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March 27, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Closed Captioning and Video
Description of Video Programming, Implementation of
Section 305 of the Telecommunications Act of 1996, Video
Programming Accessibility Further Notice of Proposed
Rulemaking, MM Dkt. No. 95-176

Dear Ms. Salas:

Enclosed please find an original and six copies of the Reply of the National Association of the Deaf and the Consumer Action Network (NAD et. al.) in the above captioned docket.

Sincerely,

Karen Peltz Strauss
Legal Counsel for Telecommunications Policy

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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)	MM Docket No. 95 -176
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

**REPLY OF THE NATIONAL ASSOCIATION OF THE DEAF AND
THE CONSUMER ACTION NETWORK**

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March 27, 1998

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**REPLY OF THE NATIONAL ASSOCIATION OF THE DEAF AND
THE CONSUMER ACTION NETWORK**

The National Association of the Deaf (NAD) and the Consumer Action Network (CAN), collectively referred to as the "NAD et. al.," submit this reply to the Federal Communication Commission's (FCC or Commission) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding. The NAD submitted its initial comments in this proceeding on February 24, 1998. CAN wishes to now express its full support for those comments, and joins the NAD in filing comments during this reply stage. CAN is a national coalition of organizations representing the interests of deaf and hard of hearing citizens.¹

I. Responses to the FCC's FNPRM Overwhelmingly Demonstrate the Need for FCC Action

In its comments to the FCC, the National Association of Broadcasters (NAB) suggests

¹ A list of the CAN organizational members is provided in Attachment A.

that “[t]here is no evidence before the Commission that indicates the essential emergency information has not been provided to deaf and hard of hearing viewers,” NAB Comments at 5. This statement could not be further from the truth. To begin with, over the past two decades, consumers have frequently sent letters to the FCC complaining of the failure of stations to caption emergency programming. Because, until recently there had only been requirements to provide visual information under rules governing the emergency broadcast system (EBS), these complaints were likely directed to the FCC division handling EBS implementation. For example, the North Carolina Department of Health and Human Services, which has submitted comments in this proceeding, has forwarded two prior letters sent to the FCC on this very issue. One of those letters detailed the failure of local stations in North Carolina to provide textual information about Hurricane Fran. In a letter dated January 6, 1997, a television viewer had reported that almost no information about that hurricane had been captioned, including information “about possible hurricane routes, and appropriate safety information, [and] occurrences of power shortages . . .” The author of that letter went on to explain his surprise when later he found out that his area had been declared a “Federal Disaster Area,” and realized that he had not acted with sufficient caution to respond to the severity of the storm. (Comment of North Carolina Department of Health and Human Services, Division of Vocational Rehabilitation Services, attaching a letter from Kevin W. Earp to the FCC).²

² Another reason that the Mass Media and Cable Services Divisions of the FCC may not have received many comments on access to emergency programming before now is that until now, this had not been a specific subject of inquiry in the FCC’s captioning docket. Throughout this proceeding, however, consumers have consistently urged the FCC to provide real-time captioning of all live news programming. This is, in part, because such programming contains up-to-the-minute information about emergency conditions. The fact that the FCC’s final captioning rule

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In our original comments, we discussed the critical need for access to emergency information by deaf and hard of hearing individuals, and the fact that over the years, we have received a plethora of complaints regarding the lack of such access.³ The record now before the Commission amply buttresses this point, and contains numerous accounts of situations where televised emergency information has not been accessible. See e.g., Comments of Caption Reporters (Oklahoma bombing); Comment of Lee Nettles (Massachusetts train derailment/chemical leak, water contamination); Comments of Stavros Center for Independent Living, Inc. (Stavros) (Massachusetts nuclear waste spills, chlorine spills, tornado warning, school floods, winter storms); Comments of Caption Colorado, Inc. (California 1997 floods); Comment of Thomas Mayes (Florida hurricane, San Fernando Valley earthquake); Comment of Arva Priola (Fredricksburg tornado); Comment of Heidi A. Sherrie (Denver blizzard).

