

TESTIMONY OF CLAUDE STOUT

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**ON BEHALF OF
THE COALITION OF ORGANIZATIONS FOR ACCESSIBLE TECHNOLOGY (COAT)**

**U.S. House of Representatives
Subcommittee on Telecommunications and the Internet
Committee on Energy & Commerce**

On the Status of the Digital Television Transition

October 17, 2007

WRITTEN STATEMENT OF CLAUDE STOUT

Chairman Markey, Ranking Member Upton, and Members of the House Subcommittee on Telecommunications and the Internet, I want to thank you for the invitation to discuss the topic of the digital television (DTV) transition. I am honored to have this opportunity to testify on an issue that affects millions of television viewers with disabilities. My name is Claude Stout, and I am both the executive director of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) and the Chair of the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN). I am pleased to offer my testimony today on behalf of the Coalition of Organizations for Accessible Technology (COAT), a coalition of more than 110 national, regional, and community-based organizations dedicated to making sure that as our nation migrates from legacy telecommunications, such as analog television, to more versatile and innovative digital communication technologies, people with disabilities will not be left behind.¹

¹ A list of COAT affiliate members supporting the COAT agenda can be found at <http://coataccess.civicspaceondemand.org/node/9>.

Introduction and Background

COAT offers this statement on behalf of over 31 million individuals with hearing loss,² 10 million individuals who are blind or who have vision loss, and millions of individuals with other disabilities who benefit greatly from accessible television programming. Along with access to televised news, information, and entertainment, access to televised emergency information enables these populations to understand and appropriately respond to warnings of hazardous weather and other emergency conditions.

COAT affiliate members are excited by the promise of digital television, the better picture quality, multicasting, and the transfer of spectrum, which, among other things, will enable first responders to be more effective in emergency situations. Like most consumers, we look forward to the benefits of technological advances. Unfortunately, history has shown that all too often, people with disabilities have been left out or left behind as these advances have taken place.

In fact, we are already witnessing this phenomenon with digital television. Despite promises of a glorious future for closed captioning, access to television programming has apparently taken a step backward. Increasing numbers of individuals are seeking to purchase digital television sets or components and systems that provide digital video programming, and distributors are offering expanded digital programming – and in particular programming in the high definition (HD) format. At the same time, we are receiving increasing numbers of reports of significant technical difficulties with the pass through and display of closed captioning.

Specifically, concerns have been raised about the following:

- Caption viewers report a number of technical difficulties associated with viewing captions on DTV, including captions that are garbled, delayed, misplaced, or otherwise unintelligible;

² Kochkin, S. MarkeTrak VII: Hearing Loss Population Tops 31 Million People, The Hearing Review, Vol. 12(7) July 2005, pp. 16-29.

- Networks whose analog channels were previously covered by the FCC's closed captioning mandates now deny coverage for their new HD channels, even when the newer channels have the same programming format as their analog predecessors;
- Viewers are having a hard time figuring out how to access closed captions and video descriptions on DTV components, including tuners supplied by television manufacturers and set top boxes provided by cable and satellite companies;³
- Consumers are struggling to resolve complaints about DTV issues with companies or with the FCC; and
- Individuals who are blind or have low vision still have negligible access to television programming because of the scarcity of video description.

I will elaborate now on each of these concerns:

Technical Difficulties

Television viewers who rely on captions to understand the content of video programming join the rest of the American public in wanting to make the transition to innovative and exciting digital television. As DTV equipment has become more affordable and available, more and more of these viewers have acquired equipment that will allow them to enjoy such enhanced viewing. But time and again, these consumers have been frustrated and disappointed. Many report disappearing, delayed, garbled or otherwise unintelligible captioning on television shows that previously provided relatively problem-free captions. Specific problems have been documented, including overlapping captions (two lines of captions displayed over each other), captions appearing in the middle of the television screen (blocking faces and other important visual information on the screen), captions running off the edge of the picture, captions exceedingly small, and captions that inadvertently switch to text mode which causes 95% of the screen image to be obscured.

³ Video description is the provision of verbal descriptions of on-screen visual elements that are provided during natural pauses in dialogue.

