

From: Steve and Jamie Berke <berke@erols.com>
To: C1.C1(ajohns)
Date: 2/27/97 3:11pm
Subject: e-mail copy of fax

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FEB 27 1997

Federal Communications Commission
Office of Secretary

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Here is an e-mail copy of the fax I sent. Had some difficulty faxing.

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FEB 27 1997

Federal Communications Commission
Office of Secretary

FAX

TO: Alexis Johns
FCC 202-418-1196

FR: Jamie Berke
e-mail: berke@erols.com

RE: Comments on FCC NPR on Captioning and Video Description

DA: February 27, 1997

Pages to follow: 18

Note: I've never done anything like this before so what I did was I read through the NPR, cutting and commenting as I did so. I have put FCC language in plain text and my own comments in bold.

New Programming - We propose to require that all non-exempt, new programming be closed captioned within eight years.=20

>>>>I have just found out that certain cable channels (USA Network, CNBC) have stopped captioning some of their programs. Money has been cited as the reason, but a captioner who must remain unnamed theorizes that the network feels that because it is already captioning 25%, it can just stop captioning the other programs. This smacks of an attitude that "we will do only the minimum" required by law.=20

I have put the info about this on Closed Captioning Web's comments page already.

Based on what the FCC proposes, I'll be in my 40s by the time we have 100%. That is too far off, and the proposed timetable is too generous.=20

The enforcement process: We propose to rely on complaints as a primary enforcement mechanism for the rules we adopt.=20

>>>If private complaints do not produce satisfactory results promptly, then further complaints to the FCC should be acted upon quickly and not allowed to pile up as neglected paperwork.

10. Currently, programming accessible to persons with hearing disabilities through closed captioning is the result of the voluntary efforts of program

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producers and providers, although the Commission has encouraged these efforts in several previous actions.=20

>>And this is precisely why captioning needs to be made mandatory. The attitude that captioning is a "charitable" activity and a luxurious afterthought instead of a routine part of post-production, will persist otherwise.

14. Most off-network syndicated programming produced before the mid-1980s (e.g., Bewitched, The Honeyymooners) was not captioned when produced and remains uncaptioned. =20

>> I know. There are many old classic programs in syndication that I would love to see with closed captions - Bewitched, the Munsters, I Dream of Jeannie.

>>>Yes, plenty of programming is closed captioned, but plenty is not. The reason we need these regulations is that as the broadcast environment becomes ever more diverse with the addition of new channels, caption-dependent viewers are at risk of ending up with access only to a small percentage of the total amount of video programming available. For example, I was happy when the History Channel was added by my cable provider, but not so happy to find that little to no programming was closed captioned on the History Channel. Ditto for the Nostalgia Network. And the Cartoon Network, which adds new cartoons like SuperFriends but does not caption them.

15. With respect to nationally distributed cable programming networks, according to the National Cable Television Association ("NCTA"), nearly 24% of the programming on the top 20 basic and six most widely distributed premium cable channels is captioned at present, with certain services providing as much as 80% of their programming with captions.=20

>>Word has it that some channels are actually cutting back on their closed captioning - someone complained to me that Showtime seems to have cut back.

For example, in 1995, HBO had captioning on 76% of its theatrical motion pictures, 83% of its musical programming, 94% of its documentaries, 72% of its family programming, 82% of its series, 100% of its comedy programs, and 100% of other categories of programming. =20

>>Yes, and this is part of the reason we chose to subscribe to HBO. We knew it captions more than any other premium channel.=20

16. While more than 6000 closed captioned titles have been distributed, according to MPAA, there are approximately 24,000 previously released films that have not been closed captioned.=20

>>Definitely. The problem with home video is that most of the "A" product is captioned while too much of the "B" and "C" product is not. It is almost as if the home video companies decided that it wasn't worth it to closed caption the rest of their product. Visits to the video rental store are a frustrating ordeal if you want to rent something other than a newly-released "A" video.

Many commercials scheduled during and adjacent to network programs are captioned by the advertising agencies which produce them.=20

>> Did you see the Super Bowl this past season? More than 30 companies did not bother to closed caption their commercials!! And captioning the commercials can be done in as little as an hour (according to one closed=

caption service who told me this) and costs peanuts compared to the cost of producing the commercials. Just goes to show you the attitude out there - the advertising agencies are so concerned about producing the "perfect" commercial that they don't bother to consider the needs of the many deaf football fans who watch the Super Bowl.

It would be nice if those "interstitials" were closed captioned too. I have always wondered what they say during those between-program segments. Total mystery to me.

17. Many local television stations caption their news, at least the portion that is scripted.

>>Ask any deaf caption viewer and they will tell you that they dislike electronic newsroom captioning. Whenever the program goes live, access is lost.

As for locally produced PEG programming, a publication titled "Low-Cost Captioning" is now available. This is a publication that offers potential solutions for PEG programming.

18. For prerecorded programming, captioning is generally "off line." Under this method, the captioning service gets an advance copy of the script, tape or film before the program is aired.

>>It costs less to caption prerecorded programming when the script is provided on disk, making captioning of offline programming quite affordable.

Estimates of the cost of this type of captioning range from \$800 to \$2500 per hour.

>>The cost estimate is about right, though I have seen smaller cost estimates on captioning company web sites. For example, the web site of Computer Prompting and Captioning <http://www2.ari.net/captions/> lists on its rate cards less than \$2000 for a 120-minute video program.

19. A variation of this method is used for prerecorded programming such as daytime dramas and late night entertainment shows, where there are only a few hours between taping and airing and the final edits for the program are not completed until close to air time.

