



THE YEAR'S HOT TOPICS FOR ALDANS: CAPTIONING

Cheryl Heppner

CHERYL HEPPNER: Hello. Good afternoon. My plan for today is to walk you through some of the hot things that happened this last year with advocacy. I'm going to start with captioning issues. I talked to several of you today and the number one topic that everybody asked me about was captioning.

Television

So first we will start with television, also the number one issue. There are two hot topics recently related to television that are very important for you to know about. One is that starting in 1999 all the way through 2005 we have had very few petitions from different groups wanting an exemption from closed captioning. As you probably remember, starting January 1, 2006, all new programs are expected to be 100 percent captioned. With a few exceptions such as programs shown from 2 to 6 a.m. and Spanish language programs the vast majority is expected to be 100 percent captioned. As we got closer to that January 1 deadline, we started to see a huge number of exemption requests from different groups not wanting to provide captioning, largely because they said it would be too expensive. Before September 1, 2006, we had had 166 petitions for exemptions from captioning posted for public notice, which means that the FCC processes them and puts information out to the public that people had requested these exemptions.

Now, of all of the petitions, nine were eventually withdrawn. The companies that submitted them, for whatever reason, took them back. Three of those petitions were actually given exemptions, two allowed to not caption for a year and one exempt for three years. The others are still waiting for some action.

Since September 1 of 2006, 238 petitions asking for exemptions from captioning were granted. We were shocked to find out, in the letter granting those exemptions, that the FCC had come up with a whole new language to explain the exemptions, something that had never been in the law before. That was shocking enough. Then we found out that there were hundreds of other exemptions that had also been sent out, all in one huge group that the FCC had never told us about. That last group of exemptions never had any public notice.

So my organization, the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, joined seven other organizations and on October 12th filed an application for review. Basically, what we were trying to do was to have those exemptions withdrawn. We were also trying to stop the FCC from granting any new exemptions.

I would like at this moment to recognize two people who were and are very important in this struggle, Claude Stout and Terry Portis. Claude and Terry represent two of the organizations ALDA worked with on this. Claude is the Executive Director of TDI. Terry is the Executive Director of HLAA, Hearing Loss Association of America.

When we filed this application for review, we talked about some of the things that were wrong with this process, that the FCC had rules for public notice and its own rules were not followed. I spent six hours in the public records room at the FCC going through file after file. I literally opened a file and I would find one piece of paper with one paragraph asking for an exemption, with no information about why, that it was too expensive or anything like that. And the FCC still granted an exemption. It's also important for you to remember that prior to this, some three exemptions had been granted. All of them were time limited to one year or three years. These hundreds of new exemptions were permanent, meaning they would never have to caption. However, when I went through the files in the records room, I found that some of these entities requesting exemptions had in excess of a million dollars.

Originally when exemptions were reviewed, the Media Bureau of the Federal Communications Commission did them. They have their own set of processes and decisions. They set what is called a precedent. But these hundreds of new exemptions were done by another bureau, the Consumer and Governmental Affairs Bureau, using a totally new set of rules that they came up with. We believed that this process was not kosher.

One of the things we learned in this process was that Aberdeen Captioning had written to the FCC stating that it provides captioning for both large and small ministries. It charges \$60 to \$150 for a 30-minute show. Aberdeen Captioning captions over 100 clients for weekly or daily programs. This clearly shows that there is a company out there that will do captioning cheaply.

A second captioning issue came up very recently, which is of great concern. This one has to do with an August 7, 2006 public notice released by the Federal Communications

Commission clarifying the requirements for visual information in emergencies in the top 25 markets. The top 25 markets refer to heavily populated areas in the country where television channels reach a very large number of people. St. Louis is included in one of the top 25 markets. Oddly enough, just a few weeks prior to this so-called clarification, the FCC had sent out a letter reminding the television stations in the top 25 markets that they have the obligation to provide 100 percent captioning for all their news programs. Obviously emergencies qualify as news.

This clarification was a really hard thing for us to stomach because it was backing away from that commitment. The FCC in its clarification said they would leave decisions about whether or not to provide real-time captioning to a company's good faith judgment. The FCC would not second-guess their decisions. They understood that in some emergencies it might be difficult to find captioning. Of course, we are very concerned about that because, again, there was no public notice. There was no real discussion with consumer organizations like ours that are really going to be affected by this.

