

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

Closed Captioning of Video Programming,	)	
Telecommunications for the Deaf, Inc., Petition	)	CG Docket No. 05-231
for Rulemaking;	)	
	)	
Closed Captioning of Video Programming;	)	
Closed Captioning Requirements for Digital	)	ET Docket No. 99-254
Television Receivers	)	

**TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.,  
NATIONAL ASSOCIATION OF THE DEAF,  
HEARING LOSS ASSOCIATION OF AMERICA,  
ASSOCIATION OF LATE-DEAFED ADULTS,  
AMERICAN ASSOCIATION OF THE DEAF-BLIND,  
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK,  
AND THE CALIFORNIA COALITION OF AGENCIES SERVING THE  
DEAF AND HARD OF HEARING**

**COMMENTS IN RESPONSE TO BUREAU REQUEST TO REFRESH THE  
RECORD**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Hearing Loss Association of America (“HLAA”), Association of Late-Deafened Adults (“ALDA”), American Association of the Deaf-Blind (“AADB”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), and California Coalition of Agencies Serving the Deaf and Hard of Hearing, (“CCASDHH”) (hereinafter “Consumer Groups”) submit these Comments in response to the *Public Notice* issued by the Consumer & Governmental Affairs Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”)

requesting interested parties to refresh the record on notices of proposed rulemaking regarding closed captioning.<sup>1</sup>

Consumer Groups seek to promote equal access to telecommunications, including video programming, for the 36 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. On July 23, 2004, TDI, together with the ALDA, DHHCAN, HLAA (formerly Self-Help for Hard of Hearing People, Inc. or “SHHH”), and NAD, filed a Petition for Rulemaking with the Commission requesting that the Commission initiate a rulemaking to establish additional enforcement mechanisms to better implement the closed captioning rules and to establish closed captioning quality standards to ensure high quality and reliable closed captioning.<sup>2</sup> Since then, TDI has submitted multiple filings about closed captioning issues, including comments and reply comments in response to the *2005 Closed Captioning NPRM*<sup>3</sup> and the *2008 Closed Captioning NPRM*.<sup>4</sup> For the Commission’s convenience, attached are copies of these filings and references to the applicable sections of these filings are provided in these Comments.

---

1 Public Notice, Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning, CG Docket No. 05-231, ET Docket No. 99-254 (rel. Oct. 25, 2004) (“Public Notice”).

2 Closed Captioning of Video Programming—Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility, Petition for Rulemaking, PRM04MB (filed July 23, 2004) (“Petition for Rulemaking”).

3 Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, Notice of Proposed Rulemaking, 20 FCC Rcd 13211, CG Docket No. 05-231 (2005) (“2005 Closed Captioning NPRM”).

4 *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674, CG Docket No. 05-231, ET Docket No. 99-254 (2008) (“2008 Closed Captioning NPRM”).

Consumer Groups provide the following responses to the specific questions posed by the Bureau in the *Public Notice*:

**Whether the Commission should establish quality standards for non-technical aspects of closed captioning, including but not limited to accuracy of transcription, spelling, grammar, punctuation and caption placement.**

Consumer Groups support establishing quality standards for non-technical aspects of closed captioning for the reasons set forth in Section IV. of the Petition for Rulemaking and in Section I.C. of Consumer Group’s Reply Comments to the *2005 Closed Captioning NPRM*.<sup>5</sup> As described therein, the marketplace has consistently failed to provide high-quality captioning and therefore the Commission must establish minimum standards to ensure non-technical captioning quality. As in most industries, there are industry standards. It is appropriate now, for caption providers to have uniform industry standards by which contractors and consumers may evaluate the quality of their work. Consumer Groups urge the Commission to adopt standards for accuracy of transcription, spelling, grammar, punctuation and placement of captions as well as acceptable error rates and display rates for pre-recorded and real-time captioning. Such standards will help to improve and sustain the quality of closed captioning to ensure they are effective. Standards may also assist video programming owners, providers, and distributors (hereinafter “VPDs”) to identify, specify, and include such standards in the terms and conditions of their closed captioning services contracts.

---

<sup>5</sup> See Reply Comments of TDI et al., *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, Notice of Proposed Rulemaking, CG Docket No. 05-231 (filed Dec. 16, 2005) (“TDI Reply Comments to 2005 Closed Captioning NPRM”).

**What the adoption of non-technical quality standards would cost to programmers and distributors.**

As set forth in Section I.B.4. of Consumer Groups' Reply Comments to the *2005 Closed Captioning NPRM*, imposing closed captioning standards should not increase the cost of captioning. Closed captions must be accurate and timely to be effective. When closed captions are provided today, they are not effective. These standards will assist VPDs to ensure they are getting the effective closed captioning services they are already paying for through contract. Today, VPDs should not be contracting, obtaining or paying for closed captions that are not effective. Therefore, imposing closed captioning standards to ensure effective captions should not increase the cost of those captions.

**Whether the captioning pool consists of an adequate number of competent captioners to meet a non-technical quality standard mandate.**

As noted in Section V. of Consumer Groups' Reply Comments to the *2005 Closed Captioning NPRM*, the captioning industry has stated that the pool of caption providers is sufficient to meet the current needs of VPDs and any additional demand to comply with any non-technical quality standards. To ensure a sufficient pool of caption providers, Congress passed the Higher Education Opportunity Act of 2008, which included a competitive grant program to train real-time writers to provide captioning. Also since 2005, the development and use of speech-to-text software systems to produce transcripts for editing or for real-time captioning has increased significantly. The amount of training and experience required by individuals using speech-to-text software to re-voice spoken words that produces a transcript or captions (also called "echo captioning") is significantly less compared to the amount of training and experience needed for an individual to become a competent stenographer. In addition, speech-to-text systems are

now used to insert time codes automatically which synchronize the transcript text to the video programming content. Some of these systems are available for use to the general public and to professional captioning service providers.<sup>6</sup>

Consumer groups applaud innovative technology that provides greater availability of quality captions, so long as the limitations of these newer technologies are understood, and edits to the captions are made prior to distribution of the programming to ensure that the captions provided are accurate.

**Whether different captioning quality standards should apply to live and pre-recorded programming.**

Consumer Groups support having different non-technical captioning quality standards for live and pre-recorded programming. As detailed in Section I.B. of the Reply Comments to the *2005 Closed Captioning NPRM*, pre-recorded programming should be virtually error free since it can be reviewed and edited prior to distribution to correct any mistakes that may have been made during the captioning process. Real-time captioning, on the other hand, does not allow for prior review and corrections. As such, the standards for real time captioning should be close but not as high as pre-recorded programming. The standards for real-time captioning must, however, include the same general criteria as captioning for prerecorded video programming with respect to accuracy, formatting, placement, speaker identification and the like. The accuracy rate for real-time captioning of live programming may be different (slightly less) and should

---

<sup>6</sup> For example, in 2009, Google announced the availability and use of automatic captioning software on a limited basis for some YouTube channels. Since then, Google has made this captioning software available for all YouTube videos and other online streaming video websites have followed suit. It is important to qualify this example with the disclaimer that the quality level of do-it-yourself captioning falls far below any current standards and should not be considered a viable substitute for professionally produced captions.

specify a minimum speed of production and maximum delay in the delivery and display of those real-time captions.

**The need for mechanisms and procedures, over and above the “pass through” rule, to prevent technical problems from occurring to and expeditiously remedy any technical problems that do arise, including current and proposed obligations for video programming distributors to monitor and maintain their equipment and signal transmissions.**

Consumer Groups support the adoption of mechanisms and procedures to prevent technical problems from occurring over and above the pass-through rule. As described in Section III.B. of the Petition for Rulemaking and Section II. of the Reply Comments to the *2005 Closed Captioning NPRM*, many of the technical problems that arise with closed captioning could be prevented in the first instance if the VPD had mechanisms in place to monitor captioning and routinely check their engineering equipment and procedures. Consumer Groups note that the new requirement for VPDs to submit contact information to the Commission and to make such information available to consumers has improved consumers’ ability to notify VPDs of technical problems that arise with closed captioning. However, a monitoring requirement remains necessary to ensure that programming is properly transmitted and delivered to be counted as captioned (or not) for purposes of complying with the Commission’s captioning rules. In addition, monitoring is necessary to ensure that VPDs quickly remedy any technical problems that may arise, rather than relying on consumers to notify VPDs of such technical errors. Indeed, in the “Report on Digital Closed Captioning Informal Complaints: Review and Analysis May 2009-May 2010” the Commission concludes:

*In situations where captions were lost for extended periods, it would appear that captions received priority far lower than the picture or sound, as it is unlikely that the loss of picture or sound would go unnoticed for hours.*

Newer technologies and equipment are available to assist VPDs with monitoring and alerting of technical problems so VPDs can expeditiously remedy those problems as they occur.

**Whether to establish specific per violation forfeiture amounts for non-compliance with the captioning rules, and if so, what those amounts should be.**

Consumer Groups support establishing a base forfeiture amount for non-compliance with the captioning rules, and as explained in Section II.D. of the Petition for Rulemaking, Consumer Groups suggest setting a base forfeiture of \$8,000 per violation, with each hour of programming below the applicable benchmark being counted as a separate violation. In addition, the Commission should have the ability to adjust forfeitures based on individual circumstances as described in Section VI. of the Reply Comments to the *2005 Closed Captioning NPRM*. Appropriate forfeitures encourage compliance with the closed captioning rules and should be established and assessed for violations as soon as possible.

**Whether video programming distributors (VPDs) should be required to file closed captioning compliance reports.**

Consumer Groups support requiring VPDs to file closed captioning compliance reports quarterly. As described in Section II.B. of the Petition for Rulemaking and in Section IV. of the Reply Comments to the *2005 Closed Captioning NPRM*, such reports will help confirm compliance and will not be overly burdensome to VPDs that must already collect data to determine that they are in compliance with the Commission's rules. Indeed, a reporting requirement should be less burdensome today than in 2005 since many of the Commission's transition benchmarks have passed (*e.g.*, since 2006,

100% of all new, non-exempt English language programming must be captioned, and since 2008, 75% of all pre-rule programming must be captioned).

In addition, VPDs are accountable for compliance with the closed captioning rules and should be required to report on their compliance. Such reporting should also include information about video programming that is not captioned, and the reason(s) for the lack of captioning (i.e., identify programming that falls within an exemption category or has been granted an exemption). Such reporting should also include information about closed captioning complaints received and/or its resolution, regardless of whether the complaint arrived at the VPD directly from the consumer or if it came from the Commission, without disclosing personally identifiable information. Such reporting should be available to the public online and upon request on the FCC website. Such reporting requirements encourage compliance, inform consumers and may assist in the processing of closed captioning complaints.

**Whether the Commission’s rules should be revised to disallow the use of electronic newsroom technique (ENT) for certain television Designated Market Areas (DMAs).**

As stated in Section V. of the Reply Comments to the *2005 Closed Captioning NPRM*, Consumer Groups support amending the Commission’s rules to require that live programming using ENT should not count as captioned programming in terms of measuring compliance, and more importantly, Consumer Groups support phasing ENT out of all markets, especially and particularly for local news programming.

