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June 12, 1999

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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

Re: In the Matter of CBS Request for Clarification
MM Dkt. No. 95-176

Dear Ms. Salas:

Enclosed please find one original and four copies of Reply Comments of the Council of Organizational Representatives on National Issues Concerning People who are Deaf and Hard of Hearing in the above captioned docket.

Sincerely,

Evelyn Cherow

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Closed Captioning and)	
Video Description of)	MM Docket No. 95-176
Video Programming)	
)	
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

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FEDERAL COMMUNICATIONS COMMISSION
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**REPLY COMMENTS OF
THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES
ON NATIONAL ISSUES CONCERNING
PEOPLE WHO ARE DEAF OR HARD OF HEARING**

The Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing (COR) submits these reply comments in response to the request of the CBS Corporation for clarification of the Federal Communication Commission's (FCC or Commission) rule governing real time captioning. COR is a coalition of national organizations that are committed to improving the lives of individuals who are deaf or hard of hearing.¹

¹ The following members of COR support these comments: Alexander Graham Bell Association, American Academy of Audiology, American Society for Deaf Children, American Speech-Language-Hearing Association, Conference of American Instructors for the Deaf, Conference of Educational Administrators of Schools and Programs for the Deaf, League for the Hard of Hearing, National Association of the Deaf, National Court Reporters Association, Registry of
Footnote cont'd on next page

Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, support groups and self-help programs, medical, audiological, and speech-language pathology assessment and rehabilitation services, information on assistive devices and technology, and general information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a bridge among interested organizations, the general public, and the community of people with disabilities on matters concerning deaf and hard of hearing individuals. COR was an active participant in the FCC's earlier proceedings on closed captioning.

CBS argues that it should not have to apply the FCC's new requirements for real time captioning to its programming which falls under the Commission's "no-backsliding" rule. This rule requires video programming providers to continue captioning their programs at "substantially the same level as the average level of captioning that they provided during the first six months of 1997," as the FCC's captioning transition schedule gradually ramps up to 100% captioning of all non-exempt new programming. COR opposes the CBS proposal that it be permitted to continue using the electronic newsroom captioning technique (ENCT)² for programming that was shown with ENCT during the first six months of 1997. Put simply, the CBS position would effectively

Interpreters for the Deaf, Self Help for Hard of Hearing People, Inc., and Telecommunications for the Deaf, Inc.

² In its recent Fact Sheet on Captioning, the FCC revised slightly its terminology for the method used to provide on-screen text with teleprompters. Formerly known as electronic newsroom reporting, the FCC will now refer to this technology as the electronic newsroom captioning technique.

nullify the intent and effect of both Section 713 of the Communications Act³ and the Commission's own real time ruling as contained in its Order on Reconsideration.⁴

CBS argues that programmers who voluntarily captioned programming using the ENCT method in 1997 should not be unfairly penalized by having to now caption such programming with real time captioning. What CBS fails to appreciate, however, is the frustration experienced by viewers who are forced to watch programs using ENCT. ENCT provides text only for pre-scripted portions of news shows. Consequently, live reports from the field, sports and weather updates, and any and all last minute news updates are omitted where ENCT is the method utilized by local stations. The deficiencies of the ENCT method are so severe that the FCC itself recognized the need to revise its initial rule permitting the unrestricted use of ENCT, during its very first review of its captioning rules. Although in August of 1997, the Commission decided to allow the unlimited use of ENCT, only a year later the Commission reversed itself, noting that real time captioning is more consistent with the statutory intent of the Section 713. Section 713 requires full access to television programming through captioning. The FCC recognized that a "captioning" method that omits considerable portions of the program content can hardly be called full access.

CBS, in its Request for Clarification, speaks of the "burden," and the "harsh result" that would be imposed on its affiliates were the FCC to require real time captioning for programming captured under the no-backsliding rule. This argument cannot withstand scrutiny, however, when

³ Section 305 of the Telecommunications Act of 1996, 49 U.S.C. §713.

⁴ 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)

one looks at the parameters of the FCC's revised real time rule. Section 713 provides an exemption for providers where captioning would impose an economic (or undue) burden. The FCC, in crafting its real time mandate, was careful to extend it only to those stations that would not experience an economic burden, even where such stations are expected to provide real time captioning early in the transition years. As noted in recent comments submitted by the National Association of the Deaf (NAD) and the Consumer Action Network (CAN), the FCC limited its real time mandate to these stations "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."⁵ In contrast, were CBS to have its way, its network and affiliates would not need to provide any real time captioning until very late in the transition schedule, as these stations would be permitted to use other programs to meet their captioning quotas during most of the next six and a half years. Certainly, this could not have been the result desired by either Congress or the FCC.

Nor can CBS argue that the scarcity of real time captioners requires the FCC to diminish its new mandate in any way. As reported by Self Help for Hard of Hearing Individuals, Inc., (SHHH), leading captioning agencies do not anticipate that a shortage of real time captioners will occur upon implementation of the new real time captioning rule. Because the number of providers covered by the new rule is limited, and will only gradually increase over time, they expect its implementation to be quite manageable.

In summary, video programming providers have an obligation under Section 713 to provide full access to their programs unless doing so would impose an economic or undue burden on these providers. The FCC has already determined that "persons with hearing disabilities do not

⁵ Comments of NAD/CAN at 4, referring to Order on Reconsideration at ¶137.

have full access to . . . programming when [ENCT] is used.”⁶ As a result, the Commission has begun to establish real time captioning requirements, while exercising caution not to impose these mandates where they may impose a burden on providers. The FCC should proceed with fulfilling its legislative mandate to ensure full access to live news programming. Indeed, in the interest of fulfilling Congressional intent, COR urges the Commission to continue to expand, rather than decrease its mandates for real time captioning.

Respectfully submitted,



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⁶ Order on Reconsideration at ¶135.