

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
Petition for Rulemaking

CG Docket No. 05-231

COMMENTS OF DIRECTV, INC.

In response to a petition submitted by Telecommunications for the Deaf, Inc. (“TDI”), the Commission seeks comment on whether its current closed captioning rules are “the most effective and efficient way of ensuring that television viewing is available to the millions of deaf and hard of hearing Americans.”¹ TDI contends that they are not, and proposes a number of changes to correct a variety of perceived deficiencies.

DIRECTV, Inc. (“DIRECTV”) does not share TDI’s assessment. By balancing responsibility between the multichannel video programming distributors (“MVPDs”) subject to the Commission’s jurisdiction and the programmers such as ESPN and MTV that actually provide closed captioning, the existing rules allow viewers to receive prompt and accurate closed captioning on an extraordinary range of programming. The Commission should resist any efforts to upset this balance.

¹ *In the Matter of Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CG Docket No. 05-231, 20 FCC Rcd 13211, ¶ 9 (rel. July 21, 2005) (“Notice”).

I. THE EXISTING RULES PROVIDE AN EFFECTIVE AND EFFICIENT FRAMEWORK FOR THE DELIVERY OF CLOSED CAPTIONING

Concerned that there are problems with closed captioning, TDI seeks to impose a variety of new technical and non-technical quality standards, and proposes that MVPDs be responsible for real-time monitoring of compliance with these standards.² DIRECTV, however, does not believe that significant problems exist that would necessitate an overhaul of the closed captioning rules. For its part, DIRECTV is committed to giving all of its customers the very best video experience possible, period.³ Provision of closed captioning is an essential component of this commitment, and DIRECTV takes its captioning obligations very seriously.

As a program distributor, DIRECTV is *legally* responsible for ensuring that its 200-plus channels comply with the Commission's captioning rules. But DIRECTV must as a practical matter rely on its programmers to provide quality captioning and to certify that the programming they provide is captioned. DIRECTV, in turn, monitors its equipment at regular intervals to ensure that the captioning contractually required to be provided to it is present and delivered to its customers.⁴ Just as DIRECTV checks that the audio portion of a program is being transmitted to the subscribers, it takes similar

² See *Id.*, ¶¶ 13, 16, 18.

³ See "Cable v. Satellite: How to Choose," (Nov. 2005), *available at* <http://www.consumerreports.org/cro/electronics-computers/cable-or-satellite-tv-whats-best-for-you-1105.htm?resultPageIndex=1&resultIndex=1> ("Satellite subscribers were more satisfied overall and more pleased with picture quality than digital-cable subscribers"); Press Release, "J.D. Power and Associates Reports: Satellite TV Penetration Increases Significantly, Even as Cable Narrows the Customer Satisfaction Gap," (Aug. 17, 2005), *available at* <http://www.jdpower.com/news/releases/pressrelease.asp?ID=2005117>.

⁴ *Notice*, ¶ 25. The Commission seeks comment on whether distributors should have "specific mechanisms in place for monitoring and maintenance" of equipment and signal transmissions. *Id.* Because DIRECTV already monitors closed captioning pass-through, such a requirement is unnecessary. A monitoring requirement would also risk limiting DIRECTV's flexibility to introduce new and more effective means of monitoring and maintaining its systems.

measures to make sure that the closed captioning is available as well. By allowing MVPDs to rely on certificates of compliance from programmers, while maintaining the responsibility to ensure that such captioning is being passed through, the existing rules achieve an appropriate balance between the legal responsibilities placed on the MVPDs subject to Commission's jurisdiction and the minimal role those MVPDs have in producing and packaging (including captioning) programming.⁵ The Commission should not lightly disturb this balance, which has proven an effective means for achieving closed captioning on a broad range of programming.

II. THE FCC SHOULD CAREFULLY CONSIDER THE PROPOSED COMPLIANCE AND ENFORCEMENT MEASURES

A. MVPDs Must Be Allowed to Continue to Rely on Certificates of Compliance

The Commission seeks comments as to whether programming distributors should be permitted to continue to rely on certificates of compliance.⁶ If MVPDs are to continue

⁵ *Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility*, Report and Order, 13 FCC Rcd. 3272, 3369 (1997) (“*Captioning Report and Order*”) (“[T]he video programming distributor’s responsibility is to ensure that the equipment used to transmit these channels to viewers is capable of passing the captioning through along with the programming is in proper working order.”).

