



NATIONAL ASSOCIATION OF THE DEAF

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June 2, 1999

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

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JUN - 2 1999

FCC MAIL ROOM

Re: In re Closed Captioning and Video Description of
Video Programming: CBS Request for Clarification
MM Dkt. No. 95-176

Dear Ms. Salas:

Enclosed please find one original and four copies of Comments of the National Association of the Deaf and the Consumer Action Network in the above captioned docket.

Sincerely,

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Enclosures

cc: Meryl Icove, DITF
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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JUN - 2 1999

FCC MAIL ROOM

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)

MM Docket No. 95-176

**COMMENTS OF
THE NATIONAL ASSOCIATION OF THE DEAF AND
THE CONSUMER ACTION NETWORK ON
CBS REQUEST FOR CLARIFICATION**

I. Introduction

The National Association of the Deaf (NAD) and the Consumer Action Network (CAN) submit these comments in response to the request of the CBS Corporation for clarification of the Federal Communication Commission's (FCC or Commission) rules on captioning. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members that works to safeguard the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. CAN is a coalition of national organizations of, by, and for deaf and hard of hearing people, that also seeks to protect and expand the rights of deaf and hard of

persons in education, employment, telecommunications, technology, health care, and community life.¹

The CBS Corporation has requested clarification of the FCC's captioning rules with respect to its obligations to provide real time captioning of live programming. The FCC's rules provide that CBS and certain other video programming providers may not count programming which contains electronic newsroom captioning (ENR) toward compliance with their captioning obligations after January 1, 2000. In its Request for Clarification, CBS reports that twelve of its fourteen owned and operated stations will also be required to comply with these new rules.

The FCC's captioning rules also contain a "no-backsliding" mandate, requiring providers who captioned their programs prior to the effective date of the FCC's captioning rules, to continue providing closed captions at "substantially the same level as the average level of captioning that they provided during the first six months of 1997."² CBS has requested clarification that providers will be permitted to continue using ENR to meet this "no-backsliding" requirement, so long as they otherwise comply with the remaining FCC captioning mandates.

The NAD and CAN maintain that CBS and other providers covered by the FCC's new real time captioning mandates should not be permitted to count ENR toward compliance with any

¹ The members of CAN are: 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, and Telecommunications for the Deaf, Inc. Its affiliate members are: Association of College Educators: Deaf and Hard of Hearing, American Deafness and Rehabilitation Association, Convention of American Instructors of the Deaf, The Caption Center, Conference of Educational Administrators Serving the Deaf, Inc., National Captioning Institute, and Registry of Interpreters for the Deaf, Inc.

² 47 C.F.R. § 79.1((b)(3).

of the FCC's captioning mandates, including its no-backsliding rule.

II. Permitting Providers to Fulfill Captioning Obligations Through ENR Would Conflict with Congress' Mandate for Full Access to Video Programming.

The NAD and CAN have, on numerous prior occasions, set forth the reasons that use of ENR is inappropriate for live newscasts.³ We have pointed out that Congress intended, through the passage of Section 305 of the 1996 Telecommunications Act, to ensure *full* access to television programming. Full access cannot be achieved with ENR because it does not provide captioning of live interviews, field reports, sports and weather updates, late breaking stories which are not prescribed, and banter among anchor persons. Notwithstanding the problems with ENR, in its initial captioning Order, the Commission decided to permit the unrestricted use of ENR by video program providers.⁴ In a Petition for Reconsideration of the FCC's original captioning Order, the NAD and CAN requested the Commission to revise its rules to require real-time captioning of live news and public affairs after January 1, 2000.

In its Order on Reconsideration, the Commission was in fact persuaded that the circumstances under which ENR should be allowed should be limited, as this would be "more consistent with the statutory intent" of the Telecommunications Act.⁵ In ruling that certain providers should not be permitted to use ENR in lieu of real time captioning, the Commission concluded that a requirement for real time captioning was advisable because it would "improve

³ See e.g., *In re Closed Captioning and Video Description of Video Programming*, CC Dkt. No. 95-176, Comments of the NAD at 18-19 (submitted March 15, 1996); *In re Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996*, MM Dkt. No. 95-176, Comments of the NAD at 27 (submitted February 28, 1997); Request for Reconsideration of the Captioning Mandates by the NAD and CAN at 14-17 (submitted October 15, 1997).