Again we joined other national organizations for deaf, hard of hearing, late-deafened, and deaf blind people in filing an application for review with the FCC. We said that the FCC has violated its own administrative procedure act requirements for notice and comment before making a rule change. We also pointed out that going all the way back to when the captioning regulations were first developed, the intention of Congress was that there would be full television access. This new decision does not give us that. We requested that the public notice that the FCC issued with the clarification be withdrawn and/or that the FCC publish an immediate clarification.

Radio

Okay. That's it for TV. Let's move on to radio. In the spring I was asked to speak to public radio engineers at a national conference in Las Vegas about the subject of captioned radio. National Public Radio was very interested in developing captioning for radio. I had met with them previously and now they wanted their engineers to understand why it was important. So I agreed. I flew out to Sin City with Galaxy.

I walked in on the conference. And let's just say I'm not really used to talking to a bunch of engineers. I was trying to feel my way with how to impress upon them how important this is. I began by giving them statistics about how many people are deaf or hard-of-hearing and why it would be good to have access to radio through captioning. They just politely sat there and watched me. They were kind of stone faced. I don't know if this is a normal demeanor or whether I was not making my point.

So I said, "I need captioned radio!" That really caused them to take a collective deep breath. I said, "I need it because my husband, Fred, is always listening to the shows when we're driving, and he has a smirk on his face and I need to know if he is listening to Howard Stern! I need to know! I need control over my husband! And unless you help me, I'll never have control over my husband!" The engineers thought that was hysterical. I have heard from several of the engineers since then, or I have correspondence with

them, and of all the things I told them at the conference, that's what they remember. We have got to have this woman get control over her husband! (Fred has forgiven me.)

Recently, within the last week or so, the Department of Education awarded a grant to National Public Radio and WGBH National Center for Accessible Media. They will use this money to develop captioned radio. The first year budget has \$227,000, of which 65 percent is from the Department of Education. National Public Radio will be raising the rest. They are planning to develop a prototype field test and to assess cutting edge radio technology.

I have to say, though, when I first brought up captioned radio to people, I got some odd reactions. One person said that it would be dangerous, because you can't be looking at the radio when you're driving. Of course, but some of us are passengers.

The Web

Next, I'd like to call your attention to the Web. We are now seeing a lot more video on the Web. Things that you used to find on TV, you're now going to the Web for. You can get news. You can go to see really interesting videos. There are TV programs on the Web, all kinds of stuff. We are finally making some progress with TV captioning, and now it's like everything is moving to another medium and here we go again. But the promising things are: America Online Line, which now goes by the name AOL, has been pioneering with video captioning on its Web site. If you go to AOL.com, there are CNN videos and some clips from the Ellen DeGeneres show and some other shows. AOL.com is still working on this, and Claude Stout and I both are on an advisory committee giving them input on how they can caption more of the videos that are available. So that should be coming soon. Also Google.com has a tool now that can be used to create online captioning. Announced in September, Google.com has begun to provide closed captioning for selected videos in their database.

Movies

I think we're going to really find this part interesting. In late July, there was a public hearing by the US Access Board... It was an informational meeting on communication access. The public could present testimony and comments on communication access and also talk about some answers to questions that the Access Board had asked for more information about.

One presentation was made by Rosaline Crawford of the National Association of the Deaf. She gave these statistics: 80 theaters are showing open captioned movies from InSight cinema every week, 150 theaters are showing them less frequently. Two hundred seventy theater screens are showing rear window captioning. Ninety more are projected through the end of 2006. One hundred fifty theater screens have what is called DTS-CSS and 60 more are projected through the end of 2006.

According to the National Association of Theater Owners, there are 5,713 movie theaters in the U.S. Collectively in those theaters are 37,092 screens.

That means we have captions on less than 1 percent of screens, after all this advocacy. At the current rate of growth, it will take 35 more years to have one caption display system in every movie theater. It will take 244 years for every movie theater to have captioned display equipment available for every screen. Guys, we have got to do something about this!