>>This is called live display captioning.

20. The cost of real time captioning for live programming is estimated to be between \$120 and \$1200 an hour.

>>And helping to keep live captioning affordable is the development of "audio hookups." With an audio hookup, a captioning service in one state can caption the news of a television station in another state. This is how Washington, DC's Channel 4 (NBC affiliate) closed captions its local news. A company in Colorado, Caption Colorado, captions the news via audio hookup and it works quite well. This enables local news broadcasters to use lower-cost captioning services in other areas.

21. Another method of captioning live programming is electronic newsroom ("ENR") captioning, in which the captions come from the text in the station's news script computers.

>>The cost advantage is just about the only good thing about electronic

newsroom captioning. It is unattractive and difficult to watch. I hate it. Washington, DC's Newschannel 8 uses electronic newsroom and I almost never watch it because it is so unattractive and unpleasant to lose access to information every time it goes live which happens often in the course of an average local news broadcast.

22. Estimates of reformatting costs generally range between \$350 and \$450 per hour, depending on the amount of editing, although it is reported that the cost of reformatting can be as high as \$750. =20

>>I've seen estimates of reformatting costs as low as one-third of the cost to originally caption. In Canada, the Caption Resource Centre keeps a library of closed captions on diskette so programs can be reformatted easily.

>>Another problem that the FCC needs to address is the problem of time compression. Often, broadcasters hungry for more ad revenue will speed up a program to squeeze in more commercials. This messes up the time codes of the captions, making them unreadable or they disappear entirely.

23. Media Captioning Service ("MCS"), however, alleges that the supply of captioning services is oligopolistic, claiming that three dominant firms have captured the majority of the business. =20

>>This is true only because the Federal government continues to provide much of the funding for closed captioning! The "oligopoly" referred to is the companies that tend to win most of the DOE captioning funds awards. Again and again you see the same announcements from the same companies - "NCI wins DOE award...Caption Center wins DOE award...VITAC wins DOE award..."

Captioning needs to be made mandatory because the problem is not one of supply, but of demand, for captioning services. I maintain the Closed Captioning Web page at <http://www.erols.com/berke/> and just about every month, I discover a new captioning service provider on the Internet, and I know of others that are not on the Internet/do not have e-mail. In addition, I recently assisted the National Information Center on Deafness on its last edition of the guide to captioning services, and more than 100 companies are listed in the guide. In addition, I just did a count of captioning services listed at <http://www.erols.com/berke/alpha-links.html> and there are over 100 in the United States and Canada.

24. Availability of real time captioning resources appears more limited. =20

>>This will change in the near future as more and more court reporters turn to closed captioning as a career. There is even a school called the Capitol Court Reporting and Captioning Institute, whose link is at <http://www.erols.com/berke/miscellaneous.html>. Making closed captioning mandatory will increase employment opportunities in the industry.

26. In order to implement any closed captioning requirements that we may adopt, we must determine where the responsibility lies for ensuring that video programming is closed captioned, and which parties shall be required to comply with those requirements. =20

27. Broadcast, cable, wireless and DBS commenters all generally agree that the responsibility for captioning of prerecorded programming should be placed at the production source, often noting that it would be inefficient and burdensome to require that captions be added at the distribution level. =20

>>I agree completely. The last thing you want to do is create a situation where there is bickering between producers and broadcasters over who is responsible for captioning the programs. Allow broadcasters to help pay captioning costs, but do not require them to be responsible - require the producers to be responsible.

28. We propose that the responsibility for compliance with our closed captioning requirements should be placed on video programming providers, which we define as all entities who provide video programming directly to a customer's home, regardless of the distribution technologies employed by such entities. =20

>> I have heard that in the case of Super Bowl ads, some companies that contracted with the advertising agencies actually stipulated captioning in their contracts, but this requirement was ignored by the producers! If you put the burden on the broadcasters, then what happens when video programming providers deliver uncaptioned product that was supposed to be captioned? Does the video programming provider go ahead and broadcast the uncaptioned program anyway, leaving caption-dependent viewers out in the cold?? Too many times the TV guide states that a program is closed captioned but when I tune in, it is NOT!

For example, a provider can refuse to purchase programming that is not closed captioned. =20

>>Yes, they can -- but are they going to want to take the time and trouble to meticulously check each program to be sure it is captioned? This has the potential for litigation situations where the provider did not caption and the provider failed to check. Then the program airs uncaptioned. Who do deaf viewers sue or complain to - the provider or the broadcaster or both?

29. We seek comment on the feasibility of having program owners and providers share responsibility for compliance obligations with our closed captioning rules. =20

>>This could be a real problem, especially in the case of classic programming. Who is responsible for captioning classic programming, the original copyright holders, the syndication company, or the broadcaster? Is Nickelodeon responsible for captioning Bewitched or is the company Nickelodeon purchases Bewitched from, responsible? Is Warner Brothers or the Cartoon Network responsible for closed captioning of "SuperFriends?"

I believe special requirements need to be made in the case of classic programming (previously published programming) that may differ from the requirements for newly-published programming. It makes sense to have the responsibility be shared, to spread the economic burden more in the case of less-profitable previously published programming.

30. Although we propose placing compliance obligations on video programming providers, we recognize that, from a practical standpoint, captioning at the production stage is often the most efficient manner to include closed captioning with video programming.

>>Yes, yes! More and more post-production companies are adding closed captioning to their menu of services.

