to be captioned within 12 hours of airtime and near-live programming to be captioned within 8 hours of airtime beginning July 1, 2017.³ But even though the Commission establishes this rule just today, it also asks in this same document whether we should decrease or eliminate those 12-hour and 8-hour timeframes.⁴ In other words, the Commission sets rules for live and near-live clips, and before they even go into effect, it asks whether those rules should be eliminated or modified.

This is . . . odd. It brings to mind a regulatory merry-go-round where regulated entities are trapped in a never-ending cycle of notice-and-comment rulemaking, with their legal obligations a constantly moving target. One would think that we would let newly adopted rules take effect and then assess their real-world impact before we decide whether to change them. This is particularly true here given the Commission's determination that a 12-hour grace period is "reasonable" and "appropriately balances" industry and consumer concerns with respect to time-sensitive clips.⁵ But unfortunately, my modest request to study the rules' effects before proposing to change them was rejected.

While I wish that this suggestion and others had been adopted, I do appreciate that some positive revisions have been made to this item since it was circulated. In particular, all tentative conclusions have been removed from the FNPRM at Commissioner O'Rielly's suggestion. Moreover, pursuant to my request, the item now includes an 8-hour grace period for video clips of near-live programming and postpones the captioning requirement for near-live programming until July 1, 2017. This is an important change because it will make it easier for programmers to make time-sensitive clips available promptly over the Internet. I thank my colleagues for incorporating this proposal into the item.

Ultimately, these and other revisions lead me to cast a concurring vote. Going forward, I hope that video programmers will continue making progress in captioning video clips during the rest of this year and 2015. These rules, which will not begin to take hold until 2016, should not supplant the industry's commendable, voluntary efforts in this area. I also hope that the Commission will be flexible in implementing the rules that we adopt today. If technology does not develop as quickly as we might like, we should adjust accordingly. After all, if it were possible today for programmers to comply with the standards we are adopting, our rules would not become effective in stages between eighteen months and three years from now.

Finally, I would like to thank Diana Sokolow, Michelle Carey, Mary Beth Murphy, Steven Broeckhart, Alison Neplokh, Evan Baranoff, Karen Peltz Strauss, Rosaline Crawford, Gregory Hlibok, Eliot Greenwald, and Suzy Rosen Singleton for their efforts on this item. Your efforts on this and other orders have brought to life the promise of the CVAA, and you have the satisfaction of knowing that your work matters to tens of millions of Americans. I also would like to make a special mention of my former advisor Jeff Neumann, who contributed to this item. I am glad that the Media Bureau is taking advantage of his many talents.

³ *See Order* at para. 30.

⁴ *Id.* at paras. 42-43.

⁵ *Id.* at para. 30.