A major difficulty for consumers in the DTV transition is determining the cause of these closed captioning problems. Indeed, experience shows that any one or a combination of factors can be a culprit in creating barriers for captioning users. For example, the failure to receive captions can be the fault of the local TV station or cable TV service that has begun broadcasting or offering digital programming, the inability to pass through captions on the program distributor's (e.g., cable company's) set top box, or a failure in the equipment used to receive and display the DTV programming, such as the receiver or its connecting components. Unfortunately, regardless of the problem source, consumers are left "holding the bag" each time they are unable to access captions.

Confusion over Scope of FCC Captioning Mandates

In addition to these technical difficulties associated with the DTV transition, there is some dispute over the extent to which TV networks now covered by the captioning rules are obligated to continue providing captions as they make the shift to HDTV and other forms of digital programming.

It would appear obvious that when a standard definition (SD) analog network, whose programming has already been captioned, converts to or creates an HD channel with a programming line-up that contains a significant amount of programming that is similar to that analog network, the new HD channel would be held to the same obligations to have closed captioning as its analog predecessor. However, some broadcasters and cable networks have taken the position that their new HD channel is a "new network" that qualifies for an exemption from the FCC's captioning rules. Specifically, they point to that section of the FCC's rules that exempts

programs shown on new networks from having captions during the first four years of the network's operations.⁴

This interpretation of the FCC's captioning rules makes little sense. Even when the HD channel repackages its programming so that it is slightly different than its predecessor network – e.g., by slightly altering its programming schedule – the HD network should be subject to the captioning rules to the same extent as its analog predecessor, so long as the digital network is substantially similar to that predecessor. If this is were not the case, then consumers would find themselves having to wait an additional four years to see captioning on programming which, but for its HDTV status, would already have to be captioned.

This “new network” interpretation of the captioning rules offered by some SD/HD networks flies not only in the face of logic; it violates Congress's intent to ensure the uninterrupted provision of closed captions with the onset of advanced technologies. The explicit directive of the Communications Act could not be clearer in this regard. Section 330 of the Act states: “As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers.”⁵

Even when the programming schedule of the enhanced HD network is substantially different than its analog counterpart – and the digital channel can legitimately be called a “new

⁴ See 47 C.F.R. § 79.1(d)(9). For example, COAT received reports of this occurring when the Discovery Channel began broadcasting over Discovery HD. We are told that in 2005, the HD channel failed to caption the same programming that had previously been captioned in its analog predecessors (i.e., Discovery, Discovery Kids). When asked about this, the company asserted compliance with the FCC's rules because it had initiated its HD programming in 2002, and still had another year before its “new network” exempt status expired. Charges of other networks simultaneously broadcasting live events on SD and HD channels, but only adding captions to the SD broadcasts similarly have been reported.

⁵ 47 U.S.C. § 330(b).

network” – at a minimum, pre-captioned programming shown on the newer network should be re-shown with those captions.⁶ COAT asks the Committee to request the FCC to clarify this point sooner rather than later during this digital transition period, so that TV viewers who rely on captioning will not lose access to the programming that they have been able to watch in the past.

User Interfaces

It is commonplace for television viewers to select their channels and other TV settings from on-screen menus. But if you are blind or have low vision, you cannot access this information through a “point and click” remote control or even use a touch screen. Individuals who are blind or have vision disabilities are thus denied the ability to control various aspects of the DTV programming that they watch. The technical feasibility of incorporating accessible user interfaces has already been demonstrated by a few individual manufacturers. When accessible user interfaces are required on all video devices, the incremental cost of adding these features will become negligible.

Caption viewers have also reported considerable problems navigating menus, some of which are “hidden,” to activate captions after connecting their digital television equipment – equipment that typically is comprised of separate receivers, monitors, set top boxes, and recording/playback devices. Often the interface that controls captions is buried several layers into an on-screen menu that is difficult, if not impossible to find. Even those consumers who are able to figure out how to turn on captions on their home equipment have an often insurmountable task when trying to activate captioning in locations away from home. For example, it is with increasing frequency that we hear of deaf and hard of hearing consumers going to hotels and not being able to watch TV simply because there is no way for them to turn on captions. On one such occasion,

⁶ A similar obligation requiring video programming distributors to pass through captions of programs that were previously captioned already exists.

