

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

In the Matter of	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	
	)	

**REPLY COMMENTS OF  
THE RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION**

The Radio-Television News Directors Association (“RTNDA”), by its attorney, respectfully submits its reply comments in response to the above-referenced *Notice of Proposed Rulemaking* adopted by the Federal Communications Commission (“FCC” or “Commission”).<sup>1</sup>

The record in this proceeding firmly supports the conclusion that the imposition of additional captioning requirements on broadcasters at this time would be unwise. While acknowledging the understandable desire of the hearing-impaired community, as expressed through the comments of its advocates, to have access to all manners of televised programming through closed captioning, the Commission must heed, as it did in establishing the rules governing closed captioning eight years ago,<sup>2</sup> Congress’s directive that the agency afford due consideration to the economic burdens that may attend certain captioning methodologies as they

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<sup>1</sup> In the Matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, Notice of Proposed Rulemaking, CG Docket No. 05-231, FCC 05-142 (rel. July 21, 2005) (“NPRM”).

<sup>2</sup> In the Matter of Closed Captioning and Video Description of Video Programming, *Report and Order*, MM Docket No. 95-176, 13 FCC Rcd 3292 (1997) (“*Report and Order*”); In the Matter of Closed Captioning and Video Description of Video Programming, Order on Reconsideration, MM Docket No. 95-176, 13 FCC Rcd 19973 (1998) (“*Reconsideration Order*”).

are applied to video programming providers, and take actions consistent with the broader public interest.

The record demonstrates that over the past eight years quantitative and qualitative improvements in captioning have been dramatic. It is also clear from the record, however, that real-time captioning remains prohibitively expensive for many broadcasters and cablecasters, that the supply of real-time captioners and captioning services are insufficient to meet needs, and that if faced with an additional layer of captioning regulation, many stations will be forced to drop local programs—especially live local news and public affairs programming—from their schedules. It is equally clear that current technologies simply cannot achieve the goals sought by advocates for the hearing-impaired, and that advanced captioning technology must be given additional time to develop, without artificial constraints. Thus, RTNDA submits that the record in this proceeding does not warrant a change from the closed captioning regulations adopted by the Commission in 1997.

**I. THE COMMISSION MUST CONTINUE TO ALLOW SMALL AND MEDIUM MARKET BROADCASTERS TO CAPTION USING THE ELECTRONIC NEWSROOM TECHNIQUE**

RTNDA cannot emphasize to the Commission enough that expansion of the real-time requirement for captioning of newscasts beyond network affiliates the Top 25 markets or to less widely-distributed cable networks will result in less local news programming. Without exception, broadcasters and cablecasters participating in this proceeding concur.<sup>3</sup> Such a result stands at odds with the Commission's overarching goal of establishing and maintaining a system

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<sup>3</sup> See Comments of the National Association of Broadcasters at 6; Joint Comments of Cosmos Broadcasting Corporation, Cox Broadcasting Corporation, Inc., Media General Communications, Inc. and Meredith Corporation at 6; Comments of NBC Telemundo License Co. at 13; Comments of the National Cable Television Association at 14; Comments of Hubbard Broadcasting at 6; Comments of Block Communications at 2.

of local broadcasting that is responsive to the unique interests and needs of individual communities.<sup>4</sup>

The conversion to digital television, a process that is incomplete, has imposed enormous capital costs on broadcasters. For small and medium market broadcasters or local cable news operations, adding the costs of real-time captioning to their already lean news budgets would be devastating. Real-time captioning costs are roughly the same regardless of market, and real-time captioning requires the same skilled labor anywhere. But real-time captioning represents a much higher proportional cost for channels with lower revenues, and skilled captioners remain unavailable to many outside of major cities. Small and medium market broadcasters who are not part of a station group sometimes must pay more for captioning than large market stations in a position to negotiate for a bulk discount. For 24-hour local cable news channels, the costs remain completely prohibitive.

The record is devoid of any strong case for expansion of the real-time captioning requirements for local news. Media Captioning Services suggests that eliminating ENT use in markets 26-100 is important because these communities are “subject to severe weather, such as hurricanes, tornados, and floods,” and that real-time captioning is of “critical importance to the public’s health, welfare and safety.” Section 79.2 of the Commission’s rules, however, already provides for the accessibility of emergency information to the hearing impaired in cases of severe weather or other emergencies. News organizations routinely provide critical information not contained in ENT captions during emergencies in the form of graphics, crawls, or other visuals. Weather segments generally convey the essence of the audio presentation visually.

