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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Closed Captioning and Video	)	**MM Docket No. 95-176**
Description of Video Programming	)	
	)	
Implementation of Section 305 of the	)	
Telecommunications Act of 1996	)	

Comments of
Association of Late-Deafened Adults, Inc.

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February 24, 1997

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Introduction

The Association of Late-Deafened Adults, Inc. (ALDA) submits these comments to the Federal Communications Commission on its Notice of Proposed Rulemaking on Closed Captioning and Video Description. ALDA is a nonprofit association with members and chapters throughout the United States. ALDA's mission is to support the empowerment of deafened people. The actual number of late-deafened people is unknown, but it is estimated to be slightly less than one percent of the population.

Late-deafened people are those who lost their hearing adventitiously, after they had begun to learn a spoken language. Late-deafened people can no longer understand speech without visual cues or rely on their hearing as a means of receptive communication. Instead, late-deafened people rely on assistive devices and alternative modes of communication such as speechreading, sign language, cued speech, and text reading.

Closed captioning of television programming is one of the most important needs of late-deafened people. Many find their access to information cut off, and their careers and independence jeopardized by their deafness and the resulting inability to use traditional auditory ways of communicating. Without visual sources of information, deafness shuts them off from what they need to grow and learn, as well as to enjoy televised programming and help guarantee their safety.

ALDA is pleased that the Federal Communications Commission has shown its commitment to access for all Americans by providing this opportunity to comment on an issue of such importance to late-deafened adults.

We strongly support the comments submitted by the Consumer Action Network, of which ALDA is a member.

Available Captioning Resources

The National Court Reporters Association has approved court reporter education programs at various sites throughout the U.S. These programs have been adding technology and curricula which will make realtime reporting an integral part of training instead of the an add-on it has been in the past. This change is already in process and should vastly increase the number of personnel available to provide captioning. (P 24)

Responsibility for Captioning

ALDA strongly supports the proposed responsibility for compliance with closed captioning requirements being placed on video programming providers. We agree with the Commission that "programming providers are in the best position to ensure that the programming they distribute is closed captioned because of their role in the purchasing of programming from producers." (P 28). This requirement will cause producers to begin to make captioning another simple step in the overall production process. Putting responsibility on producers will also give an incentive for them to require that the programs they purchase are captioned. With captioning costs as such a small part of their overall production budget, producers can incorporate captions into their production and pass these costs on to the provider.

Enforcement of compliance will also be simple. The Commission will not need to track who produced a particular program.

Transition Schedule

ALDA strongly objects to the proposed transition schedule of eight years that would phase in captioning of non-exempt new programming by requiring an additional 25% every two years. (P 41) We also object to the proposal of allowing a ten year transition period. We believe that a two to three year time frame is reasonable and achievable. Captioning is not new technology. It has now been available for more than 20 years. The ability to view closed captions on new television sets 13 inches or larger has been mandated for several years.

Programmers and owners have already been put on notice by the passage of the Telecommunications Act of 1996, which passed in February of 1996, giving them advance notice that they would be responsible for captioning video programming.

Late-deafened persons do not want to wait eight to ten more years to watch their favorite programs. We believe that at a minimum, the 25% figure should apply to captioning above and beyond what providers are currently providing. Pre-recorded captioned programs that are reformatted and rebroadcast should not be included in the 25% figure; it should apply only to new programming. The cost and effort of reformatting is minimal and can be easily absorbed by most providers, as we noted in our earlier comments.

The Commission expects that the current level of captioning will continue. (P 46) ALDA fears that this expectation is unrealistic. Already we have heard reports that certain cable channels such as USA Network and CNBC have stopped captioning some of their programs. Consumers who have followed up on the loss of captioning have been given lack of money as the official reason. However, other information received from captioning providers raises the issue that these cable channels may feel that they are already providing captions on approximately 25% of their programming and thus are meeting the minimum that would be required by law.

