



ALDAcon 2007—Rochester, New York

ADVOCACY: THIS YEAR'S HOT TOPICS OR ALDANS

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I'm going to walk you through some hot topics. There is a lot to share with you. We're going to start with TV captioning because that is always the one I get the most questions about.

Petitions for Exemptions from TV Captioning

Last year when we came here, I told you about a lot of bad stuff that came down the pike. One was that a whole lot of requests for exemptions from captioning requirements had come from different groups who didn't want to have to provide captions on their television programs. And also about something called Anglers for Christ, which is well-known among some of us who work as consumer advocates.

Anglers for Christ is a Christian organization which has a little fishing show on television. The producers of that program didn't want to have to caption it. The Federal Communications Commission (FCC) not only granted them an exemption from having to caption, but made a declaration: that they would be inclined favorably to grant an exemption petition filed by a nonprofit organization that does not receive compensation from video programming distributors from the airing of its programming, and which, in the absence of an exception, may find its programming, and/or activities important to its mission.

Isn't that a mouthful of words? You're probably going, "Okay, I heard it. What does it mean?" You have to read it several times before you get the sense of it. Basically, it's pretty much telling them "You're free to leave out the captioning because you're a nonprofit. You don't get money from the broadcasters, and so there you go."

Of course, once you start giving an exemption like this, there are other companies that can call themselves not-for-profit and will do so. So as you can imagine, several of us who represent consumer organizations at the national level filed an Application for Review on October 12, 2006, saying this decision is wrong. The FCC did not go through any kind of process in making this determination. Normally when they take an action, they will give public notice to inform people and put something on their website. The FCC will have materials available on file that can be reviewed.

They didn't do any of these things. Normally when there is a public notice, there is an opportunity for people to comment—that is, an opportunity to say if you think something is a good idea or a bad idea and why you think that way. They didn't do that. They just granted this exemption, which made it possible for others to sneak in the door.

So we filed an Application for Review, and we have not heard anything in almost a year since doing that. In the meantime, on January 1, 2006, 100 percent of new non-exempt programming was required to be captioned. A lot of those programs did not comply, especially a lot of the small programs, and we were kind of concerned because we had not been seeing them file for exemptions.

From 1999 to 2005, 67 programs had filed for an exemption. In all that time period, only 3 exemptions were granted. We thought, “Where are all these other programs? Why aren't we seeing public notices about them?” Well, suddenly the FCC granted 56 out of 99 petitions that had been posted on public notice in 2006. They also granted exemptions to 238 more programs that the public had never seen or heard about. It was shocking.

When we protested this, suddenly on November 7, 2006 they put 494 petitions for exemptions on public notice, all at one time. All of us had way too much work to do, and this process for captioning exemptions is a legal proceeding. Every one of those petitions had to be parsed and gone through. We had to look at them, determine what was in there, write up the documentation, and submit papers in legal language about why we supported or opposed all 494 of those petitions. It took weeks. We were very, very busy.

In the meantime, the FCC announced that this Anglers Order was being held in abeyance. We were able to convince them that we should have the opportunity to comment on the previously-granted petitions. So they put the previously-granted petitions on hold and informed the people who had been told that they had an exemption about the hold. We finally, with the help of all of the consumer organizations working together, particularly the National Association of the Deaf, and TDI, put all of this together and filed our responses. We were fortunate because TDI got hundreds of thousands of dollars in free legal assistance from its pro bono law firm.

Our responses to the FCC recommended that out of those 494 requests for exemptions, 57 be denied and be required to be captioned in three months, and that 345 be turned down because they did not provide enough information to determine if they were worthy or not. We saw that petitions were submitted that said, "I am such and such. Captioning would be too expensive. Please grant me a petition," and nothing about how much money they take in, or that they had looked to find out how much captioning cost. We told those 345 that had insufficient information they should either comply or reapply within 6 months with the missing documentation. Finally, we recommended that 40 should get two-year exemptions, because it seemed that they had done their homework and provided appropriate information. Another 52 were recommended for temporary exemptions for the time that they requested, or three months, if that time period had already passed. Some had said, "We want to do this, but we don't have enough time. We need another year." But their request had been made a year and a half ago.

