

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)

MM Docket No. 95-176

TO: The Commission

**Reply Comments of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits this reply to the comments on the Commission's *Notice of Proposed Rulemaking*. In the *Notice*, the Commission steered a middle course, requiring steady growth in the amount of captioned video programming available to deaf and hearing-impaired viewers, while not imposing unreasonable burdens on stations and other providers that would lead to the loss of programming for all viewers. NAB, while differing with the Commission on certain particulars, largely supported this approach. Most comments, however, seemed to fall in two categories — comments of some video programming providers who argued for longer transition times and broader exemptions than the Commission proposed, and comments of captioning providers and groups representing persons with disabilities who argued for much more rapid imposition of captioning requirements and fewer, if any, exemptions. The widely varying approaches taken in the comments suggest that the *Notice* appropriately

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

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balanced the competing interests at stake in this proceeding.² NAB will briefly address some of the particular arguments of those favoring more stringent regulations.

The Proposed Transition Period for New Programming

The Commission proposed to require all non-exempt new programming to be captioned in eight years. A number of groups argued for a far shorter transition period.³ These comments do not address many of the practical issues involved in an abrupt requirement of universal captioning. As the Commission recognized, the captioning resources available to video programmers and providers is limited, and it may take some time for that supply to increase. The comments of VITAC point out, for example, that “[o]f 100 students who enter court reporting school in fall, 1997, no more than two will become captioners, and even those two will not be ready to apply their skills until fall of the year 2000 *at the earliest*.” Comments of VITAC at 8 (emphasis in original). A brief transition to a requirement of full captioning would not, therefore, allow time for new captioning personnel to be recruited and trained. It was appropriate, therefore, for the Commission to devise a transition schedule that would allow time for new captioning resources and equipment to be obtained across the industry.

² The comments also indicate that there are wide disagreements about even existing captioning capabilities. For example, WGBH (Comments at 9) assures the Commission that its Captioning Center has caption writers capable of writing captions in Spanish and a large number of other foreign languages. VITAC, on the other hand (Comments at 6-7) points out that there is no established Spanish-language stenotype technology that would permit accurate, real-time captioning of Spanish programming. These levels of uncertainty should lead the Commission to be cautious in establishing broad captioning requirements.

³ See, e.g., Comments of the League for the Hard of Hearing at 3; Comments of the National Association of the Deaf at 4-5; Comments of the Consumer Action Network at 3-4.

Several comments pointed out that many television stations already provide higher levels of captioned programs than the proposed rules would require in their initial phase-in period. These comments argue that the Commission should establish those stations' present levels of captioning as a base line and require yearly increases from that level. Alternatively, some comments speculate that stations would reduce the amount of captioned programming.⁴

The Commission should dismiss both of these contentions. As an initial matter, the commenters worrying about a reduction in the level of captioned programming do not suggest any reason why a station that has *voluntarily* captioned a high percentage of programming would now stop captioning merely because the Commission's rules do not require greater efforts than they have already made. The Commission's rules must rest on more than such irrational conjecture. *See Quincy Cable Television, Inc. v. FCC*, 768 F.2d 1434, 1458 (D.C. Cir. 1985), *cert. denied*. 476 U.S. 1169 (1986).

The suggestion that greater captioning requirements should be imposed on stations that already caption most of their programming would have the effect of penalizing the very providers that have done the most on their own to ensure access by the hearing-impaired to video programming. That approach would be irrational and unfair. It would certainly discourage stations in the future from taking voluntary steps to improve access to television programming.

Further, it is reasonable to believe that, for stations that caption a high level of programming today, captioning additional programming would require different equipment or more resources than they presently have. The programs that are the most difficult or expensive to

⁴ See, e.g., Comments of the League for the Hard of Hearing at 3; Comments of the National Captioning Institute at 9.

caption, or for which the audiences are small, are likely to be the ones not currently captioned. Thus, the same concerns that lead the Commission to allow eight years for captioning resources to be developed before requiring full captioning equally apply to stations that have already begun captioning other parts of their program day. The Commission should not, therefore, accept the suggestions to alter its proposed transition schedule.

Previously Captioned Programming

In its comments (pp. 8-9), NAB argued that the Commission should not adopt a rule requiring captions for any program for which captions had ever been prepared. NAB pointed out that captions prepared for a film or program's distribution in one context may not be owned by the syndicator or supplier of the program for subsequent airings. Further, editing programs to remove scenes or change their length often requires substantial, if not complete, recaptioning. NAB pointed out that programs that are distributed with captions, and not subsequently edited, are invariably transmitted with captions intact. For these reasons, the mere fact that captions may have been created at one point for a program should not result in that program's receiving different treatment under the captioning rules than any similar program that had not previously been captioned.