We join the Consumer Action Network in respectfully objecting to the Commission's proposal that would allow a cable operator to transmit one particular cable network completely captioned, while transmitting three with no captioning, or the proposal that a cable system could meet its obligation by passing through the captioned programs of the broadcast stations it carries. (P 43) This would allow some providers to show no increase in captioning for several years and would not give consumers dependent on captions the same variety of viewing selections as others enjoy. The intent of Section 713 is to increase the amount of captioning, not maintain the status quo. The Commission's rules should discourage delays in making programming accessible through captioning.

We support the Consumer Action Network's comment that certain types of programming -- news, current affairs, and educational programs for children -- should be given priority to be captioned first. (P 42) Except for children's programming, prime time programming should take precedence over programs aired during other time slots.

We recommend a one week time period to determine whether a percentage requirement has been met. (P 45) Television stations operate on a weekly schedule, program guides are printed using a weekly format, and consumers are used to seeing regular programs on a weekly basis.

The Commission seeks comment on whether closed captioning requirements should apply to each channel of the multiplexed channel (P 49). We support such captioning requirements. That each channel is airing a separate program and treating it as a separate program is evidenced by its selling advertising space for each channel and program.

While many library programs are already captioned, they are often aired without captions. ALDA believes that, at minimum, providers should be required to inventory all programs currently captioned immediately upon the effective date of the rules, and should report to the Commission on which programs are currently available with captions. Those programs already available in captioned versions should be required to air only captioned versions. (P 58)

We support the Consumer Action Network's recommendation that library programming that is exhibited be subject to the same phase in timelines as new programming. We agree that the 75% figure that the Commission proposes appears to be arbitrary and unsupported by law. ALDA wishes to point out that many classic films and programs are of great interest to late-deafened adults, and we strongly support all attempts to encourage expeditious availability of captions for library programming.

Exceptions of Classes of Video Programming

Interstitials are important to late-deafened adults, many of whom are used to the availability of all program information. ALDA would like to see all interstitials such as coming attractions and previous plot summaries at the beginning of programs required to have captions. (P 64)

While local and regional sporting events are more of a challenge to caption, the technology is already available and in wide use to permit realtime captioning from remote locations. We do not support a blanket exemption for these events. (P 66)

We support a requirement that foreign language programming using a Latin-based alphabet be captioned. Many late-deafened adults want the same opportunities to

learn other languages, or already are fluent in other languages. (P 72). Many Americans would benefit from having these programs captioned. Although current technology cannot caption non-Latin alphabets, advanced television closed captioning standards are incorporating provisions for non-Latin based alphabets. We recommend that when this technology becomes more widely available, the Commission reconsider exemptions of the class of programming using a non-Latin alphabet.

For the definition of "programming that is primarily textual in nature" (P 73), the Commission should consider the purpose of the audio and whether any information is provided that is necessary to understand the program

The Commission asks whether Public, Educational, and Governmental (PEG) access channel programming should be encompassed by general exemptions. (P 74). We do not support such an exemption. While we realize that such programming often has a small production budget , it is still essential to provide citizens with access to information about important events and issues in their community. Examples of programming from these channels includes instructional material, programs produced in the schools, and coverage of local government meetings and local affairs. Many PEG access channels are already providing captioning, or have plans to provide it. We know of several locations in which such programming is already being provided with captions. There are also low-cost captioning options that can be utilized.

Many late-deafened adults have expressed frustration that they are unable to have the same access to education programs broadcast by colleges and universities. (P 76). These should not be exempted.

We support the Commission's decision not to propose home shopping programming for an exemption. (P 78). Without such captioning, consumers will be unable to make the same informed decisions in making their purchases as those who depend on audio information.

We support the Commission's proposal that if interstitials and promotional advertisements are exempted, "the information provided should be displayed in some textual or graphic form." (P 79) Such text or graphics information should be required to highlight the most important information conveyed in the interstitial or advertisement and should be easily readable.

