WRITTEN TESTIMONY OF RUSSELL HARVARD

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

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

H.R. __, Draft Legislation Enhancing Access to Broadband Technology and Services for Persons with Disabilities

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Chairman Markey, Ranking Member Stearns, and Members of the House Subcommittee on Telecommunications and the Internet, thank you for giving me the opportunity to appear before you today to discuss the need for communications access by people with disabilities. My name is Russell Harvard and I am an actor, recently sprouted in the film business and looking forward to growing in my field. I am proud to say I performed the role of Daniel Day Lewis's son in the double Oscar winning film, *There Will Be Blood*, and had the privilege of playing the villain in *CSI: New York* with my friend, Marlee Matlin. I also perform a strong thread of songs in American Sign Language. I am deaf, the third generation of deaf individuals in my family.

I am honored to offer my testimony today on behalf of the Coalition of Organizations for Accessible Technology (COAT), a coalition of nearly 200 national, regional, and community-based organizations dedicated to making sure that as our nation migrates from legacy telecommunications to more versatile and innovative digital communication technologies, people with disabilities will not be left behind.[1] Although this coalition is only a little more than a year old, its rapid growth and attraction to organizations across the nation demonstrates the urgency

[1] A list of COAT affiliate members supporting the COAT agenda can be found at http://www.coataccess.org.

of the issues being discussed at these hearings. COAT works on behalf of over 31 million individuals with hearing loss, 10 million individuals who are blind or who have vision loss, over 70,000 persons who are both deaf and blind, and millions of individuals with other disabilities who need accessible communications.[2]

I join all COAT affiliate members in being excited about the promises of new Internet Protocol and digital technologies. Like all 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. Typically, it has taken acts of Congress to put us on a level playing field with our non-disabled peers. For example, I can remember when our family needed a separate decoder box to receive and display captions on our television sets. Without a requirement for television sets to decode captions, television set manufacturers did not include this feature on their own. When our decoder box got too hot, the captions would flicker, making them hard to read. As a consequence, the family member who got to use the decoder box first was the only one who could really enjoy – and understand – his or her television program. What really sticks out in my mind is not being able to watch any programs shown just before *All My Children*. My step-mom kept me from watching any television for an hour before that show, so the decoder box would be cool enough to display steady captions for her favorite program!

I'm grateful that in 1990, Congress took care of this problem. In that year, you enacted the Television Decoder Circuitry Act, which required all televisions with screens at least thirteen inches in size, to receive and display closed captions. The Decoder Act made video

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

programming technology *more* accessible for people with disabilities. Now we need to take another step forward and make it *equally* accessible.

At the outset, I want to say that the proposed draft of the "Twenty-first Century Communications and Video Accessibility Act" is a major step forward toward expanding communications protections for people with disabilities. Today I will address the various provisions in this proposal that concern access to video programming by people who are deaf or hard of hearing. I understand that my colleagues on this panel will address other provisions found in the proposal.

Ensuring Accessible Television Programming over the Internet

This Subcommittee is all too aware that our television environment is moving swiftly from analog to digital technology. In only 10 more months, the transition will be complete. I know that you have gone to great lengths to make sure that all Americans are aware of this major change in the way we watch television. I agree that this is an exciting time that holds out great promise for the viewing experience of most Americans. Not only is the digital picture clearer and – I am told – its sound crisper, but more and more, television programming is no longer tethered to what we have come to know as a "television set." Internet-based video programming services that offer television programs, movies, and live video streaming are proliferating at lightning speed. In fact, it seems like every time I watch a television show on my old fashioned television set, an announcer at the end of the show tells me that I can watch the show many more times with enhanced features, such as deleted scenes and interviews with actors, on the Internet. But for me, these promises of a wondrous new world of video programming are largely empty.

You see, only a handful of television shows available on the Internet have closed captioning. This is true, even when these very same programs were previously shown on

television with captions. Closed captions simply have not made their way to this new viewing medium. The result is that I, along with millions of other people who cannot hear, are denied access to hundreds, if not thousands, of hours of video programming.

It was not that long ago that I and others who are deaf or hard of hearing did not have access to many TV programs on regular television channels. For example, I remember when *South Park* came out and lots of talk circulated about the "inappropriate" language used in that program. Of course, this piqued my interest. My curiousity could not be satisfied, however, because *South Park* was not captioned and lipreading the animated characters with their itty bitty nonsensical mouths was impossible. The only way I could know what was going on was to ask some of my hearing friends what the show was about.