As of today, we consumer organizations have not yet had a response from the Federal Communication Commission, and more exemption requests have been received. The bad news is that in the absence of any action, all the programs which haven't been doing captioning are still being allowed to go without captions.

Petition for Closed Captioning Rulemaking

In July 2004, ALDA was one of five organizations that filed a petition for closed captioning rulemaking with the Federal Communications Commission. The other organizations were TDI, (Telecommunications for the Deaf and Hard of Hearing); NAD,(National Association of the Deaf); HLAA,(Hearing Loss Association of America); and DHHCAN, (Deaf and Hard of Hearing Consumer Advocacy Network). That petition requested a number of things. One was that we wanted the FCC to

make sure they had a better complaint process. We wanted to have a good complaint form that people could use. We wanted to have better time limits for the complaint process. We wanted to have contact information so that people could send their complaints to the right person and try to solve problems immediately.

We also asked for quality standards. You see a lot of lousy captioning on TV, missing words, garbled sentences, and all kinds of stuff. Two things are involved in captioning quality. One has to do with the actual captioning itself, with the person who is doing the captioning and how well they're doing it. Then there are technical problems that affect how the captions are transmitted and received properly, so nothing happens to mess them up. The petition asked that both of these problems be addressed.

We also wanted the FCC to start monitoring requirements. Why isn't somebody other than us noticing these things? Why are the TV stations and the cable people not aware that their own captions are a mess? Why do we have to be the ones to tell them? We wanted to have what is called compliance audits, where the FCC maybe randomly picks this company or that program, and takes a look and makes sure that everything is okay. If people know the FCC is not watching, there is not too much of an incentive to clean things up.

We were really pleased because in July 2005 the FCC took our petition seriously. They issued a notice of proposed rulemaking. They asked for more feedback from all the interested parties, because they were thinking of taking action. Well, nothing has happened since July 2005, not a thing!

Captioning of Emergency Information

There have been some interesting developments at the FCC that support the requirement that television news programs provide visual information in emergencies such as tornadoes, hurricanes, heat waves, whatever. In August 2006, the FCC sent out what was called a "clarification notice" saying that they would permit captions to be absent from visual information in emergencies, if the critical information was provided some other way. Think about that. What other way? Some people don't realize that captioning is not required under FCC regulations. You could have a white board that you write words on and hold up to the screen. That would be fine, as long as it has these two important words required in the regulations, "critical information." We have got to get the same critical information that everybody else gets. As long as we can see it, it doesn't have to be captioned. Here's the other bad piece of bad

news. The FCC said in this “clarification notice” that television stations don't have to provide critical information if the failure is reasonable. They didn't define "reasonable." How does anybody know what's reasonable?

Three consumer organizations spoke out and said that this clarification amounted to a rule change again, with no public notice asking us for comment. Not only that, we said that in the past the broadcasters had not demonstrated that they understood or accepted their responsibilities. Why would we want to allow them to make good faith determinations about information that is needed or not needed? They haven't yet proven to us that they understand what that means. We had several meetings with the FCC which were fruitful and brought good news. In December 2006, another public notice was released. It was a clarification of their clarification.

This time the clarification was written in a way we had suggested. We consumer organizations got together and decided what we would like to have as best practices by the TV stations. To our delight, the FCC took almost the exact wording we used and put it in their public notice. Even better, in February 2007 the FCC issued what is called a “consent decree.” This is another nice legal word which basically means that both the FCC and the other parties agreed to a decision. It was a decree with the NBC station in Washington, D.C. for thunderstorm/tornado situation that happened in May 2004. I know all of this because it was a complaint filed by my center. This consent decree broke new ground. For the first time, the FCC pretty much got an agreement from the TV station that it would do every one of those best practices. The FCC put dates of mandatory compliance on them. That way FCC can go back to the station and ask “Did you do this? Can you prove it?” So we are making progress there.

