

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Closed Captioning of Video Programming:)	CG Docket No. 05-231
Telecommunications for the Deaf and Hard of)	
Hearing, Inc.)	
Petition for Rulemaking)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ submits these comments responding to the Federal Communications Commission’s (FCC) *Second Further Notice of Proposed Rulemaking*.² If the FCC’s goal is to aid consumers and improve captioning quality while also not imposing unreasonable and duplicative burdens on programming providers, the Commission should not require video programming providers (VPPs) to file with the FCC additional contact information and/or certifications of captioning compliance. The current framework is well-equipped to meet the needs of consumers and the programming providers who are currently going above and beyond to ensure the highest quality captioning and overall consumer experience.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² *Closed Captioning of Video Programming, Second Further Notice of Proposed Rulemaking*, CG Docket 05-231, FCC 14-206 (Dec. 15, 2014) (Further Notice).

II. THE FCC SHOULD NOT EXPAND ITS RULES TO REQUIRE ADDITIONAL VPP FILINGS AND CERTIFICATIONS

A. Because Broadcasters, as Video Programming Distributors, Already File Contact Information with the FCC, a Similar Obligation for Broadcast VPPs Would Be Wholly Redundant

Current rules require video programming distributors (VPDs), including broadcasters, to file contact information with the FCC, which must be updated within 10 business days of any change.³ Given their dual roles as both VPDs and VPPs, broadcasters already meet proposed VPP obligations for the filing of contact information.

If the FCC ultimately decides to include VPP contact information in another registry, such as the proposed certification registry, the FCC should not make broadcasters file duplicative information in separate locations. Because broadcasters already file contact information as VPDs, the most efficient and effective approach in that instance is for the FCC to copy and port over broadcaster contact information from VPD files to the central location for any certifications. Requiring multiple filings of the same information would be needlessly burdensome and wasteful of resources that could better be dedicated to captioning quality, and thus arbitrary.

Moreover, television broadcasters already place contact information for captioning complaints on their websites and in telephone directories.⁴ The FCC has correctly recognized that “the Internet is an effective tool for distributing information to broadcast audiences.”⁵ There are no barriers today to consumers accessing broadcasters’ contact

³ 47 C.F.R. § 79.1(i)(3).

⁴ 47 C.F.R. § 79.1(i).

⁵ *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 29 FCC Rcd. 14185, ¶ 9 (2014); *accord Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd. 4535 ¶ 10 (2012).

information on their stations' respective websites. Because captioning contact information is widely distributed online, the Commission has even less basis for requiring additional filings of redundant broadcaster information.

B. The Filing of VPP Contact Information with the FCC Will Not Assist – and Will Likely Frustrate – Consumers

Requiring VPPs, including broadcasters, to file additional contact information offers little or no value to consumers or the FCC. In a recent captioning proceeding, the FCC required VPDs to file contact information because VPDs have direct relationships with consumers.⁶ Viewers expect to contact their TV provider, whether an over-the-air broadcast station or a multichannel video programming distributor (MVPD), should a problem arise with captioning. It is not rational or efficient to encourage consumers to contact a VPP first. VPPs generally do not distribute programs to consumers (except for certain local broadcast productions) and are not in a position to readily identify potential captioning issues through the distribution chain.

An example will illustrate the problem. Assume a consumer is watching *Seinfeld*, or other pre-1998 programming in syndication, on a broadcast channel distributed via cable. If this program has captioning errors or an absence of captions,⁷ whom should the viewer contact to complain or inquire? If VPP contact information (and/or programming certifications) are required to be filed with the FCC, would a consumer be expected to locate syndicators' contact information on the FCC's website – assuming the viewer could even determine the appropriate syndicator for *Seinfeld* or another particular

⁶ Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 27 FCC Rcd. 787, ¶ 79 (2012).

⁷ The rules require 75 (not 100) percent of pre-1998 video programming to be captioned. 47 C.F.R. § 79.1(b)(2)(ii).

program? Many consumers also would likely struggle to differentiate between a VPP and VPD, and might well become confused as to which entity would more effectively address specific captioning problems. The end result will be frustrated consumers with more unresolved captioning questions.

The FCC also should be aware of potential unintended consequences of VPP filing requirements. One likely result of encouraging consumers to contact VPPs by posting their contact information would be to turn VPPs into call centers for VPDs, particularly cable and satellite providers. The record shows the vast majority of captioning errors and complaints result from consumer behavior or VPD equipment issues.⁸ A broadcaster or other VPP fielding a call about a malfunctioning set-top box would be helpless to remedy the issue.⁹ Non-broadcast VPPs lack the staff, training, infrastructure and resources to handle consumer calls about MVPD-related captioning issues. VPPs that are not licensees are likely to refer all calls back to VPDs – creating further delays in remedying captioning issues and increasing consumer frustration. VPDs, on the other hand, have experienced staff trained to interact with consumers.