The same requirement should be made for political advertising that is economically burdensome, such as that for some local elections (P 80). Information about political candidates is important to late-deafened adults in exercising their constitutional rights and casting informed votes.

We agree with the Consumer Action Network that if fundraising activities of noncommercial broadcasters are given an exemption (P 81), periodic textual graphics or captioning be provided during fundraising that would summarize activities. WGBH in Boston repeats the same captioned message during its funding appeal, and includes a TTY number. WGBH has offered this software free of charge to all public broadcasters.

ALDA supports the requirement to caption music programming (P 82). We do not believe that live performances should be exempt. Live performances offer a very different experience from those which are taped. Many late-deafened adults enjoy all elements related to music because they have memories of music, lyrics, and earlier performances to draw from.

Songs from television shows and feature films should be required to be captioned because they provide information an enhances the program for viewers depending on text.

We support the Commission's proposal not to include weather programming in its general exemption. (P 83) This information is important for development of a sense of safety and well-being.

ALDA agrees with the Commission's proposal that only those types of sports programming for which closed captioning would be economically burdensome, such as locally produced college or high school sports, should be subject to an exemption. (P 84) Where exemptions are granted, open graphics should be required to provide necessary information such as the score and time remaining. Other types of sports programming should be captioned, and the captioning should include commentary, which is important for understanding and appreciation of the game and the athletes.

ALDA strongly supports the Commission's decision not to exempt classes of video providers. (P 85) All classes of providers provide programming that is important to late-deafened viewers.

The Commission seeks comment on their proposal that contracts which affirmatively prohibit closed captioning would fall within the exemption of Section 713 (d)(2) (P 87) We recommend that the Commission require providers seeking such exemptions to show that there is a legitimate, good faith reason for any contract clause of this type before an exemption can be granted.

Undue Burden Exemptions

We support the comments of the Consumer Action Network against granting of a blanket undue burden exemption. We support case-by-case review of exemptions. Exemptions should be reserved only for cases in which the program would be unable to air because of the cost of captioning. We believe this fits with Congressional intent to make video programming accessible, while at the same time preserving diversity of programming and ensuring that captioning requirements do not impose an undue burden on providers. (P 90)

ALDA also recommends that consideration for exemptions should take into account all assets such as the revenue base of the parent company. A small cable company or channel should not be allowed to declare itself financially burdened when it is actually owned by a financially successful entity.

It is also appropriate to subject the granting of an undue burden exemption to certain conditions, such as greater use of textual graphics. (P 97) We recognize that undue burden exemptions are necessary in a small number of instances. However, it is still important for the video owners and producers to make their information accessible. Greater use of textual graphics where undue burden exemptions are granted will help achieve that goal.

We do not believe program producers and syndicators should be permitted to seek an exemption from the closed captioning requirements unless they are covered by the Commission's rules. (P 101) If the video provider is responsible for captioning, it is unnecessary to make available an exemption for the producer or the syndicator. As between the producer and the provider, responsibility for provision of captions can be allocated by contract.

Exemptions granted under 713 (d)(3) should be limited to no longer than one year. The factors that are considered in making a determination of undue burden can drastically change in the course of a year. Also, other factors, such as available technology, can change a great deal during that time (P 109)

Standards for Accuracy and Quality

We share the concerns of the Consumer Action Network that not all caption producers are adhering to the voluntary industry guidelines published by the Electronic Industries Association,"EIA 608 -Recommended Practice for Line 21 Data Service". We support the requirement that all caption providers follow these guidelines to assure a reliable and standardized service.

As ALDA mentioned in previous comments, captions should be treated as an integral part of any program, just as the soundtrack is. (P 106)

ALDA applauds the Commission's proposal to extend Section 76.606, requiring cable operators to transmit existing captions intact to all video program providers. (P 110) This will solve a vexing problem with stripping of captions when the signal from the point of origination passes through a local provider. Commission rules that require providers to deliver existing captions intact, and enforcement of those rules, should help to remedy this situation.