One important thing we don't have, though, is that the FCC hasn't solved the "Catch 22" of visual information in emergencies. The regulations require that if there is an emergency and visual information is missing, you can complain to them about it, but you have to tell them what information is missing. So basically the best complaints have been made by a hearing person who was able to listen and help us know what's not being captioned. Also, we have asked the FCC many times to do improve their complaint process. Emergencies may be life or death situations. If you don't have visual information, the FCC should be able to red flag your complaint, look at it right away, and intervene. They don't. For those of us who filed complaints, it has been like sending them into a black hole.

Cable Network Exemptions

A worrisome new issue that has popped up for TV is cable network exemptions from captioning. If you have cable, you know that shows on networks like MSNBC and ESPN have many channels and they are not necessarily captioning them all. Why is this? They're claiming that they are exempt. There is language in the FCC regulations that says that programs shown on a new network during the first four years of operation, if it has less than \$3 million in gross revenue a year, don't have to be captioned. If you watch these programs, you notice that they will show something on the main channel, and then rebroadcast it later on the other channels. If it's already been captioned, why should it be exempt? It's being shown by part of an established network that has a little bit different name, like MSNBC Sports. We are still working to have the FCC address that discrepancy.

Buying Digital Televisions

All over the country, people are buying digital televisions. We hear complaints everyday from people who cannot see the captions in the store. You don't view them until you get home. If you buy a beautiful 52-inch flat panel and you cart it home, and then you find that the captioning is not up to snuff, you have to cart it back to the store. We also know that some retailers will charge you just to open the box and take the TV out to show you how it works. We have some help in that direction because the Deaf and Hard of Hearing Consumer Advocacy Network sent complaints to major retailers Wal-Mart, Sears, Best Buy, and Circuit City. We told them about the problems, asked for better training of the employees, explained the need for better information, and requested there be no charge for demonstrations or returns.

We have found the Consumer Electronics Retailers Coalition, headed by Marc Pearl. He is coming next week to speak to the coalition, so I feel hopeful that progress will be made in the educating of the retailers.

Finding Captions on Your DTV

People are telling us every day that they're having trouble finding captions on their new televisions. You buy a new TV and how do you get the captions to show up? With the newer digital televisions, the gold standard for connecting is thing an HDMI cable. It carries video beautifully. You get that gorgeous picture on your screen. However, it has a design flaw that does not allow captions to pass through. When the engineers developed that lovely cable, they completely forgot about our captions.

The Digital TV Transition

The other hot television issue is something I want to ask you about. How many of you know when the digital television transition deadline is? The deadline is February 17, 2009. This is going to completely change your lives. It's really simple and it's complicated at the same time. TV as you have known it, called analog TV, will go dark. Put simply, if you get your TV through cable or satellite, you'll be able to get it sent through the cable or satellite company. The question is whether it's going to cost you more. Nobody seems to have an answer for that. Is the conversion going to happen automatically? Will there be increases in your bill? Do you already have an upgrade? Depending on which cable or satellite company you call, you get different answers.

Now, if you're one of the people who only use over-the-air television, such as with an antenna on top of your house or rabbit ears on your TV, after that date in February, you won't be able to get anything on your TV at all. You can easily fix this problem with something called a digital television (DTV) converter box. You will need to buy one for every television you want to use. Fred and I have cable. We have only one television connected to it. We have a bunch of other televisions that are not hooked up, but do have the ability to use rabbit ears or our old roof antenna.