DVDs

I also want to address DVDs. We had a wonderful victory thanks to a lawsuit by Russ E. Boltz. He is a lawyer in the Laguna Beach, California, area who is deaf. On August 28, 2006, his case went to settlement. It affects the biggest studios, which include Walt Disney, Warner Brothers, Universal Studios, MGM, Sony Pictures, and Tri-Star Pictures. These studios, and this is key, for the first time agreed to caption all the bonus items on their DVDs. Now, it's not just the movie with captions, it's also all the little extras. What is really interesting about this is there is no law that mandates captioning on these things. He won this really great battle based on the claim of false advertising. People were buying DVDs, taking them home, because their covers had a captioned symbol of some kind. They were opening them up, popping them in, and finding they were not entirely captioned.

Relay Services

I want to move to the category of telecommunications relay services. Some of you, I know, use sign language and also use video relay services. This year we have done a lot of pushing with the FCC to get them to make sure that all of the video relay services are interoperable, which means that you can pick up the phone and you can call anybody else who has a telephone, no matter what company you bought this from or where your service comes from. We wanted consumers to have the ability to call any VRS provider.

How many of you also have heard stories about relay fraud calls? (Showing of hands) You probably know the story. Some business owner, for example, picks up the phone for an order from a deaf person using IP Relay for 10 bridal gowns and wants them sent to him. Then he gives a credit card number, which comes back not valid. The called gives another credit card number. The business owner ships the order off but then finds out that credit card was bad, too, or was stolen or something. We have had a lot of discussion in the Deaf and Hard of Hearing Consumer Advocacy Network about this. The IP Relay is where most of these fraudulent calls were coming from. When the person calls, the business never knows who is on the other side since the business is talking to an Internet connection, not to an actual phone number. So, it's been a great way for con artists to try to get things.

One suggestion about how to deal with this is that everybody should have to register before making a relay phone call. You have a registration number. However, that idea has problems. For example, if we have registration, there are all different places we call from. Do we have to register for each place? If we register our computer for the location where we're using it now, but then we go to another location to use it, what happens then? Another big concern is that we want to maintain what we call

“transparency.” How many of you use relay calls now? (Showing of hands) Okay. There are a lot of you. When you make a call, you know that it's supposed to be as transparent as possible. Under the best conditions, you're supposed to be talking to the other person without really knowing that there is somebody in the middle. Now, one of the proposals has been to allow the communication assistant to make a decision that this is a fraudulent call and butt in on it. I think that in our discussions we have had a lot of concern about when to allow an interpreter or a CA to get involved. No transparency.

AUDIENCE MEMBER: From the business' point of view, aren't hearing people also using Internet telephone calls for fraud? I mean, is it not the same situation?

CHERYL HEPPNER: Very good question. IP-Relay is text based, which means they are not using TTYs. The caller is using a Sidekick, a Blackberry or a computer or something like that. So these don't have phone numbers. For that reason, it's easy for somebody to pretend to be deaf. Our position so far has been that we don't want the experience of using relay to become changed dramatically with registration, or with having communication assistants butt in because we feel it's the responsibility of the business owner to be wary. Any good business owner would have a question about ten wedding dresses being ordered at once. Good business owners know that you don't ship something until the credit card clears, those kinds of things.

This next subject is also a telecommunications relay issue. How many of you are using captioned telephone or CapTel? (Showing of hands) If you haven't seen it already, it basically is like a regular telephone. It's just like picking up the phone, you dial a number direct and you talk into the phone. You don't go through relay by dialing a relay number. The special phone takes care of that for you. It connects you to a captioning service and to the caller. You talk for yourself and you read captions on the display to know what the other person is saying.

For many people who are late deafened, this captioned telephone has been revolutionary. However, some states for financial reasons are not allowing CapTel. State relay phones have to be used. Some states might add a surcharge or find some other way to fund CapTel. Then there is a question about states not wanting that additional expense, because their funds are limited. But that excludes a whole class of people who need access to telephones, and that's really discrimination. People who use TTYs to make relay calls are still allowed to have their relay calls in those states. As of July 2006, there were still nine states that were limiting the number of users to captioned telephone if they offered the service at all.

But more important is that Ultratec, the company that manufactures the telephone, has found a way to completely eliminate the need for a special telephone at all. They have come up with something called IP CapTel. You can use any standard office phone off the shelf, a computer, and some software that they would make available free of charge. That would allow you to use your computer and your telephone to call anybody saving you some expense.