32. For example, HBO asserts that "marketplace forces have proved to be a significant motivator to the provision of closed captioning," and there is thus no need for government intervention to mandate captioning requirements. =20

>> This couldn't be farther from the truth. If this is true, then why are so many new cable channels coming out without any captioned programming, or very little if any captioned programming?

In contrast, NCI points out that the hopes of greater voluntary commitment to captioning by video providers after passage of the TDCA have not been fully realized. =20

>>NCI is correct. When the TDCA was enacted, there was euphoria in the captioning service industry that demand would really increase. That has not happened and in fact in some cases there have been DECREASES. USA Network and CNBC recently stopped closed captioning of some programs that had been captioned for YEARS.

33. We note, however, that this argument ignores the fact that many cable networks cycle their programming, rebroadcasting programs several times over the course of a month or season, which should significantly decrease the actual number of hours of programming to be captioned on an annual basis.

>>Correct. Another premium channel that captions much of its programming is the Disney Channel. We chose to subscribe to the Disney Channel for this reason. It is interesting that the premium channels are doing a better job of captioning than the "free" basic cable channels! And much of the programming on the "free" basic cable channels is previously published programming or syndicated programming. Will I ever get to see "Little House on the Prairie" with closed captions on TBS?

34. At the very least, providers want broad discretion in making captioning decisions, both in the types of programs which will be captioned and the method of captioning used for different types of programming.=20

>>No. If they are allowed broad discretion, they will try to caption the least that they can.

35. For example, NBC asserts that mandatory requirements "must be phased-in over a long enough period to allow the market to adjust and respond to new and increased demand." =20

>> The phase-in period, if there is one, should be brief. As stated before, the problem we have is not one of lack of supply, but of lack of demand. Captioning must be made mandatory to stimulate demand. I know from personal experience in working in the captioning industry from 1990 to 1994, that many captioning services are struggling to survive because of inadequate demand and incredible competition for limited captioning dollars. For example, Midwest Captions just went out of business, confirmed to me in a private e-mail from the owner of that company.

NCTA recommends that full captioning of new programming, with exceptions for "textual, interstitial and short form programming," be achieved over a multi-year period, in percentage increments. The Association of Local Television Stations ("ALTS") advocates a requirement that programming furnished with captions be delivered to consumers with captions intact immediately, but maintains that captioning of locally-produced programming should be achieved on a phased-in basis, taking into account costs and other burdens.=20

>>I support making captioning of interstitials mandatory. Those are brief segments and can be likened to commercials. Besides, if the interstitials were captioned, I might watch more television because then I would have more information about what was happening in upcoming programs.

Captioning of local news programs should be made mandatory, but I do support more generous phase-in periods for other locally-produced programs. I continue to get e-mails filled with frustration from deaf people frustrated at the lack of captions on their local news. Deaf people WANT to be able to watch their local news stations!

36. Captioners generally did not comment on the need for a transition period to full captioning of new programming.=20

>>One possibility would be to mandate 100% captioning sooner for providers with larger pockets than smaller providers. But all should be mandated to reach 100% as soon as possible because captioning is widely available and affordable. It is even possible to use captioning providers in Canada, which has a growing number of providers due to legislation in that country, because our television systems are the same.

41. We propose a transition schedule of eight years that will phase in captioning of all non-exempt new programming by requiring an additional 25% every two years.=20

>>Eight years? It should be less, more like five or fewer years. In eight years I will be well into my 40s. I predict that as soon as the rules are released, there will be an explosion of captioning service providers. This is a capitalist economy, and as soon as captioning is mandatory many new providers will pop up.

The regulations should be tightly written to minimize exemptions. Captioning services are too easy to obtain now and affordable. In my opinion, the only programming that I consider truly exempt would be the locally produced PEG programming and even that programming can be captioned. Monies for captioning can be allocated in local budgets as Loudoun County, Virginia is now doing.

(i.e., live local news or public affairs programming) for which we should specify an earlier implementation schedule.

>>Earlier implementation schedule for local news, newly published entertainment programming, newly published educational programming. Later implementation schedules for other programming like the PEGs.

43. With respect to MVPDs, we propose to apply the percentages of programming that must be captioned on a system-wide basis.=20

>>If a channel is already captioning more than 25%, then cuts back, there should be provisions for a penalty to penalize producers/broadcasters who have the attitude that they will caption only the minimum required. The percentage rules should apply on a per-channel basis and not across the board or we will see an uneven patchwork of channels with partial captioning and channels with no captioning, as you say. Allowing this will deprive caption-dependent viewers of choices. - what if I want to watch a program on the History Channel but it is not captioned, while all of the Playboy Channel's programming is captioned?=20

44. Alternatively, we seek comment on whether the percentages of programming that must be captioned should apply to each program service or channel transmitted by an MVPD.=20

>>Each channel, definitely. Primary financial responsibility should be clearly assigned by the FCC regulations, but the door left open to

cooperation on the paying for it. Responsibility must be assigned to avoid legal squabbling.

45. We seek comment on whether the determination that a percentage requirement has been met should be based on the amount of programming with captioning that has been shown over a month, or whether it should be based on a week or some other period of time.=20

>>Apply percentages on a per-month basis. I assume the peak periods you are referring to are "sweeps" periods. A possible alternative that might give a clearer picture, would be to apply the percentages on a quarterly basis rather than monthly or weekly. System-wide, percentages should apply quarterly; channel-wise, percentages should apply monthly.