ENT captions are created by software from a news script computer or teleprompter.<sup>7</sup> A critical deficiency in ENT captioning is that only material that is

---

<sup>7</sup> ENT “uses computer software that converts a script into closed captioning.” The Commission noted that ENT captioning is “virtually cost free once the equipment and software are purchased at a cost

scripted ends up being captioned, resulting in no captioning of substantial portions of live programming.<sup>8</sup> Spontaneous commentary, live field reports, breaking news and weather updates—including warnings involving flash flooding, tornadoes and other critical information—will ordinarily not be captioned when the ENT technique is used.<sup>9</sup> Most local news broadcasting is heavily dependent on live field reports, with ostensibly spontaneous discussion between news anchors and reporters in the field. Last minute news script changes made by the anchor may not be inserted in the computer in time for it to be displayed as captions. Without having captioned access to those unscripted on-air discussions, 36 million deaf and hard of hearing members of the public find much of the news to be incomprehensible. Often the information that is denied to deaf and hard of hearing persons when ENT is used has safety implications such as commentary on the progress of, and emergency response to hurricanes, floods, earthquakes, other natural disasters, and local emergencies, including potential terrorist attacks, massive oil or chemical spills and a myriad of other potential emergencies. The Commission acknowledges that “[p]roviding all viewers with accurate information regarding [such] fast breaking news is of great importance,” as these “reports generally provide information that must be available to people immediately and often affect the safety and

---

generally estimated to be between \$2500 and \$5000” in the mid-90s. *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, Report, MM Docket No. 95-176, FCC 96-318, 11 FCC Rcd 19214, 19220, at ¶ 16 (rel. July 29, 1996) (“*Report to Congress*”).

8 *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 97-279, Report and Order, 13 FCC Rcd 3272, 3311-3312, ¶ 84 (rel. Aug. 22, 1997) (“*Closed Captioning Order*”).

9 *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 01-81, Clarification Order, ¶ 5 (rel. March 2, 2001) (“*Clarification Order*”) (“Only material that is scripted can be captioned using this technique and, thus, within a program live field reports, breaking news, sports and weather may remain uncaptioned.”).

well-being of viewers.”<sup>10</sup> In addition, the information contained in local news programming is critical for community and civic participation, and daily living.

In general, VPDs must deliver captions for 100% of all new video programming, subject to compliance determinations and a host of exemptions.<sup>11</sup> For purposes of determining compliance with its captioning rules, the Commission allows major broadcast television network affiliates in all but the top 25 television markets, as designated in Nielsen’s DMA report, to satisfy their captioning obligation for live programming by substituting ENT for real-time captioning.<sup>12</sup> This compliance determination factor practically swallows the general rule. Roughly, half of all the television households in America are outside of the top 25 markets.<sup>13</sup> Not included in the top 25 markets are such major cities as Raleigh-Durham (1,107,820 TV Homes), Baltimore (1,093,170 TV Homes), San Diego (1,073,390 TV Homes), Nashville (1,019,010 TV Homes), Salt Lake City (944,060 TV Homes), Kansas City (941,360 TV Homes), Cincinnati (918,670 TV Homes), Columbus (904,030 TV Homes), Milwaukee (901,790 TV Homes), San Antonio (830,000 TV Homes), Las Vegas (721,780 TV Homes), Oklahoma City (694,030 TV Homes), Jacksonville (679,120 TV Homes), New Orleans (633,930 TV Homes), and Austin (678,730 TV Homes).<sup>14</sup>

---

10 *Closed Captioning Order*, 13 FCC Rcd at 3386, ¶ 252.

11 47 C.F.R. §§ 79.1(b), (d), and (e).

12 *See* 47 C.F.R. § 79.1(e)(3). National non broadcast networks that serve at least 50% of all homes subscribing to multichannel video programming services are also not permitted to count live programming transmitted with the “electronic newsroom technique” as captioned programming in relation to measuring compliance with the Commission’s rules.

13 *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, 13 FCC Rcd 19973, 19992, ¶ 39 (rel. Oct. 2, 1998) (“*Order on Reconsideration*”).

14 Exhibit 1. Nielsen, Local Television Market Universe Estimates - Comparisons of 2008-09 and 2009-10 Market Ranks, at 1.

The shortcomings of ENT were well known to the Commission when the captioning rules were adopted.<sup>15</sup> The Commission recognized that consumers who benefit from captions and live outside the top 25 television markets would inevitably receive a highly inferior captioning product.<sup>16</sup> In fact, the Commission’s fear has been realized. With ENT, deaf and hard of hearing viewers report that their local news contains no captioning of the weather segment, the sports segment, anchor-to-anchor dialog, or field interviews.

The Commission’s acceptance of ENT was based entirely on concerns over the cost of real-time captioning to VPDs, and the “top 25 markets” exception was a compromise.<sup>17</sup> These costs concerns are outdated and no longer justify the use of ENT, if they ever did, as captioning costs have fallen dramatically since these rules were adopted. In fact, real-time captioning rates, adjusted for inflation, have declined between 70-85% over the 14 years since this rule was established.<sup>18</sup> In imposing this compromise, the Commission stated that it would “eventually” phase out recognition of ENT captioning.<sup>19</sup> Consumer Groups respectfully submit that, in light of the reduced costs of captioning, the failure of VPDs to voluntarily caption as anticipated, the right and need for equal access

---

15 *Closed Captioning Order*, 13 FCC Rcd at 3311-3312, ¶ 84 (“We are concerned that certain portions of live newscasts often remain uncaptioned even with the use of ENR because they are not scripted . . . this method is not the functional equivalent of the audio portion of the programming.”); *Order on Reconsideration*, 13 FCC Rcd at ¶ 35.

16 *Order on Reconsideration*, 13 FCC Rcd at 19991, ¶ 35.

17 *Id.* at ¶¶ 34-35.

18 Data suggests that the costs of real time captioning in 2010 ranges from about \$50 to \$175 per hour, while the costs of captioning live programming in the mid-90s adjusted for inflation ranged from \$172 to \$1,717 per hour in 2009 dollars. *See Report to Congress*, 11 FCC Rcd 19232-19233, at ¶¶ 47-48. The adjustments for inflation were derived from data and tools provided by the United States Bureau of Labor Statistics. The CPI inflation tool uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used. *See*, [www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm).

19 *Order on Reconsideration*, 13 FCC Rcd 19991, ¶ 35; *Clarification Order*, at ¶ 6.

to local news programming, and as a simple matter of fairness to the 36 million people who rely on captioning, the time has come to do so.

In expeditiously phasing out ENT, Consumer Groups understand that there might be suggestions that the requirement for real-time captioning of live programming be extended beyond the top 25 markets, while stopping short of requiring it in all cases. Consumer Groups suggest that replacing one arbitrary cut-off point with another is not the correct approach. There are 115 DMAs in the United States with more than 250,000 television households. While some would call those “small” markets, many are large enough to serve as state capitals (*e.g.*, Austin, Columbus, Oklahoma City, Salt Lake City, Madison and Raleigh) and it would seem that they are sufficiently large to justify employing or retaining captioning professionals or services (which may be done in house or at a remote location) for any live programming they provide. It is doubtful that a satisfactory one-size-fits-all rule could ever be found. The economic burden of real-time captioning to a VPD may depend on many factors, including size of the DMA, but also the strength of the local economy, the amount of live programming the station actually provides, and other factors. Accordingly, Consumer Groups request that the Commission discard the concept of market size, and require that all live programming contain real-time captioning, subject to the case-by-case exemption available pursuant to Section 713(d)(3) and rule 79.1(f).<sup>20</sup>

**Whether the Commission should require petitions for exemption from the closed captioning requirements to be filed electronically.**

Consumer Groups support requiring petitions for exemption from closed captioning requirements to be filed electronically as explained in Section VII.A. of the

---

20 47 U.S.C. §§ 613(d) (3) & 613(e); 47 C.F.R. § 79.1(f).

Reply Comments to the *2005 Closed Captioning NPRM*. Also, since the Commission permits comments and reply comments to be filed electronically, the Commission should eliminate the requirement to send copies of comments or reply comments to petitioners or respondents, respectively, when those comments or reply comments are filed electronically.

**How the exemption in section 79.1(d) (12) of the Commission's rules for channels producing revenues of less than \$3,000,000 should apply to digital broadcasters that multicast, and specifically seek comment on the potential ramifications of a ruling that would conclude that each multicast stream is a separate channel for purposes of section 79.1(d) (12).**

For the reasons described in Section I. of the Comments to the *2008 Closed Captioning NPRM*,<sup>21</sup> Consumer Groups support applying the exemption in Section 79.1(d)(12) to the overall operations of broadcaster's digital allocation rather than individual multicast streams of programming. Also, should the Commission decline to apply the exemption in Section 79.1(d)(12) to the overall operations of broadcaster's digital allocation, the Commission should not raise the revenue threshold as it applies to any single video programming channel, including individual multicast streams, for the reasons described in the Reply Comments to the *2008 Closed Captioning NPRM*.<sup>22</sup>

If multicast channels are each considered a separate channel for purposes of section 79.1(d)(12), and those channels do not generate at least \$3 million of additional revenue each, regardless of the overall revenues of the broadcasters, millions of deaf and hard of hearing viewers will be unable to view a significant amount (as much as 75-80%)

---

21 Comments of TDI et al., *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, CG Docket No. 05-231, ET Docket No. 99-254 (filed Feb. 12, 2009).

22 Reply Comments of TDI et al., *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, CG Docket No. 05-231, ET Docket No. 99-254 (filed Feb. 27, 2009).

of a broadcaster's digital programming. Such a result would be a tremendous decrease in accessible video programming for the deaf and hard of hearing community and a significant setback in the progress toward equal access that Congress intended and the Commission has achieved.

For the reasons described herein, Consumer Groups urge the Commission to take steps to amend its closed captioning rules to ensure that *all* Americans have access to video programming.

Respectfully submitted,

/s/ Claude L. Stout

Claude L. Stout  
Executive Director  
Telecommunications for the  
Deaf and Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910-3822

Randall Pope  
Interim Executive Director  
American Association of Deaf-Blind  
8630 Fenton Street, Suite 121  
Silver Spring, MD 20910

Kathy Schlueter  
President  
Association of Late-Deafened Adults, Inc.  
8038 MacIntosh Lane  
Rockford, IL 61107

Nancy J. Bloch  
Chief Executive Officer  
National Association of the Deaf  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20910

Brenda Battat  
Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814

Sheri A. Farinha  
Vice Chair  
California Coalition of Agencies Serving  
the Deaf and Hard of Hearing, Inc.  
4708 Roseville Rd, Ste 111  
North Highlands, CA 95660

Cheryl Heppner  
Vice Chair  
Deaf and Hard of Hearing Consumer  
Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Dated: November 24, 2010

# EXHIBIT 1

Nielson, *Local Television Market Universe Estimates - Comparisons of  
2008-09 and 2009-10 Market Ranks*



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

2008-09 Rank	2009-10 Rank	Difference	DMA Name	2009 TV Homes	2010 TV Homes
1	1		New York	7,433,820	7,493,530
2	2		Los Angeles	5,654,260	5,659,170
3	3		Chicago	3,492,850	3,501,010
4	4		Philadelphia	2,950,220	2,955,190
5	5		Dallas-Ft. Worth	2,489,970	2,544,410
6	6		San Francisco-Oak-San Jose	2,476,450	2,503,400
7	7		Boston (Manchester)	2,409,080	2,410,180
8	8		Atlanta	2,369,780	2,387,520
9	9		Washington, DC (Hagrstwn)	2,321,610	2,335,040
10	10		Houston	2,106,210	2,123,460
11	11		Detroit	1,926,970	1,890,220
12	12		Phoenix (Prescott)	1,855,930	1,873,930
14	13	+1	Seattle-Tacoma	1,819,970	1,833,990
13	14	-1	Tampa-St. Pete (Sarasota)	1,822,160	1,805,810
15	15		Minneapolis-St. Paul	1,730,530	1,732,050
18	16	+2	Denver	1,524,210	1,539,380
16	17	-1	Miami-Ft. Lauderdale	1,546,920	1,538,090
17	18	-1	Cleveland-Akron (Canton)	1,524,930	1,520,750
19	19		Orlando-Daytona Bch-Melbrn	1,466,420	1,455,620
20	20		Sacramnto-Stkton-Modesto	1,399,520	1,404,580
21	21		St. Louis	1,249,820	1,249,450
22	22		Portland, OR	1,175,100	1,188,770
23	23		Pittsburgh	1,156,460	1,154,950
24	24		Charlotte	1,122,860	1,147,910
25	25		Indianapolis	1,114,970	1,119,760
27	26	+1	Raleigh-Durham (Fayetvll)	1,080,680	1,107,820
26	27	-1	Baltimore	1,102,080	1,093,170
28	28		San Diego	1,066,680	1,073,390
29	29		Nashville	1,016,290	1,019,010
30	30		Hartford & New Haven	1,014,990	1,010,630
33	31	+2	Salt Lake City	919,390	944,060
31	32	-1	Kansas City	937,970	941,360
34	33	+1	Cincinnati	915,570	918,670
32	34	-2	Columbus, OH	925,840	904,030
35	35		Milwaukee	905,350	901,790
36	36		Greenvll-Spart-Ashevll-And	858,050	865,810
37	37		San Antonio	818,560	830,000
38	38		West Palm Beach-Ft. Pierce	779,430	776,080
41	39	+2	Harrisburg-Lncstr-Leb-York	738,880	743,420



