

**Alexander Graham Bell Association
Association of Late-Deafened Adults
Hearing Loss Association of America
National Association of the Deaf
National Association of Theatre Owners**

Joint Recommendations to the Department of Justice

RIN 1190-AA63, CRT Docket No. 126

Nondiscrimination on the Basis of Disability by
Public Accommodations – Movie Theatres: Movie
Captioning and Audio Description

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November 21, 2014

I. Introduction

The Alexander Graham Bell Association for the Deaf and Hard of Hearing (A.G. Bell) is a non-profit organization that represents a community of 13,000 nationwide. One of the oldest and preeminent organizations in deafness, A.G. Bell uses advocacy, education, research, and financial aid to help ensure that every child and adult with hearing loss has the opportunity to listen, talk and thrive in mainstream society. A.G. Bell provides advocacy and resources for parents, professionals, and individuals who are deaf or hard of hearing.

The Association of Late Deafened Adults (ALDA) is an international organization with members throughout the United States from various economic, racial, religious, age, and occupational groups. The organization strives to provide education, role models and support for late-deafened adults. It also advocates on behalf of late-deafened adults in promoting public and private programs that support their needs, and encourages research into the various aspects of late-deafness. In furtherance of its advocacy mission, ALDA has engaged in litigation and settlements involving movie captioning, as DOJ noted in the NPRM.

The Hearing Loss Association of America (HLAA) is the nation's leading consumer organization representing some 48 million Americans with hearing loss. HLAA provides assistance and resources for people with hearing loss and their families.

The National Association of the Deaf (NAD) is a non-profit organization dedicated to a mission of preserving, protecting and promoting the civil, human, and linguistic rights of 48 million deaf and hard of hearing individuals in the United States. Established in 1880, NAD advocates in all areas including but not limited to early intervention, education, employment, technology, healthcare, telecommunications and more.

The National Association of Theatre Owners (NATO) is a non-profit organization whose members own and operate over 32,000 of the 40,000 movie screens in the U.S. NATO members operate theatres in all 50 states.

After publication of the NPRM, representatives of A.G. Bell, ALDA, HLAA, NAD, and NATO held a series of meetings with the goal of establishing a joint recommendation to the Department of Justice that would set forth the best possible means of providing people who are deaf and hard of hearing with access to closed captioning in motion picture theatres without impeding development of new and improved captioning technologies.

After much discussion, a consensus position was reached. This consensus position was presented to and approved by the leadership of all five groups.

We strongly urge the Department of Justice to adopt our recommendations as set forth below in a Final Rule on motion picture theatre captioning.

II. Closed Captioning Device Scoping

In the NPRM, the Department of Justice has recommended that all digital screens be equipped with closed captioning systems. We agree with that recommendation.

The Department of Justice has also proposed a formula for determining the number of closed captioning display units to be provided in each theatre based on the total number of seats in each motion picture theatre complex. Under the formula approach, all theatres are treated equally regardless of actual attendance or the number of people who are deaf and hard of hearing in the geographic area in which the theatre is located. Further, in the NPRM, the Department of Justice acknowledged that there is no robust data for determining how many deaf and hard of hearing people will go to the movies.

We believe that the public and the industry will be best served by establishing certain minimum device requirements and then adding a monitoring requirement that will mandate theatres to monitor consumer demand on a regular basis and adjust the number of captioning display units in each theatre based on actual consumer demand.

Recognizing that movie theatres do most of their business during the weekend, we have developed our monitoring requirement based on 150% of average weekend consumer demand for closed captioning display units.

Theatres would be required to monitor consumer demand and adjust the number of captioning display units provided biannually.

Because this method requires theatres to adjust their display unit supply based on consumer demand, theatres in areas where there are high numbers of patrons who are deaf and hard of hearing will necessarily have more closed captioning display units than theatres in areas where there are fewer patrons who are deaf and hard of hearing.

Further, as the population ages or deaf and hearing impaired patrons become more familiar with closed captioning systems, if there is increased consumer demand, theatres will be required to provide additional closed captioning display units.

We are all aware that Department of Justice rulemaking is a multi-year process. Requiring a fixed number of devices for all theatres on a mechanical, non-adjustable formula as proposed by the NPRM will result in some theatres having too many devices and some theatres having an insufficient number of devices. This will not benefit consumers or motion picture theatre operators.

In the last five years, there have been significant new developments in closed captioning device technology and more research is currently in progress. By adopting a rule based on actual consumer demand, theatre owners will be encouraged to support innovation which will benefit consumers and the industry. Adoption of a rule which requires theatre operators to purchase equipment that will not be used will stifle innovation.

We therefore recommend that the Final Rule not include a fixed number of closed captioning display units requirement. Instead, we recommend that the Final Rule include a flexible, market-responsive scoping requirement with an initial minimum number of devices. This method will ensure that theatres are adaptive to changing demographics and meeting the needs of their patrons. Consistent with the express mandates of the Americans with Disabilities Act, every company shall be entitled to an “undue burden” defense. Likewise, consumers who are deaf and hard of hearing shall be entitled to pursue legal action if and when they believe a theatre is not providing access to deaf and hard of hearing in compliance with the Americans with Disabilities Act of 1990.

To be included in the Definitions:

Consumer Demand: All requests by movie theatre patrons who are deaf or hard of hearing, whether or not those requests are satisfied.

Weekend: All show times on Friday, Saturday, and Sunday.