However, the Federal Communications Commission has not proceeded with the request for this to be permitted. Right now, the Federal Communications Commission has not mandated captioned telephones. They are optional, which means your state can decide to offer the service or not. ALDA has joined other organizations in submitting a petition to the FCC for the mandate. If the mandate goes through, and the FCC allows the Internet Protocol version of CapTel to be used, the states would not have to worry about the funding because it would come from another pot of money at the federal level. So consumers should care about this. We have to get involved.

Emergency Preparedness

Let's move on to emergency preparedness. I want to go back to the Access Board meeting in July 2006. Brenda Battat, of the Hearing Loss Association of America, Terry Portis' rep, told the Access Board about emergency information being announced over the public address systems in a lot of buildings, shopping malls, places like that. That's how they get the word out. Of course this is not accessible to anyone who can't hear. Also, public address systems don't usually have good sound quality. So Brenda keeps pushing the issue that we need other solutions.

One of my staff, Lise Hamlin, at the Northern Virginia Resource Center Deaf and Hard of Hearing Persons raised concerns about using strobe lights in her presentation. Research recently revealed that vibrating bed shakers are more effective than strobe lights. In the study, it was found that with an intermittent bed shaker, 100 percent of people woke up. And a continuous bed shaker woke up 91 percent of the sleepers. If you think about it, it's common sense. If you are asleep and somebody nudges you to wake up, you might awaken but then drift back to sleep. But if somebody pushes you and pushes you, you wake up. And that's what the intermittent bed shaker does.

They found that low frequency audible alarms do really well. 90 percent of people woke up. A standard audible alarm would wake up 83 percent of people. But a strobe light only woke up 33 percent. And all this time we have been pushing for strobe lights in all of our public buildings and our homes. So, this was astonishing information.

Lise also brought up the issue that hotels are using the stand-alone alerting devices, meaning a strobe light that you plug into an outlet in the wall. That is going to be your protection in a hotel. But these lights are not connected to the same system that has the audible alarm. They are only going to go off if the fire is in or very near your room, which means your safety is jeopardized. Possibly by the time you notice the fire, it would be too late for you to get out of your room to safety.

Access to Testing Programs

Another thing I thought you should know about is the recent decision by the Department of Justice concerning the company, Testmasters. Testmasters provides classes in preparation for the law school admission test and other exams. The Department of Justice decided these test making companies have to provide sign language interpreters, note-takers, and other kinds of what they call auxiliary aids, which could include CART. It could assistive listening systems. This is important because it sets a

precedent. Many people in ALDA have asked me before about getting assistive listening help and CART at schools and for tests. People want to be able to take a class, but the school or tester told them that can't provide those things. We don't have money for it. Now, the Department of Justice has this decision that says , "Yes, the schools are responsible."

Air Travel

Now at last we come to air travel access. We have a really long history of trying to get access to information when we fly. In 1996, ten years ago we started pushing for a notice of proposed rulemaking with the Department of Transportation, with a whole list of concerns we wanted addressed. Those concerns included access to in flight movies or telephones on airplanes that other people had. Also about information in airports and on the planes, we wanted to get the same information hearing people were getting.

In February 2006, the Department of Transportation released a notice of proposed rulemaking. Ten years later, we finally got something on paper. We were really happy to see the proposal has almost everything in it that we had asked for. Terminals would have captioning on their TVs and displays. They have to post information about flight delays, schedule changes, seat assignments, and boarding information. And just when we were on the verge of having some success, the secretary of the Department of Transportation, Mineta, decided to leave. He had been, in a way, a champion to try to get something done. Now everything is in their court while we wait to see if the next person will have the same commitment. But it's discouraging, because we may have to start all over educating this new person about our concerns.

Questions and Answers

That's it for me. Now it's your turn. What questions do you have?

AUDIENCE MEMBER: We just recently joined the rest of America and got a DVD player. We have subscribed to NetFlix. When we read the descriptions, we are aware of whether it's advertised as being captioned or not. We have found about a third of the movies that we order supposedly closed captioned are not. Can you tell me what's going on with this?