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

<b>2008-09</b>	<b>2009-10</b>			<b>2009</b>	<b>2010</b>
<b>Rank</b>	<b>Rank</b>	<b>Difference</b>	<b>DMA Name</b>	<b>TV Homes</b>	<b>TV Homes</b>
40	40		Birmingham (Ann and Tusc)	739,750	742,140
39	41	-2	Grand Rapids-Kalmzoo-B.Crk	741,420	740,430
42	42		Las Vegas	728,410	721,780
43	43		Norfolk-Portsmth-Newpt Nws	718,020	709,880
44	44		Albuquerque-Santa Fe	689,120	694,040
45	45		Oklahoma City	687,300	694,030
46	46		Greensboro-H.Point-W.Salem	685,110	691,380
47	47		Jacksonville	674,860	679,120
49	48	+1	Austin	667,670	678,730
50	49	+1	Louisville	667,230	668,310
48	50	-2	Memphis	673,770	667,660
53	51	+2	New Orleans	602,740	633,930
51	52	-1	Buffalo	631,120	633,220
52	53	-1	Providence-New Bedford	622,580	619,610
54	54		Wilkes Barre-Scranton	594,570	593,480
55	55		Fresno-Visalia	574,900	579,180
56	56		Little Rock-Pine Bluff	567,060	564,490
57	57		Albany-Schenectady-Troy	556,750	554,070
58	58		Richmond-Petersburg	550,240	553,950
59	59		Knoxville	547,930	552,380
60	60		Mobile-Pensacola (Ft Walt)	537,810	534,730
61	61		Tulsa	529,540	528,070
63	62	+1	Lexington	503,260	506,340
65	63	+2	Charleston-Huntington	479,750	501,530
62	64	-2	Ft. Myers-Naples	509,530	500,110
64	65	-1	Dayton	483,790	482,590
68	66	+2	Tucson (Sierra Vista)	456,030	465,100
67	67		Roanoke-Lynchburg	461,420	461,220
66	68	-2	Flint-Saginaw-Bay City	465,790	458,020
69	69		Wichita-Hutchinson Plus	450,930	452,710
70	70		Green Bay-Appleton	444,210	443,420
72	71	+1	Honolulu	429,940	433,240
71	72	-1	Des Moines-Ames	432,410	432,310
73	73		Toledo	425,890	423,100
74	74		Springfield, MO	421,960	422,740
75	75		Spokane	416,630	419,350
76	76		Omaha	411,520	410,350
77	77		Portland-Auburn	410,890	408,120
78	78		Paducah-Cape Girard-Harsbg	393,260	399,690



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

2008-09 Rank	2009-10 Rank	Difference	DMA Name	2009 TV Homes	2010 TV Homes
79	79		Columbia, SC	393,170	398,620
80	80		Rochester, NY	390,590	392,190
82	81	+1	Huntsville-Decatur (Flor)	386,520	390,900
84	82	+2	Shreveport	385,770	386,180
81	83	-2	Syracuse	388,000	385,440
83	84	-1	Champaign&Sprngfld-Decatur	386,000	384,620
85	85		Madison	378,740	377,260
86	86		Chattanooga	366,780	365,400
87	87		Harlingen-Wslco-Brnsvl-McA	349,910	354,150
88	88		Cedar Rapids-Wtrlo-IWC&Dub	346,330	346,030
94	89	+5	Waco-Temple-Bryan	329,690	339,570
90	90		Jackson, MS	334,650	336,520
89	91	-2	South Bend-Elkhart	334,720	336,130
91	92	-1	Colorado Springs-Pueblo	334,390	334,710
92	93	-1	Tri-Cities, TN-VA	332,840	334,620
93	94	-1	Burlington-Plattsburgh	331,320	330,650
95	95		Baton Rouge	326,390	326,890
96	96		Savannah	319,160	322,030
99	97	+2	Charleston, SC	307,610	311,190
98	98		El Paso (Las Cruces)	308,080	310,760
97	99	-2	Davenport-R.Island-Moline	309,600	308,910
100	100		Ft. Smith-Fay-Sprngdl-Rgrs	297,920	298,330
101	101		Johnstown-Altoona-St Colge	293,860	294,350
102	102		Evansville	292,220	291,830
103	103		Greenville-N.Bern-Washngtn	289,050	290,280
104	104		Myrtle Beach-Florence	285,010	287,400
106	105	+1	Lincoln & Hastings-Krny	281,290	281,590
105	106	-1	Tallahassee-Thomasville	282,390	280,710
107	107		Ft. Wayne	275,350	273,860
108	108		Reno	271,080	270,500
110	109	+1	Tyler-Longview(Lfkn&Ncgd)	265,200	267,890
109	110	-1	Youngstown	268,930	266,560
111	111		Springfield-Holyoke	262,850	262,960
112	112		Boise	262,290	262,800
113	113		Sioux Falls(Mitchell)	260,190	261,100
115	114	+1	Augusta-Aiken	253,950	255,950
114	115	-1	Lansing	258,650	253,690
116	116		Peoria-Bloomington	248,510	247,830
117	117		Traverse City-Cadillac	247,650	245,000



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

2008-09 Rank	2009-10 Rank	Difference	DMA Name	2009 TV Homes	2010 TV Homes
118	118		Montgomery-Selma	247,230	244,750
119	119		Eugene	242,790	241,730
121	120	+1	SantaBarbra-SanMar-SanLuOb	240,190	241,370
120	121	-1	Fargo-Valley City	241,120	240,330
122	122		Macon	239,820	239,330
123	123		Lafayette, LA	230,670	230,180
124	124		Monterey-Salinas	225,350	227,390
125	125		Bakersfield	220,730	222,910
126	126		Yakima-Pasco-RchInd-Knnwck	216,780	219,510
127	127		La Crosse-Eau Claire	215,610	214,820
128	128		Columbus, GA (Opelika, AL)	213,980	213,880
129	129		Corpus Christi	197,290	199,560
130	130		Chico-Redding	197,280	197,970
131	131		Amarillo	192,090	192,490
134	132	+2	Wilmington	187,480	189,950
133	133		Columbus-Tupelo-W Pnt-Hstn	188,740	189,460
132	134	-2	Rockford	188,860	189,160
135	135		Wausau-Rhineland	184,220	184,720
138	136	+2	Topeka	175,940	180,090
137	137		Columbia-Jefferson City	179,010	178,810
136	138	-2	Monroe-El Dorado	179,190	177,200
139	139		Duluth-Superior	173,180	174,360
140	140		Medford-Klamath Falls	171,830	172,900
141	141		Beaumont-Port Arthur	165,440	167,330
142	142		Palm Springs	159,240	161,110
143	143		Lubbock	158,070	158,360
144	144		Salisbury	157,940	158,340
147	145	+2	Albany, GA	156,800	156,890
146	146		Erie	157,610	156,520
148	147	+1	Joplin-Pittsburg	156,560	155,670
149	148	+1	Sioux City	154,900	154,810
145	149	-4	Wichita Falls & Lawton	157,820	154,450
150	150		Anchorage	150,620	151,470
151	151		Panama City	147,520	147,440
152	152		Terre Haute	145,450	145,550
154	153	+1	Rochestr-Mason City-Austin	144,700	144,300
153	154	-1	Bangor	145,100	144,230
156	155	+1	Odessa-Midland	141,560	143,710
155	156	-1	Bluefield-Beckley-Oak Hill	142,570	142,570



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

2008-09 Rank	2009-10 Rank	Difference	DMA Name	2009 TV Homes	2010 TV Homes
157	157		Binghamton	138,930	137,240
158	158		Minot-Bismarck-Dickinson	136,730	136,540
159	159		Wheeling-Steubenville	133,700	133,110
160	160		Gainesville	129,960	128,400
161	161		Sherman-Ada	128,100	127,990
162	162		Idaho Falls-Pocatlo(Jcksn)	124,220	126,880
163	163		Biloxi-Gulfport	121,750	122,740
164	164		Yuma-El Centro	115,650	118,300
165	165		Abilene-Sweetwater	115,310	116,190
166	166		Missoula	111,340	111,940
167	167		Hattiesburg-Laurel	110,330	111,610
168	168		Clarksburg-Weston	109,150	110,050
170	169	+1	Billings	106,030	107,420
169	170	-1	Utica	106,280	104,890
171	171		Quincy-Hannibal-Keokuk	103,910	102,710
172	172		Dothan	100,950	101,840
173	173		Jackson, TN	98,050	98,250
174	174		Rapid City	96,450	98,240
176	175	+1	Lake Charles	95,410	95,900
175	176	-1	Elmira (Corning)	96,090	95,790
177	177		Watertown	94,960	93,970
178	178		Harrisonburg	92,900	93,400
179	179		Alexandria, LA	89,630	90,740
180	180		Marquette	89,290	88,490
181	181		Jonesboro	80,900	82,300
182	182		Bowling Green	80,260	81,650
183	183		Charlottesville	76,600	75,920
184	184		Grand Junction-Montrose	73,360	75,030
185	185		Meridian	72,280	72,180
186	186		Lima	70,690	71,380
187	187		Greenwood-Greenville	70,050	70,350
188	188		Laredo	68,110	69,790
192	189	+3	Bend, OR	64,830	66,980
190	190		Butte-Bozeman	65,480	66,260
189	191	-2	Lafayette, IN	67,070	66,180
191	192	-1	Great Falls	64,910	65,000
194	193	+1	Twin Falls	63,540	64,740
193	194	-1	Parkersburg	63,760	64,060
195	195		Eureka	60,900	61,090



**Local Television Market Universe Estimates**  
**Comparisons of 2008-09 and 2009-10 Market Ranks**

<b>2008-09</b>	<b>2009-10</b>			<b>2009</b>	<b>2010</b>
<b>Rank</b>	<b>Rank</b>	<b>Difference</b>	<b>DMA Name</b>	<b>TV Homes</b>	<b>TV Homes</b>
197	196	+1	Casper-Riverton	54,340	55,620
198	197	+1	Cheyenne-Scottsbluff	54,120	54,710
196	198	-2	San Angelo	54,980	54,580
199	199		Mankato	52,230	52,230
200	200		Ottumwa-Kirksville	51,270	51,370
201	201		St. Joseph	46,840	48,440
202	202		Fairbanks	37,110	36,250
203	203		Zanesville	32,550	32,350
205	204	+1	Victoria	31,260	31,560
204	205	-1	Presque Isle	31,270	31,070
206	206		Helena	27,040	27,630
207	207		Juneau	25,250	25,340
208	208		Alpena	17,520	17,420
209	209		North Platte	15,250	15,350
210	210		Glendive	3,940	3,940
			<b>NSI Total U.S.</b>	<b>114,456,650</b>	<b>114,866,380</b>

Copyright © 2009 The Nielsen Company  
 All Rights Reserved

# ATTACHMENT 1

*Closed Captioning of Video Programming—Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, Petition for Rulemaking, PRM04MB (filed July 23, 2004)

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7647  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
TELEPHONE (212) 973-0111  
FACSIMILE (212) 891-9598

July 23, 2004

## **VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE, Suite 110  
Washington, DC 20002

**Re: Petition for Rulemaking; In the Matter of Closed Captioning of Video Programming—Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility**

Dear Ms. Dortch:

Please find enclosed for filing the original and nine (9) copies of a Petition for Rulemaking, filed on behalf of Telecommunications for the Deaf, Inc., National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network, in the above-captioned matter. The Petition for Rulemaking seeks to establish additional enforcement mechanisms to better implement the captioning rules and to establish captioning quality standards to ensure high quality and reliable closed captioning.

