

Before the  
**Federal Communications Commission**  
Washington, DC 20554

*In the Matter of* )  
 )  
Closed Captioning of Video Programming ) CGB Docket 05-231  
 )  
Telecommunications for the Deaf, Inc. )  
Petition for Rulemaking )  
\_\_\_\_\_ )  
To: Office of the Secretary

**REPLY COMMENTS**

Joint Commenters (the “Local Market Broadcasters”)<sup>1</sup>, by their counsel, hereby submit these Reply Comments to the Commission’s Notice of Proposed Rulemaking,<sup>2</sup> in the above-captioned rulemaking proceeding.

**Introduction**

The Local Market Broadcasters are broadcasters that own and operate full-power, low-power and Class A commercial television stations in small and mid-sized markets outside of the top 25 designated market areas (“DMAs”) and the state broadcasters’ associations named on Exhibit A. While acknowledging the fundamental role that closed captioning plays in delivering broad access to video programming to hearing impaired viewers, the Local Market Broadcasters urge the Commission not to augment the already existing captioning requirements under its rules. To do so would create severe economic

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<sup>1</sup> Attached hereto, as Exhibit A, is a list of all that parties that make up the Local Market Broadcasters.

<sup>2</sup> In the Matter of Closed Captioning of Video Programming, *Notice of Proposed Rulemaking*, CG Docket No. 05-231, 6 (rel. July 21, 2005) (hereinafter “*NPRM*”).

hardship for the Local Market Broadcasters as well as similarly situated stations throughout the country and would result in the elimination of important local programming. Moreover, adoption of the proposed changes would offer only a marginal increase in the availability of programming to the hearing-impaired viewing audience.

### Discussion

**A. The Commission should not extend its prohibition of counting ENT to markets beyond the top 25 DMAs**

In the *NPRM*, the Commission sought comment on the use of Electronic Newsroom Technique (“ENT”) to caption newscasts, and whether it should no longer count toward the fulfillment of the captioning requirements for stations outside of the top 25 DMAs.<sup>3</sup> The Local Market Broadcasters submit that such a change would have a disproportionately deleterious effect on their local programming.

Broadcasters often rely on ENT to provide captioned local news, sports and weather coverage at a reasonable cost to them, with only a small portion of newscasts airing unscripted. Under the current rule regime, as of January 1, 2006, all new non-exempt English language programming must be closed captioned, as the implementation of Section 79.1(b)(1)(iv) of the Commission’s rules takes effect.<sup>4</sup> Should the Commission exclude ENT captioning from the total amount counted toward compliance with the captioning rules, the combined burden on the Local Market Broadcasters of meeting the higher captioning benchmark and replacing ENT with real-time captioning in live local newscasts and on-the-spot programming would be onerous.

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<sup>3</sup> See *NPRM* at ¶48.

<sup>4</sup> See 47 C.F.R. §79.1(b)(1)(iv).

Real-time captioning is costly for broadcasters of all sizes, as it entails either the engagement of professional stenocaptioners, whose services are contracted on an hourly basis, or the hiring and training of full-time station personnel to become skilled in captioning. Several comments submitted in this instant proceeding describe the expenses associated with real-time captioning, listing rates ranging from \$100 to \$500 an hour, with annual totals potentially exceeding \$250,000 per year.<sup>5</sup> The Local Market Broadcasters cannot avail themselves of the discounted, bulk rates for captioning services enjoyed by network-owned and operated stations, nor do they have the resources to staff their stations to meet the demands of real-time captioning. Faced with the prohibitive costs of providing real-time captioning for their news programming, many would be forced to reduce or eliminate valuable local, live news coverage, at a great loss to the public. Conversely, should the Commission adopt the proposed change, only the short segments of newscasts that go unscripted through ENT would be added to the overall amount of captioned programming. To ensure that the provision of beneficial local news coverage continues, the Commission must not extend the exclusion of ENT from meeting captioning requirements to stations outside of the top 25 DMAs.

**B. The Commission should create an exemption to 100% captioning for programming produced by nonprofit entities**

The Local Market Broadcasters propose that the Commission adopt a new, self-executing exemption to the captioning requirements for programming produced by nonprofit entities, in order to facilitate the upcoming transition to 100% captioning.