Being able to understand *South Park* cartoon characters may sound trivial to some people, but, as a young adult, keeping up with the cultural and social experiences of one's peers is very important. Whenever access is denied to me, I feel – and am – left behind. Another example of inaccessible programming in the past was MTV music videos, which were very popular during my pre-teen years. These, too, were rarely captioned. Although my step-sister was nice enough to write down or sign the lyrics, this did not afford me the independence that everyone else had, and I surely desired. Just imagine not being able to watch TV on your own, and having to ask a family member or friend to tell you what is being said.

But my generation is also lucky. Thanks to the work of this Subcommittee and others in Congress, in 1996, you passed a law requiring nearly all television shows to have captioning. That law went into full effect for new programs in January 2006 and, since January 2008, has required 75 percent of older television shows (shows first shown or exhibited prior to 1998) to have captions. Closed captioning has made a huge impact on the lives of every deaf or hard of

hearing person, including me. Captions allow me to be in sync with what is going on in the world. They let me watch television with my family and friends. They enable me to get the information I need to develop and share my political views on the presidential campaign. They let me keep pace with current trends and maintain my independence and sense of dignity.

But, it seems like just as soon as we finally have access to nearly all of the news, information, and entertainment on television, we now find that when we turn to such video programming on the Internet, we are again left behind, unable to understand what is going on. Because captioning of television shows on the Internet is not yet required by law, hardly any of these programs are captioned. Like the deaf generations of my family that came before me, I am again confronted with having to guess at what is being said.

Additionally, for me, not having the ability to watch video programming on the Internet is far more than just an annoyance; it affects my ability to compete in my profession. As an actor, it is a significant hardship not to be able to have access to all mediums of video programming. I am always looking to improve my skills: being able to re-watch the work of other actors is something that can help me immensely in my work. Not being able to do so makes technology regress for me as it progresses for everyone else. I am not alone in my frustration. When something as popular and important as Internet programming is not accessible to us, the reaction from the deaf and hard of hearing community is very strong. Imagine, if you will, hearing the collective groan of millions of people expressing their frustration as they see history repeating itself all over again.

To ensure equal access, we ask Congress to make clear that the captioning obligations that were passed in 1996 and apply to video programming distributors, also apply to their

programming distributed over the Internet.[3] Specifically, we want legislation to make sure that captions are available for the following types of Internet programming:

- Pre-produced video programming that was previously captioned for television viewing in compliance with Section 713 of the Communications Act.

- Live programming that must be captioned for television viewing in compliance with Section 713 of the Communications Act**.**

- New web-based video programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited over the Internet for residential use. This category is not intended to cover user-generated content uploaded by private citizens, but rather to capture the same type of programming that video programming distributors would otherwise exhibit on analog or digital television channels.

Some of you may have questions about the extent to which captioning of Internet-based videos is technically feasible. While I am no expert on this issue, my understanding is that this is already being done today on a few Internet sites, such as the NBC/Fox Hulu video website, and in a large number of movies available from Apple's iTunes. In addition, I am told that there are a number of ways that content providers and distributors can convert their traditional television captions into captions for Internet-based distribution, or create and display original captions for online media.

Accessible Video Programming Equipment

[3] A video programming distributor is defined in the FCC's rules as "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in §76.1000(e) of [Chapter 47], and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission." 47 C.F.R. §79.1(a)(2). A "multichannel video programming distributor" is defined as "an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities." 47 C.F.R. §79.1000(e).

Expanding the captioning laws to the Internet will solve part of the problem being confronted by people with disabilities who want access to video programming, but there is still more work to do. It used to be that the majority of televisions ranged from 19 to 32 inches. So when Congress enacted the Decoder Circuitry Act of 1990, requiring all television sets with screens larger than thirteen inches to include decoder chips that could display captions, it was confident that the overwhelming majority (approximately 96 percent) of all television sets would be covered by the new law.[4]

But times and technology have changed – dramatically! Now my friends and colleagues are able to watch their favorite shows on their cell phones. They can download and playback sporting events on their MP3 players. They can store movies on their compact laptops. And phone companies and satellite radio services are now in the business of providing television programming! Once again, I and others who cannot hear are finding ourselves left out of this whirlwind of technological change. Although we can watch captioned television shows when we are in our own homes, when we are on the go, we are typically out of luck.

