

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

In the Matter of)
) CG Docket No. 05-231
Closed Captioning of Video Programming)

COMMENTS OF AT&T

AT&T Services, Inc., on behalf of its affiliated companies, (collectively “AT&T”) files these reply comments on the Second Further Notice of Proposed Rulemaking (“*Second Further Notice*”) about methods to improve the closed captioning of video programming shown on television.¹

I. INTRODUCTION AND SUMMARY.

AT&T renews its call for video programmers to share responsibility for transmitting high quality closed captioning for television video programming. Video programmers, rather than video programming distributors (“VPDs”), control the provision and quality of captions in their programming, and thus, are in the best position to develop and implement solutions to improve closed captioning quality. Attempting to improve closed captioning quality indirectly through private contractual arrangements between video programmers and VPDs is inefficient. Instead, the Commission can more effectively encourage the provision of consistent, high quality closed captioning by requiring programmers to comply with caption rules. VPDs can undertake an initial investigation of closed captioning complaints and shift the burden to programmers when it is in the programmers’ control to resolve the complaints. This process would result in more

¹ Closed Captioning of Video Programming, *Second Further Notice of Proposed Rulemaking*, CG Docket No. 05-231, 79 Fed. Reg. 78768, FCC 14-206 (2014) (“*Second Further Notice*”).

timely resolution of complaints and have a positive long-term impact on closed captioning quality.

With shared responsibility for closed captioning, VPDs will no longer need programmer certifications to demonstrate compliance with the closed captioning rules. Instead, VPDs and video programmers will demonstrate compliance with the closed captioning obligations that they control—providing a more efficient and transparent division of responsibility and complaint resolution process. Nevertheless, if the Commission determines that programmers should still create certifications of compliance, those programmers should file those certifications and accompanying contact information directly with the Commission. Receipt of programmer certifications and contact information will allow the Commission to more effectively monitor programmer compliance with the closed captioning rules.

II. DISCUSSION

A. Closed Captioning Users Will be Best Served by an Allocation of Responsibility Between Video Programmers and VPDs.

AT&T reiterates its call for the Commission to shift to a regulatory scheme that requires video programmers and VPDs to share the responsibility for providing high quality closed captioning for television programming. Programmers create and embed the captions in the video programming stream and thus, are in the best position to address closed captioning transmission and quality issues.² For their part, VPDs pass through captions to viewers and should ensure that their equipment does not block or impede the delivery of captions embedded in the programming stream. Imposing all closed captioning obligations upon VPDs, as is currently done, and

² Closed Captioning of Video Programming, *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, CG Docket No. 05-231, 29 FCC Rcd 2221, 2255 (2014) (“2014 CC Report & Order, Declaratory Ruling, and Further Notice”) (“[V]ideo programmers typically are the entities with the most direct control over the quality of closed captioning of their programming.”)

expecting VPDs to indirectly regulate the video programmers' transmission of high quality captions is inefficient, more costly, and ultimately, less effective at meeting the goals of Section 713 of the Communications Act.

Shared responsibility for transmitting and delivering high quality captions recognizes the significant role that both video programmers and VPDs play in the closed captioning process and in resolving captioning problems. Programmers and VPDs would each be responsible for only those functions impacting closed captioning that are within their control. Contrary to the statements made by the National Association of Broadcasters,³ AT&T's experience has been that programmers bear at least 50% of the responsibility for captioning problems. Thus, video programmers should share direct responsibility with VPDs for compliance with the Commission's closed captioning rules and for resolving captioning problems that arise.

Imposing on VPDs the *initial* obligation to investigate closed captioning problems would avoid the need for viewers to track the parties that are potentially responsible for resolving captioning problems. VPDs would shift the burden to programmers only after confirming that the captioning problem does not originate with VPD equipment. The viewer need do nothing to shift that burden. This framework builds on existing programmer and VPD practices, but adds transparency, allowing viewers to know where captioning issues originate. For these reasons, the Commission should shift to a shared allocation of responsibility between video programmers and VPDs for compliance with the closed captioning transmission and quality rules.

³ Comments of The National Association of Broadcasters, CG Docket No. 05-231, at 4 (filed Jan. 20, 2015).