⁴ *In re Closed Captioning and Video Description of Video Programming*, Report and Order ¶84, MM 95-176, FCC 97-279 (August 22, 1997).

accessibility to important information to a significant portion of the population,” and would “stimulate growth of real-time captioning and, in turn, lead to lower captioning costs.”⁶ In its new ruling, the Commission was careful not to impose a captioning requirement that would be economically burdensome. Rather, the Commission made clear that its rules would only apply to those “video programming providers for which a real-time captioning requirement would not impose an economic burden *even at the initial stages of the transition.*”⁷ Having established this standard, the Commission decided to impose its real-time captioning mandate on the four major national broadcast networks, the broadcast stations affiliated with these networks in the top twenty five television markets, and national nonbroadcast networks serving very large numbers of households. The FCC limited its real time mandate to these providers in light of its determination that these providers would have sufficient resources to bear the costs of captioning even at the start of the transition schedule.

In the early months of 1997, the CBS network and many of its affiliates captioned 75%-100% of programming not exempted from the FCC’s new captioning rules. Because these providers will only be required to caption approximately 25% of their programming as of January 1, 2000 and 50% by January 1, 2002, they would not need to use real time captioning for their news and public affairs programming for quite some time, were they not required to switch to real time captioning for news programming that had been captioned with ENR in early 1997. Rather, these providers would be permitted to apply the captioning of other programming to the required

⁵ *In re Closed Captioning and Video Description of Video Programming*, Order on Reconsideration ¶35, MM 95-176, FCC 98-236 (October 2, 1998) (Order on Reconsideration).

⁶ *Id.* at ¶37.

⁷ *Id.* (emphasis added)

percentages, forcing consumers to wait until near the end of the transition schedule - as much as six and a half additional years - before they can receive full access to live news programming.

CBS argues that it should not be penalized for having voluntarily captioned its programming prior to the captioning mandates. Consumers truly appreciate the past efforts of CBS and other networks to caption their programs even before there was a federal law requiring captioning access. Without such access, consumers would not have been able to enjoy the diverse programming that CBS provides, or to have access to any of the news and information transmitted through CBS stations.

But in 1996, Congress set forth a clear and unequivocal mandate for the FCC to issue rules requiring all new programming to be fully accessible, unless providing such access would result in an undue or economic burden. The FCC has now ruled that real time captioning is needed to fulfill this Congressional mandate. In its Order on Reconsideration, the Commission acknowledged that “ENR captioning is not ideal,” and declared that “persons with hearing disabilities do not have full access to . . . programming when ENR is used.”⁸ The only reason then, for the FCC not to require real time captioning at this time would have to be that the Commission decided that the provision of this service would impose an economic burden. But the FCC has been careful to confer its new real time captioning mandate only upon those providers who would not experience an economic burden, even were those providers required to fulfill this mandate at the start of the FCC’s transition schedule. The very purpose of this new FCC real time mandate would be negated were it not to apply to programming covered by the no-backsliding rule. Precisely because CBS provided a considerable amount of captioning prior to

⁸ Order on Reconsideration ¶35.

the effective date of the FCC's rules, the network's present position would defeat the FCC's intent to gradually phase out ENR sooner rather than later. This, in turn, would defeat Congressional intent to ensure full television access for individuals who are deaf and hard of hearing.

III. Conclusion

For the reasons stated above, the NAD and CAN urge the FCC to prohibit CBS and other video programming providers from using ENR to fulfill their obligation to caption substantially the same amount of live programming as they captioned during the first six months of 1997. Real time captioning is critical to provide full access to information contained in live news and public affairs programming, as is mandated by Section 305 of the Telecommunications Act of 1996.

Respectfully submitted,

National Association of the Deaf
Consumer Action Network

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