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<sup>5</sup> See e.g., In the Matter of Closed Captioning of Video Programming, *Comments of the National Association of Broadcasters*, CG Docket No. 05-231, 7 and n.15 (filed November 10, 2005); see also In the Matter of Closed Captioning of Video Programming, *Joint Comments of Cosmos Broadcasting Corporation et al.*, CG Docket No. 05-231, 3 (filed November 10, 2005).

Alternatively, the Local Market Broadcasters request that the Commission confirm the applicability of an exemption under Section 79.1(d)(8) for such programming.

Many of the stations owned by the Local Market Broadcasters air religious programming produced by local churches and other religious entities. The programming producers generally deliver the material to the stations uncaptioned, as they lack the funds necessary to insert the captioning. The stations broadcast the programs immediately on delivery, to permit home viewers unable to attend in person to have access to religious services on their day of worship. The broadcast times thus typically fall on Sundays, when stations are operating with minimal staff, and as a result, the broadcasters cannot provide captioning for these programs, as it would tax their limited resources to have personnel on hand to operate the equipment and repeat the content.

When the 100% captioning requirement takes effect, either the stations or the video programming producers must provide captioning for these programs or seek a waiver from this requirement. At this time, many church ministry groups and other local programming providers seek exemptions on the basis of undue burden, under Section 79.1(f) of the Commission's rules.<sup>6</sup> This exemption, while flexible in scope, requires that the party seeking the exemption file a petition, making a showing of various factors demonstrating that captioning the programming in question creates significant difficulty or expense. The petitioner must expend resources to prepare the petition, often engaging counsel to handle the filing requirements and ensure that they have made a proper showing under the rule.

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<sup>6</sup> See 47 C.F.R. §79.1(f).

The Local Market Broadcasters propose that the Commission adopt a self-implementing exemption for local programming produced by nonprofit entities, to encompass not only religious programming, but also, locally-originated programs of community interest, such as public affairs or regional public interest programming. Establishing this exemption would effectively exempt programming that meets the undue burden standards, while eliminating the additional expenditures connected with waiver petitions for stations and programming providers operating with limited means and budgets, and introducing greater efficiency for Commission staff by lowering significantly the number of undue waiver petitions for their review. Self-implementing exemptions exist already under Section 79.1(d) of the Commission's rules. The Commission carefully crafted them to be narrow in scope and exclude no more programming from the captioning requirements than necessary to execute the specific purpose of each exemption. The Local Market Broadcasters are confident that the Commission, in adopting this new proposed exemption, would strike the appropriate balance between guaranteeing the widest possible access to video programming to the hearing-impaired viewing audience and protecting the needs of local broadcasters.

In the event that the Commission declines to adopt a provision explicitly exempting programming produced by nonprofit entities, the Local Market Broadcasters request that it issue a declaration that the religious and community-oriented programming described herein falls under the exemption for locally produced and distributed non-news programming with no repeat value, as contained in Section 79.1(d)(8) of the Commission's rules.<sup>7</sup> In recent orders issued in response to petitions for a waiver where

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<sup>7</sup> See 47 C.F.R. §79.1(d)(8).

religious programming producers asserted the applicability of this exemption, the Commission explained that, by its creation, it intended to exclude only a “limited class of truly local materials...locally created and not networked outside of the local service area or market of a broadcast station.”<sup>8</sup> In these cases, the Commission found that the petitioner had failed to present sufficient evidence demonstrating these qualities, but it did not definitively exclude religious programming from the scope of the exemption altogether.<sup>9</sup> Notably, the Commission, in its *Report and Order* adopting the closed captioning rules, expressed its intent to create this particular exemption for programs made on a low budget basis and that are of “limited repeat value.”<sup>10</sup> Local religious programming and community-based public interest programming conform to the standards set forth in the *Report and Order*, however, the discussed precedent undercuts their status in relation to the exemption. The Local Market Broadcasters now request a clarification of the applicability of Section 79.1(d)(8) in situations where the programming involved is produced and aired locally, with minimal repeat value and, as such, is comparable to the local parades, community theater productions, and other programs enumerated in the cited cases.

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<sup>8</sup> In the Matter of Prophetic Miracle Ministries, 20 FCC Rcd 5904, ¶3 (March 17, 2005); *see also* In the Matter of Quail Valley Church, 20 FCC Rcd 3685, ¶3 (February 18, 2005); In the Matter of Gulf Meadows Church, DA 05-1705, ¶3 (June 22, 2005); In the Matter of Highland Park Baptist Church, 20 FCC Rcd 9729 (May 23, 2005).