Moreover, many VPPs distribute their programming nationwide via many different VPDs. If, for example, a VPP distributes its content via MVPDs across the country and one large cable provider with multiple systems experiences a problem, the VPP could receive consumer calls from a dozen states about a dozen different channels. The VPP would find it time consuming and resource intensive to investigate all these complaints,

⁸ See Letter from Gerald J. Waldron, Covington & Burling LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2, CG Docket No. 05-231 (Aug. 18, 2014).

⁹ Even if a captioning issue does originate from a VPP it cannot remedy the problem in real-time. Once a VPP sends a program to the VPD, the VPP has no control over it or the VPD. Better for a consumer to call a VPD about a captioning issue and the VPD contact the VPP, if necessary.

and then could well be unable to determine the cause of or to rectify the problem. A VPD receiving complaints, in contrast, would know the particular VPP providing a specific program at any time, and would be able to either address any distribution problem directly or contact the relevant VPP if the VPD determines the programming provider to be the cause of a captioning problem.

Ultimately, the burden of requiring all VPPs to coordinate and file captioning contact information outweighs any benefit. VPDs, including broadcasters, have the duty to investigate captioning issues, which requiring VPPs to file contact information will not alter.¹⁰ Consumer calls to VPPs in the first instance, therefore, will only add delay to the process and increase consumer confusion and frustration.

C. The FCC Should Deny ACA's Request that VPPs File Captioning Compliance Certifications with the FCC

The American Cable Association (ACA) asks the FCC to require that VPPs file closed captioning certifications with the FCC.¹¹ The FCC should reject this wholly unnecessary request. A filing requirement has no consumer benefit and merely increases the burden on VPPs. VPDs easily can request, or negotiate, closed captioning certificates from their VPPs as part of programming negotiations. Many VPPs voluntarily make captioning certificates widely available; doing so is part of the voluntary Best Practices that NAB, NCTA, and captioners recently negotiated with the FCC. ACA's request changing the current voluntary submissions between companies into a required FCC filing would eviscerate the intent of the Best Practices to encourage all parties to

¹⁰ 47 C.F.R. § 79.1(g).

¹¹ Ex parte letter from Barbara Esbin, American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3, CG Docket No. 05-231 (Sept. 4, 2014) (ACA Ex Parte).

voluntarily improve captions without continuing FCC involvement.¹² ACA has presented no basis for altering the voluntary Best Practices approach with a new mandatory certification requirement.¹³

ACA asserts that VPP captioning certifications are necessary for ACA's members to "know where to go to find the information they need."¹⁴ The FCC should not base its regulations on the ACA's specious claims. All VPDs have contact information for their VPPs, including television broadcasters. Otherwise, how would they contract and pay for video content? If a VPD must contact a VPP, at a minimum it can contact the VPP using its programming contact information. And, for broadcast licensees, VPDs have specific contact information for station personnel handling captioning issues, filed at the FCC and placed on stations' websites.

ACA's claim that the FCC must require certifications to be filed in a central repository because its members do not know their programmers' contact information is thus both unsubstantiated and spurious. In any event, many VPDs negotiate specific captioning requirements into their contracts as part of their program carriage agreements. Nothing prevents ACA's members from doing the same.

¹² See *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 2221, 2346 (2014) ("First, the Best Practices are voluntary."); *id.* ("The Best Practices provide video programmers, captioning vendors, and captioners with flexibility in establishing performance requirements that are designed to promote the creation of high quality closed captions for video programming").

¹³ Indeed, mandatory submissions of captioning certifications may cause additional delays and may also dissuade smaller captioning vendors and smaller programmers from formally contracting with VPPs pursuant to the Best Practices, particularly given their significant obligations and the limited availability of the highly-trained captioner pool.

¹⁴ ACA Ex Parte at 3.

D. Changing the Certification Process Will Result in Significant Problems

ACA's request to change FCC rules and require VPPs to file captioning certifications, instead of relying on the agreed-upon Best Practices, has at least three additional problems, each of which should lead the FCC to reject this request.

First, requiring every VPP in the country to file a certification, and especially to keep the information current, would be a significant cost and time burden on VPPs with very little commensurate benefit. VPDs constantly change their programming. Forcing VPPs to file certifications with the FCC for every programming shift would be extremely resource intensive and burdensome. Television shows are introduced at differing times of the year, and program lineups are very fluid. For example, dozens of broadcast network shows are introduced each new fall season, with smaller numbers of new shows introduced at other times. As broadcast networks determine which shows are successful, which shows to cancel, and whether to move programs, content from many VPPs is replaced. Additionally, consumers are now used to and expect mini-series and program debuts throughout the year, rather than just in the fall. An affirmative filing requirement would result in almost weekly amendments to certifications filed with the FCC. A less burdensome and more efficient approach reaching the same result would be for VPDs to ask VPPs, as part of their private contractual agreements, to provide captioning certifications on an as-needed basis.