An NAD request to our members evoked similar responses. One woman who described herself as “a deaf, disabled retired lady with back spinal discitis problems” wrote to us of her dependency on television to provide information about special weather emergency warnings (Jacalyn Stover). Another wrote of the need to know exactly what is happening during an emergency in order to fully protect her three children. She specifically noted her fear of being a neglectful parent should she not be apprised of an accident in the nuclear power plant located not

at this time, require real-time captioning of all news programming makes the need for the full and accurate textual presentation of *emergency* information during these broadcasts even more critical.

³ Indeed, many complaints from individuals denied emergency access to televised emergency information in the past probably came to us rather than to the FCC simply because the individuals complaining had been unfamiliar with making submissions to the FCC. For example, a brother and sister have now submitted comments to the FCC explaining that “[f]or a very long time we

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more than 20 miles from her home in Richmond, Virginia (Arva Priola). Still another expressed the fear that she and her family would not receive information about the need to evacuate the North Carolina beaches during her upcoming summer vacation, should that need arise. In her words, her one “qualm” about vacationing at those beaches is that the stations located in that area are not “caption-friendly.” One man who wrote to us spoke of health and safety concerns he had with respect to the shipping of hazardous waste that was to take place near the New Mexico School for the Deaf, and more specifically, his fear that the televised notification to deaf and hard of hearing individuals in that area would be inadequate. (Richard Pearson, New Mexico Association of the Deaf).

Finally, one notable letter expressed the deep frustration experienced by parents of deaf children when full access to emergency information is not provided. In their letter, dated February 20, 1998, Mr. and Mrs. Gary Geiger wrote:

We are the parents of a deaf 15 year old boy. We are concerned with the lack of captioning in emergency broadcasts. Three years ago, while wild fires raged in the pine barrens of Long Island, my son watched the TV closely. We had family and friends fighting this fire. We were also helping supply food and beverages for the firefighters. Our local station, Channel 12, had 24 hour coverage of this fire. They would show the flames, firefighters and other scenes while reporters talked. There was no captioning and no way for a deaf person to follow what was happening. . . .

The above accounts refute the assertions made by various parties to this proceeding, that the current EBS rules have been sufficient - and that the newly developed EAS rules will be sufficient - to ensure access to emergency programming. See e.g., CBS Corporation (CBS) Comments at 7; Paxson Communications Corporation Comments at 3-4; National Cable

have wanted to write a letter, but we didn't know to whom we should address the letter until last weekend.” (Comment of Trudi Kuibeda and Michael Kuibeda III at 1).

Television Association (NCTA) Comments at 7-8; BellSouth Comments at 3; Cosmos Broadcasting Corporation at 4-6. Further, they refute the assertion made by the Radio-Television News Directors Association (RTNDA) that a requirement to caption emergency information would provide only a "minimal" benefit to viewers with hearing disabilities. RTNDA at 5. Rather, these examples demonstrate the dire need for a Commission rule that ensures full and immediate access to emergency programming. While hearing people are able to obtain up-to-the-minute information about emergencies from both radio and television stations, deaf and hard of hearing individuals must solely turn to television programming for such information. To date, these individuals have had to depend largely on others to fill in the text that has been missing from such television programming. A comment to the FCC from two siblings illustrates this point:

My older brother and I are deaf. We live with our parents and another hearing brother. We cannot depend on hearing people to collect the important/emergency real-live news that is not captioned, since our parents will not live forever. We all have to be able to collect the news ourselves.

(Comment of Trudi Kuibeda and Michael Kuibeda III at 1).

Consumers unanimously agree on the need to make the captioning of such emergency programming a priority in the Commission's captioning transition schedule. See Comments of Self Help for Hard of Hearing People, Inc. (SHHH) at 2; Comments of Telecommunications for the Deaf (TDI) at 3; Comments of NorCal Center on Deafness at 1; Comments of American Academy of Audiology at 1-2; Comments of Access to Independence and Mobility at 1; Comments of Richard Pearson at 1; Comments of Stavros at 2. The testimonies described above, as well as the experiences of others throughout the United States, point to the urgent need for a rule mandating full and equal access to emergency programming. Having already waited decades for such access, it should not be necessary to wait even longer - and possibly as long as eight

years - for access to information that directly affects the health, safety, and well-being of these individuals.

