

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

In the Matter of)	
)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Closed Captioning Requirements For Digital Television Receivers)	ET Docket No. 99-254

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS
AND REQUEST FOR CLARIFICATION**

The Association of Public Television Stations (“APTS” or “Public Television”)¹ hereby submits these comments and request for clarification in response to the Commission’s *Declaratory Ruling, Order, and Notice of Proposed Rulemaking* in the above-referenced proceeding.²

APTS applauds the Commission’s focus on ensuring that all Americans, including those who are hearing-impaired, will continue to have access to broadcast programming after the digital transition. As an outgrowth of its universal service mission,³ Public Television has always made the utmost effort to ensure that persons with disabilities have access to its programs and services, and has been a pioneer of closed-captioning and descriptive video technologies.

The vast majority of programs aired on the primary and multicast streams of local public

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² *In re Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC No. 08-255 (Rel. Nov. 7, 2008) (“*Order*” or “*NPRM*”).

³ See, e.g., 47 U.S.C. § 396(a)(9) (“[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies”).

television stations are closed captioned. At the same time, however, local public television stations are under serious financial constraints that preclude them from closed captioning a small portion of all the programming that they produce specifically for their multicast streams. In the interest of maximizing stations' ability to provide locally produced multicast programming, the Commission should hold that multicast channels constitute separate "channels" for the purposes of the captioning exemption set forth in 47 C.F.R. § 79.1(d)(12).

With regard to the Commission's *Order* amending its complaint process rules, APTS supports the Commission's efforts to ensure that programmers are responsive to consumers, and appreciates that the Commission is being sensitive to the precarious financial situations of some stations by not requiring stations to alter the hours during which they have staffing available.⁴ However, the *Order* states at the same time that any calls or inquiries received should be returned or addressed within 24 hours,⁵ which some stations would not be able to do on weekends or holidays without increasing their hours of operation. Thus, APTS seeks clarification that the Commission intends that calls or inquiries to a station's dedicated contact information should be returned or addressed within one business day.

I. MULTICAST CHANNELS SHOULD CONSTITUTE SEPARATE "CHANNELS FOR PURPOSE OF § 79.1(d)(12) EXEMPTION.

In its NPRM, the Commission seeks comment on whether, for purposes of section 79.1(d)(12) of its rules, each programming stream on a multicast signal constitutes a separate channel, and thus each programming stream would be exempt from the closed captioning rules until its revenues reach the \$3 million mark. Further, the Commission seeks comment on its assumption that this interpretation would lead to less captioned programming. APTS asserts that

⁴ *Order* at ¶ 31.

⁵ *Id.*

this interpretation of section 79.1(d)(12) is appropriate—and, indeed, essential—if public television stations are to continue to provide the broad range of local multicast programming that they are presently offering. In addition, we believe the Commission’s assumption is not correct vis-à-vis public television programming, because the vast majority of public television’s multicast programming is already closed captioned. Interpreting “channel” to refer to all of a broadcaster’s digital offerings collectively would merely reduce the overall amount of locally produced multicast content by forcing stations to cease creating the small amount of programming for which it would be too expensive to provide captioning.

The leading programming suppliers for public television stations—PBS, American Public Television (APT), and the National Educational Telecommunications Association (NETA) Program Service—all require that programming submitted to them for distribution must be closed-captioned.⁶ Thus, insofar as many stations use some of their multicast channels to air nationally distributed programming, including programming from the national public television services World⁷, Create⁸, and V-Me⁹, this programming is already captioned. The same is true

⁶ See PBS Red Book, Format and Packaging, *available at* http://www.pbs.org/producers/redbook/specs/format_and_packaging_print.html; APT’s Technical Requirements, *available at* [http://www.aptonline.org/aptwweb.nsf/vServices/Services-Technical+Specifications/\\$FILE/APTPresentationTechSpecs.++REVISED+5.08.doc](http://www.aptonline.org/aptwweb.nsf/vServices/Services-Technical+Specifications/$FILE/APTPresentationTechSpecs.++REVISED+5.08.doc); NETA “Tell Us About Your Program” Form, *available at* <http://www.netaonline.org/ProgInfoSheet.rtf>.