46. We recognize that, in some instances, the level of captioned programming shown already may exceed our proposals. We expect that this level of captioning will continue. =20

>> USA Network and CNBC have stopped captioning some programs citing funding cutbacks. Interesting that when the finances get tight, closed captioning is one of the first things to go, being viewed as a "luxurious afterthought" rather than a routine thing that must not be cut, like sound and video.

We are also aware that a significant portion of funding for current levels of closed captioning comes from the federal government through Department of Education grants.=20

>>The regulations should be written in such a way as to prod sharp increases in the private support of closed captioning so that educational department funding can be reduced equally sharply. The high level of current federal support contributes to the perpetuation of the image of closed captioning as a "charitable activity, a luxurious afterthought." But don't reduce that funding until the private sources are firmly in place.

47. we seek comment on the costs of such reformatting and on whether we should also require that such programming be shown with captions.

>> This is a little technical for me, but I hope that you will write the regulations on this matter in such a way as to prevent future time-compression of programs that affect the closed captions. There should be some kind of penalty, too, for broadcasters who violate this so consumers have some sort of way to prod the broadcasters into remembering the captions when planning their forecasted ad revenue.

48. We recognize that as distribution technologies increasingly convert to digital transmissions, there may be alternative means that become available for captioning programming.=20

>>Is this a hint about computers and television merging? It is already happening! Already there are webcasts [or netcasts] on the internet that are inaccessible to the deaf. I have been prodding the developers of video players for the internet, to include accessibility features in their next releases. A couple have said they will in the next releases. But the onus is on the providers of the video programming for the web, to make sure those videos are captioned. This can be done through the use of a hidden text track, as demonstrated by the WGBH National Center for Accessible Media, and undoubtedly newer captioning technologies will be developed as well.

49. We also note that some programming services use multiplexing to

offer several programs at the same time. =20

>>In the case of multiplexing, the percentage requirements should apply on a per-channel basis - that is HBO1 25%, HBO2 25% HBO3 25%. Just an example -- HBO already exceeds those percentages.

52. Networks and program producers request that no mandatory captioning requirements be placed on programming libraries.=20

>> Captioning library programming would be a one-time expense, and when the rights to library programming is transferred, the purchasers would have the option of purchasing it intact with captions already encoded. I find it ludicrous to believe that providers would be more likely to archive library programming rather than pay to have it captioned - what the heck do they plan to fill their airwaves with then, more expensive newly-produced programming which would be subject to captioning requirements? Common sense says that they would actually spend MORE money replacing uncaptioned library programming with newly-captioned, newly-produced programming.

>>Library programming must and should be required to be captioned. Not captioning library programming means that caption-dependent viewers will continue to be deprived of access to those programs. I get e-mails from caption viewers who dream of having access to certain classic programs, and I have my own wish list. Just this week, I got an e-mail from one who yearns for captions on the 1966 "Batman" program, and another one yearns for captions on "That Girl." I have my own personal wish list, which is at <http://www.erols.com/berke/classic.html>.

53. HBO asserts that the amount of captioning of previously published programming has been steadily increasing and that the success of voluntary captioning efforts proves it unnecessary to require completion of captioning video libraries by a date certain. =20

>>It should be required or caption-dependent viewers will have only partial access. What about those channels like the Nostalgia channel, which are almost 100% library programming? Or f/x? TBS?

I think for an example of how library programming can be captioned, look to the Disney Channel. The Disney Channel depends heavily on library programming, and much of that programming already is captioned.

Similarly, MPAA claims that a requirement of wholesale captioning of video libraries is unnecessary and impractical, claiming that voluntary efforts of the motion picture industry have been successful to date and that the industry will continue to meet demands for captioning where they exist.=20

>>MPAA's statements demonstrate why captioning of library programming should be mandatory to some degree. Past history, like with what happened after passage of the Television Decoder Circuitry Act, as well as the history of closed captioning since 1980, shows that when something is voluntary, not very much of it gets done. In my honest, emotional opinion, we deaf people have given the "voluntary" option quite enough time and the result has been inadequate access as when it is voluntary most of the time they will choose not to do it!! It was only after YEARS of complaining from the deaf community that American Movie Classics, a channel that is all-library programming, finally began to closed caption some of its programming.

54. With regard to library programming, commenters representing individuals with hearing disabilities interpret the requirement that our rules "maximize the accessibility" of such programming to mean that all library programming should eventually be captioned. =20

>>Agreed. To get an idea of what would probably happen if captioning of library programming was voluntary, look at the rental video industry's record for captioning of A, B, and C product. Perhaps making the captioning of library programming mandatory would prod the rental video industry into captioning more of its B and C product.

55. NCI notes that very little captioning has been done of programming produced prior to early the 1980s; that which does exist is primarily home videos and off-network programming. =20

>>Agreed. Example of what happens in the video industry: A few years ago, after a campaign by the deaf community, Republic Pictures Home Video finally began to closed caption some videos, including six precious volumes of "The Little Rascals." I bought all six precious volumes. Then when Cabin Fever Home Video got the rights to re-release the Rascals on home video in a 26-volume series, NONE of the videos were captioned! I had no knowledge in advance that Cabin Fever had gotten the rights - I thought it would still be Republic - and no chance to be proactive and ensure those videos would have captioned. I complained to Cabin Fever, and got back a letter saying they would caption when re-releasing those videos - probably decades from now, as video companies generally do not re-release videos until their back stock is all gone. I can forget about being able to enjoy the classic adventures of Spanky, Alfalfa, Porky, Buckwheat, and Darla with closed captions until I am in my 50s maybe. Other deaf people making similar complaints about non-captioned video releases of classics have gotten similar worthless pledges. I predict similar attitudes in the broadcast industry without regulation.