For those TVs using over the air captions, you can take advantage of the digital TV converter box program. Congress set aside quite a lot of money to help Americans get converter boxes. A coupon program will start in January of 2008. The coupon will be worth \$40. Every household will be allowed to have two of those \$40 coupons, so you can use them to buy two converter boxes. You don't have to use them both. You don't have to use them at all. But if you need them, you can have up to two. You can't give them to anybody else. They're going to be able to track this. After you apply for a converter box coupon or two, they will be mailed to you. With them will be a list of all the stores near your zip code where you can go to buy a converter box. The boxes are being tested right now to make sure that they meet requirements. The boxes will cost from about \$50 to \$70, maybe \$75. So you get the first \$40 off but you have to pay the rest. And you can't use two coupons to get one box.

You'll be hearing a lot more about this program. I don't want to go into it too much in-depth, because we will be working with all of the different organizations to get the word out. I just want you to be

aware of this and to plan ahead. The DTV converter boxes are like the TV caption decoder boxes, and they are about the same size. Most of the ones I saw are black but I saw one that's white. You can only use your coupon to buy boxes that are certified by the NTIA, which is a government agency. They are being certified to make sure that they meet standards. One of the standards is the ability to provide captioning correctly. They're testing for that now.

I have been working very closely with some of the manufacturers who are making these boxes. Several of us have been pushing very hard to make captioning easy to access. We want to make sure that people can find a way to turn on captions right away. One of the decoder boxes has a caption button right on the remote control. We are hoping to convince other manufacturers to make that a standard.

DVD Captioning

Some of you may have noticed that when you rent or buy DVDs now, they have a lot of captioned extras added to them. Only certain studios are doing that. They are the ones that were covered under a lawsuit that was brought by Russ Boltz in California. The bad news is that now people are moving away from DVDs. Netflix people are still telling me that they are having problems with renting something that is supposed to be captioned, but the captions are not there. Now Netflix has started offering movies downloaded right to your computer. Captions do not come with them.

Recently a partnership developed between Amazon, the Internet site, and TiVO, that device that records programs for playback. The two of them got together for something called Unbox video. That, too, does not have captioning. You can go to the website, download movies, and they go into your TiVO. Then you can watch them any time you want. After you watch them once, they disappear. If you elect to buy the movie, it will stay there for your use forever.

There is a lot of confusion in using DVDs for captioned movies. When you go to locate the captions on a DVD box or menu, you may find you have captions, subtitles and something called SDH, which stands for subtitles for the deaf and hard of hearing. SDH is supposed to be the same as the closed captions you are used to on television, but it's not. Sometimes SDH leaves off a lot of the information you get from captions. That is an issue because it's confusing to figure out what you'll get when you play the DVD. It would be nice if we could convince the industry to have a standard and stick with it across the board.

Movie Theaters

Moving on to movie theaters, we are not seeing a whole lot of progress with captioning. There is a trend toward fewer theaters, but more screens in the big multiplexes. One of our ALDA members e-mailed me last week that her theater manager told her not enough movies are coming out with rear window captioning now. I had not really noticed that. I'm not sure if it's true. Also, some of you may know that the State of Arizona filed a lawsuit to try to require their theaters to show captioned movies. I haven't heard a report of anything happening in that yet.

I went to an interesting symposium by the Regal theater chain in Washington, D.C. to have a look at some new technologies for possible use in movie theaters. There was one really old technology that used to be called Clozed Captions. It basically projects the captions to a display below the bottom of the screen, and you have to wear special 3D glasses to be able to see the captions. The other three technologies all seemed to be moving toward something that you wear on your head. They were interesting technologies, but if you wear glasses, which a lot of us do, and you have bifocals or trifocals, a headset can be awkward. Also people have different sized heads and or might have a cochlear implant to work the headset around. I'm not really thrilled with the technologies I saw, but maybe they will get better.

Captioning of Educational Videos

Roy Miller, a former ALDA president in the great State of Missouri, figured out a real clever way to require the whole state to have all of their educational videos captioned. A state bill was passed. The State won't buy any educational videos unless they have captions. That will force the producers of video to make them available. There is no reason why other states can't do that. If we all start putting pressure on it in our states, it won't be very long before the producers will go, "Oh man, we can't fight this in every state; let's just do it."