<sup>9</sup> *See* In the Matter of Prophetic Miracle Ministries at ¶3.

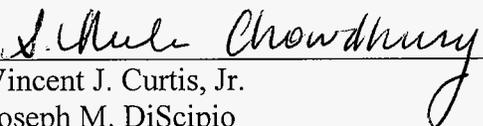
<sup>10</sup> *See* In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, *Report and Order*, 13 FCC Rcd 3272, ¶158 (August 22, 1997) (hereinafter, “*Report and Order*”).

**Conclusion**

The Local Market Broadcasters respectfully request the Commission's consideration of the foregoing matters in the resolution of the above-captioned proceeding.

Respectfully submitted,

LOCAL MARKET BROADCASTERS



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## EXHIBIT A

- Alabama Broadcasters Association
- Arkansas Broadcasters Association
- Catamount Broadcasting of Chico-Redding, Inc., KHSL-TV, Chico, CA
- Catamount Broadcasting of Fargo LLC, KXJB-TV, Valley City, ND
- Delmarva Broadcast Service General Partnership, WMDT(TV) Salisbury, MD
- Dimension Broadcasting Company, LLC, KBCA(TV), Alexandria, LA
- Florida Broadcasters Association
- GE Media, Inc., WFXB(TV), Myrtle Beach, SC
- Mississippi Association of Broadcasters
- Monroe Broadcasting, Inc., KAQY(TV), Monroe, LA
- Morris Network, Inc., WMGT-TV, Macon, GA
- Morris Network of Mississippi, Inc., WXXV-TV, Gulfport, MA
- The following subsidiaries of ultimate parent, Pappas Telecasting Incorporated\*:
  - KMPH(TV) License, LLC, KMPH(TV), Visalia, CA
  - KFRE(TV) License, LLC, KFRE-TV, Sanger, CA
  - Pappas Telecasting of the Midlands, L.P., KXVO(TV), Omaha, NE
  - KPTM(TV) License, LLC, KPTM(TV), Omaha, NE
  - Reno License, LLC, KREN-TV, Reno, NV
  - KTNC License, LLC, KTNC(TV), Concord, CA
  - Concord License, LLC, KUNO-TV, Fort Bragg, CA
  - Pappas Telecasting of Opelika, L.P., WLGA(TV), Opelika, AL
  - Pappas Telecasting of Sioux City, L.P., KPTH-TV, Sioux City, IA
  - Pappas Telecasting of Central Nebraska, L.P., KHGI-TV, Kearney, NE and KWNB-TV, Hayes Center, NE
  - Pappas Telecasting of Southern California License, LLC, KAZA-TV, Avalon, CA
  - KAZH License, LLC, KAZH(TV), Baytown, TX
  - Pappas Arizona License, LLC, KSWT(TV), Yuma, AZ
  - WTWB of the Triad, LLC, WTWB(TV), Lexington, NC
  - WMMF License, LLC, WWAZ-TV, Fond du Lac, WI
  - Casa of Washington, LLC, KAZW(TV), Walla Walla, WA
  - KDBC License, LLC, KDBC-TV, El Paso, TX
- The following subsidiaries of ultimate parent, Piedmont Television Holdings, LLC:
  - Piedmont Television of Anchorage License LLC, KTBY(TV), Anchorage, AK
  - Piedmont Television of Eastern Carolina License LLC, WFXI(TV), Morehead City, NC and WYDO(TV), Greenville, NC
  - Piedmont Television of Huntsville License LLC, WAAY-TV, Huntsville, AL
  - Piedmont Television of Macon License LLC, WGXA(TV), Macon, GA
  - Piedmont Television of Monroe/El Dorado License LLC, KTVE(TV), El Dorado, AR

- Piedmont Television of Savannah License LLC, WJCL(TV), Savannah, GA
- Piedmont Television of Springfield License LLC, KSPR(TV), Springfield, MO
- Piedmont Television of Youngstown License LLC, WKBN-TV, Youngstown, OH
- Thomas Broadcasting Company, WOAY-TV, Oak Hill, WV
- WCBI-TV, LLC, WCBI-TV, Columbus, MS

\* Pappas Telecasting Incorporated is also the ultimate parent of subsidiary entities that own and operate low-power and Class A television stations, not listed in this Exhibit.