Second, any VPP captioning certification filing requirement will almost inevitably become a *de facto* obligation on VPDs to track down and monitor thousands of VPPs to ensure they file their certifications. Most non-broadcast VPPs have no experience interacting or filing materials with the FCC, and do not even know the FCC has proposed this new rule. Only VPDs will be in a position to know which VPPs should have filed

captioning certifications. Thus, an obligation for VPDs merely to identify or “shame” non-filers will require VPDs to monitor and confirm VPP performance.¹⁵ As a practical matter, the same VPD employees charged with addressing captioning issues will be forced to spend valuable time hunting for certifications, thereby removing resources from pursuing the FCC’s real goal of quickly remedying issues and improving overall captioning quality.

Third, the certification proposal would impose obligations on numerous small programming providers, including even local groups that require broadcaster or other network assistance to produce programming. NAB doubts that the FCC wants to spend its scarce resources on tracking local churches, schools, community theatres, local government watchdogs or other civic groups that provide hyperlocal programming to VPDs. Enforcement of a certification obligation raises numerous concerns; sending Letters of Inquiry to such local groups for failing to file captioning certifications would result in misallocations of valuable resources by all parties. In short, VPDs are in the best position to request and receive voluntary caption certifications from VPPs, including smaller ones.

To be clear, television broadcasters support quality captioning, and we have long worked with the FCC, captioning vendors, programmers and MVPDs to respond to and resolve consumer complaints.¹⁶ However, forcing broadcasters to expend scarce resources monitoring certifications from VPPs, including local community programmers or syndicators, will hamper complaint resolution while providing no discernible benefit. The

¹⁵ Further Notice, ¶ 10.

¹⁶ See, e.g., Comments of the National Association of Broadcasters, at 4-6, CG Docket No. 05-231 (Nov. 10, 2005); Letter from Jane Mago, National Association of Broadcasters, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 05-231 (Nov. 17, 2005).

public interest is better served by VPDs deploying resources to improve the quality of captioning rather than focusing on formal administrative compliance by thousands of VPPs. Simply stated, the captioning certification registry is untenable if it requires the inclusion of all VPPs. Ensuring that VPDs and VPPs can continue to work collaboratively with all stakeholders under the existing Best Practices will more effectively improve captioning quality.

III. ANY SHIFT FROM THE CURRENT CAPTIONING LIABILITY FORMULA MUST NOT BE A ONE-WAY STREET

Any potential modification of the FCC's closed captioning liability formula must ensure that liability is ultimately shifted to the proper party, even if it means liability is returned to the VPD. In the event of a captioning problem that a VPD claims is the fault of a VPP, there must be a simple mechanism by which the VPP can shift the burden back to the VPD, if the VPP can show that it is not the source of the problem.

Under the current liability formula, VPDs often assert that a caption problem is the fault of a VPP, but, after an internal investigation, the VPP may find conclusive proof to the contrary. For example, a broadcaster, after discovering a complaint about an absence of captions in a program viewed via an MVPD, may quickly determine that the captions were intact when sent by the broadcast facility to the MVPD receive-site (e.g., cable head-end). In such cases, the FCC must ensure that any revised regulations include processes to return complaints (and the responsibility for consumer responses) to the VPD. A broadcaster or other VPP must not be held responsible because a VPD erroneously claims the VPP is at fault. If the FCC does not allow VPPs to shift the burden to remedy the issue back to VPDs, it risks incentivizing VPDs to claim that issues lie with VPPs to avoid liability, while failing to resolve the real problem.

IV. CONCLUSION

NAB and its members will continue to work with industry, the FCC, captioning vendors, and the disability community to ensure caption quality improves. A central registry containing VPP contact information and/or certifications, however, will not achieve our collective goal. Instead, it will impede improvements in caption quality by diverting resources away from addressing captioning problems and toward complying with unnecessary administrative burdens. VPD contact information already is widely available online and at the FCC, and, as explained above, VPP contact and certification information will not assist consumers in the event of captioning issues. The FCC therefore should not alter its correct decision to make captioning certifications voluntary as part of the Best Practices designed to improve captioning throughout the video ecosystem. Finally, the FCC, regardless of its eventual decision about its captioning liability formula, must allow VPPs to return captioning complaints to VPDs should they determine that captioning problems did not originate with them.

Respectfully submitted,

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