Captioning in Live Theater

A really encouraging thing is that I am hearing more reports from people who have gone to live theater performances with captioning.

Comments, Questions and Answers:

Comment: Portable DVD players and computers don't have the captioning chip inside.

Cheryl: Some do have that capability. If there is a digital TV tuner in them, there should be the ability to show closed captions. One thing I've asked the manufacturers for help on is finding a DVD player that can both record and play the captions. Usually you can record, but then the captions don't show up.

Question: Who can we complain to if we buy a DVD player, take it home, put a DVD in that we know has captioning, and it doesn't show up?

Cheryl: If it has that DTV tuner, it should have the capability. So that means the problem could be something like the HDMI cable not allowing the captions to pass through to the TV. We're working with the Consumer Electronics Association to do two things. One is to make that kind of information easy to find. If you use the Internet, you can go to almost all the manufacturers' websites and pull down the information about a product. It shows a whole list of the product's features. You can see if there is caption capability on the list.

The other thing that we're working on is improving the user's guide. We are trying to help them make the captioning information easier to find and use. I decided to look at a user's guide to show some examples of what could be improved. Fred and I had bought a new Panasonic flat panel TV, and Fred had set it up without really reading the guide. I pulled it out.

The first thing I did was look in the index, but there wasn't any index. I couldn't look under "C" for captioning. This reminded me of this really wonderful country lawyer that I used to work for as an indexer for his country history books. He always said "Damn the book without an index." I started from the front of the guide, leafing through. I found a bit of a reference to captioning but nothing meaty. I finally got to a full-page about captioning with a diagram of the remote control. The diagram had some arrows with numbers that pointed to the remote. I looked on the next page for a description of what to do, and discovered that one page was written in Spanish!

I showed it to Fred, and we both looked at each other. I think we had the same thought. I flipped through the back and sure enough, the front part of the manual was in English, the back part was in

Spanish. I thought maybe they somehow flipped the pages and I'd find the missing English page back in the Spanish section. But no.

If you can't go to the Internet to find the information about the features that are supposed to be in your product, you can call the 800 number for a lot of the companies. You should also be able to have a retailer tell you. If all else fails or if you feel like it, let me know because I'll be happy to pass this on to the company.

Question: I've been following what you have been saying and comparing it with the way things are going back in England, where I come from. You say that analog TV, the old TV, is being switched off. Over the whole country?

Cheryl: Only in the United States! I believe that some of the Nordic countries, such as Finland, and Norway have already gone through the transition to digital. We're not the first.

Question: Is it too soon to contact a cable supplier to ask about what they're doing with that transition? What is going to happen for getting your box and support?

Cheryl: It's not a bad idea to do that. They're supposed to be doing a consumer education program. Some have already started. The National Cable Television Association came out this year with advertisements on their website to tell people about the cable TV transition. Since the information was not captioned, we gave them a very hard time about that. You'll be seeing a lot of education efforts. There is a real fear that the televisions will go dark and the consumers won't know it's coming or how to make the transition. Congress knows they will be in really deep trouble, because they were the ones that made the decision that analog TV was going to stop at that date.

Question: I was just wondering, since most filmmakers are located in California, if any advocacy was done on the state level with the government of California and how successful that might have been?

Cheryl: For movie captioning? It would be really nice if the folks in the state of California could jump all over the backs of the movie producers. Movies are really big business. We haven't really convinced them to caption more of the movies. We can't convince the theaters to show more movies, because they still believe that if there are captions, your average hearing person would just flee the theater and the theater will go bankrupt. Those of you in California can try to do some PR on this, and see what you can do. But I can tell you why we don't have movie captioning covered in the Americans with Disabilities

Act. The movie companies have the deepest pockets and lobby against it. Getting change is not going to be an easy process.