COAT has learned, it took a hotel technician two hours to set up captions; on another occasion, hotel staff realized that the only means of retrieving captions was by means of a single “master” remote control that the hotel owned (and did not want to leave with any one guest). The remote controls distributed to guest rooms in that hotel were apparently for the “cable box,” not the “television,” and could not activate the captions.

COAT has initiated discussions with digital television manufacturers to help them understand the extent to which the user interfaces on their television equipment may adversely impact consumers with hearing and vision disabilities – and by association, the families and friends of these television viewers. While our efforts have been rewarded by a few design changes – for example, by the addition of a designated closed captioning button on the remote controls for certain digital-to-analog converter boxes – we know from experience that the vast majority of manufacturers will not incorporate all of the necessary accessible user interfaces on their television sets or components unless mandated to do so. In the past, virtually all technology-related access features have come about only after they were mandated by federal law – for example, hearing aid compatible telephones and televisions with built-in closed captioning decoders. This is because the disability market – while growing with our ever-expanding aging population – still is not large enough, forceful enough, or wealthy enough – to have an impact on manufacturer product design. With competition the way it is, no manufacturer wants to be the only one putting resources into accessibility features.

When, however, Congress directs that access be incorporated on an industry-wide level, the competitive playing field is leveled, economies of scale force the cost of compliance down, and consumers get the access they need. To this end, we come to you today seeking mandates that would accomplish several goals. First, we ask for a requirement for digital televisions to be

designed so that individuals with disabilities can access all of their functions, including the receipt, display, navigation or selection of video programming. Among other things, this will require audio output to accompany on-screen text menus or other visual indicators used to access video programming functions, to allow control of these functions by people who are blind or have low vision. Second, Congress should require a conspicuous means of accessing both closed captioning and video description on digital television equipment. This should include provision of a button on the television's remote control that could activate closed captions, as well as the ability to control closed captions and video description on the top tier of the television equipment's set-up menu.

It is critical for both captioning and video description users to be able to effectively use the accessibility features that are added to video programming content. Put simply, it makes little sense for broadcasters to go through the time and expense of incorporating captions and video description if the beneficiaries of these features are not able to find and access them easily.

Barriers to Resolving Concerns

Consumers with disabilities have also encountered significant barriers when attempting to contact distributors of video programming and manufacturers of DTV equipment with concerns about accessing closed captioning or video description. The reasons for this are many:

- Customer service representatives or technical support personnel are often unfamiliar with closed captioning and video description and simply do not understand the content and context of the consumers' concerns.
- Customer service representatives or technical support personnel are typically not familiar with telecommunications relay services that are commonly used by persons with hearing and speech disabilities, and hang up or otherwise disregard the phone call.
- Customer service representatives or technical support personnel may choose not to respond to e-mail requests, particularly in a timely manner. Such text-based communications are commonly used by persons with hearing loss.

Furthermore, many consumers with disabilities remain unaware of their right to file informal complaints with the FCC, or the Commission's ability to mediate and resolve their problems. Additionally, those consumers with disabilities who may be aware of the complaint procedures often choose not to use those procedures because they find the complaint process too difficult to navigate. This is because the process for filing informal closed captioning complaints with the FCC requires consumers to first notify distributors responsible for the delivery and exhibition of the programming at issue, cite the specific FCC regulation violated, and include detailed complaint content in order for the FCC to pursue the complaint.⁷ The FCC's procedures also contain overly complicated timelines and unduly long response times.

As a consequence, when consumers do confront problems with their TV distributor or with the manufacturer of a DTV product or device, most of the time, in utter frustration, they give up and revert to using their "old" television receiving components. While this may be an option now, it will no longer be an option in February 2009. COAT notes that the clock is ticking loudly and these problems must be resolved before the time remaining for analog programming expires.

