

**CONCURRING STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: 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)

In the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Congress mandated that we adopt close captioning requirements for previously-televised content delivered using Internet protocol (IP) and for certain devices that display video programming. I have been a steadfast proponent of ensuring the accessibility of communications services for disabled Americans and am supportive of promoting a better Internet video programming experience for the deaf and hard of hearing. In light of the growth and popularity of online content, I recognize the importance of our action today to ensure full access to the Internet for the disabled community. Such rules, however, have to be carefully crafted to weigh these benefits against the costs they may place on programming owners and distributors. Although I will do as Congress has directed, I am concerned that, in implementing this statute, we may not have achieved this desired balance. For this reason, I vote to concur.

Today, we adopt rules requiring, under tight timeframes, a new IP captioning scheme that includes captioning for new content and programming already contained on the Internet, quality standards, and the creation of a mechanism for video owners to inform distributors about programming subject to these requirements, amongst others. Although I wholeheartedly share the desire to help disabled Americans empower themselves, I fear that these regulations could infringe upon the First Amendment rights of content creators. Pragmatically, although our intentions are good, I am also concerned that our actions today may result in the withholding of content from the Internet, either temporarily or permanently, and the removal of programming that is currently available to all consumers to avoid enforcement action. I am pleased that Congress specifically mandated that a *de minimis* failure to comply with the regulations will not be considered a violation. I urge the Commission to remain mindful of this when investigating potential infringements.

Further, I am concerned that the caption performance and display standards, which will be complicated due to the diversity of devices and screen sizes covered, may be unworkable in many instances and burdensome to manufacturers. I also wonder whether we may be raising undue expectations regarding the availability of IP closed captioning. Although we require new content to be captioned on a rolling basis over the next year and a half, devices are not required to be compliant until January 1, 2014.

Thankfully, Congress provided the Commission with generous authority to grant case-by-case exemptions from these captioning rules. I hope that such waivers will be reasonably provided to alleviate burdens on video programming owners, providers and device manufacturers in the event that our rules cause unintended consequences. I also suspect that, as we do not have experience with the delivery of programming in the Internet space, this matter may come before us again. At such time, we will be able to gain useful insight from the deaf and hard of hearing community regarding their experiences with and ability to obtain captioned online content. I

also hope that we will learn from owners and distributors about any difficulties in implementing IP closed captioning and reconsider the actions we take today if they prove to be unworkable or overly burdensome. In short, this order may end up being a “beta” version that will require numerous revisions in the future.

I am grateful for the Chairman’s willingness to incorporate many of my suggested edits. I also thank the committed staff of the Media Bureau for their thoughtful efforts in confronting a difficult task.