⁶ *Notice*, ¶ 43 (“If we do or do not impose a reporting requirement, we seek comment on whether the Commission’s rules should be amended to place a greater burden on video programming distributors to ensure that the programming they carry is captioned, regardless of the assurances they receive from programmers.”). Similarly, the *Notice* seeks comment on assertions made by TDI that programming distributors should be held ultimately responsible for monitoring captioning, *id.*, ¶ 16, and whether text that is full of errors should not be counted as captioned for purposes of meeting the captioning benchmarks (presumably, even if the MVPD has received a certificate stating that the text will not contain errors). *Id.* Captioning errors attributable to the content originator should not be counted against MVPDs in cases where the distributor has obtained a certificate of compliance. In addition, DIRECTV agrees with the National Cable & Telecommunications Association (“NCTA”) that momentary or temporary loss of captioning should not disqualify programming from counting toward compliance benchmarks. See NCTA Opposition, RM-11065 (Oct. 4, 2004) at 12.

to be held legally responsible for a process over which they have little practical control, this is an absolute necessity.

Congress specifically contemplated that MVPDs, many of whom distribute thousands of hours of programming daily, would enter into agreements with programmers to have those programmers provide captioning,⁷ and the Commission specifically approved reliance on certificates from programming suppliers affirming that the programming contains captions.⁸ The rationale for allowing such arrangements – that MVPDs cannot possibly monitor the quality of closed captioning on the simultaneous transmission of hundreds of channels – is simple and undeniable, and even stronger today, as many MVPDs (including DIRECTV) now offer far more programming than they did then.

Even setting monitoring issues aside, the fact remains that programmers are in a far better position to assure compliance with the rules than are MVPDs. Just as it is most efficient to caption at the production stage, it is most efficient to monitor (and, if necessary, correct) at the captioning stage. Indeed, this would be an even more significant consideration were the Commission to implement formal non-technical standards such as checks for spelling and grammar.⁹

⁷ *Captioning Report and Order*, 13 FCC Rcd. at 3286 (finding that Section 713 of the Communications Act “reflect[s] Congress’ recognition that it is most efficient to caption programming at the production stage” irrespective of the party bearing the ultimate responsibility for compliance with the captioning rules).

⁸ *Id.* at 3369 (recognizing the burden that substantial monitoring obligations would impose on MVPDs and assuring MVPDs that they “may rely on certifications from video programming suppliers that the programming contains captions and will not need to actually review every program before distribution to consumers.”).

⁹ *See Notice*, ¶ 13.

The Commission adopted the present rules governing reliance on certificates of compliance after carefully weighing the burdens on the parties involved, including the burdens on MVPDs, against the benefits to be achieved from closed captioning. The rationales for allowing certificates of compliance have only strengthened with the passage of time, and the rules governing them should be reaffirmed.

B. The Existing Complaint Process Enables DIRECTV to Address Its Customers' Concerns Quickly and Efficiently

The Commission also seeks comment on its process for handling complaints on closed captioning issues.¹⁰ Specifically, the Commission seeks comment as to whether complainants should be permitted to complain directly to the Commission (rather than, as they do now, first complaining to the MVPD). DIRECTV submits that the proposed changes are unnecessary because the current rules allow MVPDs to respond directly and quickly to address any problems that arise.

The Commission currently requires that closed captioning complaints be sent to distributors, reasoning that doing so would “lead to quicker action to resolve a complaint than if the complaint were filed directly with the Commission.”¹¹ When it issued this rule, the Commission stressed the importance of the “direct relationship between the video programming distributor and the consumer.”¹² This, as it turns out, is exactly how the system has worked in practice. Because DIRECTV receives complaints directly from

¹⁰ *Id.*, ¶ 31.

¹¹ *Captioning Report and Order*, 13 FCC Rcd. at 3381. The Commission retained this requirement on reconsideration. *Closed Captioning and Video Description of Video Programming*, Order on Reconsideration, 13 FCC Rcd. 19973, 20025 (1998) (“*Reconsideration Order*”).