Please date-stamp the enclosed extra copy of this filing. Should you have any questions please do not hesitate to contact the undersigned at (202) 295-8436.

Respectfully submitted,



Andrew D. Lipman  
Paul O. Gagnier  
Brian M. McDermott

Enclosures

Secretary

July 23, 2004

Page 2

cc: Thomas Chandler (FCC DRO)  
Cheryl King (FCC DRO)  
Amy Brown (FCC DRO)  
Claude Stout (TDI)  
Cheryl Heppner (DHHCAN)  
Nancy Bloch (NAD)  
Brenda Battat (SHHHP)  
Lois Maroney (ALDA)

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

In the Matter of )  
 )  
Closed Captioning of Video Programming ) RM - \_\_\_\_  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
Video Programming Accessibility )

**PETITION FOR RULEMAKING**

Claude L. Stout  
Executive Director  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Andrew D. Lipman  
Paul O. Gagnier  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Cheryl Heppner, Vice Chair  
Deaf and Hard of Hearing  
Consumer Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Nancy Bloch  
Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, Maryland 20910-4500

Brenda Battat  
Director of Public Policy and State Devt.  
Self Help for Hard of Hearing People  
7910 Woodmont Avenue, Suite 1200  
Bethesda, Maryland 20814

Lois Maroney, President  
Association of Late Deafened Adults, Inc.  
7545 83<sup>rd</sup> Street North  
Seminole, FL 33777

Dated: July 23, 2004

## SUMMARY

Petitioners Telecommunications for the Deaf, Inc., National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network request that the Federal Communications Commission (“Commission”) initiate a rulemaking to establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning.

Closed captioning is critical to deaf and hard of hearing individuals, both for personal safety and with respect to quality of life. Deaf and hard of hearing individuals who rely on closed captioning in order to have access to video programming continue to experience numerous problems with closed captioning. This has resulted in a lack of access to video programming that is contrary to the mandates of Section 713 of the Communications Act of 1934. The Commission’s adoption of the captioning rules was the first step towards increasing the availability of captioning. However, it has become clear that additional enforcement mechanisms are required in order to ensure full implementation of the rules and to increase accountability for noncompliance with the rules. In addition, measures are needed to ensure that the occurrence of technical problems is minimized and to ensure that technical problems that do occur are remedied efficiently and expeditiously. The Commission also must adopt quality of service standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

Specifically, Petitioners request the following:

- The Commission should establish additional compliance and enforcement measures including the creation of an Commission-maintained database with updated contact information for video programming distributors and providers and the creation of a captioning complaint form.

- The Commission should establish compliance reporting requirements and should undertake compliance audits to ensure effective implementation of the captioning requirements and to improve accountability.
- The Commission should revise its complaint rules to require responses to consumer complaints regarding captioning quality issues (and other issues not directly tied to benchmark compliance) within 30 days.
- The Commission should establish fines/penalties for non-compliance with the captioning rules.
- The Commission should require continuous monitoring of captioning by the video programming distributor or provider to ensure that technical problems are remedied promptly and efficiently.
- The Commission should require video programming distributors to reformat edited or compressed captioning.
- The Commission should require that for a program to be considered “captioned” under the existing rules, it must meet minimum standards set by the Commission for completeness, accuracy, readability and synchronicity with the audio portion of the program.
- The Commission should adopt non-technical quality standards to ensure that video programming is “fully accessible” to deaf and hard of hearing individuals.

## TABLE OF CONTENTS

<b>I.</b>	<b>Introduction</b> .....	3
<b>A.</b>	<b>Interest of Petitioners</b> .....	3
1.	Telecommunications for the Deaf, Inc. ....	3
2.	Deaf and Hard of Hearing Consumer Advocacy Network.....	4
3.	National Association of the Deaf.....	5
4.	Self Help for Hard of Hearing People, Inc. ....	5
5.	Association for Late Deafened Adults.....	5
<b>B.</b>	<b>Captioning Mandates Under Section 713 of the Communications Act and Current Captioning Rules</b> .....	6
1.	Background.....	6
2.	Current Complaint Procedures.....	8
3.	Benchmark Captioning Audit Reports.....	9
4.	Technical Quality Standards.....	9
5.	Non-Technical Quality Standards.....	11
<b>II.</b>	<b>The Commission Should Establish Additional Compliance and Enforcement Measures</b> .....	12
<b>A.</b>	<b>The Commission Should Require Video Programming Distributors and Providers to Provide Contact Information, and Should Post Such Contact Information on the Commission’s Website</b> .....	12
1.	Contact Information for Captioning Complaints.....	12
2.	Captioning Complaint Form.....	15
<b>B.</b>	<b>The Commission Should Establish Compliance Reporting Requirements and Should Undertake Compliance Audits to Ensure Effective Implementation of the Captioning Requirements and to Improve Accountability</b> .....	16
1.	Benchmark Reporting Requirements.....	16
2.	Benchmark Compliance Audits.....	20
<b>C.</b>	<b>The Commission Should Revise its Complaint Rules to Require Responses to Consumer Complaints Regarding Captioning Quality Issues (and Other Issues Not Directly Tied to Benchmark Compliance) Within 30 Days</b> .....	21
<b>D.</b>	<b>The Commission Should Establish Fines/Penalties for Non-Compliance with the Captioning Rules</b> .....	22
<b>III.</b>	<b>The Commission Should Revise its Captioning Rules to Specify Procedures and Mechanisms for Ensuring Technical Quality</b> .....	24
<b>A.</b>	<b>The Current Rules Do Not Ensure Technical Quality for Closed Captioning</b> .....	24
<b>B.</b>	<b>The Commission Should Require Continuous Monitoring of</b>	

	<b>Captioning to Ensure that Technical Problems are Remedied Promptly and Efficiently</b> .....	27
<b>C.</b>	<b>The Commission Should Require Video Programming Distributors to Reformat Edited or Compressed Captioning</b> .....	30
<b>D.</b>	<b>The Commission Should Clarify that Incomplete Captioning Does Not Qualify as Captioned Hours</b> .....	33
<b>E.</b>	<b>Live Programming that Uses the “Electronic Newsroom Technique” Should Not Count as Captioned Programming in Terms of Measuring Compliance with the Commission’s Rules</b> .....	34
<b>IV.</b>	<b>The Commission Should Adopt Non-Technical Quality Standards to Ensure that Video Programming is “Fully Accessible” to Deaf and Hard of Hearing Individuals as Mandated by Section 713 of the Communications Act</b> .....	35
<b>V.</b>	<b>Adoption of the Measures Proposed in this Petition is in the Public Interest</b> .....	39
	<b>CONCLUSION</b> .....	40

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

In the Matter of )  
 )  
Closed Captioning and Video Description ) RM - \_\_\_\_  
of Video Programming )  
 )  
Closed Captioning Quality Standards )

**PETITION FOR RULEMAKING**

Telecommunications for the Deaf, Inc. (“TDI”), by its undersigned counsel, National Association of the Deaf (“NAD”), Self Help for Hard of Hearing People, Inc. (“SHHH”), the Association for Late Deafened Adults (“ALDA”), and the Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”) (collectively “Petitioners”) petition the Federal Communications Commission (“Commission”), pursuant to 47 C.F.R. § 1.401, to initiate a rulemaking to establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning. The Commission should adopt minimum quality of service standards to ensure that deaf and hard of hearing individuals have full access to video programming, regardless of distribution technology, as required by Section 713 of the Communications Act of 1934 (“Section 713”).<sup>1</sup>

This Petition will demonstrate that deaf and hard of hearing individuals who rely on closed captioning in order to access video programming continue to experience numerous problems with closed captioning. This has resulted in a lack of access to video programming that is

---

<sup>1</sup> 47 U.S.C. § 613(b). Section 713 of the Communications Act of 1934 (47 U.S.C. § 613(b)), which was added to the Communications Act by Section 305 of the Telecommunications Act of 1996, generally requires that video programming be closed captioned to ensure that it is accessible to deaf and hard of hearing individuals.

contrary to the mandates of Section 713. For example, deaf and hard of hearing individuals continue to encounter pervasive technical problems resulting in captioned programming appearing without captions, with garbled and otherwise illegible captions, and programming during which captioning simply disappears (for example, in some cases captions disappear one hour into a movie, a special report on a severe weather event is broadcast without captions by a local TV station, or captioning disappears ten minutes before the climax of a national broadcast program).

As Congress recognized when it adopted the closed captioning mandates set forth in Section 713, closed captioning is vital to deaf and hard of hearing individuals. The Conference Report accompanying the Act states that it is “the goal of the House to ensure that all Americans ultimately have access to video service and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.”<sup>2</sup> Access to closed captioning is critical to deaf and hard of hearing individuals to assure personal and public safety as well as maintaining quality of life. In its comments on the Commission’s 1996 Notice of Inquiry<sup>3</sup> regarding captioning accessibility, the Boston Chapter of Self Help for Hard of Hearing People poignantly described the critical nature of captioning for deaf and hard of hearing individuals:

Television is such a tremendous and wide-ranging force in American life today. Much of today’s information, from sports to local and national news and to emergency information, is transmitted verbally across television. Ten percent of Americans, the hearing impaired, are denied access to this force, if there is no captioning. Because they cannot hear or hear well enough, they are literally cut off from one of society’s main streams. . . . Communication via language differentiates human beings from all other living creatures. People are social beings and it is through speaking and hearing that one of

---

<sup>2</sup> Conf. Rep. No. 104-458, 104<sup>th</sup> Cong., 1d Sess. (1996) at 183-4.

<sup>3</sup> See *Closed Captioning and Video Description of Video Programming*, Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996) (“NOI”).

their fundamental needs is fulfilled. Life without verbal communications is isolated, drab, and depressive. Advances in assistive technology for hearing impaired people can make the difference between living in isolation and continuing to be part of the world at large. Captioning is one of these technologies that enabled hearing impaired to lead informed, full and rewarding lives. Hearing loss is not simply an issue of aging. It affects children, young adults, and adults. Captioning is necessary for them to remain an active part of the larger community. Captioning provides them with informational and cultural quality.”<sup>4</sup>

The Commission’s adoption of the captioning rules required by Section 713(b) was the first step towards increasing the availability of captioning.<sup>5</sup> However, based on experience with captioning over the course of the past five years since these rules went into effect, it is clear that additional enforcement mechanisms are required in order to ensure full implementation of the rules and to increase accountability for noncompliance with the rules. In addition, measures are needed (1) to ensure that the occurrence of technical problems is minimized and (2) to ensure that technical problems that do occur are remedied efficiently and expeditiously. The Commission also must adopt quality standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

## **I. Introduction**

### **A. Interest of Petitioners**

#### **1. Telecommunications for the Deaf, Inc.**

TDI is a national advocacy organization that seeks to promote equal access issues in telecommunications and media for the 28 million Americans who are deaf, hard of hearing, late-

---

<sup>4</sup> *Comments of Boston Chapter of Self Help for Hard of Hearing People*, filed January 25, 1996 in response to the Commission’s NOI (MM Docket 95-176).