CHERYL HEPPNER: If they were one of those companies that I listed, I don't know when your movies came out, but it's possible that problem will be solved by the DVD settlement now. But that doesn't happen if you already bought them. The best answer I can give you for now is take them back and ask for a refund, because it is false advertising. A reputable organization should give you your money back. Fred and I tend to buy our DVDs at Costco, because they are really good about taking back anything that you have any kind of problem with.

AUDIENCE MEMBER: We order the movies from NetFlix by mail over the Internet, and they are delivered to the house and then we return them after we view them. Yes, we can call them every time. But my husband is more in favor of telling them we're canceling the subscription if things don't improve.

CHERYL HEPPNER: I had that happen, too, to the very first video that I got from Netflix. Do you check before you order them and see that it says "Captioning" on the NetFlix Web site? Well, that is something that maybe we can poll and find if there are others with the same experience, and do something as a group to call attention to it. They need to be sure their information is accurate. I don't know what they could do other than to refund the money to make it fair. Let me make a note of that.

AUDIENCE MEMBER: I have a different question than what we talked about before. You mentioned a test for lawyers. I face many young prospective teachers who try and take an exam called "Praxis." Many are failing because to take the test with accommodations is next to impossible. I needed to take the test myself this past year, because I moved to a different state. And being very experienced in self-advocacy, I will ask for accommodations. Reading what I had to go through to get an interpreter, I didn't bother. If I didn't, how can we expect young people who are new to the field to try? I'm very worried about that situation. Do you know anything, if anything is being done on your level?

CHERYL HEPPNER: That's not anything that we have addressed. Let me clarify. Is that a state level test?

AUDIENCE MEMBER: The test itself is a national test. Many, many states in the country participate. To get accommodation is nearly impossible.

CHERYL HEPPNER: We don't currently do advocacy on that issue, but if it's something on a national level like that, if it's not something attached to a state requirement, developed by the state, but nationally available, then that means that we can address that. Because I'm sure that it's not just you. We have to talk more about that after this meeting and see what we can figure out for a strategy, okay?

AUDIENCE MEMBER: Hi. I'm from Atlanta, Georgia. And I hope I can explain this briefly. We got a lot of bad weather in the afternoon in the summer, bad weather for us, anyway. We have local news that has to be captioned 100 percent from 5:00 to 7:00. So that's fine. We can see all the weather emergencies. But then at 7 o'clock, the national news comes on and it changes caption providers. But, at 7 o'clock, the national news doesn't come on because of the weather emergency. We stay with the local channel, but we lose the captions. Does that make sense?

CHERYL HEPPNER: So you're saying that in the transition from when the National news takes over, it doesn't come with captioning?

AUDIENCE MEMBER: Right. But the national news doesn't come on like it's supposed to because of the weather emergency.

CHERYL HEPPNER: But you are still watching local news, and the captions stop because it is 7 p.m.? And Atlanta is one of top 25, I'm pretty sure.

AUDIENCE MEMBER: When I have talked to the television stations in Salt Lake City, they have said it's a real problem for them. They have a contract time for the captions, and when an emergency occurs outside of that contract time, they cannot get captionists. Now, Salt Lake isn't as big a market as Atlanta, but they have warned us that they will do their best, but that they realize that captionists are in short enough supply that their regular captioner has moved on to another job.

CHERYL HEPPNER: Okay. But if we're talking about emergencies, they have to do something. It doesn't matter. Scrolls are acceptable if they have the important information. You're getting nothing?

AUDIENCE MEMBER: Nothing.

CHERYL HEPPNER: You should be filing complaints, if you're not getting any emergency information. That is a violation. It doesn't matter if they have a white board and they write on it and hold it up. If it's visual, it doesn't have to be captioning. One of the things people get puzzled by is that the regulations say it has to be visual information in an emergency. Visual doesn't spell out captioning. Now, we know the only way we will get full information is real-time, word-for-word, or close to it. Except for those top 25 markets, the big centers of the country, that is not required. Now even that may not be because of the change, that clarification letter I spoke about earlier. But it does not excuse them from their obligation to provide something that gives you the critical information. And then there are things for like evacuations. If the emergency orders an evacuation, they have to tell you that. They have to tell you where you can go or can't go. If there is a chemical spill, they need to inform you that there is a spill. Should you stay in your home? Should you leave? When should you leave? All of those important instructions should be provided visually. White board, captions, scrolls, as long as you're getting the same crucial information.