COAT asks the Committee to urge the FCC to overhaul its regulations governing the handling of consumer concerns and complaints on closed captioning, so that (1) the Commission and television distributors have a more rapid and efficient means of learning about problems associated with the digital transition and (2) the FCC and the DTV industry can take the steps necessary to remedy these problems before they cause consumers to lose television access.

Video Description

The Communications Act of 1996 authorized the FCC to conduct an inquiry to assess the appropriate means of phasing video description into the television marketplace. Although the

⁷ See 47 C.F.R. § 79.1(g).

FCC's response to this grant of authority was a modest requirement that broadcasters and other multimedia video programming providers in the top 25 major national markets provide video description on four primetime programming hours per week,⁸ this requirement was overturned in federal court a little over a year after it was adopted.⁹ As a consequence, there are no federal requirements to make television programming accessible through video description. COAT seeks reinstatement of the FCC's video description rules so that Americans with vision loss have an equal opportunity to understand and enjoy television content.

Notwithstanding the lack of video description mandates, some networks still offer this form of accessibility on a voluntary basis. However, COAT is concerned that, as the digital television transition takes place, the lack of attention given to this form of accessibility by DTV distributors and equipment manufacturers may seriously impede the ability of video descriptions to reach consumers, even when these descriptions have been added to programming. To prevent this from occurring, COAT urges the Committee to immediately require that the DTV standard include video description, which is consistent with the recommendation made by the 1998 Presidential Advisory Committee on Public Interest Obligations of Digital Television Broadcasters:

Utilization of video description as a form of providing access has been hindered by the analog standard, which only permits delivery of descriptions via the secondary audio program channel. In contrast, digital technology offers multiple audio channels, with significantly greater bandwidth, that can more easily accommodate video descriptions. We recommend that broadcasters allocate sufficient audio bandwidth for the transmission and delivery of video description in the digital age to make expanded use of this access technology technically feasible.¹⁰

⁸ *Video Description of Video Programming*, Report and Order, MM Dkt. 99-339, FCC 00-258, 15 FCC Rcd 15230, amended in part at Memorandum Opinion and Order on Reconsideration, FCC 01-7, 16 FCC Rcd 1251 (2001).

⁹ *Motion Picture Association of America, Inc. v. Federal Communications Commission*, 309 F. 3d 796 (2002).

¹⁰ *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters* (December 18, 1998) at 62.

During the period in which the FCC's video description rules were in effect, broadcasters routinely demonstrated the technical and economic feasibility of description by adding this feature to their programs. With the advent of digital television, it is easier than ever for broadcasters to build into the digital structure ways to pass video description along to viewers. However, it is imperative to take this action now while DTV is nascent, because the failure to do so may lead to greater technical and economic obstacles to providing description in the future.

COAT RECOMMENDATIONS

In order to smooth the transition to DTV for people with disabilities, COAT urges Congress to mandate the following:

1. Direct the FCC to clarify that it is the responsibility of broadcast and other networks that have made the transition from an SD to HD channel or other digital programming to continue captioning programs on their HD/digital networks when the content and format of those networks is substantially similar to that of their analog predecessors. The FCC should further be directed to clarify the obligation to show pre-captioned programming with captions at all times, even when the re-exhibited programming that contained those captions is shown on a new network that is substantially different from its analog predecessor.
2. Reinstate the FCC's video description rules and ensure that digital signals have sufficient capacity to make available the transmission and delivery of video description. This will require having the FCC require programming distributors, in their coordination efforts, to ensure the proper processes for carrying video description so that it is passed through properly to the viewer.
3. Direct that digital televisions be designed so that individuals with vision and other disabilities can access all of their functions, including the receipt, display, navigation or selection of video programming. Include within this, an obligation for audio output for on-screen text menus or other visual indicators used to access video programming functions.
4. Direct manufacturers of DTV equipment to provide a conspicuous means of accessing both closed captioning and video description on digital television equipment. This should include provision of a button on the television's remote control to activate closed captions and the ability to control closed captions and video description on the top tier of the television's on-screen menu.
5. Direct the FCC to revise its complaint procedures so that consumers with hearing loss who are having difficulty accessing closed captions on DTV have a user-friendly means of seeking assistance and resolution from the FCC.