<sup>5</sup> Section 713(b) and (c) required the Commission to establish regulations and implementation schedules to ensure that video programming is fully accessible through closed captioning. 47 U.S.C. §§ 613(b) and (c).

deafened, or deaf-blind so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled.<sup>6</sup>

## **2. Deaf and Hard of Hearing Consumer Advocacy Network**

DHHCAN, established in 1993, is a coalition of national organizations of, by, and for the deaf, hard of hearing, late-deafened, and deaf-blind that seeks to protect and expand the rights of individuals who are deaf, hard of hearing, late-deafened, and deaf-blind in education, employment, telecommunications, technology, health care, and community life. The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), Jewish Deaf Congress (JDC), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

---

<sup>6</sup> TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes *The GA-SK*, a quarterly news magazine, and the annual *Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

### **3. National Association of the Deaf**

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of twenty-eight million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

### **4. Self Help for Hard of Hearing People, Inc.**

SHHH is the nation's foremost consumer organization representing people with hearing loss. SHHH's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The SHHH mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. SHHH provides cutting edge information to consumers, professionals and family members through their website, [hearingloss.org](http://hearingloss.org), their award-winning publication, Hearing Loss, and hearing accessible national and regional conventions. SHHH impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

### **5. Association for Late Deafened Adults**

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for

reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

Petitioners represent most of the advocacy groups and organizations concerned with issues impacting deaf and hard of hearing Americans. Petitioners believe that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

**B. Captioning Mandates Under Section 713 of the Communications Act and Current Captioning Rules**

**1. Background**

Section 713 of the Communications Act of 1934, as amended, entitled “Video Programming Accessibility,” which was added to the Communications Act by Section 305 of the Telecommunications Act of 1996, generally requires that video programming be closed captioned to ensure that it is accessible to deaf and hard of hearing individuals. Section 713 also required the Commission to adopt and implement regulations to maximize closed captioning of video programming, regardless of the entity that provides the programming to consumers or the category of programming.

Specifically, Section 713(b) required the Commission to adopt rules establishing implementation schedules to ensure that: (1) video programming first published or exhibited after the effective date of the regulations (“new programming”) is “fully accessible” through the provision of closed captions, and (2) that video programming providers or owners maximize the

accessibility of video programming first published or exhibited prior to the effective date of such regulations (“pre-rule programming”) through the provision of closed captions.<sup>7</sup>

In a Report and Order released in August 1997, the Commission established closed captioning rules that included an eight-year transition schedule to phase in closed captioning for “new” non-exempt video programming (for programs first shown on or after January 1, 1998).<sup>8</sup> Pursuant to the Commission’s subsequent *Order on Reconsideration*, as of January 1, 2006, 100% of video programming distributors’ new non-exempt programming must be closed captioned.<sup>9</sup> The Commission established a ten-year transition period for pre-rule programming,<sup>10</sup> requiring that at least 30% of a channel’s pre-rule programming be captioned beginning on January 1, 2003,<sup>11</sup> and 75% of all pre-rule programming delivered to consumers must be captioned beginning on January 1, 2008.<sup>12</sup>

The Commission also included a “no backsliding rule” requiring video programming providers to continue to provide closed captioning at a level substantially the same as the average level they provided during the first six months of 1997, even if that amount of closed captioning would exceed the benchmarks.<sup>13</sup>

---

<sup>7</sup> 47 U.S.C. § 613(b).

<sup>8</sup> *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 97-279, Report and Order, 13 FCC Rcd 3272, 3301 (rel. Aug. 22, 1997) (“*Report and Order*”); 47 C.F.R. § 79.1(e).

<sup>9</sup> *Closed Captioning and Video Description of Video Programming: Implementation of Section 305 of the Telecommunications Act of 1996*, 13 FCC Rcd 19973, FCC 98-236 (rel. Oct. 2, 1998) (“*Order on Reconsideration*”).

<sup>10</sup> “Pre-rule programming” is programming published or exhibited prior to January 1, 1998.

<sup>11</sup> *Order on Reconsideration*, 13 FCC Rcd at 19988.

<sup>12</sup> *Id.* at 19984-19988.

<sup>13</sup> *Id.* at 19983.

## 2. Current Complaint Procedures

With respect to enforcement, the Commission elected to establish a complaint procedure whereby complainants must file a written complaint with a video programming distributor in order to initiate a process to resolve captioning problems (on an *ad hoc* basis). Pursuant to the rules, video programming distributors are not required to respond to such complaints until 45 days after the end of the calendar quarter in which the complaint was received, or 45 days after the complaint was received, whichever is later. Complainants may not file captioning complaints with the Commission until 30 days after the time allotted for the video programming distributor to respond.<sup>14</sup> The onus of initiating enforcement proceedings to ensure implementation of the rules and to resolve captioning problems under the current rules is placed upon consumers, and the time-frame for resolving disputes under the rule is unduly lengthy.

As a result, based on communications Petitioners continue to receive from deaf and hard of hearing individuals, consumers continue to be frustrated in their efforts to resolve captioning problems in an efficient and expeditious manner. It is also difficult for deaf and hard of hearing individuals to track down the necessary information to contact the appropriate contact person for the relevant video programming provider or distributor in an effort to resolve such problems.<sup>15</sup> In the majority of cases, it is impossible for a television viewer of captions to independently determine the cause of the problem. To compound problems, video programming distributors

---

<sup>14</sup> 47 C.F.R. § 79.1(g)(4).

<sup>15</sup> See e.g., Exhibit B1, June 6, 2002 e-mail complaint of Gretchen Butkus of Melbourne, Florida to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning difficulty in reaching someone to address her captioning complaint; Exhibit B2, January 1, 2003 e-mail complaint of Joan Cassidy to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning difficulty in finding the proper person to contact for the lack of captioning on the Hallmark Channel.

and providers often point fingers at one another and send complainants on a fruitless paper chase without making much (or any) effort to assist in remedying the captioning problems.<sup>16</sup>

### **3. Benchmark Captioning Audit Reports**

As discussed below,<sup>17</sup> the current captioning rules also do not require video programming distributors or providers to file with the Commission benchmark compliance audit reports. The absence of reporting and record-keeping requirements make it impossible for deaf and hard of hearing individuals or the Commission to monitor compliance (and noncompliance) with the required quarterly benchmark levels for captioning. As a result, it appears that currently there is very little monitoring of (and accountability for) meeting the required benchmark levels of captioning. As discussed below,<sup>18</sup> the complaint process under the current rules is not adequate to ensure that video programming distributors are complying with the benchmark captioning requirements.

### **4. Technical Quality Standards**

As discussed in greater detail below,<sup>19</sup> while the rules require video programming distributors to pass through captions of already captioned programs,<sup>20</sup> and require basic technical compatibility,<sup>21</sup> the rules do not include an effective mechanism for ensuring that video programming distributors and providers continuously monitor captioning and engineering

---

<sup>16</sup> See Exhibit B3, May 10, 2002 Complaint of Lisa Tempesta. (An inquiry as to why “Sex in the City” and “The Sopranos” was not captioned was responded to by HBO that the problem was with the cable provider. The cable provider responded that the problem was with HBO.)

<sup>17</sup> See *infra* pp.12-16.

<sup>18</sup> See *infra* part II.

<sup>19</sup> See *infra* pp. 22-25.

<sup>20</sup> 47 C.F.R. § 79.1(c).

<sup>21</sup> 47 C.F.R. § 15.119.

equipment in order to avoid the occurrence of technical captioning problems in the first instance.<sup>22</sup> Technical problems continue to occur on a widespread basis, resulting in captioned programming being inaccessible to deaf and hard of hearing individuals (due to missing captions, garbled captions, and captions that disappear during portions of a program, for example).<sup>23</sup> Video programming distributors and providers apparently do not have sufficient incentive to diligently monitor captioning and their engineering equipment to prevent the occurrence of such technical problems.

The rules also do not require that edited or compressed captioned programming be reformatted in order to make the captions accessible to deaf and hard of hearing individuals (except where required in order for a distributor to meet its benchmark hours). As a result, deaf and hard of hearing individuals are foreclosed from access to programming that originally was captioned. Many programs are edited or compressed to fit within a specific time-frame, or edited in other manners which degrade the original captioning. As discussed below,<sup>24</sup> Petitioners submit that the Commission should revise its rules to require that edited or compressed programming be captioned in accordance with the mandates of Section 713.

---

<sup>22</sup> The Commission has mandated that program distributors must take necessary steps to “monitor and maintain their equipment and signal transmissions” but has not enacted a system to ensure compliance with that mandate. *See* 13 FCC Rcd at 3369, ¶ 212.

<sup>23</sup> In the 2003 Report to the National Captioning Institute Foundation entitled “The State of Closed Captioning Services in the United States,” the Annenberg Public Policy Center of the University of Pennsylvania recommends ten areas in which captioning can be improved including “1. Address technical issues quickly, before video providers move to digital broadcasting and the 2006 mandate for 100 percent captioning is in place...6. Build quality control into the process of closed captioning.” *See Exhibit C*, “The State of Closed Captioning Services in the United States,” 2003 Report to the National Captioning Institute Foundation, at 45-46 (“2003 NCI Report”).

<sup>24</sup> *See infra* part III(C).

## **5. Non-Technical Quality Standards**

The Commission's rules currently do not include non-technical quality of service standards. The Commission committed to continue to review non-technical quality issues and revisit the issue if necessary after a period of implementation of the original captioning rules. As discussed herein, the time has come for the Commission to address non-technical quality issues and adopt captioning quality standards in order to ensure that deaf and hard of hearing individuals have full access to video programming as required by Section 713.

More than five years have passed since the Commission's captioning rules became effective. Less than two years remain until 100% captioning of new non-exempt programming will be required. However, without effective enforcement procedures, enhanced standards to ensure technical quality, and the adoption of non-technical quality standards, fulfillment of the mandates of Section 713 will remain illusory.

Based on the experience of deaf and hard of hearing individuals as communicated to Petitioners over the course of the past five years since the captioning rules were established, and based on the personal experience of Petitioners' principals, Petitioners believe that the time has come for the Commission to address enforcement and captioning quality issues in order to ensure that deaf and hard of hearing individuals have full access to captioning of video programming. Each of these issues is discussed in turn in greater depth below. Petitioners respectfully request that the Commission expeditiously initiate a rulemaking proceeding to address these issues in order to ensure a smooth transition to 100% captioning for new non-exempt programming in 2006 and to 75% captioning for pre-rule programming in 2008.

## **II. The Commission Should Establish Additional Compliance and Enforcement Measures**

Petitioners applaud the Commission's efforts to establish and implement the captioning rules to date. However, Petitioners submit that, in order to achieve the mandates of Section 713 of the Communications Act and better implement the requirements set forth in the Commission's captioning rules, additional enforcement and compliance measures must be adopted. Specifically, given that the Commission chose to place the responsibility for enforcement and compliance on captioning consumers through a complaint process, it is critical that the Commission establish the means to facilitate compliance monitoring and the reporting of complaints and to increase accountability for non-compliance.

### **A. The Commission Should Require Video Programming Distributors and Providers to Provide Contact Information, and Should Post Such Contact Information on the Commission's Website**

#### **1. Contact Information for Captioning Complaints**

In the experience of Petitioners' constituents since the captioning rules went into effect, deaf and hard of hearing individuals have difficulty in getting responses from the video programming industry regarding captioning technical quality issues and compliance with the captioning benchmarks. Based on communications that Petitioners have received from their constituents, it appears that deaf and hard of hearing consumers generally have little confidence in the ability of the current captioning enforcement and compliance provisions to bring about the resolution of captioning problems in a timely and efficient manner.