⁷ World, a joint venture between PBS, WGBH (Boston), and Thirteen/WNET (New York), is a 24-hour digital service focusing on documentary, news and public affairs programming.

⁸ Create, a joint venture between APT, WGBH, and Thirteen/WNET, is a digital service airing programming from PBS, APT, and NETA with a focus on cooking, arts & crafts, gardening, home improvement, and travel.

⁹ V-Me is a Spanish-language educational and informational service developed by Thirteen/WNET.

for the many stations, such as WETA in Washington, D.C., that use a multicast stream to air additional children's programming distributed by PBS.

Many of the nation's 364 independent public television stations, however, are also using their multicast capabilities to offer innovative local services, and these services might not be possible if multicast channels do not constitute separate channels for the purpose of the section 79.1(d)(12) exemption. For example, Idaho Public Television (Idaho PTV), like several other public television stations and station groups, presents live coverage of the Idaho Senate and House of Representatives on its multicast channels.¹⁰ Because the schedule for the legislature is unpredictable, Idaho PTV would have to have two captioners on standby for between 30 and 40 hours per week at an estimated cost of \$80,000 per year. Because the state network uses robotic cameras to film the legislatures, the current production cost is minimal. This program is obviously a valuable public service but not a significant revenue-booster. With Idaho PTV facing budget cuts of more than \$1 million, if it were required to caption this programming it would be forced to eliminate it.

Public Television takes seriously its universal service mission and is devoted, whenever possible, to making its programming accessible to the hearing-impaired. If the Commission deems that multicast channels constitute separate channels for the purpose of the section 79.1(d)(12) exemption, this would not lead to an epidemic of stations eliminating captioned programming on their multicast channels, or even to a scourge of stations choosing not to caption new local content. This interpretation would simply permit stations to provide unique and

¹⁰ This programming might or might not be eligible for the Commission's exemption under section 79.1(d)(8) for "programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable."

valuable local programming even in the rare situations where it would not be financially viable to caption such programming.

II. COMMISSION SHOULD CLARIFY THAT INQUIRIES TO STATION'S DEDICATED CONTACT INFORMATION MUST BE ADDRESSED WITHIN ONE BUSINESS DAY.

APTS supports the Commission's efforts to ensure that programmers are responsive to consumers, and appreciates that the Commission at the same time is being sensitive to the precarious financial situations of some stations by not requiring stations to alter the hours during which they have staffing available. However, APTS seeks clarification of certain aspects of the Commission's *Order* concerning the dedicated contact information requirement.

The *Order* states that "to the extent that a distributor has personnel available, either on site or remotely, to address problems that may arise, consumers . . . must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns."¹¹ It emphasizes that the Commission is "not requiring that distributors alter their hours of operation or the hours during which they have staffing available."¹² However, later in the same paragraph, the *Order* requires that "in situations where a distributor is not immediately available, any calls or inquiries received . . . should be returned or otherwise addressed within 24 hours."¹³ There are times, such as weekends and holidays, when stations go for longer than 24 hours without being staffed by personnel that are available to address captioning problems. If this 24-hour requirement is applied strictly, it would require stations to alter the hours during which they have staffing available, substantially increasing stations' personnel costs. This expressly was not

¹¹ *Order* at ¶ 31.

¹² *Id.*

¹³ *Id.*

the intention of the Commission. Thus, APTS seeks clarification that in situations where a distributor is not immediately available, any calls or inquiries received using the dedicated contact information should be returned or otherwise addressed *within one business day*. Such a rule ensures that stations are responsive to complaints while not placing significant added expense on stations in this difficult economic climate.

Respectfully submitted,

/s/

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