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<sup>4</sup> *Broadcast Localism*, Notice of Inquiry, FCC 04-129 (rel. July 1, 2004) at ¶ 4.

While not perfect, ENT makes most substantive portions of local newscasts accessible to the hearing impaired, with more accuracy than real-time captioning.

The record contains no evidence that would serve to alter the Commission's conclusion that a "real time captioning requirement could impose an economic burden on smaller entities since resources are likely to be limited, costs for real time captioning remain high and methods for remote real-time captioning are still being developed."<sup>5</sup> Since the adoption of the closed captioning rules, the state of technology and the cost of captioning have not changed sufficiently to justify altering the rules. Conversely, declining news revenues and the tremendous costs associated with the digital transition favor continued sensitivity to the enormous burden and adverse consequences a real-time captioning requirement would have on electronic journalists' ability to provide valuable live and local programming.

As the record suggests, advancements in technology will continue so as to allow for captions of all of a newscast's dialogue at low cost, but the marketplace is simply not there yet. The Commission should continue to allow the marketplace to work, and should take no action that would interfere with the development of new technologies, or set artificial benchmarks for increased real-time captioning of local news.

## **II. THE COMMISSION SHOULD NOT ADOPT TECHNICAL OR NON-TECHNICAL QUALITY STANDARDS**

RTNDA agrees with those commenters who oppose the imposition of non-technical and technical quality standards. As the record demonstrates, video programming distributors recognize that the success of closed captioning requires that captions be intelligible, accurate, and complete. Video programming providers constantly strive to ensure the technical and non-technical quality of all closed captions. The imposition of quality standards will not improve

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<sup>5</sup> *Reconsideration Order* at ¶ 37.

these efforts. The fact of the matter is, given necessary human intervention, errors are and will remain a part of the captioning process, regardless of whether the Commission imposes standards. At this point, it is difficult if not impossible to deliver perfect real-time captioning, particularly during breaking news or emergency situations. Similarly, technical glitches are sometimes unavoidable and will continue to occur.

Still, the flaws that have been identified by TDI and other parties to this proceeding do not evidence widespread problems, chronic non-compliance with the Commission rules or other material deficiencies.<sup>6</sup> An additional layer of regulation would have little benefit, yet create enormous administrative burdens and drain resources that could otherwise be spent improving the overall quality or quantity of programming, including news programming.

Moreover, qualitative standards could serve as a disincentive for broadcasters and cablecasters to provide local news programming. Given current technology, when faced with the option of being forced to provide perfect captions or face sizable fines, some local stations may opt not to offer breaking news or other live local programming. As the Florida Broadcasters point out, the demands of captioning in a live environment can be overwhelming and there is little margin for error. Even under the best of circumstances, errors are made. During times of broadcasting emergency information, the speed and amount of information that is being broadcast is prone to problems and mistakes. Employees are physically and emotionally exhausted and nevertheless called upon to work extended hours to provide 24/7 news coverage. If the Commission imposes unworkable quality standards on closed captioning, it may unintentionally shift the focus from serving local communities to meeting arbitrary Commission

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<sup>6</sup> See Comments of the National Court Reporters Association at 4. In fact, as the National Court Reporters Association noted in their comments, some of the problems interpreted as errors are in fact efforts on the part of captioners to ensure the audience's full comprehension.

guidelines. This unintended consequence is similar to that resulting from the Commission's "no exceptions" policy regarding the immediate accessibility of emergency information, as discussed in RTNDA's initial comments in this proceeding.

Market forces have proven adequate to drive the captioning transition, and remarkable progress has been made in a relatively short period of time. The most efficient and effective way to ensure continued high-quality captioning is to allow the industry to continue to meet viewers' demand without further regulation. The Commission should not attempt to micromanage the captioning of programming, and should support the development of advanced captioning technology.

### **III. CONCLUSION**

RTNDA shares the Commission's goals of making video programming accessible to all members of the viewing public, but cautions the Commission not to adopt any proposal that could undermine the Commission's objectives, hinder the development of cost-effective captioning technology or encumber the ability of broadcasters and cablecasters to provide quality local news and public affairs programming. The Commission should permit continued use of ENT captioning as provided in its current rules, and reject proposals to impose technical and non-technical quality standards. RTNDA believes that advanced captioning technology will

ultimately resolve the concerns expressed by advocates for the hearing impaired without the need to impose additional and substantial burdens on already strained electronic news operations, or to sacrifice the provision of quality local news programming.

Respectfully submitted,  
**THE RADIO-TELEVISION NEWS DIRECTORS  
ASSOCIATION**

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