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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
	)	
Implementation of Section 305 of the Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

REPLY COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits its reply in response to comments filed in the above-referenced proceeding on video programming accessibility. Lifetime is a 24-hour, advertiser supported basic cable network featuring high-quality, contemporary programming targeted toward the viewing needs and interests of women. Lifetime, which currently reaches in excess of 67 million households, is one of the most widely distributed and highly rated basic cable services.

Lifetime's commitment to program accessibility dates back to 1989, when the network instituted closed captioning of select original productions. The amount of captioned programming on Lifetime has increased in each succeeding year, so that in April, 1997, approximately 35% of Lifetime's weekly program schedule will be closed captioned.[1] Virtually all of the network's prime time original programming is closed captioned, including highly-rated, award-winning original movies, such as "Almost Golden: The Jessica Savitch Story"; specials such as "Lifetime Applauds the Fight Against

[1] A significant increase over the 24% averaged by the top 20 basic cable and most widely distributed six premium networks. See comments of the National Cable Television Association ("NCTA") at 4.

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Breast Cancer" (which concluded Lifetime's 1996 campaign that won the Golden CableAce award and for which Lifetime was honored by numerous breast cancer organizations); "Final Take" documentaries on issues such as sexual harassment, fertility clinics and body image; and the "Intimate Portrait" series featuring prominent women such as Hillary Rodham Clinton, Tipper Gore, Audrey Hepburn, Maya Angelou and Gloria Estefan. Lifetime has also captioned two original daytime parenting series ("What Every Baby Knows" and "Kids These Days"). In addition, Lifetime has made a major commitment to reformat captioning of acquired programs, most recently 180 episodes of "Golden Girls" as well as espisodes of "Homicide," "thirty something," "Sisters," "L.A. Law" and "Barbara Walters."

The Commission's *Notice of Proposed Rulemaking* in this proceeding as well as many of the comments filed in response to the *Notice* contain some valuable suggestions for achieving program accessibility as smoothly, expeditiously and effectively as possible. Accordingly, Lifetime supports the specific proposals set forth below because they will increase the accessibility of programming to viewers with special needs without destroying the flexibility that program networks such as Lifetime need to continue bringing innovative programming to women.

1. THE TRANSITION TO CLOSED CAPTIONING

For the reasons set forth below, Lifetime supports: (i) a reasonable transition period for achieving captioning of non-exempt "new product;" (ii) a market-based approach toward greater captioning of "library programming;" (iii) a limited exemption followed by a reasonable phase-in of captioning for newly-launched networks; (iv) application of phase-in percentages on a channel-by-channel basis; and (v) a reasonable time period for assessment of compliance.

a) Phase-in for Non-exempt "New Product"

The ten-year phase-in for captioning of non-exempt programming first aired after August 1, 1997 ("new product") represents a well-reasoned approach toward implementation of increased accessibility. See *Notice* at ¶ 41 and comments of National Cable Satellite Corporation ("C-SPAN") at 8-9 and

NCTA at 11. Because of the sheer volume of programming that must be captioned and a host of other administrative and economic concerns, a reasonable transition period is necessary.

As noted above, Lifetime began the practice of closed captioning much of the prime time original programming it produces for the network in 1989 and has increased that commitment each year. Nevertheless, we take issue with the suggestion that the 25% figure should apply to captioning beyond what providers were providing on the effective date of the rules. See comments of Consumer Action Network at 4 and National Counsel on Disability at 3. Although it certainly is our intention to continue to increase the amount of Lifetime programming that is captioned, we think it highly unfair to hold programmers that have voluntarily undertaken closed captioning of their programming to a higher overall standard than applies to programmers who have done less captioning or no captioning at all. To do so would require partially-captioned networks to *increase* their current level of expenditure for captioning, in effect penalizing them for their past efforts by putting them at a competitive disadvantage with other networks that have not made the same level of commitment to captioning. Furthermore there is no authority in the Act for the Commission to hold programmers or MVPDS to two different standards. Thus, rules establishing a transition schedule for captioning should apply percentage benchmarks to each network's programming as a whole, not just to programming that is not yet captioned.

b) Approach for "Library Programming"

Lifetime agrees with the Commission's observation that the statute does not require captioning of all library programming. *Notice* at ¶ 58[2]. Lifetime also subscribes to an approach that relies on market factors to encourage the captioning of library programming without the need for a stringent phase-in schedule with rigid deadlines and percentages. See, e.g., comments of NCTA at 26-29; A&E

[2] "Library programming" should be defined as any program first aired or exhibited prior to the effective date, regardless of whether it was acquired or aired by a network or MVPD before or after the effective date. In addition, only library programming that is actually aired (as opposed to library programming in inventory) after the effective date should be subject to the captioning requirements.