II. Access to Televised Emergency Information Must be Complete and Accurate

Individuals who responded to the NAD's inquiry also reported on the need for full and complete information - rather than a summary of the audio content - of televised emergency information. For example, one woman wrote in that during an unexpected blizzard in the Denver, Colorado area, she did not want "to miss part of what was happening, like a piece of a jigsaw puzzle was missing. I would like to see the stations caption the entire emergency segment so we know what is happening in its entirety." (Heidi Sherrie). Another reported the frustration of frequently misspelled words on news programming, citing as examples, captions that read: "Errrquakd" for earthquake or a "a state trooper had been "kiied in shooting" (Franco D'Angelo). These individuals urged that the textual presentation of emergency information be comprehensive and accurate to ensure that deaf and hard of hearing individuals receive the same information that is provided to hearing viewers.

Some of the networks commenting on this proceeding have suggested that television broadcasters be permitted to choose the method of visually displaying emergency information. (ABC, Inc. Comments at 2; CBS Comments at 2; see also Comments of BellSouth Corporation (BellSouth) at 5-7) It is not clear, however, whether such stations desire the flexibility to provide such information graphically, rather than in text. We caution that graphics, alone, will be insufficient to provide viewers with sufficient information to respond appropriately in the event of an emergency. For this reason, we restate the need to provide the full text of the audio version of the emergency information to viewers. Anything short of this will result in second class treatment

for deaf and hard of hearing individuals, as they will be denied basic information and emergency instructions which is provided to everyone else.⁴

The NAD *et. al.* support a definition of “emergency” that will be broad enough to accomplish the above goals. In addition to the definition proposed by the NAD in its initial comments, which focused on information that has an immediate bearing on one’s life, health, or safety, we support a definition of “emergency” which encompasses the preservation of one’s property. Accordingly, we also approve of the definition proposed by ABC: “information which is of timely decisional value to the public in furthering the safety of life and property” (ABC Comments at 4), and the definition proposed by the Weather Channel: “safety-related information having an immediate and direct relation to the preservation of life or property.”⁵

III. Remote, Real-Time Captioning is a Feasible Option

In our earlier comments, we suggested that the textual presentation of emergency information be provided with the use of remote, real-time captioning.⁶ In contrast, the NAB and

⁴ In an attempt to prove that consumers are satisfied with the use of electronic newsroom reporting (ENR) for news programming, the NAB directs the Commission’s attention to the fact that station KPWB-TV in Sacramento, California received a county award for “providing captioned information during the Northern California floods in January 1977.” NAB Comments at 3 n.3. In fact, however, the very failure of all of Sacramento’s stations to provide emergency real-time coverage of the 1997 floods prompted an outpouring of complaints from deaf and hard of hearing individuals. This ultimately led another Sacramento station, KCRA-TV, to revise its captioning policies, and to provide *real-time captioning services* for its coverage of the floods of 1998. Caption Colorado reports that during this very same time, it had no difficulty also providing real-time coverage for several other stations in California that were covering related storms. Caption Colorado Comments at 2.

⁵ The Weather Channel Comments at 15, citing to *Commission Reminds Licensee About Obligations Contained in Section 73.1250(h) of the Commission’s Rule, Public Notice, FCC 90-302, 5 FCC Rcd 6260 (1990)*.

⁶ We also continue to maintain that voice recognition technologies may provide an easy alternative for transcribing the audio content of emergency information in the near future.

the NCTA assert that remote captioning would not work because the unscheduled nature of emergencies would require captioners to be available “around the clock.” NAB Comments at 4; NCTA Comments at 5. Others express concerns about the costs and availability of real-time captioners. CBS Comments at 4-5; ABC Comments at 2-3. They query how the FCC can now propose real-time captioning as a solution when it rejected a requirement for these services for regular news programming just six months ago. Id.

