

**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)	ET Docket No. 99-254
)	

To: The Commission

COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.

Maranatha Broadcasting Company, Inc. (“MBC”), licensee of digital television broadcast station WFMZ-DT, Allentown, Pennsylvania, through counsel, hereby offers these comments concerning the FCC’s *Notice of Proposed Rule Making* in the above-captioned proceeding, *Declaratory Ruling, Order and Notice of Proposed Rule Making*, FCC 08-255, released November 7, 2008 (the “*NPRM*”).¹ The *NPRM* is devoted to the question how the exemption from captioning requirements (other than to pass through captioning received from programmers) in Section 79.1(d)(12) of the Rules (for channels with revenue of less than \$3,000,000 in the previous calendar year) should apply to multicast channels. The *NPRM* asks: whether (a) each multi-cast stream should be treated as a separate channel, exempt from captioning requirements unless revenues from that stream exceed \$3 million in a calendar year (¶ 37); (b) the \$3 million threshold should be determined by reference to overall operations, including all activities on all streams (¶ 38); (c) with respect to “secondary” multicast channels, (1) a lower dollar threshold should

¹ 74 *Fed. Reg.* 1594 (January 13, 2009).

apply, (2) captioning requirements should be tied to a “variable” depending on the number of programming streams being offered, or (3) a “new, non-revenue approach” should be adopted (¶¶ 39-40).

The short answer to these questions is that the FCC should not take any action that in any way imposes additional costs on the production of local programming. First of all, television broadcasters have been forced to absorb enormous capital expenditures in order to make the transition to digital broadcasting. The new programming streams made possible in a digital environment are start-up lines of business -- experiments, in many cases – not new cash cows ready to be milked by regulators for more services to special interest groups. Second, it ought to be obvious that, at a time when the economy is in such dire condition that Congress deems a trillion-dollar stimulus to be imperative, no industry – and television broadcasting is no exception – needs the burden of more taxation by regulation. Earlier this week, *The Wall Street Journal* (February 10, 2009, p. A1, col. 3) reported that, nationally, television station revenues have been falling since 2006, and a further 20 to 30 percent decline is forecast for 2009. Like every other business, broadcasters are being forced to shed jobs and shave budgets. This is not the time for the FCC to be forcing television stations to add additional expenses to their financial statements.

The fact is that, applying the \$3 million exemption to overall station operations rather than on a per channel basis, or any of the other possible changes put forward in the *NPRM*, will not increase the amount of captioned programming from non-network sources or program syndicators. In ¶ 37, the *NPRM* states: “[G]iven the pass through rule, it is likely that much of the programming delivered to broadcasters for airing on multicast

streams will already be captioned, especially if it is provided by a network programmer, even if” the \$3 million threshold is applicable to each multicast channel. That much is certainly true. However, not only will most content on multicast channels be already captioned, the effect of *requiring* captioning on programming streams that yield revenues of less than \$3 million per year will likely be to force stations to (a) rely *more* on network-supplied programming, or syndicated programming, that is already captioned and (b) produce less local programming where captioning must be outsourced (at a cost of hundreds of dollars per hour) or substantial investments made in captioning staff, software and equipment.

Much locally-originated non-news programming, as acknowledged by the *NPRM* (§ 38), “afford[s] little or no economic return.” This is particularly true of public affairs and other informational programming, and for the foreseeable future is likely to be true of most programming *of all types* on multicast channels, because the FCC has not provided for mandatory carriage of multicast channels on CATV systems and satellite carriers. Because the large percentage of TV households that subscribe to cable or satellite services are denied access to multicast channels, revenues from such channels are but a fraction of advertising revenues derived from a station’s “main” channel.

Section 79.1(d)(8) of the Rules is a partial response to the non-remunerative nature of much local programming, exempting “[l]ocally produced and distributed non-news programming with *no repeat value*.” (Emphasis added.) However, a local program that repeats may still be subsidized by revenue from news and entertainment programming, and a rule requiring captioning of a subsidized program only necessitates yet more

subsidization. Section 79.1(d)(8)'s limitations – based on the uninformed assumption that a program that repeats must somehow be able to support the cost of captioning – can, therefore, result in local audiences *losing* valuable public-interest programming. This will be exacerbated if the FCC changes Section 79.1(d)(12) in any way that has the effect of requiring additional captioning on lower-revenue multicast channels.

WFMZ-TV's *Law Journal*, a weekly, local, prime-time public affairs program broadcast by the station for more than 20 years, illustrates that point. *Law Journal* was a round table discussion featuring attorneys from all over the Philadelphia metropolitan area. Many of the topics (for example, estate planning, employment law, bankruptcy, privacy, etc.) were not time-sensitive and therefore many programs in the series were suitable for rebroadcast on a number of occasions – and for that reason, the exemption in Section 79.1(d)(8) did not apply. Notwithstanding that some *Law Journal* programs were repeatable, MBC was required to subsidize the series – and the captioning costs – and, ultimately, continuing losses on the program forced MBC to discontinue *Law Journal* in order to broadcast other programs with more revenue potential.

If the FCC were to decide to impose additional captioning requirements on multicast channels – whether by (a) applying the \$3 million threshold to overall station operations, (b) setting a lower threshold revenue figure for requiring captioning on secondary channels, or (c) adopting a “new, non-revenue” approach -- the outcome would be similar to the fate of *Law Journal*. Stations would be discouraged from developing local and/or innovative new programming for multicast channels. Some stations might choose to forego new multicast channels altogether. The overall result would be less local public interest

programming, less diversity in programming, and probably less *total* programming of all types than would be the case if the FCC left the rules as they are and affirmed that the \$3 million threshold applies to each multicast channel.

Again, MBC's situation is instructive for the FCC's decision. One of WFMZ-DT's secondary program streams, Ch. 69.2, is a 24-hour, seven-day a week weather reporting service with content provided (but not captioned) by Accu-Weather, Inc., and packaged by MBC. Rules requiring closed captioning of that channel would add enormously to the cost of the service – far more than MBC's annual revenues from that channel -- and lead to its termination.

The FCC should recognize, moreover, that for services such as WFMZ-DT's 24-hour weather service – services that are vital to the future of digital multi-casting – captioning *is not necessary* to provide hearing-impaired viewers meaningful access to on-air content. The WFMZ-DT's weather service is heavily dependent on graphic material – maps, charts, radar displays, satellite images, crawls, etc. -- and local news headline and traffic inserts include similar graphic components. All of this graphic material is accessible by hearing-impaired viewers without captioning. This would be the case with many innovative services – business updates, traffic news, travel information, etc. – that WFMZ-DT and many other stations might choose to deploy on their multicast channels. If the FCC wants to strangle innovative DTV programming services in their infancy, new captioning obligations suggested by the *NPRM* would be a prime place to start.

For the foregoing reasons, the FCC should affirm that each multicast channel is a separate channel for the purposes of Section 79.1(d)(12) of the Rules and that the current exemption from the captioning rules for channels producing revenues of less than \$3

million dollars per year applies to each such channel. There could come a time, in the future and in a different regulatory environment (i.e., under rules that included multicasting must-carry) when closed captioning requirements will not entail an undue burden on multicast program services. Now is not that time.

Respectfully submitted,

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