Television Networks, the History Channel and Ovation ("A&E, et. al") at 16—22; and Motion Picture Association of America ("MPAA") at 13-17. If, however, the Commission should determine that regulatory standards are necessary, we would urge a lower target (no greater than 50% and subject to a reasonable phase-in period) and a reassessment of the status of library captioning after five years. The captioning status of library programming varies greatly based on its age, its source, the amount and type of recent exposure and other factors. Although the amount of captioned programming has increased and continues to increase, a stringent phase-in schedule undoubtedly would result in the loss of valuable programming to the viewing audience as a whole and would unnecessarily restrict networks' ability to schedule programming in the most interesting and varied manner.[3]

c) Treatment of Newly Launched and Limited Distribution Networks

In response to a finding that the programming needs and interests of younger women (ages 18 to 34) currently are underserved, Lifetime began airing "The Place," a block of programming designed to appeal to these viewers, in January, 1997. It is hoped that this program block eventually will develop the requisite following to become a cable network in its own right. The cost of establishing a new cable channel and making it a viable economic proposition is substantial. Adding the cost of closed captioning to an already daunting array of expenses easily could deter programmers from undertaking new launches. Thus, we support the suggestion made by NCTA (at 26-29) and A&E, et al. (at 23) that new networks intended for national distribution be exempted from mandatory captioning requirements for a period of five years from date of launch. At that point, such networks would be required to phase in captioning of new product in accordance with the ten-year transition schedule and also to increase the

[3] In an effort to make certain acquired programs and movies suitable for airing on Lifetime, we must reformat much of what we acquire. Although some of this programming already is captioned, the expense of reformat captioning is substantial. It is estimated that the cost of captioning alone runs $400 per hour, with additional costs for shipping, coordinating and encoding. In addition, reformat captioning involves significant logistical burdens, adding several complicated steps to Lifetime's post-production process.

level of captioned library product aired on their networks. Lifetime also supports a temporary grace period or exemption for national programming services until their subscriber base reaches 15 million. See C-SPAN at 10.

d) Additional Considerations

Another issue addressed in the *Notice* and comments was whether compliance should be required on a systemwide basis (*Notice* at ¶ 43) or channel-by-channel . See, e.g., comments of NCTA at 14 , C-SPAN at 12. Lifetime supports application of standards channel-by-channel[4]. As a network that is not affiliated with cable operators, Lifetime agrees with comments advocating a channel-by-channel application of captioning requirements as enhancing the overall fairness of the marketplace by ensuring that cable systems impose equivalent captioning requirements on affiliated as well as unaffiliated programming services. See comments of Television Food Network ("TVFN") at 4. In addition, a channel-by-channel approach would be an easier system for cable operators from the standpoint of administering, monitoring and demonstrating compliance.

As part of its continuing effort to highlight particular issues of unique interest to women, Lifetime periodically devotes entire weeks or months of its program schedule to special events and themes. For example, Lifetime's February programming celebrated Black History month. In March, Lifetime featured Women's History Month and in October, Lifetime's year-long breast cancer awareness campaign culminated in a month of on-air program special events. Optimum packaging of these featured periods would not be possible if Lifetime had to meet a rigid captioning quota each day, week or, in some cases, in a particular month. Lifetime is in agreement with other commenting parties (for example CBS, Inc. at 5 and NCTA at 16-17) that urge the Commission to assess compliance with its standards over a

[4] Lifetime notes in addition that members of the captioning industry and advocates for the disabled also support channel-by-channel application. See comments of Captivision at 2, Access to Independence and Mobility ("AIM") at 2 and Californians for Television Access ("CAL-TVA") at 4.

sufficiently lengthy period of time to take into account specials, features and thematic scheduling. In our view, a quarterly assessment would best allow the necessary flexibility; however, under no circumstances should the requirement be applied over a period of time that is shorter than a month.

2. EXEMPT PROGRAMMING

The *Notice* recognized that captioning could be unduly burdensome for certain types of programming because of their unique format, length, content or other features. There was widespread concern in the comments of programmers and MVPDs as to the difficulty of captioning extremely brief segments such as interstitials and promotional announcements as well as commercials spots and program length. (See, e.g., C-SPAN at 9-10, CBS, Inc. at 3-4, E! Entertainment Television, Inc. at 6, TVFN at 4-6, NCTA at 17-26, MPAA at 17-18 , NBC, Inc. at 11-13 and Time Warner Cable at 2.)

Lifetime would like to supplement the record with its own experience with these types of programming. Lifetime relies on occasional interstitial programs to enhance the orientation of the network to the female audience. Important issues and aspects of particular programs or series can be emphasized through presentation of explanatory or introductory material before the program or related material afterward. Interstitial material also facilitates transition between programs. Like many other networks, Lifetime also airs periodic announcements not just promoting the programming on the network but making viewers aware of events and information of interest. For example, Lifetime offers 60-second sports vignettes featuring athletes or teams sponsored by Lifetime and "Take a Minute" issue-oriented capsules currently hosted by Linda Ellerbee. In most cases, captioning of this brief material that is often produced on a very abbreviated timetable, would be unfeasible.