¹² *Id.* (citing *Captioning Report and Order*, 13 FCC Rcd. at 3286).

its customers before the Commission does, DIRECTV has every incentive to resolve issues *before* they reach the Commission.¹³

A formal complaint process, by contrast, would cause two sets of problems. First, it would delay the onset of DIRECTV's own investigation until after the Commission had processed the complaint. Because the vast majority of complaints are easily resolved, this would represent a substantial disservice to viewers. Initiation of formal FCC complaints would also force DIRECTV and the viewer to adopt a needlessly adversarial posture, whereas now DIRECTV works in partnership with its customers to resolve captioning issues.

Providing viewers with accurate closed captioning is, of course, the goal behind all regulation in this area. The existing rules recognize this by encouraging expeditious resolution of any problems that may arise. The Commission should not replace these rules with an unwieldy, cumbersome, and ultimately counterproductive formal complaint process.¹⁴

¹³ DIRECTV includes customer service contact information on its bills as well as on its website. *See Notice*, ¶ 32 (“We seek comment on ... whether distributors should be required to provide the name or phone numbers for customer services on their websites, and in bills and telephone directories.”).

¹⁴ Although we believe that most complaints can be resolved on an informal basis in a timely manner, we don't think the Commission should reduce the amount of time MVPDs have to respond to formal complaints if they do arise. *Id.*, ¶ 30. Although all new non-exempt programming must be captioned as of January 1, there remain situations where questions about the exempt status of programming remain. In those cases, DIRECTV would still need to seek additional information from programmers. In addition, DIRECTV needs time to collect and process the compliance certificates from their programmers. Thus, the rationale for the 45 day requirement remains the same for many of the complaints that are received.

C. The Commission Should Reaffirm Its Prior Findings that Mandatory Reporting Would be “Unduly Burdensome and Administratively Cumbersome”

The Commission also has asked for comment on TDI’s proposal that video programming distributors be required to file mandatory compliance reports.¹⁵ The Commission previously found that mandatory filing would be both “unduly burdensome and administratively cumbersome,”¹⁶ and reaffirmed this conclusion on reconsideration.¹⁷ These decisions should not be disturbed.

TDI asserts that mandatory reporting is necessary for both the Commission and consumers to monitor distributors’ compliance with the captioning rules. However, video programming distributors already are required to “maintain records sufficient to demonstrate compliance” with the captioning rules.¹⁸ Indeed, even if not required to do so, DIRECTV would need to maintain such records in order to respond to customer complaints. Under the current rules, the Commission has the ability to access such information and otherwise monitor compliance with captioning requirements in the same manner it monitors compliance with other rules: by conducting random audits.¹⁹ In short, the Commission already has significant mechanisms in place to determine compliance with the captioning rules should any question arise.

¹⁵ *Id.*, ¶ 43.

¹⁶ *Id.*, ¶ 40 (citing *Captioning Report and Order*, 13 FCC Rcd. at 3383, ¶ 244).

¹⁷ *Id.*, ¶ 41 (citing *Reconsideration Order*, 13 FCC Rcd. at 20026-27, ¶ 118).

¹⁸ *Captioning Report and Order*, 13 FCC Rcd. at 3383, ¶ 244.

¹⁹ *Reconsideration Order*, 13 FCC Rcd. at 20026-27, ¶ 118 (noting that the Commission will “conduct random audits of captioning similar to the audits we use to monitor compliance with other rules, such as the children’s programming requirements.”) Significantly, the Commission rejected TDI’s request for rulemaking to authorize the use of benchmark compliance audits, noting that the Commission already has the authority to conduct audits to monitor compliance with the captioning benchmarks. *Notice*, ¶ 57.

* * *

DIRECTV's experience with closed captioning has been far different than that described by TDI. DIRECTV believes that the existing regulatory regime ensures the provision of captioning in an accurate and timely manner, while rationally apportioning responsibility among the various entities concerned. The Commission should reject the proposed rule changes applicable to distributors and reaffirm the existing rules allowing for efficient and effective delivery of captioning to the public.

Respectfully Submitted,

William M. Wiltshire
Michael Nilsson
S. Roberts Carter III
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, NW
Washington, DC 20036
(202) 730-1300

Counsel for DIRECTV, Inc.

/s/

Susan Eid
Vice President, Government Affairs
Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, INC.
444 North Capitol Street, NW, Suite 728
Washington, DC 20001
(202) 715-2330

November 10, 2005