We share the concerns of the Consumer Action Network about the actual quality of the captioning. As the Commission recognizes, "unless closed captions accurately reflect the audio portion of the video programming to which they are attached, they may be of limited use to the viewer." (FCC Report P 87) Captions are of limited use when they contain multiple mistakes in spelling, grammar, timing, accuracy, or placement and do not include all of the elements of the soundtrack necessary for accessibility. We strongly believe requirements are needed for some minimal standards for the non-technical aspects of quality and accuracy.

Without these standards, providers will have little incentive to contract with high quality captioning providers. We support the minimum guidelines suggested by the Consumer Action Network in their original comments:

- Individuals who depend on captioning must receive information about the audio portion of the program which is functionally equivalent to the information available through the program's soundtrack. Caption data and information contained in the soundtrack must be delivered intact throughout the entire program.

- Standards for proper spelling must be devised. Spelling should be considered a technical aspect of captioning, as the accurate written representation of the spoken word depends on proper spelling.
- Captioning must be reformatted as necessary if the programs on which they are included have been compressed or edited.
- Program tapes should be labeled as to whether they are captioned to ensure that the closed captioned master tape is used for duplication as the program moves through the distribution chain.

The Commission indicates that it may consider rules in this area "after a period of experience." (P 111). ALDA believes strongly that standards should be set at the effective date of the rules. As a minimum, we support monitoring during the first year, and, if warranted, standards being written to become effective no later than two years from the effective date of the rules.

Enforcement

We are concerned with the Commission's proposal that when viewers have a complaint about captioning, they first notify the video programming provider before filing with the Commission, and allow the provider a period of time to resolve the complaint at the local level. (P 123)

Based on past experience with many complaints, we know that many, if not most, late-deafened viewers do not know who to contact about a problem. Also, many late-deafened persons attempting to rectify problems with captioning have been unable to register their complaints. Some providers do not have, or do not publicize, TTY numbers, FAX numbers, or electronic mail addresses. Consumers attempting to register complaints have reached answering machines, either because the local provider does not answer TTY calls "live" or because there is no staff assigned to monitor and rectify such complaints after hours.

In addition, if the provider claims that the problem is not at the local level, most viewers do not have the expertise or resources to pursue investigating the source of the problem. It is not clear what type of good faith effort is necessary on the part of the provider to resolve the complaint and ensure that the problem does not occur again, and reasonable time limits for resolving the complaint have not been set.

We do not believe that a complaint should be required to first be sent to a local provider instead of filing a complaint with the Commission when there is a problem. Normal Commission complaint channels should still be available.

We support the Consumer Action Network proposal that, in addition to this, the Commission establish a council for the resolution of complaints. The council could provide information to consumers on the responsibility of video providers and serve as a liaison between consumers and providers. It could gather, track, and resolve complaints for the industry. It could also work with the provider and others in the industry to ensure the problem does not occur again. The council could be funded by the industry. It would aid the industry by gathering and analyzing complaints, thus making it easier for providers to pinpoint problems. Providing consumers one central place to bring their complaints would decrease its administrative burden of enforcement. We also support having such a council be composed of captioning consumers, the industry, and the Commission.

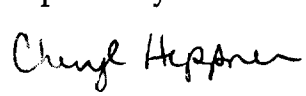
We support the Commission's proposal that providers be required to retain in a public file, or have available on request, records sufficient to verify compliance on the amount of closed captioning they provide. (P 124) Such a requirement does not seem onerous, given that providers generally have such documents on hand as part of the process of having material captioned.

ALDA recommends that the Commission add to the rules more language to clarify enforcement provisions, timelines, and penalties.

Conclusion

We thank the Commission for the opportunity to comment on these proposed regulations, which are very important to us, and we commend the Commission for its commitment to telecommunications access for all Americans.

Respectfully submitted,



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