56. Individuals with hearing disabilities also acknowledge that captioning of library programming should be accomplished over a longer period of time than that allowed for captioning of new programming. =20

>>Yes, that is fair, but the timeline should not be too generous. I'd like to see all library programming closed captioned before my time on earth is finished.

NAD argues that previously published captioned programming should be required to be transmitted with captions immediately upon the effective date of the rules. =20

>>Agreed!

Captioning of other library programs should be mandated based on a timetable beginning within six months of the effective date, and staggered to reflect differences in the size and resources of the provider, nature of the program, and time of day. =20

>>With the increase in providers of captioning services, the issue of "undue burden" may become a moot point. More providers means more competition, which holds down costs. And there is nothing to stop the holders of library programming from purchasing captioning software and doing it themselves, though they will probably want to use outside captioning services because of how labor intensive captioning is.

57. An enormous amount of older programming exists, including classic movies and television series, as well as current-run, uncaptioned programming. =20

>>Another thought: Unless library programs are mandated to have captions to some degree, the growth of the captioning industry would be hurt. If only newer programming is mandated to have captions, that would mean a lot of

competition for limited captioning dollars, whereas mandatory captioning of library programming would aid the industry by increasing demand and therefore increasing available dollars. Fewer dollars=3Dfewer jobs.

58. We believe it inappropriate to mandate captioning of nearly all library programming.=20

>>Perhaps a percentage requirement for library programming, incrementing gradually, would make sense. The main thing is that the ATTITUDE about captioning of library programming must change, so some level of mandatory captioning of library programming is necessary. Once the attitude changes, captioning of library programming will probably increase faster than mandated by regulation.

60. We seek comment as to whether our expectations regarding market influences are sound.=20
=20

>> The problem with this scenario is that no one wants to be the first to spend the extra dollars to have it captioned. I was told back in my days at NCI, that such spending puts the spender at a "competitive disadvantage." The only way to avoid this is to level the field - require that each broadcaster of public domain programming caption the programming, period. Or - how about this - require that the programming be captioned but the captions themselves would be in the public domain too, so anyone who broadcasts the programming would be able to use the captions. There would need to be some type of reward for the broadcaster that first captions the programming and puts the captions in the public domain - how about a partial tax credit?

62. We note that under these requirements it is necessary to know when a program was first exhibited or published in order to determine whether it may be shown without closed captioning. We seek comment on whether sufficient information regarding when a program was first published or exhibited is readily available.

>>Yes, it is readily available. Just look at the books we have about the history of television programming, most of which include the air dates.

=20
the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming.

>>I want to see "economic burden" very narrowly defined. My viewpoint is that captioning is so readily achievable and affordable that the issue of "economic burden" may one day become a moot point. Furthermore, use of the "economic burden" term implies that captioning is not to be regarded as a routine cost of production. If you are going to exempt programmers because of economic burden, you may as well exempt them from having to pay their talent, crew, license fees, pay for sound, video, post-production editing, and so on.

64. Many providers want broad categories of programming to be exempted from any mandatory captioning requirements, and most also do not want to caption "interstitials" (i.e., promotional spots for upcoming programs) or other short-form material.=20

>>I will tolerate the exemptions for interstitial programming, but if that

programming is not captioned then the broadcasters actually risk losing viewers! I would be more likely to stay tuned in to a channel if I knew what was coming up. I can't comment on music videos because I don't watch them, but I disagree that captions are unnecessary. If there is singing and words, how are caption dependent viewers going to learn the songs?

65. The Wireless Cable Association International ("WCA") requests exemption of locally-originated programming, citing the limited production budgets and resources available to such program producers. =20

>>Exempt them only to the extent that they can not find affordable captioning services in their area. And in many cases, affordable captioning services ARE available. More public television stations are setting up captioning centers. Among the newest additions to Closed Captioning Web are the Nebraska Captioning Center and another captioning center at a public tv station in Iowa.

Along similar lines, the Association of America's Public Television Stations ("APTS") requests that the Commission take into account the limited operating budgets of public television stations in considering standards for exemptions or waivers of mandatory captioning for locally produced programming. =20

>>One problem with exempting "locally produced" public tv programming is that very often, this programming is distributed nationally over the PBS network. I know because I had an internship at PBS in the summer of 1986 and that internship gave me an insight into how PBS operates. Again, you have to ask what percentage of the total cost to produce the programming is closed captioning? Probably a very small percentage.

ALTS notes that the enormous costs involved with captioning at the station level could exert substantial influence over a station's programming decisions, forcing local stations to forego locally-produced programming in favor of pre-packaged, captioned programming which may not be responsive to the needs, tastes and interests of local viewers.

>>"Enormous costs?" As an aggregate or total, maybe, but break it down on a per-program basis and you will find that the cost is very small.

66. Broadcast and cable providers also claim that a variety of technical issues argue against captioning sports in general, and specifically regional sports. =20

>>It is NOT necessary for the stenocaptioner to be able to see the game. If they can hear the announcers through a long-distance audio hookup, they can caption the game. And caption placement can be controlled on some television sets.

>> I don't watch sports anymore, but when I was younger and a sports fan I had a hard time understanding games because of lack of captions. I watched baseball more than hockey because hockey was too hard to follow without captions.

>>And don't forget the Olympics!! The Olympics have been captioned for at least a few years now.
If captioning costs can't be spread over multiple showings, then how are they spreading the costs of televising the games over multiple showings?

