

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

SUPPLEMENTARY COMMENTS AND REQUEST FOR CLARIFICATION

The Association of Public Television Stations (“APTS”)<sup>1</sup> hereby submits Supplementary Comments and a Request for Clarification in the above captioned proceeding. APTS seeks clarification regarding how the Commission’s rules, regulations and policies apply to an issue of direct relevance to public television stations licensed to state entities. In this regard, APTS submits these comments at this time and seeks clarification from the Commission.

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<sup>1</sup> APTS is a nonprofit organization whose members comprise the licensees of nearly all of the nation’s 356 CPB-qualified noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch and engages in planning and research activities on behalf of its members.

### **Locally-Produced and Distributed Non-News Programming with No Repeat Value**

APTS seeks clarification regarding how the exemption for locally-produced and distributed non-news programming with no repeat value applies to public television state licensees.<sup>2</sup> In 20 states, public television stations are run by state commissions that provide noncommercial educational television programming on a universal basis through an integrated system of synchronized transmitters with state-wide coverage. Several additional public television licensees fill this role in other states where state universities or other state entities serve as licensees.

Critically, unlike commercial group owners which may have multiple network affiliations, these public state systems provide the same programming from a central source that is distributed throughout their states over synchronized transmitters to rural and urban centers alike. The ability to localize programming is in many circumstances limited or nonexistent. Therefore, where locally-produced, non-news programming with no repeat value is distributed by such state systems, it is typically retransmitted state-wide as a matter of course.

Counsel for public TV stations have spoken with FCC staff regarding whether public television state licensees' simultaneous transmissions would fall, in certain instances, within the locally produced, no repeat value exemption where it would normally be appropriate. The need for clarification must take into account two critical factual bases.

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<sup>2</sup> See 47 C.F.R. § 79.1(d)(8).

First, where a state licensee has multiple transmitters broadcasting a program simultaneously throughout the state territory, there is a question as to whether the state licensee is in fact broadcasting the program more than once, i.e. repeating the program. However, APTS asserts that this is not a “repeat” of the program in the ordinary sense of the term. APTS contends that a more reasonable reading of this exemption, which the Commission seemed to have in mind, is that an exception applies where the programming does not have repeat value over time.<sup>3</sup> If a state licensee broadcasts a locally-produced non-news program covering a transitory event with no repeat value and does so simultaneously throughout a state system, APTS requests clarification that this is in fact only a single broadcast that falls within the exemption.<sup>4</sup>

Second, because the transmissions are distributed over an entire state territory, there is a question as to whether it may be thought that such transmissions are not locally distributed. Again, APTS asserts that this is not a reasonable reading of the rules, nor is it consistent with existing Commission precedent and policy. In fact, to the contrary, the Commission has consistently stated that public television state licensees are considered to be local within their state territories. See 47 C.F.R. § 73.7000. See also Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report and Order,

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<sup>3</sup> While it is true that in its original 1997 order, the Commission stated that the exemption in question only applies when the programming is “locally created and not networked outside of the local service area or market of a broadcast station,” See In the Matter of Closed Captioning and Video Description of Video Programming, Report and Order, FCC 97-279, 13 FCC Rcd 3272, ¶ 158 (1997), it is clear that the Commission had commercial group owners in mind, who might be retransmitting networked programming that crosses state boundaries. For instance, on reconsideration, the Commission rejected the arguments that inter-state networked groups of stations could share certain kinds of programs and still benefit from the exemption. Order on Reconsideration, FCC 98-236, 13 FCC Rcd 19973, ¶ 61 (1998) (referencing co-owned or LMA’d commercial stations). Nowhere did the Commission explicitly consider how its rules would apply to noncommercial state networks.

<sup>4</sup> Also of note is the fact that transmitters in a state network cover discrete areas of the state, and thus discrete audiences. In this sense, too, state licensees that cover the state with multiple transmitters are broadcasting programming without repeat value to an audience only one time.

FCC 00-120, ¶ 54 (2000), and Memorandum Opinion and Order, FCC 01-64, ¶ 50 (2001) (“governments are considered local throughout their jurisdiction” because of “their broad accountability throughout their areas of jurisdiction”). This rule was explicitly upheld as rational and well-founded by the D.C. Circuit.<sup>5</sup> In addition, the fact that networked state systems distribute their signals on a synchronized basis to all transmitters means that they do not technically localize the transmission of the programming that would otherwise be of interest only to one portion of the state. In this sense, the entire state is “local” to the state public television licensee.

For the reasons articulated above, APTS respectfully requests that the Commission clarify that public television state licensees are not barred from using the existing exemption for locally-produced and distributed non-news programming with no repeat value broadcast by a state system.

### **Conclusion**

APTS requests that the Commission clarify that public television state licensees are not barred from using the exemption in the FCC rules for locally-produced and distributed non-news programming with no repeat value broadcast by a state system. This clarification will ensure that state licensees that broadcast programming across state transmitters and translators simultaneously to ensure that all citizens in their states, even those in very remote, often otherwise unserved areas, will not be prejudiced in the interpretation of the FCC’s captioning rules.

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<sup>5</sup> See American Family Association, Inc., v. FCC, 365 F.3d 1156, 1164 (D.C. Cir. 2004): (“The FCC reasoned that local governments are especially accountable to people within their jurisdictions and so will be especially responsive to their needs”).

Respectfully submitted,

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