In fact, new information about the costs of remote, real-time captioning has been presented in the instant proceeding. While in its earlier proceeding, the FCC estimated the costs of real-time captioning to be between \$120 and \$1200 per hour,⁷ Caption Colorado has confirmed that the costs for its “on-call” real-time captioning service can be contained at the lowest end of this range - at merely \$120 per hour. Caption Colorado Comments at 3. Caption Colorado reports that it is able to keep its costs down because it has so large a volume and staff size. Id. at 3. This provides ample evidence that a requirement for real-time captioning by the FCC - a requirement which will certainly increase the demand for such captioning - will continue to drive down the costs of this service.

Moreover, Caption Colorado has demonstrated to the FCC, through its own experience, the practical feasibility of providing real-time remotely for emergency programming. Contrary to the assertions of some commenters that the very nature of an emergency might preclude remote captioning (CBS Comments at 2,6 n.10; Media Captioning Services (MCS) Comments at 3), Caption Colorado reports that it has successfully provided emergency captioning for all of its

⁷ *In the Matter of Closed Captioning and Video Description of Video Programming, Report and Order*, MM Docket No. 95-176, FCC 97-279 at ¶84 n.256.

regular customers, as well as for other stations for which it provides only emergency captioning.⁸

With minimal lead time - as little as a few minutes - it states it is able to handle last minute real-time captioning, without affecting its regularly scheduled 3000 hours of captioning per month.

Caption Colorado Comments at 2. Finally, Caption Colorado notes that its services are available 24 hours per day, 7 days per week, and confirms that “with over 30,000 court reporters in the

U.S.,” there are enough qualified personnel who can be “on call” for local emergencies. *Id.* at 3.

Perhaps because it had not been requested, most, if not all of this information had not been before the FCC during its initial captioning rulemaking proceeding.

An FCC requirement for real time captioning of emergency programming will certainly expand even further the existing employment pool of real-time captioners. An illustration will help to prove this point. In 1990, Congress enacted Title IV of the Americans with Disabilities Act requiring nationwide telecommunications relay services. At that time, only a few states had underfunded and understaffed relay services, operated by fairly unskilled relay operators. In July of 1993, the FCC’s rules implementing Title IV went into effect, requiring nationwide relay services, which were to be operated by qualified relay operators called communications assistants. Since that time, the pool of communications assistants has steadily grown, and the qualifications for joining this profession have become more demanding. Where there had been virtually no

⁸ We note that, to the best of our knowledge, Media Captioning Services, whose comments put into question the feasibility of using remote captioning, does not itself have first hand experience with this type of captioning. Moreover, MCS’ statements that “unless a captioning company is captioning a particular local station’s programming on a regular basis, it is unlikely that a captioning company would agree to provide emergency captioning on an ‘as needed’ or demand basis,” MCS at 3, has no basis in fact. Caption Colorado and other national captioning agencies report that are very willing to enter into such agreements. Certainly it is plausible that such

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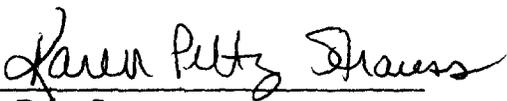
profession, one was created by the passage of a law. Similarly, as the need for real-time captioners increases, the supply of qualified individuals available to meet that need will also increase. In any event, at least one captioning agency - Caption Colorado - has a waiting list of real time captioners, indicating that in at least some areas, the supply of these employees is already exceeding their demand.

IV. Conclusion

We again thank the FCC for the opportunity to submit these comments and urge the Commission to expedite action to require full and accurate textual reporting of all televised emergency programming.

Respectfully submitted,

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March 27, 1998

agencies would be willing to enter into contractual arrangements that permit them to provide real-time captioning of emergencies on an "as needed" basis.

ATTACHMENT A

Consumer Action Network

Members

**American Association of the Deaf-Blind
American Athletic Association of the Deaf
American Society for Deaf Children
Association of Late Deafened Adults
Deaf Women United, Inc.
Gallaudet University Alumni Association
Jewish Deaf Congress
National Association of the Deaf
National Black Deaf Advocates
National Fraternal Society of the Deaf
National Hispanic Council of Deaf and Hard of Hearing People
Telecommunications for the Deaf, Inc.**

Affiliate Members

**Association of College Educators: Deaf and Hard of Hearing
American Deafness and Rehabilitation Association
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The Caption Center
Conference of Educational Administrators Serving the Deaf, Inc.
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