67. Captioners also want a requirement that all programming be captioned. =20

>>Of course! Captioners know that the health of their industry and the

security of their jobs depends on how well the FCC writes its regulations.

One commenter points out that cable subscribers with hearing disabilities pay for full cable service even though they can access only a small selection of cable's program offerings due to limited existing captions. =20

>>Absolutely! Media General Cable, the provider in Fairfax County, VA continues to add new channels but those channels have little to no captioning available. And our rates keep going up. It got to the point where I had to have my husband take over paying the cable bill because I would get so upset thinking about how little access I had, really.

Many commenters representing the hearing disabled specifically request mandatory captioning for several types of programming which providers argue should be exempt from captioning requirements, or at least subject only to limited requirements, including weather, sports, interstitials, commercials, and locally-produced programming. =20

>>Commercials could be exempt, at the advertisers' own risk. What they risk is not having their product information available to potential customers, and they also risk public relations black eyes as with the Super Bowl. I personally contacted several advertising agency organizations via e-mail to complain about the lack of captions on the Super Bowl. I didn't watch the SB, because I'm not a football fan, but many non-football fans who are deaf want to be able to watch the commercials.

68. With respect to local, live programming, one commenter with a hearing disability points to weather and emergency broadcasts as being of great concern, noting that, without captions, she must guess at the significance of information concerning storm alerts and instructions from emergency management personnel. =20

>>At the time of the earthquake in California a few years ago, many deaf viewers had problems getting information.

>>I have gotten messages from deaf people across the USA who passionately state that they want to be able to watch their local news programs. I have to agree - not having access to local news makes a deaf person feel like a second-class citizen in their own community.

69. Several commenters involved in creating captions also support captioning for news programming. =20

>>Yes, realtime captioning or live captioning should be mandatory. I fear that if stations are given the option, the majority will opt for ENR which is totally unsatisfactory. I will not watch an ENR news broadcast as it is such an unpleasant experience. I challenge you at the FCC to sit down and watch an ENR captioned news program without sound to see what it is like.

71. In particular we seek comment on whether a definition of economic burden should be based on factors such as relative market size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors. =20

>>I think the only factor that should be taken into consideration is what percentage of total programming costs is closed captioning? If it is more than 30%, the programming probably should be exempt; below 30%, do not exempt the programming. If the programming is not newly-produced programming, then look at the percentage of total costs of broadcasting, advertising, etc. and see what percentage of that total closed captioning would be.

72. Foreign language programming: =20

>>In the case of foreign-language programming, Spanish language closed-captioning probably should be mandatory, and for other languages require or encourage subtitling in English so that hearing viewers can understand the programs.

73. Programming that is primarily textual in nature.=20

>>Agreed. No need to make captioning mandatory for say, the Prevue channel which is just a guide. It is worth pointing out that this type of programming is typical of PEGs as well.

74. Cable access programming.=20

>>Don't make it mandatory except for the most important programming, and offer a tax credit for captioning the rest.

76. Instructional Programming.=20

>>Yes, it would, especially when you consider that the ADA mandates educational access for persons with hearing loss. Having full access to instructional programming would enrich my life intellectually and would aid students as well by giving them another resource. I wish to point out that many instructional home videos are not closed captioned.

And as the baby boom generation (which includes a substantial number of deaf people due to the rubella epidemic of the 60s) ages, intellectual stimulation becomes even more important and captioned locally produced instructional programming would play an important role in that intellectual stimulation.

I wish to point out that too much educational programming is not captioned. Very, very often I see an interesting program on the Discovery Channel only to find it is not closed captioned. It drives me nuts that I can watch the Simpsons in syndication but can't watch a historical documentary.

With respect to nationally-distributed instructional programming, we note at least some of this programming may be prerecorded and have repeated showings.=20

>>Nationally distributed instructional programming should definitely be required to have captions as there is a national audience of deaf people that would be left out if it is not captioned.=20

Possible alternative: are there associations of producers of educational/instructional programming? Could these associations play a role in pooling monies for the captioning of such programming?

77. Advertising.=20

>> It costs mere hundreds to closed caption a commercial compared to the cost of producing the commercial, in the thousands of dollars.

Could captioning costs be offset by the revenues produced by the commercials?=20

>>Oh, definitely. NCI did studies in the past that showed deaf consumers more likely to buy products that had captioned their commercials.

Alternatively, would a captioning requirement significantly raise the cost of certain advertising, especially local advertising that reaches small audiences which is currently inexpensive, and prevent some entities from advertising? =20

>>I think a captioning requirement would actually make the commercials more profitable for local advertisers. In the Washington, DC to Baltimore area, for example, there are over 300,000 deaf and hard of hearing people. "Local" stations air between DC and Baltimore, reaching a wide audience. Most "local" stations are accessible within certain metropolitan areas, and the metro areas tend to have at least some deaf people. I don't see how a few hundred dollars is going to "significantly" raise the cost of captioning commercials.

We note that there is likely to be a marketplace incentive for advertisers to caption their commercials to attract consumers with hearing disabilities and seek comment on this assumption. We observe that many national advertisers have already recognized the benefits of captioning their commercials. =20

>>Then why were so many Super Bowl commercials not captioned?

We further believe that there will be a greater incentive for advertisers to caption their commercials once a significant amount of programming is captioned, as uncaptioned commercials will seem inconsistent with surrounding captioned programming for the individuals with hearing disabilities who are attracted to the programming because of its accessibility. =20

>>Actually, the opposite situation exists! All too often, the commercials are captioned but the programming is not! This happens because the same commercial can air at many different program times.