B. A Burden-Shifting Regime Obviates the Need for Certifications.

Commission rules allow VPDs to rely on certifications from video programmers to demonstrate compliance with the television closed captioning rules rather than actually reviewing every program before distribution to viewers.⁴ If the Commission modifies its rules to make video programmers responsible for closed captioning functions within their control, VPDs will no longer need to use certifications from programmers to demonstrate VPD compliance with the closed captioning rules. Eliminating certifications would reinforce that VPDs and programmers are solely and directly responsible for complying with their own closed captioning related obligations and eliminate what would otherwise be a needless paperwork burden on programmers.⁵

C. VPDs Need Not Gather Certifications or Report a Programmer's Failure to Provide Certifications.

If the Commission deems it in the public interest for video programmers to continue providing certifications of compliance with rules pertaining to the provision and quality of closed captioning, the programmers should submit those certifications directly to the Commission rather than to VPDs. If the Commission concludes in this docket that closed captioning compliance obligations should be imposed on programmers, then VPDs will no longer need certifications from programmers to demonstrate compliance with the captioning rules and thus, it would serve

⁴ 47 C.F.R. §79.1(g)(6). *See also* Closed Captioning and Video Description of Video Programming, *Report and Order*, MM Docket No. 95-176, 13 FCC Rcd 3272, 3369 (1997).

⁵ *See* Comments of DIRECTV, LLC, CG Docket No. 05-231, at 3 (filed Jan. 20, 2015); Comments of Comcast Corp., CG Docket No. 05-231, at 3 (filed Jan. 20, 2015); Comments of Charter Communications, Inc., Mediacom Communications Corp., Cequel Communications, LLC d/b/a Suddenlink Communications and Time Warner Cable Inc., CG Docket No. 05-231, at 3-4 (filed Jan. 20, 2015) (“Comments of Charter Communications, *et al*”).

no purpose for VPDs to gather them. In that instance, using VPDs as intermediaries would be inefficient, unnecessary, and inject delays into the process.

On the other hand, if the Commission concludes that VPDs should retain primary responsibility for compliance with the closed captioning rules, the Commission should revise its rules to require providers to submit certifications of closed captioning quality directly to the Commission rather than to VPDs. As the American Cable Association explained:

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. . . . 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.⁶

Commission rules require VPDs to seek out closed captioning quality certifications from video programmers and report to the Commission any programmer that does not, within thirty (30) days of a request, make its certification available on a publicly accessible website. This process is inefficient, unnecessarily complex, and burdensome for VPDs. It essentially throws VPDs into an enforcement role. AT&T agrees with Verizon that VPDs should not be tasked with enforcing the Commission's closed captioning rules.⁷ Requiring programmers to file certifications directly will instead place the Commission in a better position to monitor and

⁶ Comments of American Cable Ass'n, CG Docket No. 05-231, at 8 (filed Jan. 20, 2015).

⁷ *See* Comments of Verizon, CG Docket No. 05-231, at 5 (filed Jan. 20, 2015). *See also* Comments of Charter Communications, Inc., et al, at 6 (“[I]t 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.”)

enforce programmer compliance, without the delays and inefficiency that exists in the current process.

D. Providing Programmer Contact Information Will Facilitate Timely Resolution of Complaints.

AT&T agrees with commenters that video programmers' contact information should be provided to the Commission to facilitate timely resolution of closed captioning complaints.⁸ ACA states that small VPDs "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" because smaller VPDs "primarily purchase their national video programming through the National Cable Television Cooperative . . . and therefore have little or no direct interaction with national programmers."⁹ According to DIRECTV, "[p]ublicizing VPO contact points would promote that goal by providing consumers an avenue for resolving captioning issues and facilitating interactions between [programmers] and VPDs in their coordinated efforts to deliver captioning to viewers."¹⁰ And, the Consumer Groups and the Technology Access Program at Gallaudet University believe that requiring the filing of programmer contact information "will enable the Commission to proactively identify the party responsible for captioning problems that are not under the direct control of a VPD and initiate swift resolution and enforcement action if necessary."¹¹

⁸ Comments of American Cable Ass'n at 1-2, 3-6; Comments of Comcast Corp. at 3; Comments of DIRECTV, LLC at 1-3.

⁹ Comments of American Cable Ass'n at 4-5.

¹⁰ Comments of DIRECTV, LLC at 3.

¹¹ Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Hearing Loss Association of America, the Association of Late-Deafened Adults, the Cerebral Palsy and Deaf Organization, the Deaf and Hard of Hearing Consumer Advocacy Network, the American Association of the Deaf-Blind, and Speech

AT&T agrees with these assessments. While video programmers might express concerns about the burden associated with filing contact information, AT&T believes that the burden is minimal. Requiring video programmers to provide contact information to the Commission is no more burdensome than the burden currently placed on VPDs. Further, the benefits to be derived from giving viewers access to programmer contact information would exceed this minimal burden.

Dated: January 30, 2015

Respectfully submitted,



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