The comments that supported a requirement that previously captioned programs must include captions for subsequent distribution simply ignored these problems. They did not address how a station that lacked copyright clearance to use captions owned by others could obtain those rights. While they brush aside the difficulties in preserving captions for programs that are edited, they provide no support for the conclusion that recaptioning is inexpensive. Further, they do not address the difficulties stations that do not possess full captioning equipment might have in

repairing captions on edited programs. As captioning technology improves and becomes more widely distributed, some of these problems may be alleviated. At present, however, requiring a program to be broadcast with captions because it was captioned at one point would result in substantial burdens on stations and other program providers.

Exemptions and Captioning Standards

Many comments took issue with the possibility of exempting certain categories of programming from captioning requirements and with the Commission's proposal not to adopt technical or quality standards for captioning at this point. These comments are often inconsistent with each other. Comments which suggest exemptions are unwarranted for certain types of programming because they can be added inexpensively by untrained personnel⁵ cannot be reconciled with demands that the Commission mandate high standards for captioning.⁶ Here again, the Commission struck the appropriate balance by proposing that it exempt certain types of programs from captioning requirements and by not proposing stringent quality requirements.

The comments on exemptions do not grapple with the practical problems of requiring captions in material that are not produced by stations or by regular program suppliers. These issues are exemplified by demands that the Commission require captioning for advertising generally and for political advertising in particular.⁷ Advertisers, advertising agencies, and political candidates are not generally subject to the Commission's rules or familiar with its

⁵ See Comments of the WGBH Educational Foundation at 10 ("local access facilities can take advantage of new, low-cost, do-it-yourself captioning software and hardware").

⁶ See *id.* at 15-16; Comments of the National Association of the Deaf at 22-27.

⁷ See, e.g., Comments of the League for the Hard of Hearing at 8, Comments of the National Association of the Deaf at 15-16.

requirements. If, as the Commission proposed, stations will be responsible for complying with captioning requirements, the Commission must be clear about the specific obligations it is imposing.

If an advertisement or infomercial is presented to a station without captioning, must the station add captioning? If each station must do so, and then bill the advertiser for the captions, the cost of advertising will spiral out of control. Alternatively, must a station simply reject an advertisement that does not contain captions? Many advertisers, particularly local advertisers, may not have access to captioning equipment or personnel. This is especially true for advertisements that are prepared shortly before airing. Requiring captions would force those advertisers to seek other media.

For political candidates, these problems are exacerbated. If a station rejects a spot submitted by a candidate for federal office because it is not captioned, is that action consistent with its obligation under section 312(a)(7) of the Act, 47 U.S.C. § 312(a)(7), to provide the candidate with "reasonable access?" If a station instead must add captions, if the captions obliterate part of the advertisement or, in the interests of clarity, do not literally transcribe every word of the candidate's message, could the station be found to have violated the no-censorship provision of section 315(a), 47 U.S.C. § 315(a)?

Similar concerns exist with respect to other programs that stations do not select or produce. Therefore, the Commission should not require captions for these types of programming and, at a minimum, should make clear that stations are not obliged to insert captions themselves for programs over which they do not have control.

Conclusion

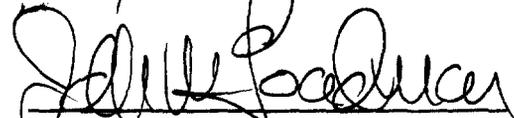
In the *Notice of Proposed Rulemaking*, the Commission generally took a measured approach towards the difficult task of ensuring access by deaf and hearing-impaired persons to a wide range of video programming. For the foregoing reasons and those set forth in NAB's initial comments, the Commission should maintain that flexible approach and reject calls for abrupt and rigid captioning requirements.

Respectfully submitted,

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I, Kimberly Washington, hereby certify that I have, this 31st day of March, 1997, caused to be sent by mail, first-class postage prepaid, copies of the foregoing "Reply Comments of the National Association of Broadcasters" to the following:

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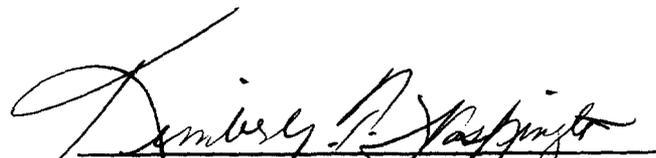
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