79. Interstitials and promotional advertisements. From the information we have gathered, we conclude that most interstitials and promotional advertisements provide their principal information in textual form. =20

>>NO they don't!! I have no way of knowing what Melissa Joan Hart of "Sabrina" is saying in her interstitials. Most interstitials feature the characters sitting on couches, talking their heads off, no captions.

80. Political advertising. =20

>>I thought captioning was already required for Presidential campaigns - see the language below:

26 =A7 U.S.C.A. 9003(e)

"No candidate for the office of President or Vice President may receive amounts from the Presidential Election Campaign Fund under this chapter or chapter 96 unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired

individuals via any comparable successor technology to line 21 of the vertical blanking interval."

I think you have to look at what percentage of the total cost of producing political advertising closed captioning is. I think you will find it is a small percentage.

81. Fundraising activities of noncommercial broadcasters. =20

>>Requiring summaries might be helpful and make sense as an alternative. However, before you go ahead and give them a blanket exemption, talk to the people at the Jerry Lewis Labor Day Telethon and find out if there has been any difference since they began closed captioning the telethon a few years ago. I would certainly be more inclined to contribute funds if they captioned.

82. Music programming. =20

>>Music - if there are words spoken or sung, they should be captioned or the entire experience of viewing the music video programming is ruined. Yes, having access to the lyrics of these songs on television really makes a difference! I was so thrilled the first time I saw the words, "The Flintstones, meet the Flintstones...have a Yabba Doo time, have a gay old time.." Wow!! So that was what my sister grew up hearing on television when she watched the Flintstones cartoons!

83. Weather programming.

>>I agree that allowing ENR captioning of weather - and that is the only part of a local news broadcast that I support ENR captioning for - makes sense. Allowing this portion of a program to be ENR would reduce the total number of minutes that actually have to be closed captioned live, reducing the cost to the station.

84. Sports programming. =20

>> Talk to deaf people in the New York City area about their frustrations with MSG (Madison Square Garden) broadcasts and with people in the DC area about Home Team Sports, which has no closed captioning at all. In fact, we dropped Home Team Sports because it had no closed captioning and my hearing husband could not justify the expense for HTS. I'd like to be able to see HTS captioned so I could see certain games, like the Baltimore Orioles which are the de facto "local" team for the DC-Baltimore region.

There may be, however, types of sports programming for which a closed captioning requirement would be burdensome, such as locally produced college or high school sports.

>>Yes, it might be burdensome for them. "Might" is a relative term that depends on the availability of captioning services, which will increase after the FCC releases its regulations. Perhaps they could be permitted to credit captioning costs against taxes? Just providing a textual summary is inadequate because you don't get the full experience of watching the program.

85. While the statute provides that we also may exempt classes of video providers, we believe that a blanket exemption even for very small providers is unnecessary, because the various providers distribute the same types of programming to consumers, and all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact.=20

>>Very sound.=20

86. 88. Under this latter interpretation, a large volume of programming covered by long term contracts, but not yet produced, would never be captioned. =20

>>Absolutely! This broad, vague interpretation would mean that a large amount of programming under long term contracts - both already produced and yet to be produced - would not have to be captioned, and that would definitely fly in the face of Congress' intent to increase the availability of captioning, as quickly as possible. Captioning requirements should be made retroactive, and maybe some type of tax credit given.

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89.=20

90. =20

91. The Undue Burden Standard/Factors. =20

>>I want to see the FCC regulations permit petitioning, but pending the outcome of the petitions, captioning should be mandatory. The reason for this is to prevent the FCC from being snowed under by a mountain of petition paperwork, and to prevent petitioners from taking advantage of the paperwork delays to shirk/get around captioning requirements. Otherwise, I can foresee many non-exempt providers claiming that they are exempt, and filing lots of petitions with the FCC in an effort to avoid having to caption. I propose that the FCC make the captioning mandatory for petitioners pending the outcome of their petitions, and then if the FCC finds that it is indeed economically burdensome for the petitioners, allow the petitioners to stop their captioning and recover costs through a tax credit.

92. How the Exemption Factors Should be Applied.=20

>>Agreed. The definition of undue burden must be written in such a way as to make it VERY hard to meet the definition of undue burden.

93. The LHH also suggests that at times the Commission should consider the percentage of the advertising budget required to provide closed captioning. One commenter proposes that programs with production budgets of less than \$25,000 should be eligible. They also suggest that captioning should be required if it would represent less than 10% of the production budget.

>>Agreed. Both percentages of production budgets and advertising budgets. Or maybe the proposed dollar thresholds of \$25,000 or so. Using dollar thresholds would avoid the burden of proving that captioning is X percent of Y dollars and avoid the "creative bookkeeping" issue.=20

I don't know what it costs to advertise in the high-profile magazines and trades, but I have seen fancy advertisements in Variety and other trades for the media industry that were full-page and looked quite expensive. I'm referring to ads from, for example, syndicators of children's cartoons like DIC.

97. Finally, we seek comment on the possibility of allowing undue burden exemptions subject to conditions in some instances. =20

>>One possible alternative is the use of an ASL bubble whereas a signer would interpret the program in a small bubble on the screen in a corner.