Minimum Closed Captioning Scoping Requirement: All digital screens in a theatre complex are to be equipped with closed captioning systems, with a minimum number of fully functioning and operational closed captioning display units per theatre complex as follows:

Single Screen:	4 units
Miniplex (2-7 screens):	6 units
Multiplex (8-15 screens):	8 units
Megaplex (16+ screens):	12 units

Biannual Tracking Requirement: Subsequent to the compliance period, all movie theatre complexes will track and record weekend consumer demand for closed captioning access. Theatres will evaluate the total average weekend demand no less than every six months.

Securing Additional Units Requirement: Theatres will adjust the number of available units to a minimum amount equaling one hundred and fifty percent (150%) of the average weekend consumer demand experienced by the theatre during any given tracking period. If a theatre must add units at the end of the tracking period, all such additions must be ordered or reallocated within 30 days of the end of the tracking period.

For example, a facility has six units and the tracking period data reflects the average weekend consumer demand is eight. At the end of the tracking period, the facility must order or reallocate six additional units within 30 days to make the facility total device count be 12 (150% of eight).

Reporting Requirement: All movie theatre companies will submit an annual report of its tracking records to the Department of Justice.

III. Compliance Period

Theatre operators will issue purchase orders for closed captioning and audio description systems and baseline device counts specified in the rule within six months of Final Rule publication. Equipment must be installed and operational, and staff trained on use of the systems, either within six months of system delivery or within two years of Final Rule publication, whichever comes first.

IV. Marketing

Theatre operators will ensure the availability of closed captioning and audio description access is specified on the theatre company's website and/or ticketing website in such a manner that on a movie-by-movie basis consumers can discern whether any such movie has captions available. Movie theatre operators are not liable under the ADA if third-party websites fail to include information about the availability of captioning and audio description at movie theatres.

Theatre operators will supply captioned/audio described movie information to third party ticketing sites and strongly urge them to display the information.

Theatre operators will post information at or near the box office or other ticketing locations about the availability of captioned/described movies. Such information may include accepted closed captioning and audio description symbols, and will include in plain language an explanation of how closed captioning and audio description work, and how and where to obtain those devices.

Theatre operators will have printed instructional information about their captioning systems available at the theatre for use by patrons who are deaf and hard of hearing.

Theatre operators are encouraged to conduct outreach to deaf, hard of hearing, and vision-impaired advocacy groups.

NATO will encourage technology manufacturers to meet with disabilities groups and will furnish the DOJ with a list of interested parties available for consultation by technology companies.

A.G. Bell, ALDA, HLAA, NAD, and NATO have made additional commitments to expanding access. See Attachment A, "Voluntary Commitments on Closed Captioning and Audio Description Access," for details.

V. Equipment Maintenance and Staff Training

Devices must be available, clean and functional when requested by a patron. Ensuring that a device is functional means that the device operates consistent with the manufacturer's design.

Theatre operators shall develop reasonable staff training programs and equipment maintenance programs to meet the needs of patrons and the requirements of any DOJ rule.

Staff training will be directed to those staff members responsible for maintaining and providing the devices to consumers. All staff members shall be trained as to the availability of closed captioning devices.

Training will be reinforced on a regular basis.

Theatre operators will have a staff member on-site at all times who is knowledgeable regarding closed captioning devices, including system operation and routine operational trouble-shooting, to ensure that appropriate assistance can be provided to patrons as needed.

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Attachment A

**Alexander Graham Bell Association
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**Voluntary Commitments
on Closed Captioning and Audio Description Access**

November 21, 2014

NATO Commitments

NATO will encourage all movie distributors to provide all movies and trailers with both closed captioning (CC) and audio description (AD).

NATO will encourage distributors to notify theatre operators at least seven days in advance of the film's release of the availability of CC and AD so that the theatre operators have time to include this information in show time listing and websites.

NATO will encourage distributors to include CC and AD symbols on movie one-sheets and other studio-generated marketing materials when such technology is available for the movie marketed.

NATO will contact equipment manufacturers regarding the need to provide theatre operators with simple how-to-use materials for patrons and training information for theatre staff.

NATO will collect and disseminate device information to advocacy groups representing people who are deaf or hard of hearing to assist them in advising their members of systems being used in theatres.

NATO will request that advocacy groups representing people who are deaf or hard of hearing provide a list of schools specializing in students who are deaf or hard of hearing as well as a list of areas of high concentration of people who are deaf or hard of hearing. NATO will provide this information to theatre operators with theatres within a 25-mile radius of these locations.

NATO will endeavor to periodically involve advocacy group leaders in NATO Technology Committee webinars and in NATO's annual meeting when appropriate.

Marketing Recommendations

Theatre operators are encouraged to conduct outreach to advocacy groups representing people who are deaf or hard of hearing.

Large Groups Recommendations

Theatre operators are encouraged to accommodate large group requests for either open-captioned shows or large group requests for closed captioning devices, subject to advance notification by patron groups and a sufficient number of patrons.

Patron Contact Information Recommendations

Theatre operators, requesting patron contact information prior to providing closed captioning or audio description devices, are encouraged to make efforts to obtain said contact information without holding official identification as collateral.

Theatre operators are encouraged to use loyalty cards as another means to track patron identification requirements in connection with requests for closed captioning and audio description equipment.

Commitments of Advocacy Groups

Advocacy Groups will:

1. Inform their members of the availability of closed captioning systems in motion picture theatres, how those systems operate and where such members may obtain information concerning open captioned films and show times.
2. Work with NATO to encourage film distributors to provide closed captioning on all movies and on movie trailers.
3. Work with NATO in encouraging members of Congress to support the joint A.G. Bell, ALDA, HLAA, NAD, and NATO position on motion picture theatre captioning.

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