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

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

COMMENTS OF
Massachusetts Assistive Technology Partnership
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February 27, 1997

The Massachusetts Assistive Technology Partnership (MATP) Center submits these comments to the Federal Communications Commission on its Notice of Proposed Rulemaking on Closed Captioning and Video Description (CITE Fed Reg. released Jan 17, 1997). MATP promotes access to assistive technology through consumer-responsive activities. Captioning is an assistive technology service designed to provide access to television programming for persons with hearing disabilities. MATP is a cross-disability project, funded under the National Institute on Disability and Rehabilitation Research, U.S. Department of Education. The Massachusetts Commission for the Deaf and Hard of Hearing is the administering agency for MATP. The MATP Center applauds the Commission's commitment to disability access and appreciates the opportunity to comment on this important issue.

Introduction

The Commission describes the term closed captioning as similar to subtitles (p. 1). We do not disagree with the analogy, but we wish to point out a major difference, i.e., subtitles are open captioned. As we stated in our comments in the Notice of Inquiry on Closed Captioning and Video Description of Video Programming, we do not believe it conducive to the interests of people with hearing disabilities to lock the regulations for Section 713 of the Telecommunications Act of 1996 into the term "closed captioning" but to allow leeway for producers to offer open captioning, if they so desire.

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Moreover, we believe that future technologies will be available that will completely transform captioning technology as we know it today. Therefore, we strongly recommend the Commission to simply use the word "captioning" when finalizing the regulations.

Responsibility for Compliance

We concur with the Commission's proposal to place responsibility for compliance with captioning requirements on video programming providers and owners (p. 28). Providers can then require that the programs they purchase for airtime are captioned. We believe that when captioning is done in the production stage, it is more efficient, exact, and economical because the producer can make captioning part of the production budget and have the cost reimbursed when the program is sold. Therefore, video programming providers and owners will not have to retrofit their products later on and will have a more valuable and saleable product. Moreover, ensuring that the video programming providers and owners are responsible for the captioning will result in easier compliance and enforcement of rules.

Transition Schedule

The Commission seeks comment on either an eight- or ten-year phase-in period for captioning of non-exempt new programming (p. 41). MATP respectfully objects to such a prolonged transition schedule of either eight or ten years as unnecessarily long. We believe that a much shorter phase-in period would suffice. The fact that —

1. captioning technology has been in existence for more than 20 years,
2. captioning technology is now widely available and affordable,
3. captioning services are abundant and competitive,[1]
4. video programmers and owners have been aware of Section 713 citing the requirement for full video access since the passage of the Telecommunications Act one year ago

— all lead us to conclude that a time window of two to four years is a reasonable period for phasing in captioning of non-exempt new programming.

The Commission seeks comments on a transition schedule for library programming and proposes an allowance of 25 percent of library programs be uncaptioned (p. 58). In our experience, and consistent with comments submitted

[1] We note in the FCC's NPRM that some commenters state there are approximately 83-100 stenocaptioners nationwide. However, according to the National Court Reporters Association, there are currently 542 court reporters in who hold certification as realtime reporters (CRR) and hundreds more who are registered professional reporters (RPR) with realtime skills. The CRR designation is much sought after, with more than 1,000 candidates sitting for the examination annually.

by many parties, there are many captioned library (archived) programs in existence. However, they continue to be aired with no captions. We request that the Commission's rules require providers to air any captions that already exist.

Moreover, the Congressional intent of Section 713 was that all library programming exhibited to the public would be captioned. Therefore, while we recognize that there is no necessity for captioning unaired library programming, we strongly oppose any proposed rule to allow 25 percent of exhibited library programming to be uncaptioned.

Exemption of Classes of Video Programming

We support the Commission's proposed decision not to exempt any specific class of provider (p. 85).

Section 713(b)(2) requires programmers or owners to "maximize the accessibility of video programming . . . through the provision of closed captions, except as provided in subsection (d)." Subsection (d) allows for the Commission to grant exemptions when:

(1) " . . . 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;"

(2) " . . . such action would be inconsistent with contracts in effect on the date of enactment . . .," and

(3) a "petition" shows that "the requirements contained in this section would result in an undue burden."

The legislative intent of Section 713(b)(2) is to increase captioning, and we find nothing in subsection (d) that would allow for exemptions based on class of providers.

The Commission asks whether Public, Educational, and Governmental (PEG) "access channel programming should be encompassed by [our] general exemptions" (p. 74). MATP strongly believes that it should not. While we understand the funding issues, we believe programming that includes coverage of local affairs must be accessible to all citizens. People with hearing disabilities have a civil right to participate in their community activities. Therefore, we believe that PEG programming should not be subject to a general exemption. Costs can easily be borne by minimum tariffs and/or subscriber surcharges to cable viewers. This has already been accomplished in Fremont, California,

where local cable subscribers are assessed seven cents a month to provide realtime reporting for government meetings.

We agree that music programming, both live and taped, should be captioned (p. 82). Lyrics can be easily pre-submitted to the captioner and programmed into the captioning software before the program begins, regardless of whether the show is live or pre-recorded. Furthermore, a great many captioning consumers (specifically those with acquired hearing loss) did not become deaf or hard of hearing until after adolescence, and can "replay" old songs from auditory memory if the lyrics are provided in the form of captions.

We support the Commission's proposal not to exempt weather programming in its general exemption (p. 83). As the Commission points out, "Weather reports can be scripted and included in the teleprompter text that is converted to captioning at virtually no cost when using the ENR method of captioning that is common at many local stations" (p. 83). An exemption for weather programming would be troublesome, since deaf and hard of hearing consumers have as much need to know about impending storms or severe temperature changes as everyone else.

Undue Burden

In our earlier comments, we cited statistics from the U.S. Census Bureau and the National Center for Health Statistics indicating that the prevalence of hearing loss has increased dramatically over the past 20 years. We also cited the benefits of captioning to other persons with no hearing loss, but who, for example, are learning English as a second language, or those with cognitive impairments or auditory processing disorders, etc. Moreover, we pointed the direct correlation between increasing age and decreasing hearing acuity, as well as a rise in population longevity rates. Therefore, it is logical to assume that there will be an increased need for more and more captioned programs for many years to come. Any discussion of undue burden, then, must be weighed with an argument based on increased need.

We do not believe that granting of an undue burden exemption is necessary, except under the most extraordinary circumstances. The cost of captioning today can be significantly reduced with inexpensive and flexible software. High school students at the Clarke School for the Deaf in Northampton, Massachusetts, have been captioning school videos for more than a year. While we do not propose using high school students as captioners, we point out that it is entirely possible for low-budget programs and videos to provide low-cost captions while producers still meet the voluntary industry standards promulgated in "EIA 608 - Recommended Practice for Line 21 Data Service." As we pointed out in our earlier comments, by issuing broad-based exemptions based on undue burden,

the Commission is substantially restricting equal access for people with hearing loss.

In those rare cases where captioning may be an undue burden, we agree with the National Association of the Deaf's recommendations that the Commission require a high threshold for programmers to demonstrate undue burden. We also point out that with respect to section 713 (d)(3), the Congessional Conference Report authorizes the Commission to grant additional exemptions, on a case-by-case basis, rather than by rulemakings across classes of programming.

Conclusion

We thank the Commission for considering these comments on a vitally important topic to millions of Americans with hearing loss.

Respectfully submitted,

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