AUDIENCE: We get a weather map.

CHERYL HEPPNER: I've gotten those in a lot of places. They will give you what they call a Doppler map. Like we consumers can look at the Doppler map and say oh, does that mean that the storm is going from here to there? Or is that just the temperatures going from here to there? Well, that is something that I have a lot of experience with, too. It's very frustrating. If you don't have what the person is saying to explain what you're seeing, it's no good. You're not getting the critical information. You're just getting a map. One of the best things you can do, if you think about it, is to push the button on your tape deck and record it. If you have a copy of that and you send it to the FCC with a letter of complaint, they have the evidence right there. All they have to do is pop it in their recorder and play it back without any sound, and that's what you're seeing, that's what you're getting. I met with the FCC not long ago, and I brought up to them that they have never solved the Catch 22 that I asked them to address over two years ago. The complaint process for emergency captioning requires that you tell them what is missing. We are deaf. How do we know what's missing? (Chuckles)

AUDIENCE MEMBER: I just wanted to say that the important thing is to file a complaint. I mean, that's a violation of the emergency requirements. And all you have to do is file a complaint. The law exists that says they have to do something about that.

CHERYL HEPPNER: And to add to that, I've helped a number of people with their complaints. If you have a problem, contact me, I can walk you through it. The most important information to get, if you can, is the date, the time, and the TV station. Don't tell me Channel 4. There are Channel 4s all over the United States and they are not all from the same company. So I need to know a little bit more than "Channel 4." You also need to have as much detail as you can. In your situation, you can say I only saw a Doppler map and I knew it was an emergency, but there was nothing to explain what the emergency was except the map.

AUDIENCE MEMBER: I live in a small town, not the top 25 market at all. In Fairbanks we have four local news stations. Two are now captioning their news. The other two are not. Does that mean they're meeting their requirements, or are all supposed to caption? I'm still not clear about that.

CHERYL HEPPNER: Let me clarify. Are you talking about regular captioning of TV programs, the news, or emergencies? One hundred percent of the news is required. In the top 25 markets it has to be real-time. Outside of the top 25, in the smaller places, news has to be provided as captioning, but it can be something that is called the electronic newsroom technique. That's basically the teleprompter notes that people type in that the reporter sees, and it's sometimes, depending on the reporter, maybe just a couple of words so they know, oh, talk about that. It might not have all the detail. So there are many problems with the quality of that one. But they have to provide something. And even though you have two stations captioning, all of them are expected to.

AUDIENCE MEMBER: The morning news in our area has gone to a magazine format, where they have other things interspersed with the news. Does only the news have to be captioned, or does the 100 percent rule mean they need to caption the things they do out of their studio?

CHERYL HEPPNER: I'm thinking about this one. If they call themselves a news magazine or news program, what does it bill itself as?

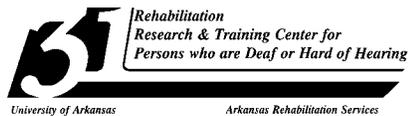
AUDIENCE MEMBER: They basically say the news in the morning. But they also will call it something like Utah a.m. They do admit they have news on. Its four hours.

CHERYL HEPPNER: Four hours? Oh, I want to say yes, they have to caption. But it's hard to know. Even if you watch Good Morning, America, there is a lot of fluff in between the real news stories. So...I would think so.

AUDIENCE MEMBER: In the community where I live, the television station has a

contract with a CART reporter who is on duty 24-hours a day and does real live captioning for the news and what have you, emergencies. I'm wondering if there is an organized effort with the National Court Reporters Association, CART reporters, to try and establish working agreements across the country between CART reporters and television networks. This would certainly enhance employment opportunities for CART reporters and certainly make the media more accessible to us.

CHERYL HEPPNER: I think the safe answer would be that we cannot look to the NCRA to do that, because we have fair trade practices or something like that. You can't be seen as being in collusion to control the market. I know there is a group called AMIC. It's a number of different organizations and companies that provide captioning who got together to work on solving some of those issues.



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