6. Direct the FCC to require broadcasters and multi-channel video programming distributors (MVPDs) covered by the FCC's captioning rules to put into place customer service practices that are easily accessible and capable of responding swiftly to consumer inquiries and complaints concerning the provision of closed captions on DTV by their stations and networks. Among other things, the FCC should require these entities to designate a point of contact to handle such inquiries and complaints, and to identify this contact on both the FCC's and the covered entity's websites, as well as in billing inserts and promotional materials. This will alert distributors to DTV problems and provide for speedier resolutions.
7. Direct the FCC to require broadcasters and MVPDs to begin comprehensive testing of the closed captioning pass-through capabilities of their DTV systems, and implement solutions wherever technological barriers are encountered during this testing process, well in advance of the transition date in February 2009. To achieve these goals, the FCC should convene a working group of broadcasters, MVPDs, DTV product manufacturers, including manufacturers and distributors of television receiving equipment and set top boxes, and captioning providers and consumers, to ensure compatibility with captioning services before bringing these to market. This group, which should include top engineering personnel from the relevant industries and the Commission, should be tasked with
 - a. identifying current and anticipated problems with the transmission and display of captions over digital programming;
 - b. evaluating and assessing their components, systems, and set top boxes for compatibility with captioning services;
 - c. developing solutions to existing and potential problems in order to ensure the capability to pass through closed captions intact to the consumer;
 - d. publishing widely solutions for pass through of captioning and video description.¹¹

¹¹ Many of these suggestions have been submitted to the FCC in *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Dkt 07-91, FCC 07-70 (May 18, 2007).

Conclusion

We call upon Congress to ensure that people with disabilities – including the rapidly growing population of senior citizens who experience reduced vision and hearing with increasing frequency – are not left behind as the DTV transition takes place. On behalf of COAT, I thank the Committee for this opportunity to share our concerns and urge you to take the necessary steps to ensure a smooth transition to DTV programming for all Americans with disabilities.

Executive Summary
of
Claude Stout's Testimony, October 17, 2007

Stout testifies on behalf of the Coalition of Organizations for Accessible Technology (COAT), a coalition of more than 110 national, regional, and community-based organizations. We benefit greatly from accessible television programming. Also, access to televised emergency information enables us to understand and appropriately respond to warnings of hazardous weather and other emergency conditions. We report disappearing, delayed, garbled or otherwise unintelligible captioning on television shows that previously provided relatively problem-free captions. A major difficulty is determining the cause of these closed captioning problems. There is some dispute over the extent to which TV networks now covered by the captioning rules are obligated to continue providing captions as they shift to digital programming. It is commonplace for television viewers to select their channels and other TV settings from on-screen menus. But if you are blind or have low vision, you cannot access this information through a "point and click" remote control or even use a touch screen. Consumers with disabilities have also encountered significant barriers when attempting to contact distributors of video programming and manufacturers of DTV equipment with concerns about accessing closed captioning or video description. Furthermore, many consumers with disabilities remain unaware of their right to file informal complaints with the FCC, or the Commission's ability to mediate and resolve their problems.

COAT urges Congress to mandate the following: 1) Direct the FCC immediately to clarify that it is the responsibility of broadcast and other networks to continue captioning programs on their HD/digital networks and show pre-captioned programming with captions at all times. 2) Reinstate the FCC's video description rules. 3) Direct that digital televisions be designed so that individuals with vision and other disabilities can access all of their functions, including audio output for on-screen text menus or other visual indicators. 4) Direct manufacturers of DTV equipment to provide a conspicuous means of accessing both closed captioning and video description on digital television equipment. 5) Direct the FCC to revise its complaint procedures so that consumers with hearing loss who are having difficulty accessing closed captions on DTV have a user-friendly means of seeking assistance and resolution from the FCC. 6) Direct the FCC to require broadcasters and multi-channel video programming distributors (MVPDs) covered by the FCC's captioning rules to put into place customer service practices that are easily accessible and capable of responding swiftly to consumer inquiries and complaints concerning the provision of closed captions on DTV and 7) designate a point of contact to handle such inquiries and complaints.