

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Closed Captioning of Video Programming) CG Docket No. 05-231
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**COMMENTS OF CHARTER COMMUNICATIONS, INC., MEDIACOM
COMMUNICATIONS CORPORATION,
CEQUEL COMMUNICATIONS, LLC D/B/A SUDDENLINK COMMUNICATIONS,
AND TIME WARNER CABLE INC.**

Charter Communications, Inc. (“Charter”), Mediacom Communications Corporation, Cequel Communications, LLC d/b/a Suddenlink Communications and Time Warner Cable Inc. (collectively “Operators”) hereby submit comments in response to questions posed by the Commission in its recent *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”) regarding closed captioning certification requirements.¹

¹ *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking, Second Further Notice of Proposed Rulemaking, CG Docket No. 05-231; FCC 14-206 (rel. Dec. 15, 2014) (“Second FNPRM”); Announcement of Comment Deadlines for Closed Captioning Quality Second Further Notice of Proposed Rulemaking, Public Notice, CG Docket No. 05-231, DA 14-1910 (rel. Dec. 31, 2014).*

I. Operators Restate Support for Rule Changes That Place Legal Responsibility for the Provision and Quality of Closed Captioning Directly on Programmers

As set forth in Operators Comments² and Reply Comments³ filed with the Commission in response to the FNPRM accompanying its *Captioning Quality Report and Order*,⁴ placing direct responsibility and liability on programmers for both providing closed captioning and meeting the Commission's captioning quality rules is the most effective way to ensure the delivery of satisfactory captioning to viewers. Programmers are best positioned to ensure that the programs they deliver to video programming distributors (VPDs) are captioned and that the FCC's quality rules are satisfied. Captioning is typically added to programs during production, before VPDs receive the content to distribute to viewers. As recognized by the Commission, video programmers control programming content during the stage of the captioning process when captions are added.⁵ As such, it stands to reason that the party with control over the process should also be the party responsible for compliance.

Similarly, forcing VPDs to monitor and enforce programmer captions is not an effective means of ensuring that captioning is provided and quality is maintained as VPDs lack both control and leverage over the programmers. Moreover, requiring VPDs to police programmers is needlessly adversarial and introduces unnecessary friction between the parties. VPDs hold

² See Operators Comments in CG Docket No. 05-231 (filed Apr. 28, 2014) ("Operators 2014 Comments").

³ See Operators Reply Comments in CG Docket No. 05-231 (filed May 27, 2014).

⁴ *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, CG Docket No. 05-231; 29 FCC Rcd 2221 (2014) ("*Captioning Quality Report and Order and FNPRM*").

⁵ See, e.g., Operators 2014 Comments at n.4 and accompanying text (citing numerous orders in which the Commission recognized that programmers are the entities with the most direct control over most aspects of closed captioning).

significant other responsibilities under the Commission’s closed captioning rules, as they must ensure the pass-through of closed captioning to viewers and are required to monitor and maintain their equipment and signal transmissions to ensure that captioning is delivered to consumers intact.⁶

Most importantly, allocating responsibility directly to programmers would contribute to a better experience for consumers. By drawing a clear line between responsibilities of the relevant parties, and doing so in a logical manner that mirrors real-world practices, the Commission would create a more efficient captioning system that minimizes mistakes and resolves issues faster. Both programmers and VPDs agree that, ultimately, the point of the closed captioning rules is to deliver high-quality captions to viewers. Captioning rules that reflect reality, play to the parties’ strengths, and assign responsibility with the party best positioned to ensure compliance will move viewers ever closer to that goal.

II. If Programmers Are Directly and Solely Responsible for Provision and Quality of Captions, the Commission Can Eliminate All Rules Relating to Certification

Assigning responsibility for providing captioning and meeting captioning quality rules to programmers would obviate the need for certification requirements. The current rules rely upon programmer certifications to enforce compliance because, while VPDs are liable for ensuring that programming is captioned, VPDs do not control the captioning process. Accordingly, under the current rules, VPDs may rely upon certifications in defense of a complaint concerning captions.⁷ VPDs also must “exercise best efforts” to obtain certifications that programmers are either in compliance with the Commission rules, following best practices or exempt from the

⁶ 47 C.F.R. § 79.1(c).