Lifetime supports the commenting parties who point out that with respect to commercial advertisements, whether brief spots or program length "infomercials," marketplace prices can be relied upon to create incentives for captioning by the advertiser. See, e.g., Captivision at 6 and Ameritech New Media, Inc. ("Ameritech") at 17. Sale of advertising time is essential to the economic viability of

advertiser supported networks such as Lifetime, yet neither the network nor the video programming distribution outlets that carry the network have control over or access to most of the national advertisements that appear. Typically, national advertisements are delivered to Lifetime's operations center only 24-48 hours before a scheduled telecast, and in many cases delivery is less than 24 hours in advance. For example, it is not unusual for Lifetime to receive 20 movie premiere ads on a Friday morning for telecast that same evening and during the weekend. Requiring networks or cable operators to monitor and enforce the captioning of national advertising or infomercial[5] programming would be unduly burdensome and could result in the loss of an important source of income. Lifetime supports a similar exemption for captioning of local advertising. See Comments of American Association of Advertising Agencies.

Lifetime also supports the concept of a "safe harbor" or "de minimis" exemption that could be used to accommodate the truly unique or unusual cases on almost every network that are deserving of exemptions but that are too numerous for the Commission to identify in a single rule or to deal with on a case-by-case burden. See, e.g., TVFN at 6-7 and E! Entertainment Television, Inc. ("E!") at 6-7. If a programming distributor is making a good faith effort to abide by the captioning requirements, there should be a certain small percentage of its schedule (for example, 5—10%) that would be immune from captioning compliance and review. Similar to the law of diminishing returns, as programmers approach 100% captioning, the more expensive and burdensome it is to caption the last 5-10% of the programming schedule. As the Comments of NCTA point out, "Congress did not intend the costs of captioning to interfere with the creative process or stifle program development or network growth. While Congress directed the Commission to ensure 'full accessibility' of programming first published or exhibited after the

[5] As with many networks, Lifetime airs most infomercial programming during non-peak viewing hours of the "over night" period. Other comments have supported the exemption of programming aired during periods of low viewership, when the lack of captioning could not be expected to have a significant impact. See comments of C-SPAN at 11-12, NCTA at 17-26, NBC, Inc. at 8-10.)

rule's effective date, [it] also recognized that a case-by-case showing could be used to relieve captioning obligations with respect to particular programs." Thus, the captioning scheme established by Congress clearly allows for a de minimis exception.

3. QUALITY AND ACCURACY OF NON-TECHNICAL ASPECTS OF CAPTIONING

The practice of captioning is still in the developmental phase. When the new requirements take effect, captioning will become a much more widespread practice than it has ever been in the past. Categories of programming that may not have been captioned extensively will now be subject to captioning, and countless distributors, networks and producers will undertake an unprecedented effort to caption a variety of programming, a significant amount of which will present unique problems and challenges for the captioning process. During this transition period, it is likely that new categories of programming and novel formats will come into existence. In addition, technological developments and new methodology that may improve or change the captioning process also may evolve as a result of this flux, and it will be extremely difficult to devise effective standards for such non-technical aspects of captioning as format, placement, type font, grammar, spelling and reproduction of non-verbal sounds. In fact, any attempt to devise such standards could interfere with activity that ultimately may result in more accurate or more efficient captioning. Lifetime joins the many programmers and distributors as well as several advocates for the disabled[6] who find reasonable the Commission's proposal to refrain from adopting standards covering these aspects of captioning at this time.

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[6] See, e.g., comments of ABC, Inc. at 4, 16-17; Association of Local Television Stations, Inc. at 3; CBS, Inc. at 8; C-SPAN at 10-11; E!. at 7-8; A&E, et al. At 17; Home Box Office at 27-28; TVFN at 7; NCTA at 32; CaptiVision at 10; Media Captioning Services at 5-6; AIM at 5; CAL-TVA at 2; Ameritech at 22; SBC Communications, Inc. at 6; and U.S. West, Inc. at 16. Lifetime notes in addition that members of the captioning industry and advocates for the disabled also support channel-by-channel application. See comments of CaptiVision at 2, Access to Independence and Mobility ("AIM") at 2 and Californians for Television Access ("CAL-TVA") Inc. at 6; and U.S.West, Inc. at 16.

4. CONCLUSION

The proposals cited above provide a reasonable, effective foundation for increasing the accessibility of video programming to all members of the audience. As the Commission recognized in its *Notice* and as the comments demonstrate, the goal of greater accessibility can be achieved in a fair and balanced manner that considers the interests of program networks like Lifetime (in its role as both a producer and a consumer of programming), the interests of the audience Lifetime serves, as well as the interests of cable operators and other MVPDs that distribute the programming.

Respectfully submitted,

LIFETIME TELEVISION

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