

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

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

**COMMENTS**



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January 20, 2015

## I. INTRODUCTION AND SUMMARY

The American Cable Association (“ACA”) submits these comments in response to the Commission’s Second Further Notice of Proposed Rulemaking (“Second FNPRM”) in the above-captioned proceeding.<sup>1</sup> The Second FNPRM seeks additional comment on several issues related to matters raised in the Commission’s Further Notice of Proposed Rulemaking released last February in this docket.<sup>2</sup> In particular, the Second FNPRM seeks comment on proposals to require video programmers to file both contact information and certifications of captioning compliance with the Commission.<sup>3</sup>

ACA supports these proposals, and recommends that the Commission adopt them. Requiring video programmers to file both contact information and certifications of captioning compliance with the Commission will better facilitate compliance with the Commission’s closed captioning rules and ensure that individuals who are deaf and hard of hearing receive accurate and complete captions. In its filings in this docket, ACA has described how the current regime for resolving consumer complaints concerning television closed captioning is unfair, inefficient, and ineffective.<sup>4</sup> Accordingly, ACA has urged the Commission to extend some responsibility and liability for closed captioning compliance under its rules to the video programmers that provide the captioning and has generally supported the proposed burden-shifting enforcement

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<sup>1</sup> *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 14-12 (rel. Dec. 14, 2014) (“Second Further Notice” or “Second FNPRM”).

<sup>2</sup> *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, 29 FCC Rcd 2221 (2014) (“Report & Order” and “Further Notice” or “FNPRM”).

<sup>3</sup> Second FNPRM, ¶ 1.

<sup>4</sup> *Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Ex Parte Letter of the American Cable Associations, CG Docket No. 05-231, at 1-2 (filed Sept. 4, 2014) (“ACA Ex Parte”); Reply Comments of the American Cable Association, at 2-7 (filed May 27, 2014) (“ACA Reply Comments”); Comments of the American Cable Association, 4-6 (filed Apr. 28, 2014) (“ACA Comments”).

model as a mechanism for shifting the compliance burden from the video programming distributor (“VPD”) to the video programmer in appropriate cases.<sup>5</sup>

Commission staff and smaller multichannel video programming distributors (“MVPDs”) would benefit greatly from the public disclosure of contact information for the staff in the video programmer’s organization in charge of handling closed captioning. This is especially important for Commission staff in light of the proposal that would shift the compliance burden to the video programmer when evidence is available that the closed captioning problem is not within the VPD’s control. When this occurs, the Commission would have a list of video programmer contact information at its disposal. In addition, as the Commission notes in the Second FNPRM, a number of commenters have raised concerns regarding the ability of VPDs to locate the correct video programmer point of contact for resolution of closed captioning complaints should the Commission extend to video programmers some of the responsibilities for liability and compliance with its captioning rules.<sup>6</sup> Requiring video programmers to identify and disclose contact information for ensuring compliance with the Commission’s closed captioning rules is a low cost solution to this problem.

VPDs, consumers, and Commission staff would also benefit greatly from the Commission requiring video programmers to provide certifications of their compliance with, or exemption from, the Commission’s closed captioning rules, and to file these certifications with the Commission. Currently, as the Commission highlighted in the Second FNPRM, video programmers are not required to provide certifications.<sup>7</sup> This creates enforcement issues and uncertainty for VPDs and for consumers about the specific practices of individual video programmers upon whom they depend, which can easily be removed by obligating video programmers to provide certifications. ACA also supports requiring video programmers to file

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<sup>5</sup> See FNPRM, ¶ 125.

<sup>6</sup> Second FNPRM, ¶ 4.

<sup>7</sup> *Id.*, ¶ 9.

these certifications with the Commission because it is the most efficient means of enabling the Commission to determine whether a video programmer is meeting its requirement to provide a certification. VPDs also benefit from a single electronic destination for the certificates of all video programmers. In addition, maintaining certifications in a single database may obviate the need for a consumer to file a complaint simply to determine whether the programming is exempt or not, which would benefit the Commission and VPDs if, in turn, there is a reduction in the number of unwarranted complaints.

ACA therefore recommends that the Commission require video programmers to file both contact information and certifications of captioning compliance with the Commission.<sup>8</sup> As described in more detail below, these proposals will further the public interest and ACA fully supports their adoption.

