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
	)	
	)	

To: The Commission

FURTHER COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of digital television broadcast station WFMZ-TV, Allentown, Pennsylvania, through counsel, hereby responds to the FCC's invitation for "refreshed" comments in the above-referenced proceedings. *Public Notice*, DA 10-2050, released October 25, 2010. In 2005, MBC filed Reply Comments in support of continued use of the "electronic newsroom" technique by independent stations. In 2009, MBC filed comments in opposition to imposing new captioning requirements on digital multi-casting channel. The *Public Notice* specifically seeks "refreshed" viewpoints on both issues.

Notwithstanding the passage of time since the FCC first received comments on these matters, nothing has transpired in the marketplace to make feasible the imposition of large financial burdens on independent television stations to support more sophisticated captioning techniques or expanded captioning obligations on multicast channels.

I. Independent Stations Should Be Allowed To Continue To Rely On The Electronic Newsroom Technique

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Since January 1, 2006, all television broadcast stations have been required to provide closed captioning for all of their English-language programming, and up to 900 hours per quarter of their Spanish-language programming. However, with the exception of stations affiliated with the four major networks in the 25 largest markets, stations are allowed to count, as meeting the closed captioning requirements, live programs captioned with the so-called "electronic newsroom" captioning technique, which provides captioning derived from scripts or teleprompters. The ENR technique does not directly produce captions of live, unscripted remarks, as might occur during live on-the-scene reports, interviews or coverage of late-breaking developments. In 2005, the FCC asked whether captioning costs had decreased "such that little hardship would result if the FCC were to further limit the circumstances under which captions created using the electronic newsroom technique would be allowed to count as captioned programming?" The answer to that question, then and now, is an emphatic "no."

While the *Public Notice* speaks about "advances in captioning technology (such as speech-to-text technologies), along with . . . expanded availability of captioning services nationwide," the issue for independent television stations such as WFMZ-TV is neither technology nor availability but cost. Further limitations on the ability to count electronic newsroom technique-captioned programming as compliance with the closed captioning requirements would be unduly expensive for independent television stations such as WFMZ-TV, who earn revenues that are a fraction of those of network-affiliated stations, and would result in less local news programming, for the public as a whole, for viewers with hearing impairments, and for niche audiences who are served uniquely by independent stations.

WFMZ-TV is located in the Philadelphia television market, ranked by Nielsen as the nation's fourth largest, with approximately three million television households. Because WFMZ-TV is an independent station, it is permitted to count live programming captioned by the electronic newsroom technique as in compliance with its closed-captioning obligations.

WFMZ-TV broadcasts 74 live and 20 recorded local half-hour newscasts each week, including five half-hour Spanish-language newscasts (M-F at 11:00 p.m.), winning Emmy awards in competition against network-affiliated and non-network stations in markets of all sizes throughout the mid-Atlantic region. All of WFMZ-TV's news programs, including its Spanish-language and Berks County editions, are captioned using the electronic newsroom technique.[1] In addition, WFMZ-TV uses crawls and other visual aids to ensure that broadcasts of live, unscripted emergency information are available to hearing-impaired members of the WFMZ-TV audience in a timely manner.

Comments filed by the RTNDA and network-affiliated stations in 2005 showed annual costs for news departments in major markets of as much as $500,000 for full, real-time captioning. Technological advances have not diminished these costs. As an independent station, WFMZ-TV's financial resources are more similar to a small market station than to a top-25 market network affiliate. Moreover, WFMZ-TV's large number of live local newscasts means that its costs would likely *exceed* those of network-affiliated

[1] Because the five Spanish-language newscasts represent all of WFMZ-TV's Spanish-language programming, all are required to be captioned.

stations, because a much larger portion of its schedule – in some cases twice as much -- is devoted to live local programming than the schedules of major network affiliates in the largest markets.

A requirement to bear the additional cost of full, real-time closed captioning for all of WFMZ-TV's news programs, whether $100 per hour or $500 per hour or any figure in between, would have catastrophic consequences. It would likely result in the cancellation of newscasts, probably starting with the low-rated Spanish-language newscast. Staff cuts would be required, and fewer reporters and producers would be available to cover important local news stories, including local emergency situations.

The electronic newsroom technique provides hearing-impaired viewers with access to the central elements of each newscast. Other visual components in the newscast, such as weather reports, slides and video-tape, provide hearing-impaired viewers with other essential information. It would make absolutely no sense for the FCC to adopt an inflexible captioning rule that had as its consequences less Spanish-language news programming, and less local news programming for the hearing-impaired community and the community as a whole.

For that reason, the FCC should not extend the existing limited restriction on the use of the electronic newsroom technique to comply with broadcasters' closed-captioning obligations, to medium or smaller market stations or to independent stations in markets of any size.

II. No Additional Captioning Requirements Should Be Imposed On Digital Multi-Casting Channels

Barely more than two years ago, the FCC asked 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; (b) the $3 million threshold should be determined by reference to overall operations, including all activities on all streams; (c) with respect to "secondary" multicast channels, (1) a lower dollar threshold should 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.

It seems odd that, such a short time later, the FCC should ask whether the answers to those questions have changed. The short answer to these questions was then – and remains – that the FCC should not take any action that in any way imposes additional costs on the production of local programming for multicast channels.

First of all, television broadcasters – after making enormous capital expenditures in order to make the transition to digital broadcasting -- have been broadcasting in a digital-only mode for barely more than a year. The new programming streams made possible in a digital environment were and continue to be start-up businesses -- experiments, in many cases – not new cash cows ready to be milked by regulators for more services to special interest groups. This situation has not changed in the past two years, in significant part because the FCC's must-carry regulations do not require cable operators to deliver multicast channels to their subscribers. While WFMZ-TV's main channel has virtually universal carriage in the Philadelphia market, only a fraction of the market's cable subscribers, and none of the subscribers to the DBS companies, receive WFMZ-TV's multicast programming.

Second, it ought to be obvious that, at a time when the government and Federal Reserve are pumping out hundreds of billions of stimulus dollars into a wheezing economy, no industry – and television broadcasting is no exception – needs the burden of more taxation by regulation. TV advertising revenue declined from 2008 to 2009 by more than twenty percent. Since 2009, growth in on-line media advertising has far outstripped growth in TV advertising revenues. This is not the time for the FCC to be forcing television stations to add additional expenses to their financial statements.

Much locally-originated non-news programming, as the FCC has acknowledged, "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. It exempts "[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 – arising from the uninformed assumption that a program that repeats will 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 low-revenue multicast channels.

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 -- 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.

MBC's situation is instructive for the FCC's decision. One of WFMZ-TV'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-TV's 24-hour weather service – services that are vital to the future of digital multi-casting – captioning *is not necessary* to provide hearing-impaired views 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 is the case with many innovative services – business updates, traffic news, travel information, etc. – that WFMZ-TV 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 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 multicast must-carry) when closed captioning requirements will not entail an undue burden on multicast program services. That time is not here..

Respectfully submitted,

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