As discussed in comments filed in the Commission's captioning proceedings, captioning consumers experienced the same types of difficulties in resolving captioning problems prior to

adoption of the captioning rules.<sup>25</sup> In Petitioners' experience, the captioning rules to date generally have not adequately addressed the problems that captioning consumers experience, due in part to a lack of responsiveness of video programming providers and distributors to remedy such problems in a timely and efficient manner.

In order to ensure the effective implementation of the captioning mandates, Petitioners propose that the Commission establish procedures to make reliable contact information readily available to captioning consumers.<sup>26</sup> Specifically, Petitioners propose that the Commission require each video programming provider and distributor to provide the Commission with (and to post on their websites) the complete contact information for the person responsible for addressing captioning complaints and resolving captioning problems, including the contact person's name, address, TTY/toll-free telephone number, facsimile number, and e-mail address. The Commission also should establish an ongoing requirement that video programming distributors and providers update the contact information within seven days of any changes.

The Commission should maintain video programming distributor and provider contact information (and updates thereto) on its website. The Commission also should include on its website the name, address, TTY/toll-free telephone number, facsimile number, and E-mail address

---

<sup>25</sup> See *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 96-318, Report, 11 FCC Rcd 19,214 ¶¶ 89-93 (rel. Jul. 29, 1996) (“*FCC Report to Congress*”).

<sup>26</sup> The Annenberg Public Policy Center of the University of Pennsylvania recommendation number six of ten is “Make it clear who audiences can contact and how. The Federal Communications Commission suggests that audiences with complaints first contact the network or cable company. Yet the industry interviews reveal that they receive very little feedback from audiences. Indeed, it was more often the captioning company, which sometimes provides a website or is a local entity, who gets the complaints. Offering the station's website, with a “link” for closed captioning, might begin a dialogue between audiences who use closed captioning and programmers that provide them.” See *Exhibit C, 2003 NCI Report*, at 45.

for the Commission contact person responsible for addressing captioning complaints. In addition, the Commission should require video programming distributors that send bills to customers to include on consumer bills (or via bill inserts) specific contact information for submitting captioning complaints. Video programming distributors and providers such as TV stations that broadcast directly and do not bill the customer should be required to provide such information by way of periodic public service announcements (in addition to white pages and yellow pages telephone directory advertising listing the TV stations' address and TTY/telephone numbers, as well as on their websites).

It is important that the Commission establish contact information requirements as outlined above in order to provide consumers with a practical mechanism to file complaints with video programming distributors and providers regarding captioning problems. Due in large part to the absence of this type of easily accessible contact information, consumers to date have been hindered in their efforts to resolve captioning problems in an efficient and timely manner.<sup>27</sup> Moreover, consumers continue to be frustrated by non-responsive video programming distributors and providers who simply "pass the buck" and leave to the complainant the burden of tracking down the source of captioning problems.

One recent example of the frustration that the current system engenders occurred when WPXW PAX-66 in Fairfax Station, Virginia stopped transmitting captioning with its programs. *See Exhibit B4.* The customer in question initially called her cable provider and informed it that captioning was not appearing on the particular station. Instead of first checking the station's feed to

---

<sup>27</sup> The need for a single point of contact for complaints was a key issue identified by both consumers and captioning service providers at a recent Caption Quality Initiative Conference held on September 14, 2002 in Fairfax, Virginia. *See* Caption Quality Initiative Conference Report, September 14, 2002 available at: <http://tap.gallaudet.edu/CapQualReport.htm>

determine whether the problem was at the station level, the cable provider sent out a technician to ensure that the customer's connection was working.<sup>28</sup> After several more fruitless inquiries with the cable provider and hours of Internet research to determine whom to contact at the station, the customer managed to lodge a complaint with the appropriate person at PAX. Eleven days after the customer's initial complaint, the station finally determined that the problem was a "programming error in one of our satellite receivers not allowing it to pass the closed captioning."<sup>29</sup> Creating a better system for alerting the proper people of a captioning issue would benefit all parties by shortening the time-frames for resolution of similar problems.

Maintaining an efficient and updated system for consumers to contact providers will also serve to resolve problems without resulting to a formal complaint process. If a consumer has an effective way to alert a station that captioning is not being transmitted or is being transmitted improperly, the station will be in a better position to correct the situation in a timely manner. This will benefit both the consumer and the provider who will be in a better position to meet the captioning benchmarks. For example, if the provider is alerted at 8:00 p.m. that its captioning feature is not functioning, the provider may be able to resolve the issue prior to the 8:30 program. Therefore, only one half hour of programming would be lost as opposed to the possibility that an entire evening of programming would be lost due to a problem.

## **2. Captioning Complaint Form**

In order to enhance the enforcement/complaint procedures set forth in the captioning rules

---

<sup>28</sup> In Petitioners' experience, customer service representatives of cable or satellite providers often attempt to blame the problem on the customer's failure to turn on the captioning feature on their television, even when the evidence precludes that from being the cause. Even after the customer explains that captioning is only missing on a particular channel and/or that other customers are having the exact same issues, service providers often insist that the problem is at the customer level.

and in turn, better ensure implementation of the captioning requirements, the Commission also should develop and make available on its website a standard captioning complaint form that may be used by consumers to file written complaints with the relevant video programming distributor/producer.<sup>30</sup> An example of such a form is attached hereto as Exhibit A. The form should be optional (*i.e.*, the complainant may prepare an E-mail or other communication in a different format providing the substance of the complaint) and should be made available on the Commission's website.

**B. The Commission Should Establish Compliance Reporting Requirements and Should Undertake Compliance Audits to Ensure Effective Implementation of the Captioning Requirements and to Improve Accountability**

**1. Benchmark Reporting Requirements**

The Commission previously elected not to establish specific record-keeping and public reporting requirements applicable to video programming distributors and providers.<sup>31</sup> Petitioners submit that, based on experience with captioning over the course of the past five years since the captioning rules went into effect, the lack of such benchmark reporting requirements has seriously hampered the effectiveness of the captioning rules and the ability of captioning consumers, their advocates, and the Commission itself to monitor compliance with the captioning rules.

Except for a limited number of cases (initiated by consumer complaints) which have revealed deficiencies in levels of benchmark captioning by some video programming distributors, the Commission and captioning consumers have no means of determining whether video programming distributors have complied with the captioning benchmarks for each channel, for each

---

<sup>29</sup> See Exhibit B4, Response of David Linnemeyer, Chief Engineer of WPXW, to Diane Edge.

<sup>30</sup> The Commission has created consumer complaint forms in other contexts such as Form 475 (general telephone complaints) and Form 501 (Slamming complaints).

<sup>31</sup> *Report and Order*, 13 FCC Rcd at 3383, ¶ 244.

calendar quarter, since the rules went into effect on January 1, 1998. Indeed, it is not clear the extent to which video programming distributors themselves are keeping track of their compliance (or non-compliance) with the benchmark requirements.

One example of a case in which the video programming provider itself apparently did not know whether it was in compliance with the captioning benchmarks came about as a result of a complaint filed by a captioning consumer.<sup>32</sup> As a result of a complaint filed by Mr. Kelby Nathan Brick, it was revealed that Comcast Cablevision of Maryland, Inc. (“Comcast”) failed to comply with the Commission’s closed captioning requirements during the first and second quarters of the year 2000 on the Courtroom Television Network (“Court TV”) station. According to the Commission’s Order in that case, when Comcast contacted Court TV after receiving Mr. Brick’s complaint, Court TV represented in a letter to Comcast that it was in compliance with the benchmark hours because it provided three hours of captioned programming daily (at that time, six daily hours of captioning was required). Comcast stated that it relied on Court TV’s representation and relayed this information to Mr. Brick asserting that compliance with the benchmark requirements was being met on the Court TV channel distributed by Comcast. The Commission admonished Comcast, stating that, upon receiving information from Court TV indicating that only three hours of programming was captioned daily,

Comcast should have known that Court TV was not in compliance with the captioning rules. As a distributor of programming, Comcast is responsible for ensuring that the programming it distributes on its systems complies with the Commission’s captioning requirements. It failed to do so here.<sup>33</sup>

---

<sup>32</sup> See *Kelby Nathan Brick v. Comcast Cablevision of Maryland and Courtroom Television Network, Request for Compliance with the Closed Captioning Requirements, Memorandum Opinion and Order*, DA 02-45 (rel. Jan. 11, 2002) (“*Comcast Order*”).

<sup>33</sup> *Id.* at 4.

Comcast's failure to self-monitor compliance may be pervasive in the video programming industry, but without public benchmark reporting requirements, such problems are revealed and confirmed on an *ad hoc* basis, if and when a captioning consumer suspects a problem with compliance, and then only after a lengthy, onerous complaint process. During the protracted complaint process (first at the distributor level, then at the Commission level), which under the Commission's rules can take many months, consumers are without the required benchmark level of captioning for those stations.

Petitioners fear that the lack of a benchmark reporting requirement has created a situation where many providers are unaware that they are out of compliance with the benchmarks. As we approach the January 1, 2006 deadline for 100 percent captioning of new non-exempt programming, Petitioners believe that it is vital for providers to come into full compliance with the benchmarks. Even after the January 1, 2006 deadline, when all new non-exempt programming must be captioned, the creation of a benchmark reporting requirement would assist in the determination of whether providers are in compliance with the Commission's benchmarks for pre-rule non-exempt programming and for Spanish-language programming. Creating a system whereby video program providers must audit themselves and report on their compliance with the benchmarks is the most efficient and effective way to ensure that captioning is available at the levels mandated.

It is noteworthy that the Commission did not impose any penalties, sanctions, or other remedial measures as a result of the complaint against Comcast (in part because Court TV had on its own increased the number of captioned hours beyond the required benchmark amount).<sup>34</sup> As a result, the *Comcast Order* does not provide much incentive for other video programming providers

to self-audit their own compliance with the benchmarks. Affirmative reporting requirements are necessary to better ensure compliance and accountability and to assist captioning consumers and the Commission in monitoring compliance on an ongoing basis.

At this point in time, six years into the captioning phase-in period (and only two years away from the 100% captioning requirement for all new non-exempt programming), and in light of the general lack of information regarding benchmark compliance to date, it is of critical importance to the implementation and enforcement of the captioning rules that the Commission establish compliance reporting requirements. Specifically, the Commission should revise the captioning rules to require video programming distributors and providers to file with the Commission (and to make available on their websites) captioning compliance reports, on a quarterly basis, within 30 days following the end of the previous quarter, to be maintained and accessible on the Commission's website. This would allow captioning consumers to assist the Commission in efforts to ensure compliance with the captioning requirements.

In the absence of such reporting there is no mechanism by which captioning consumers may verify whether particular video programming distributors and providers are in compliance with the captioning requirements during the phase-in period (and after 2006 for pre-rule non-exempt programming and Spanish-language programming), except perhaps by filing a complaint and requesting that the video programming provider disclose such documentation. The burden should not be placed on consumers in this manner. Consumers should not be required to attempt to extract compliance information from video programming providers on a case-by-case basis. This type of piecemeal monitoring resulting from *ad hoc* customer complaints does not and cannot lead to

---

<sup>34</sup> The Commission determined that, “[a]s there has been a successful, albeit delayed, effort to comply with the captioning requirements, penalties, sanctions or other remedial measures are not

consistent effective enforcement and accountability throughout the video programming industry. Moreover, an audit reporting requirement will assist in ensuring a smooth transition toward 100 percent captioning of new non-exempt programming by January 1, 2006, and with 75 percent of pre-rule programming by January 1, 2008.

## **2. Benchmark Compliance Audits**

In addition to establishing (going forward) compliance reporting requirements as discussed above, the Commission should (1) conduct compliance audits to determine the level of compliance (or non-compliance) by video programming distributors, (2) publish the results of such audits, and (3) take enforcement action where warranted by non-compliance. When the Commission elected not to adopt benchmark compliance reporting requirements, it stated that it would conduct compliance audits.<sup>35</sup> However, Petitioners are unaware of any Commission actions to conduct such audits. The lack of compliance audits and compliance reporting requirements seriously undermines enforcement of the captioning rules and the effectiveness of the captioning rules.