## **II. THE COMMISSION SHOULD REQUIRE VIDEO PROGRAMMERS TO FILE CONTACT INFORMATION FOR STAFF RESPONSIBLE FOR CLOSED CAPTIONING COMPLIANCE WITH THE COMMISSION**

The Second FNPRM invites comments on a proposal to require video programmers to file with the Commission contact information for a dedicated person or persons responsible for ensuring compliance with the Commission's closed captioning rules.<sup>9</sup> ACA supports adoption of this common sense proposal because it will help ensure that consumer closed captioning complaints are addressed quickly and efficiently in a coordinated manner without adding any undue burden on programmers.

ACA has maintained from the outset that smaller MVPDs would benefit greatly from programmers publicly disclosing the name and contact information of the person to contact

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<sup>8</sup> The Commission asks whether it "would not have statutory authority to impose the requirements proposed in this and other paragraphs of [the Second FNPRM]." *Id.*, ¶ 10. As ACA has previously discussed, the Commission has the authority to take these actions. See ACA Comments at 3-4 (citing 47 U.S.C. § 613(b)(2)) ("The Commission has authority under Section 713 of the 1996 Telecommunications Act to shift compliance responsibilities from VPDs to video programmers. In particular, Section 713 directs the Commission to prescribe regulations that 'shall ensure' that 'video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions.'").

<sup>9</sup> *Id.*, ¶¶ 4-5.

about closed captioning problems in the video programmer's organization.<sup>10</sup> This dovetails with the Commission's recognition that "the creation and delivery of good quality captions is not solely within the control of any one entity and often requires coordination and execution among many connected parties in the video delivery chain..."<sup>11</sup> By adopting a minimally burdensome rule that requires video programmers to file the name and contact information of the staff person(s) responsible for handling closed captioning complaints, the Commission would enable Commission staff and MVPDs to quickly connect with the relevant parties within the video delivery chain and efficiently resolve complaints to ensure the delivery of programming with quality closed captioning.<sup>12</sup>

Making video programmer contract information readily available in an up-to-date centralized directory containing the closed captioning contact information of all relevant parties within the video programming provision and delivery chain location would allow Commission staff to more easily contact video programmers when the need arises. This is particularly important should the Commission shift the compliance burden to the video programmer when evidence is available that the closed captioning problem is due to the video programmer. In instances where Commission staff may need to contact the video programmer, having this information available serves a similar purpose to having VPDs provide this information to the Commission. Since the Commission's directory already contains closed captioning contact information for MVPDs, the only barrier to a complete directory is the lack of contact information for video programmers.

Making video programmer contact information readily available is also particularly important for smaller MVPDs, like the majority of ACA's members, who primarily purchase their

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<sup>10</sup> ACA Ex Parte at 2-3.

<sup>11</sup> Second FNPRM, ¶ 2 (citing Report & Order, ¶ 52).

<sup>12</sup> To be clear, ACA is not arguing that video programmers should disclose the name and contact information of a person to contact about closed captioning problems in order to facilitate consumers contacting the programmer directly when closed captioning problems arise.

national video programming through the National Cable Television Cooperative (“NCTC”) and therefore have little or no direct interaction with national programmers.<sup>13</sup> While it may be possible for smaller MVPDs to eventually obtain the necessary video programmer contact information through the NCTC or another buying group, the time it takes to track down the relevant contact information in this indirect manner can only serve to delay the resolution of a captioning complaint. This is especially true for very small MVPDs with limited administrative resources. Many very small MVPDs have only a handful of staff members whose time is otherwise fully devoted to the day-to-day tasks necessary to operate a small system. Ensuring that video programmers’ up-to-date contact information is included in the Commission’s closed captioning contact directory would help eliminate any barriers to communication that may prevent consumers’ closed captioning complaints from being resolved in the most expeditious manner possible.

The benefits, as described above, of requiring video programmers to submit contact information for the staff member or members responsible for handling closed captioning clearly outweigh any potential burdens involved in such a filing. The filing would simply require the video programmer to electronically complete a straightforward form with the names, email addresses, and phone numbers of a primary staff member (and back-up if such a person exists) responsible for handling closed captioning issues. The fact that many video programmers already submit contact information for their closed captioning staff confirms that this requirement will not be overly burdensome.<sup>14</sup> These video programmers likely do so because they recognize that it is in their own interest to ensure that their closed captioning staff is readily available to resolve any captioning issues that may arise. While it may be tempting for the Commission to

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<sup>13</sup> ACA Ex Parte at 2-3.