Comment: I am from Canada and I'm very involved in advocacy for captioning. Recently in Ontario a person sued the movie chain for not providing accessibility at the movies. It went right to the Supreme Court. The ruling came down two months ago. It said that rear window captioning in theaters that had it must continue to provide it. But any new theaters will not be required to provide rear window captioning, because it was too expensive, almost extinct, and too old a technology. It also didn't meet the criteria for "reasonable cost." The ruling also said that there was a new technology called out a PDA, personal digital assistant, in the testing stage. All theaters would be required to have PDA between 2009 and 2013.

As for the movies with open captioning, I haven't been able to go to the movies for a long time and I really want to start going. I talked to the manager of our local theater and asked if there a way that he could get open captioned movies? He did a bit of research, said, "I just found out that the only movie maker that does open captioning is Universal Studios. This is what I'm going to do. Any future movies that come made by Universal Studios, I'll let you know. But you have to call. You have to make a special booking because hearing people will start complaining about captioning at the regular movies."

We called them up. My God, the people that went to those movies. We made sure that we had family, friends, community advocates, or whoever. We had a really large crowd. He told me, "We're not going to vote whether people are hearing or not hearing. We will vote by feet by whoever comes to the movie. We need to prove that people will go to open captioned movies." So then we were told if you want to have all the movies open captioned, you have to start advocating with Warner Brothers, MGM, because it only costs \$15,000. to open caption a movie. That's my information.

Cheryl: Well, first, I wish you a lot of luck. We have been down that road. We are trying to get the bodies, "Butts in the seats." The problem with that is you can get people excited for the first movie. Then maybe they will come for the second movie. But we're all so different. Some people like love stories and some like suspense, some like to take their family. It's hard to sustain that. And you'll always have it used against you that you don't get enough people there to support captioned movies. We have actually been almost sabotaged in our attempts to do that by having them send us a movie that

nobody really wants to see. Or more often they send us a movie after it's been in the theaters for two or three months and nobody is really interested in it anymore.

Now, about the PDA you mentioned, the personal data assistant. We have been having quite a lot of traffic on some listservs recently on that topic. They have been showing up in live theaters and museums, but not so much in movie theaters. They are basically like a BlackBerry that you hold. You look from the device up to the screen, then back to the device and back to the screen. Some people have reported terrible eye strain. You can only do it for so long.

I think that a lot of the technology they're developing is like that. They want us to adapt to the technology; they do not want to adapt the technology to us. This is not what we need. I think it's a step backwards, if it's not done right. My opinion. I'll stand by it.

Relay Services

Some delightful things are happening with relay services. We have gotten IP CapTel approved. We have gotten the rate of reimbursement for relay services to remain stable. Hopefully there will be money for more research and development. One of the things that we're really hoping is there will be new technology to help us. One of the ideas that has been batted around by a lot of people using video relay is instead of signs, having captions and the ability to speech read somebody.

Hearing Aid Compatibility

We have had a landmark agreement this year for hearing aid compatibility of wireless telephones. This is a huge victory. There is going to be a continued increase in the number of different phones that are available that are compatible. They will have different prices with different features.

Telephone Numbers

I feel strongly that at some point in the near future, you'll see the ability to use a 10- digit telephone number for a lot of relay devices. This means that you'll have the ability to more easily receive a relay call when you use CapTel, without the person having to dial the 800 number and then give your number. It's similar to using a video relay. Calling out is easy, but you can't take incoming calls, because there is no phone number. It's done over the Internet. There are web-based solutions. They are coming. It's just a question of how fast we can push them.

One of the things that is driving a lot of this is that we are impressing on the FCC that these advances are necessary to protect us in emergencies. Suppose I call my 911 center, say I need help, and then I suddenly get cut off. How can they call me back? How can they check on me?

Cheryl is executive director of the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, and has served for many years as ALDA's voice in Washington, DC. She is currently advocacy chair, and is sponsorship chair for this year's ALDAcon. In addition, Cheryl was recently appointed a member of the board of trustees of Gallaudett University. Cheryl has been honored by organizations such as National Association of the Deaf, Virginia Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing as well as ALDA.