⁷ 47 C.F.R. § 79.1(g)(6).

captioning obligations.⁸ And, in the event that such certifications are not made available to VPDs, the VPDs must report the programmer to the Commission.⁹ However, if programmers were made solely responsible for compliance with the captioning rules, there would be no need for VPDs to collect certifications or to report on certification truants. Rather, compliance would be required by the rules and would be enforced directly through complaints, not indirectly by way of certifications.

The Commission could therefore amend its rules to remove certification requirements, as the certification process would be rendered moot by an allocation of direct responsibility for captioning compliance on programmers.¹⁰ VPDs would no longer need to rely on certifications to demonstrate compliance per Section 79.1(g)(6). Similarly, the requirement that VPDs “use best efforts to obtain a certification from each video programmer” per Section 79.1(j)(1) would be equally unnecessary.¹¹ Under an approach where programmers hold the appropriate direct responsibility for meeting their captioning obligations, it would make little sense to require VPDs to make sure that programmers are properly documenting such efforts because programmers would have sufficient incentives through direct liability to ensure that captions are provided and that the quality standards are satisfied. Instead, VPDs would concentrate their best efforts on pass-through and equipment monitoring, the only activities that are within their control to effect in meeting the overarching objective of delivering quality captions. Whether a programmer certified to the VPD that it was captioning correctly would be irrelevant.

⁸ 47 C.F.R. § 79.1(j)(1).

⁹ *Id.*

¹⁰ Section 79.1(k)(1)(iv), 47 C.F.R. § 79.1(k)(1)(iv), may also be superfluous .

¹¹ 47 C.F.R. § 79.1(j)(1).

III. If the Commission Adopts Shared Responsibility, Certifications Should Be Required and Widely Available

On the other hand, if the Commission opts not to place direct and sole responsibility on programmers and to continue to hold VPDs responsible for the provision and quality of captions, the certification process should be retained. In fact, under those circumstances, the process could be made more robust. For example, the rules' current language, which refers to "the programmer's Web site or other widely available location used for the purpose of posting such certification," places the burden on the distributor to pursue the programmer certification.¹² Rather than requiring the VPD to exert its "best efforts" to obtain a certification, with consequences for the VPD for failing or refusing to do so, Section 79.1(j)(1) should be amended to place responsibility directly on the programmer to proactively provide its certification to the VPD or to make a certification available on some central repository.

In addition, in the event the certification process is retained, the Commission should amend Section 79.1(k)(1)(iv) to more clearly state precisely what is required in a programmer certification to meet the best practices requirement. The current rules do not clearly define the level of specificity that is required in a certification for the VPD to meet its obligations under either Section 79.1(g)(6) or 79.1(j)(1) of the rules. For example, the Commission's rules state that the certification should "specif[y] the exact exemption that the programmer is claiming."¹³ However, while that may be practical for certain exemptions, such as the new network exemption or the \$3 million revenue threshold, it is not practical for other programming that is exempt as a matter of course, such as interstitials, advertising and late night programming. Thus, it would help if the Commission clarified that certifications need only identify the applicable

¹² 47 C.F.R. § 79.1(j)(1)(iii).

¹³ *Id.*

exemptions that would justify a lack of captioning on all or nearly all of the programming on a particular channel. If, for some reason, non-exempt programming is not captioned or fails to meet the captioning standards but the certification is provided, the VPD should be permitted to rely upon the certification nonetheless.

Finally, no additional notification or monitoring obligations should be imposed on VPDs.¹⁴ Even if the Commission decides not to place direct and sole responsibility for captioning compliance on programmers it should not fall to VPDs to notify programmers of their captioning responsibilities or to keep track of whether programmers are meeting their own obligations. Doing so would only further exacerbate the problem of indirect regulation and would further expend VPD resources better deployed in ways affecting a greater impact on the delivery of high quality captioning to viewers.

IV. Conclusion

For the reasons discussed herein, the Commission should place direct and sole legal responsibility for the provision and quality of closed captioning on programmers, the party best suited to fill that role. Should it do so, the Commission may then set aside the certification system and repeal the rules relating to it, as those rules would be rendered superfluous. If, however, the Commission implements shared responsibility between programmers and VPDs in a manner that continues to hold VPDs responsible for the provision or quality of captions, programmers should be required make certifications widely available to VPDs.

¹⁴ See *Second FNPRM* at ¶ 10.

Respectfully submitted,

/s/

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