<sup>14</sup> See e.g., *Closed Captioning of Video Programming, Search VPDs*, Consumer & Governmental Affairs Bureau, FCC.gov (last visited Jan. 16, 2015) (search results for the Washington, DC area show several programmers have contact information in the VPD database, including Disney Channel), [http://esupport.fcc.gov/vpd-search/search!openProvider.action?vpd\\_id=V10-002416](http://esupport.fcc.gov/vpd-search/search!openProvider.action?vpd_id=V10-002416).

simply continue to rely on video programmers voluntarily submitting contact information for their closed captioning staff, it is unlikely that programmers who are responsible enough to voluntarily report their contact information are the source of many closed captioning problems. Instead, to ensure that consumers' closed captioning complaints are resolved quickly and efficiently, all programmers should be held to the same standard as MVPDs and be required to submit contact information to the Commission's closed captioning directory.

**III. THE COMMISSION SHOULD REQUIRE VIDEO PROGRAMMERS TO PROVIDE COMPLIANCE CERTIFICATIONS AND SHOULD REQUIRE THESE CERTIFICATIONS BE FILED WITH THE COMMISSION**

**A. Video Programmers Should Be Required to Certify Their Compliance With the Commission's Closed Captioning Rules.**

The Second FNPRM asks whether the Commission should require video programmers to provide certifications covering their compliance with Commission rules on the provision and quality of closed captioning if some responsibilities for compliance with its closed captioning rules are extended to video programmers.<sup>15</sup>

ACA recommends that the Commission require video programmers to provide certifications of their compliance with, or their exemption from, the Commission's closed captioning rules. The Commission's recent Order imposes an obligation on VPDs to exercise their best efforts to obtain a captioning quality certification from each video programmer from which the VPD obtains programming stating: (i) that the video programmer's programming satisfies the required caption quality standards; (ii) that in the ordinary course of business, the video programmer adopts and follows the programmer best practices (adopted in the recent Order) in captioning its programming; or (iii) that the video programmer is exempt from the closed captioning rules, under one or more properly obtained exemptions.<sup>16</sup> VPDs benefit from obtaining and compiling certifications – covering both the provision and quality of closed

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<sup>15</sup> Second, FNPRM, ¶ 6.

<sup>16</sup> 47 C.F.R. § 79.1(j)(1).

captioning – from video programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors because VPDs may rely on these certifications to demonstrate compliance<sup>17</sup> or to avoid liability for captioning issues outside of their control.<sup>18</sup> However, as the Second FNPRM emphasizes, the Commission’s rules do not obligate video programmers to provide such certifications to VPDs.<sup>19</sup>

Not requiring video programmers to provide certificates creates enforcement issues and uncertainty for VPDs and for consumers about the specific practices of individual video programmers. Specifically, it permits a programmer, without risk of enforcement action, to not satisfy the obligations outlined in the certification. It may also permit a programmer to satisfy the obligations, but not disclose this fact to VPDs or to the public. The inability of the Commission to take action against programmers who do not provide certificates, and the uncertainty that could be thrust upon VPDs and consumers who rely on the video programmers, can be easily removed by obligating video programmers to provide certifications. For video programmers already providing certificates to VPDs, this requirement imposes no new burden. For those not already providing certificates, any new burden is outweighed by the benefit to consumers of the commitments made by the video programmer. Accordingly, ACA strongly urges the Commission to require video programmers to provide certifications.

**B. Video Programmers Should Be Required to File Their Compliance Certifications With the Commission.**

The Second FNPRM also asks whether the Commission should amend its rules to require video programmers to file their certifications regarding the provision and quality of

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<sup>17</sup> See 47 C.F.R. § 79.1(g)(6).

<sup>18</sup> See 47 C.F.R. § 79.1(j)(1)(iii).