Petitioners submit that the adoption of compliance reporting requirements as outlined above, in addition to Commission auditing to determine non-compliance with the benchmark requirements, will help ensure a smooth transition toward 100 percent captioning of new non-exempt video programming by 2006 as well as the benchmark for pre-rule programming. By auditing current and past compliance now, the Commission may discover benchmark noncompliance, and will be in a better position to require distributors to remedy failures to meet the benchmark going forward (in addition to requiring increased captioning hours and imposing other penalties as warranted). In so doing, the Commission will assist the video programming

---

warranted at this time.” *Id.* at 5.

<sup>35</sup> *Order on Reconsideration*, 13 FCC Rcd at 20030, ¶ 126.

industry to come into compliance as required in the timetable, rather than waiting until 2006 for the industry to discover problems and then claim that they do not have enough time and/or resources to come into compliance with 100% captioning by 2006.

**C. The Commission Should Revise its Complaint Rules to Require Responses to Consumer Complaints Regarding Captioning Quality Issues (and Other Issues Not Directly Tied to Benchmark Compliance) Within 30 Days**

Under the current rules, video programming distributors are not required to respond to a complaint about captioning problems (including technical captioning problems) until 45 days after the end of the prior calendar quarter or 45 days after receipt of the written complaint, whichever comes later. Accordingly, if a consumer encounters technical problems with missing captions on January 1<sup>st</sup> and immediately files a written complaint with the relevant video programming distributor, the video programming distributor is not required to respond until May 15<sup>th</sup>. Four months could pass before the video programming provider is legally required to respond, and in the interim, the consumer would continue to suffer from the lack of access to the relevant video programming.

The problem is compounded when these consumer are paying the high costs of cable, satellite, or other distribution services, but are not receiving captioned programming, so that in effect they have no access to the services for which they are paying premium prices. Unfortunately, based on correspondence that Petitioners have received from consumers regarding these issues, this happens far too often. In many parts of the country, consumers do not have any alternative choices of cable, satellite or other distributor but instead have only one option (and cannot receive broadcast programming without such a service). Particularly in the absence of alternative sources for receiving video programming (and even where such competition exists), the distributors in many cases apparently do not feel any market pressures to quickly remedy such problems.

In light of the problems that captioning consumers continue to experience with respect to non-responsiveness to captioning complaints and the difficulty in resolving captioning complaints expeditiously and efficiently, the Commission should revise the complaint procedures set forth in Rule 79.1(g) to establish two categories of complaints: (1) complaints regarding the number of hours captioned in a quarter (to which the video programming distributor may wait to respond until 30 days after the end of the relevant calendar quarter or 30 days after the complaint is filed, whichever is later) and (2) complaints regarding other captioning issues not related to the number of benchmark hours (including, but not limited to technical problems resulting in missing captions or garbled captions, for example) to which the video programming distributor must respond within 30 days after the complaint is filed. Particularly given that the types of technical problems have not changed or improved since the Commission's *1996 Report to Congress*, the rules must be revised to strengthen enforcement and compliance, including the creation of a shortened complaint response time-frame, at a minimum with respect to technical quality issues.<sup>36</sup>

**D. The Commission Should Establish Fines/Penalties for Non-Compliance with the Captioning Rules**

In order to ensure full access to video programming as required by Section 713 of the

---

<sup>36</sup> In the *Order on Reconsideration*, the Commission recognized that its decision to allow video programming distributors to respond to a complaint within 45 days of the end of the quarter or after the complaint is filed “is premised on the complaint being related to the compliance with the quarterly benchmarks. In order to avoid confusion for both video programming providers [sic] and consumers, however, we will apply the same time table even to those alleged violations that are not tied to quarterly compliance benchmarks.” *Order on Reconsideration* at 20025, ¶ 116. Petitioners submit that this system has not worked effectively and that the Commission should create a shorter response time for complaints that are not related to quarterly compliance benchmarks. Shortening the time frame by which distributors must respond to complaints not related to the number of captioned hours (such as technical problems) will better ensure enforcement of the rules and the timely and efficient resolution of captioning problems. Petitioners believe that the industry and consumers have become familiar with the concept of quarterly benchmarks and there is little chance that differentiating between benchmark related complaints and non-benchmark related complaints will create any confusion.

Communications Act, the Commission should establish additional enforcement measures, including punitive measures such as specific fines, for noncompliance with the Commission's captioning rules.<sup>37</sup> Specifically, Petitioners propose that the Commission establish a base forfeiture amount for violations of the captioning benchmark requirements. Such a forfeiture would create a financial incentive for video programming distributors or providers to comply with the Commission's benchmarks. Petitioners suggest that the base forfeiture amount for violation of the benchmark captioning requirements be set at \$8,000 per violation, with each hour of programming below the applicable benchmark being counted as a separate violation.<sup>38</sup> (In January 2006 when 100 percent captioning is required for new non-exempt video programming, the \$8,000 fine should apply for every hour of new programming that is not captioned.) The establishment of a system of punitive penalties is necessary to ensure compliance as the benchmark levels increase.

Experience has shown that the marketplace will not ensure compliance with the captioning benchmarks. Even as new more technically-advanced methods of transmitting programming, such as digital television, become more prevalent, evidence indicates that the marketplace has failed to ensure compliance with captioning requirements. A recent nationwide sampling of locally broadcast digital television programming conducted by the WGBH National Center for Accessible Media ("NCAM"), showed that 35% of local digital television stations failed to provide any closed captioning and only 20% provided captions in compliance with the Commission caption decoder rules (47 CFR Section 15.122), even though Commission rules now apply equally to digital

---

<sup>37</sup> Currently, the Commission generally wields the threat of potential increased captioning requirements beyond the benchmarks for noncompliance. *See, e.g., Comcast Order* at 5, n.32; 47 C.F.R. § 79.1(b)(8).

<sup>38</sup> The suggested base forfeiture amount of \$8,000 is akin to the Commission's current forfeiture amount for violation of the Commission's children's television programming requirements.

broadcasts and require that at least 75% of new non-exempt programming be captioned as of January 1, 2004.<sup>39</sup>

In light of the apparent failure of some programming distributors or providers to affirmatively audit their programming to determine compliance with the Commission's benchmarks, Petitioners fear that the frequency of non-compliance will increase as the Commission's benchmarks increase. Accordingly, increased enforcement measures are required to provide incentives for the regulated industry to comply with the rules and to ensure captioning quality, reliability, and availability.

### **III. The Commission Should Revise its Captioning Rules to Specify Procedures and Mechanisms for Ensuring Technical Quality**

#### **A. The Current Rules Do Not Ensure Technical Quality for Closed Captioning**

In the 1997 *Report and Order*, the Commission noted that technical captioning quality is addressed by Rule Sections 15.119 (technical requirements for transmission and display of closed captioning to assure basic technical compatibility among captioning services) and 76.606 (which requires cable companies to pass through captioning intact).<sup>40</sup> However, in light of reported problems with captioning not being transmitted properly, the Commission stated that it would "adopt and enforce a rule to ensure that captioned programming is always delivered to viewers complete and intact. This rule, Section 79.1(c) is an extension of the existing provision of the cable rules that requires cable operators to deliver existing captions intact."<sup>41</sup> Petitioners applaud the

---

<sup>39</sup> NCAM also notes that although some High Definition versions of pay cable and satellite services offer regular closed captioning, many of the new cable and satellite High Definition channels (such as INHD, HDNet, Discovery HD and national/regional sports networks) offer no captioning, even when their program content has been captioned for other, analog, distribution channels.

<sup>40</sup> 47 C.F.R. § 15.119 and 47 C.F.R. § 76.606.

<sup>41</sup> *Report and Order*, 13 FCC Rcd at 3368, ¶ 211.

Commission's decision to extend the requirements of 76.606 to apply to all video programming providers, regardless of distribution technology.<sup>42</sup> However, based on six years' experience since the captioning rules became effective, the pass-through requirement has not been sufficient to ensure that video programming distributors and providers take the steps necessary to prevent (and expeditiously remedy) technical problems that result in captions being removed from programming or otherwise becoming garbled and inaccessible to deaf and hard of hearing viewers.

In the 1997 *Report and Order*, the Commission reiterated that it is

*unacceptable* that existing captions might fail to be transmitted in a complete and intact manner to consumers. The reported problems – such as captions not being delivered intact, captions not synchronized with the video portion of the program, captions ending before the end of the programming, programming without captions even though the program indicates captioning or captions transmitted during one offering of the program but not another – deny accessibility to persons with hearing disabilities even when captioning seems to be available. . . . We believe that our enforcement of this new rule [Section 79.1(c) pass through requirement] and the enforcement of the requirements of Sections 15.119 and 73.682 in conjunction with the mandatory captioning requirements will ensure the technical quality for the closed captioning that is delivered to viewers' television receivers.<sup>43</sup>

Unfortunately, based on the communications Petitioners continue to receive from deaf and hard of hearing individuals, such technical problems (including, but not limited to the same problems highlighted in the 1997 *Report and Order*) continue to occur, and technical quality has not been ensured or noticeably improved by virtue of the pass-through requirement in Section 79.1(c).<sup>44</sup>

---

<sup>42</sup> 47 C.F.R. § 79.1(c) (obligation to pass through captions of already captioned programs).

<sup>43</sup> *Report and Order*, 13 FCC Rcd at 3368-69, ¶ 211 (emphasis added).

<sup>44</sup> See Exhibit B5, July 20, 2000 e-mail complaint of Jan Boldt of Falls Church to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning several problems with captioning that still commonly occur such as captioning cutting off prior to the end of programming and failure to synchronize captioning with what is shown visually.

Accordingly, the Commission must adopt additional mechanisms and procedures in order to prevent the occurrence of technical problems in the first instance, and to expeditiously remedy technical problems that may occur, in order to ensure that deaf and hard of hearing individuals are afforded “full accessibility” to video programming as required by Section 713 of the Communications Act.

Some of the types of technical problems that continue to occur with frequency, based on communications Petitioners continue to receive from deaf and hard of hearing individuals (and the personal experience of Petitioners’ principals), include the following:

1. Captions are turned off ten minutes before the end of national network programming.<sup>45</sup> (For example, captions disappear from national network programs that lead into local news broadcasts. For hearing persons, imagine watching a cliff-hanger and losing the audio ten minutes before the end of the show, every time. This is what happens to deaf and hard of hearing individuals when the captioning disappears.)
2. Captions disappear one hour into a two-hour movie.
3. Captions are absent although listed on TV programming schedules as having closed captions.<sup>46</sup> (On a related topic, in the case of pay-per-view channels, deaf and hard of hearing individuals have gone through the effort of selecting a pay-per-view program listed as having closed captions, and pay for the programming, only to discover that the program does not have captions.)
4. Captions are illegible, include white boxes, and overtypes.
5. Captions appear on a national program in one locality, but not another.<sup>47</sup>

---

<sup>45</sup> See *FCC Report to Congress* at ¶ 89; n. 211 (“It is also reported that the closed captions are sometimes turned off five to eight minutes before the end of national network programming.”) Based on information provided by TDI’s constituents, this problem has not been satisfactorily resolved.

<sup>46</sup> See e.g., Exhibit B6, E-mail complaint of Gretchen Butkus to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning programs listed in Florida Today newspaper as being captioned that are not captioned.