So we come to you, fifteen years after the Television Decoder Circuitry Act was enacted. Again, we thank you for passing this wonderful law, a law that truly changed my life, as well as the lives of millions of deaf and hard of hearing people who would otherwise not have had access to television programming for the last decade and a half. We ask that you now take this law to its next level. The thirteen-inch screen limitation has worn out its welcome. With it now

[4] In 1989, TV Digest reported that 96 percent of new televisions had screens that were thirteen inches or larger. 12 TV Digest (Elec. Indus. Ass'n, September. 11, 1989); See also DuBow, "The Television Decoder Circuitry Act-TV For All," Temple Law Review 64, No. 2 (1991) and Strauss, *A New Civil Right, Telecommunications Equality for Deaf and Hard of Hearing American* (Washington, D.C.: Gallaudet Press, 2006), p. 230, for more on the thirteen-inch screen size minimum.

being possible to display television programming on screens of all sizes, we urge you to get rid of that restriction and extend the captioning circuitry requirements to *all* video devices that receive or display video programming, including devices that can receive or display video programming carried over the Internet. In this modern digital era, we all know that devices that receive video programming can be as large as a living room wall or as small as a handheld MP3 player. All of these devices need to have the capacity to display closed captioning.

Accessible User Interfaces

The last point I want to make has to do with my ability – or should I say my inability – to figure out how to activate captions on television sets, even when captions are provided. In this regard, I ask the members of this Subcommittee to try something out. The next time you are in a hotel and, after a long day, sit back to watch the news or enjoy a movie on a brand new digital television, try to turn on the captions. The first thing you will probably do is look at the remote control. If you are lucky, there will be a caption control button there, and that will end your search. More likely, what you will find are buttons for volume control, buttons for channel selection, and buttons to perform a host of other functions that may or may not make any sense to you. Chances are that you will not find a caption control button.

Your next strategy may be to turn on the television's on-screen menu and try to find the captions that way. I wish you the best of luck as you try to navigate the maze of complicated choices. If this attempt fails as well (which it has for me on many occasions), your third option will be to call the front desk and have them send up the hotel engineer. You can then laugh to yourself as you watch him go through the same steps you did. I cannot begin to tell you how often this scene is repeated across America. In the past, the problem of not being able to access closed captions was largely limited to televisions located outside the home. People generally

were able to figure out how to turn on captions on televisions that they purchased because they had the manuals to do so. But now, even finding the captioning features on digital and HDTVs purchased for use inside the home has become a considerable chore, and sometimes a virtual impossibility.

The shame of it is that, in the year 2000, the FCC issued wonderful rules requiring enhanced captions on all digital televisions. Unlike captioning on analog television sets, which only appear as white letters on a black background, digital televisions must provide viewers with the ability to control caption fonts, sizes, colors and opacity. The FCC created these rules so that people who can not hear can reap some of the fantastic benefits that digital television has to offer. But as I have explained, figuring out a way to get access to these captioning features is not so easy – in fact, it is typically quite difficult. My guess is that most deaf and hard of hearing people don't even know that these captioning options exist for them.

The proposed legislation will fix this. It will require devices that display video programming to provide a conspicuous means of accessing closed captioning (along with video description for people who are blind or have vision loss). This can be achieved by adding a button for captioning on the remote controls of video programming devices and by enabling viewers to control captioning features on the top tier of the equipment's on-screen menu. Captions enable us to understand the content of a program, the same way that the sound track enables people who can hear to follow a program's plot. It should be as easy for people who are deaf and hard of hearing to find and control captions as it is for hearing people to control the volume and other audio features on a TV set.

Conclusion

In conclusion, on behalf of millions of Americans with hearing, vision and speech disabilities, we call upon Congress not to leave people with disabilities behind as new Internet and digital video programming technologies become available to the general public. I am a big fan of technology: it empowers me to do things I otherwise could not do and allows me to access the information I need to be successful – both in my profession and as a citizen who actively participates in our nation's civic affairs. On behalf of the Coalition of Organizations for Accessible Technology, I thank the Subcommittee for this opportunity to share our concerns and urge you to introduce and pass legislation that will safeguard continued access to emerging communications and video programming technologies.