<sup>19</sup> Second FNPRM, ¶ 9 (“[A]lthough section 79.1(g)(6) allows VPDs to rely upon certifications from programming suppliers, it does not require programming suppliers to provide such certifications”). See *also* 47 C.F.R. § 79.1(j)(1)(iii) (requiring VPDs to report to the Commission those video programmers not providing a captioning quality certification).

closed captioning with the Commission.<sup>20</sup> ACA recommends that the Commission adopt this proposal. Requiring video programmers to file certifications with the Commission is the most efficient means of enabling the Commission to determine whether a video programmer is meeting its requirement to provide a certification. It will also lead to a single electronic destination for all video programmers' certificates. Finally, it will enhance transparency for the public, thereby decreasing unwarranted complaints.

Requiring video programmers to provide and file such certifications with the Commission will provide substantial public interest benefits. Such a change in procedures would be the most efficient means for the Commission to ascertain whether video programmers are meeting a requirement on them to provide a certificate. If the Commission does not receive a certificate, the Commission can take immediate action against the programmer. It would also alleviate the need for the Commission to rely on VPDs to report back to the Commission that a particular video programmer has not provided a certification.<sup>21</sup>

An obligation on video programmers to provide and file certifications in a public database would also benefit consumers. Previously a consumer or a consumer group would have to file a captioning complaint with its VPD simply to find out if the programming was subject to captioning rules or if it was exempt. With public filing of compliance certifications with the Commission, the consumer or consumer group could instead review a programmer's certification and determine whether or not the programmer qualifies for one of the exemptions from the Commission's closed captioning rules. In this example, if the programmer qualifies for

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<sup>20</sup> Second FNPRM, ¶¶ 7, 9.

<sup>21</sup> Under section 79.1(j)(1)(iii), if a video programmer does not make such a certification covering captioning quality widely available within 30 days after receiving a written request, the VPD is obligated to promptly submit a report to the Commission identifying such non-certifying video programmer for the purpose of being placed in a publicly available database. See 47 C.F.R. § 79.1(j)(1)(iii).

an exemption no complaint would be filed, saving the consumer's, the VPD's, and the Commission's limited resources.<sup>22</sup>

Requiring video programmers to take certifications that most already provide to VPDs and instead file them electronically with the Commission adds little to no additional burden on video programmers. This is especially true in light of Commission plans to maintain a database of non-certifying video programmers with respect to captioning quality. Moreover, video programmers' transaction costs would likely be reduced because they would no longer need to devise an independent system to make their certifications publicly available to each individual MVPD. In turn, MVPDs can expect a single standardized location where they can find the relevant certifications upon which they rely.

#### **IV. CONCLUSION**

In order to create an efficient system to ensure that all non-exempt video programming is compliant with the Commission's new closed captioning quality rules, the Commission should adopt the common sense proposal to require video programmers to file contact information in centralized Web-based interfaces maintained by the Commission. In addition, the Commission should require video programmers to certify their compliance with the Commission's closed captioning rules, and provide such certifications to the Commission rather than requiring programmers to provide a certification to each VPD it delivers programming to. These measures

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<sup>22</sup> The Commission asks a series of related questions covering whether a VPD should have an obligation to alert a video programmer to the requirement to provide certifications to the Commission, whether the video programmer should be solely responsible for failing to comply with Commission rules (after being notified of its obligation by the VPD, or, alternatively, whether VPDs should be tasked with monitoring video programmers' compliance with a certification requirement. In addition, it asks whether this would be inconsistent with the approach of shifting certain responsibilities in the areas of closed captioning from the VPDs to the programmers. Second FNPRM, ¶ 10. The short answer to the last question is: yes. It would be inconsistent with the burden-shifting approach by continuing to place primary responsibility on the VPD as well as inefficient and wasteful. The sole responsibility for complying with a Commission rule, and any burden of non-compliance, should lie with the party on whom the requirements are imposed. In the case of both provisioning and ensuring the quality of closed captioning, that would be the video programmer. There is no policy justification for continuing to require hundreds of VPDs to police the compliance of video programmers with Commission rules when the Commission can just as easily impose this obligation directly on the regulated entity.

would increase accountability and transparency in the closed captioning process, and decrease transaction costs for smaller MVPDs, without adding any undue burdens on video programmers. The result would be a streamlined record, open to the public and the Commission, giving each entity in the video programming delivery chain a greater incentive and ability to proactively meet their responsibilities in providing quality closed captioning for consumers. These relatively low-cost proposals will therefore produce large and compelling public interest benefits and should be adopted by the Commission without further delay.

Respectfully submitted,

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