99. We propose to use standard "special relief" or waiver type=

procedures that are familiar and readily accessible to many of the parties that might seek such an exemption.=20

>> Don't make it easy for petitioners to get exemptions. Petitioners should be required to publicize the fact that they have petitioned for an exemption, so caption-dependent viewers will have the opportunity to comment publicly to the FCC. If Newschannel 8 petitions for an exemption, I want to know this so I can write a letter of complaint to the Washington Post, for example.

101. We also solicit comment on which parties should be permitted to seek an exemption from our closed captioning requirements. =20

>>Limit it to producers, on the condition that the producers inform the public that they have filed for a petition. This could be done through a small notice in say, Variety for example. And caption dependent viewers should be able to find out if the producers of a certain program have filed for exemptions, by contacting the FCC. If the producers of "My Brother and Me" [an uncaptioned new program] currently airing on Nickelodeon have filed to be exempted, I want to have full access to that information so that I will have the opportunity to publicly comment.

102. Finally we seek comment on whether exemptions granted under Section 713(d)(3) should be for a limited period of time only.=20

>> If a waiver is granted, it should be periodically reviewed to see if an affordable solution has become possible in the time that has passed. For example, at the time a waiver is granted only one captioning service might be available, but in the intervening years several new captioning services come into existence, driving down the cost through competition.

103. 104.=20

>>Yes, some level of MINIMUM quality is necessary and should be mandatory. I'm not technically competent enough to comment further, but believe some minimum level is necessary to prevent poor-quality, dirt-cheap "mom and pop" captioners from popping up and grabbing all the captioning dollars from producers/broadcasters seeking the least expensive captioning services possible. Establishing a minimum standard would aid the health of the captioning industry by creating a level playing field. Already, some captioners are known to have cut corners - a few years ago, there was an uproar when a certain captioning company which I shall not name, cut corners when captioning something - they had fewer levels of editing than normal and the result was a poorly captioned product. I agree with the proposed standards. Violations of the standards should be regarded as a violation of the FCC rules.
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108. urrently, the number of real time captioners is small.=20

>>Small, but growing. I find that more real time captioners are working as independent contractors. Make realtime captioning mandatory, and the nations' court reporting schools will train more and more realtime captioners.

109. With respect to the technical quality of existing closed captions, we observe that the basic technical compatibility among captioning services is assured by virtue of Section 15.119 of our rules, which sets forth the technical requirements for transmission and display of closed captioning.=20

>>I think all broadcasters should be required to have a publicly available=

telephone number that can be called 24 hours a day and is answered live, usually in their engineering rooms, to alert them to problems with the captions. One of the biggest complaints that caption viewers have is their inability to reach someone at the station when at the start of a program, the captions are bad. NCI tried to help this problem by setting up a monitoring program, but it is impossible to monitor everything.

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111. We seek comment as to whether accuracy of spelling in captions should be considered a non-technical issue,

>>Consider spelling a technical issue only for offline captions. Live captions are expected to have some degree of error.

113. It is evident that there is going to have to be an increase in the resources and individuals involved in the captioning process. =20

>>Agreed. There should be no postponement. Make live captioning mandatory, and the supply will increase sharply to meet the demand. This is a capitalist society after all. I predict that much of the demand will be fulfilled by not captioning firms, but by independent contractors who contract to caption a program here and there. As for the cost issue, I have heard of firms able to do it for as little as \$50 per hour - yes, I said \$50 per hour!

118. We further believe that the adoption of rules that require closed captioning as an integral part of video programming will provide a marketplace incentive for program providers and producers to distribute the best quality captioning possible. =20

>>The FCC regulations should stipulate where captioning consumers should direct complaints on captioning quality - the FCC? The Better Business Bureau?

120. We also do not propose to establish minimum credentials for those employed to provide closed captioning for video programming.

>>I agree about not having minimum credentials, but to avoid subjecting consumers to poor quality captioning, consumers should have a central place to direct complaints. The threat of complaints should be adequate to force the captioning services to self-monitor their quality.

>> One way to encourage quality that would not cost anything, would be to require all captioning services to put their names on their closed captions, in credits at either the beginning or the end of a program! This is already done by the major captioning service providers to some extent.

121. We further conclude that it is not appropriate or necessary to restrict the captioning methodology used to achieve the goal of maximizing available captioning as long as the criteria for captioning proposed above are met.=20

>> They can employ independent contractors and use audio hookup captioners in other states.

122. We tentatively conclude that any closed captioning requirements we ultimately adopt will best be enforced through the existing types of complaint processes.

>>Seems fair, yet puts the FCC at risk of being snowed under by paperwork. A specific time frame for responding to complaints filed with the FCC should be established, i.e. two weeks for a complaint. The problem with providing viewing logs or videotapes is that in cases where much of the programming is not captioned, you could be talking about literally hundreds of

videotapes! It would be better just to allow the filing of a complaint and do not require that consumers notify the providers or consumers may be reluctant to file complaints. Anonymous filing of complaints should be permitted as long as the anonymous complaints are supported with evidence.

123. We are also concerned with maximizing administrative efficiency and minimizing complaints that are better resolved by the video program provider or through informal processes.=20

>>As long as there is a clearly defined time frame for the providers to respond to the complaints made informally.=20

124. We further seek comment on alternative methods or information needed to verify compliance.=20

>>I'm unsure about this as it would mean more paperwork for all. Perhaps just an annual, publicly available brief report on the amount of captioned programming?

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147. In summary,=20

>>Agreed, especially because there are now multimedia conglomerates that own multiple stations or producers. And owning a television station or producer is expensive and requires deep pockets. So even if a station or producer is small by SBA definition, it may have a wealthy parent or owner.
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