<sup>47</sup> In the 1997 Report and Order, the Commission used the example of Jeopardy! being captioned in Washington, D.C. and Nashville, Tennessee, but not in Atlanta, Georgia. See *FCC Report to Congress*, 11 FCC Rcd 19,214 at ¶ 90. More recently the season finale of Survivor:

6. Captions are missing from repeats of previously aired captioned programming or have scrambled and unreadable captions.<sup>48</sup>

Even more disturbing is a recent trend among providers to include a disclaimer in its broadcast stating that the provider is not responsible for the correctness of captions.<sup>49</sup> While the Petitioners understand that some small errors will occur, particularly during live events, the programming provider should be held ultimately responsible for monitoring captioning and to take action if the captioning quality is substandard. Otherwise it will be easy for providers to sidestep captioning requirements by contracting with substandard captioning providers and disavowing the end product by saying that the quality of captioning is not in their control. If the text is full of errors it is not a caption, and should not be counted as such for purposes of meeting the law.

Given that captioning problems continue to occur and in some cases captioning quality has deteriorated since the adoption of the 1997 rules, it is clear that additional mechanisms or procedures are required to prevent the occurrence of such problems, in addition to the need for additional enforcement mechanisms (as outlined above) to remedy any technical problems that occur.

**B. The Commission Should Require Continuous Monitoring of Captioning to Ensure that Technical Problems are Remedied Promptly and Efficiently**

As discussed above, deaf and hard of hearing individuals continue to encounter numerous technical problems with captioning. While consumers may file complaints under the current rules,

---

Marquesas on May 17, 2002 was captioned in Baltimore but not in Vienna, Virginia. See Exhibit B7, Complaint of Lisa Tempesta to Cox Northern Virginia and related responses.

<sup>48</sup> See *FCC Report to Congress* at ¶ 90, n. 214. See also, Exhibit B8, E-mail complaint of Richard Johnson to the Northern Virginia Resource Center for Deaf and Hard of Hearing concerning the fact that captioning on Fox 5-Washington's 10 o'clock news captioning was garbled and/or incomprehensible on April 29-30, 2003 and May 5-8, 2003.

<sup>49</sup> For example, CBS Sports routinely broadcasts a disclaimer that it is not responsible for the accuracy of its captions during live sporting events.

as discussed above,<sup>50</sup> the process is onerous, lengthy, and rarely (if ever) results in the prompt and efficient resolution of a captioning technical problem. It is telling that the same types of technical problems continue to occur as those which occurred at the time the Commission submitted its Report to Congress on Video Programming Accessibility in 1996 (more than seven years ago),<sup>51</sup> and when the Commission adopted the captioning rules in 1997.<sup>52</sup>

Petitioners believe that many of these technical problems could be prevented in the first instance if the video programming distributor and providers had mechanisms in place to monitor captioning and routinely check their engineering equipment and procedures.<sup>53</sup> However, based on the communications that Petitioners have received from captioning consumers, many video programming providers and distributors apparently do not know about such problems until and unless a consumer actively complains about the problem. Presumably, such video programming providers and distributors are not monitoring the captioning equipment on a continuous basis to ensure technical quality, and to ensure compliance with the pass through requirement set forth in Section 79.1(c).<sup>54</sup>

In the 1997 *Report and Order*, the Commission stated that it would

require video programming distributors to be responsible for any steps needed to monitor and maintain their equipment and signal transmissions to ensure that the captioning included with the video

---

<sup>50</sup> See *supra* part I(B)(2).

<sup>51</sup> See *FCC Report to Congress*, 11 FCC Rcd 19214.

<sup>52</sup> See *Report and Order*, 13 FCC Rcd 3272.

<sup>53</sup> During the Caption Quality Initiative Conference held in September 2002 in Fairfax, Virginia, consumers attending the conference identified the need for ongoing monitoring to ensure problem-free delivery as the most important issue relating to prerecorded captioning material that needs to be resolved. See Caption Quality Initiative Conference Report, September 14, 2002 available at: <http://tap.gallaudet.edu/CapQualReport.htm>.

<sup>54</sup> 47 C.F.R. § 79.1(c).

programming reaches consumers. Programming distributors will be responsible for any corrective measures necessary to ensure that the captioning is consistently included with the video programming delivered to viewers.<sup>55</sup>

However, the Commission did not establish specific rules to operationalize these monitoring requirements. Petitioners respectfully submit that monitoring by both distributors and providers is of critical importance to minimize (and ultimately eliminate) the types of technical problems that continue to occur which prevent deaf and hard of hearing individuals from having access to captioned programs.<sup>56</sup> While the increased enforcement measures outlined above<sup>57</sup> are critical to implementation of the captioning rules, the need for filing complaints would be greatly minimized if video programming distributors and providers actively monitored and maintained their equipment in order to eliminate the occurrence of technical problems in the first instance, and to quickly and efficiently repair such problems that do occur (rather than waiting to receive a complaint to discover that such a problem is occurring).

In addition, without such continuous monitoring and equipment maintenance, many video programming distributors might be counting programming as captioned when in fact the programming was not captioned. In some cases, the distributor may not even know that it is violating the Section 79.1(c) pass-through requirements until and unless a captioning consumer complains. Rather than placing the burden on deaf and hard of hearing individuals to discover these

---

<sup>55</sup> 13 FCC Rcd at 3369, ¶ 212.

<sup>56</sup> As the Commission stated in its *Report to Congress*, “[t]he critical technical steps of a quality captioning service are accurate encoding, transmission reception and decoding of the signal. To avoid such errors, it is important that the captioned signal be monitored as it is fed, monitored during the duplication process and checked to ensure that the equipment used is not inadvertently stripping the captions, moving them onto the wrong line or placing them in the wrong field.” *FCC Report to Congress*, 11 FCC Rcd at ¶ 93.

<sup>57</sup> See *supra* part II.

types of problems, the distributor and providers should meet their obligations to monitor and maintain their equipment to minimize the occurrence of such technical problems that result in previously captioned programming being inaccessible to deaf and hard of hearing individuals.

The Commission should clarify and confirm that its captioning rules require video programming providers to have in place procedures to continuously monitor captioning equipment and processes to *avoid* technical problems in the first instance, and to quickly remedy any technical problems that may arise. In addition, as discussed below, the Commission also should clarify by rule that, to the extent such technical problems arise and cause any portion of the captioning to be garbled or missing, the program may not be counted toward meeting the applicable benchmark of required captioning hours. The Commission also should require that programs for which captioning was garbled or missing (during the entire program or any part thereof) be recorded/logged and included in a separate section of the video programming provider's captioning audit reports so that the Commission and captioning consumers may ensure that such programming is not included in the video programming provider's captioned hours.<sup>58</sup>

**C. The Commission Should Require Video Programming Distributors to Reformat Edited or Compressed Captioning**

The Commission previously elected not to require video programming distributors to

---

<sup>58</sup> If there are problems with the audio portion of a program, the video programming provider apparently has far more incentive to ensure a rapid response to remedy the problem than in the context of captioning. (It is difficult to imagine a video programming provider allowing the audio portion of a program to simply be removed from the program, as occurs with captioning far too often, and in some cases for the same shows, week after week.) Again, it appears that market forces do not adequately address the need to ensure the consistent, reliable technical quality of captioning. Captioning consumers often feel isolated and extremely frustrated in their numerous and repeated attempts to have such captioning technical quality problems remedied.

reformat captioned programming that has been edited or compressed.<sup>59</sup> However, the Commission did not exempt edited programming; instead, under the current rules video programming distributors are only required to reformat the captions of a specific program if such captioning is necessary to reach the applicable benchmark.<sup>60</sup> In the *Order on Reconsideration*, the Commission reaffirmed its previous decision that a program received with captions that is edited is not required to have reformatted captions under § 79.1(c) (the “pass-through” rule).<sup>61</sup> However, the Commission clarified that as the benchmarks increase, distributors will have to reformat the captions to comply with the rules. As the Commission noted, “We expect that new technologies will be developed to standardize reformatting procedures among captioning agencies making the process easier and less expensive. . . . We expect formatting to become standardized among captioning agencies which will in turn allow for easier, less expensive reformatting of edited programming.”<sup>62</sup>

The Commission reasoned that by giving distributors until 2006 to gradually begin to reformat edited/compressed programming as required in order to meet the benchmark levels,

---

<sup>59</sup> *FCC Report and Order*, 13 FCC Rcd at 1312-1313, ¶ 86. *Order on Reconsideration* at 20009, ¶ 83. In its Report to Congress in 1996, the Commission explained the problems that result when previously captioned programming is edited or compressed but for which the captioning is not reformatted accordingly: “Closed captions may not remain with a program throughout the distribution chain, as would be expected. It is reported that, sometimes, a prime time program broadcast on network television may not have the captions when it is rerun in syndication or redistributed by a cable network. When a prime time program goes into syndication it may be edited to fit a shorter time frame. While the video and audio portions remain intact, the captioning may be removed. For example, some PBS programming originally broadcast with closed captions has been redistributed on cable by A&E without the captions included.” *Report to Congress*, 11 FCC Rcd at ¶ 90 (footnote references omitted). The lack of captioning for previously captioned programming due to editing/compressing remains a pervasive problem and results in consumer confusion, frustration, and disappointment when shows they know have been captioned no longer are.

<sup>60</sup> *Order on Reconsideration* at 20008, ¶ 80.

<sup>61</sup> *Id.* at ¶ 82.

<sup>62</sup> *Id.*

distributors would then have the procedures in place to undertake reformatting in all cases as of January 1, 2006.<sup>63</sup> Petitioners respectfully submit that, to the contrary, if distributors are not required to reformat edited or compressed programming until 100% captioning is required in 2006, they may be more likely to claim that they are not able to comply with the 100% captioning requirement on January 1, 2006.

Based on the numerous consumer complaints received by the Petitioners, it is not uncommon for rebroadcast or time compressed material to be labeled as captioned in programming guides even though no captions appear. It seems likely that providers may improperly count mislabeled reformatted programming towards making the benchmark numbers. Without a requirement that the providers track and report on their compliance with benchmarks, some providers may even be unaware that they are not in compliance.

In addition, since the *Order on Reconsideration* was issued, technology has progressed to the point that it is not problematic or cumbersome for providers to be required to caption edited or compressed programming. For example, software is available that extracts captioning data prior to video compression and then reinserts it after the video is decompressed.<sup>64</sup> Requiring reformatting of edited or compressed programming now will allow for a smoother transition to 100% captioning in 2006.

Moreover, Petitioners submit that the Commission should require distributors to reformat previously captioned programming that has been edited or compressed now (rather than waiting until 2006), in order to ensure that deaf and hard of hearing individuals have full access to video

---

<sup>63</sup> *Id.*

<sup>64</sup> For example, Computer Prompting and Captioning Co. ([www.cpcweb.com](http://www.cpcweb.com)) offers software programs that allow for the reformatting or time compressing of video material without losing captioning.

programming as required by Section 713 of the Communications Act. In the absence of such reformatting, the programming is not accessible to deaf and hard of hearing individuals.<sup>65</sup>

**D. The Commission Should Clarify that Incomplete Captioning Does Not Qualify as Captioned Hours**

Under the Commission's current rules, to the extent technical problems occur which result in programs that were already captioned not being passed through with the original closed captioning intact, such failures to pass through already captioned programs constitutes a violation of Section 79.1(c) of the rules. The Commission should revise its captioning rules to clarify that if a video programming distributor fails to pass through original closed captioning intact as required by Section 79.1(c), whether in whole or in part, then the programming does not qualify as captioned for purposes of meeting the captioning benchmarks.

For example, if the captioning suddenly cuts off five or ten minutes before the end of the program, or an hour before the end of the program, or for any period of time during the programming, or if the captioning is garbled and otherwise illegible and/or incomplete, then the

---

<sup>65</sup> In addition, as a result of previously captioned programming being edited and/or compressed in cases where a distributor then removes the captioning rather than reformatting the captioning, programming and TV/cable listings may incorrectly list the programming as closed captioned ("cc") even though it no longer is. The Commission noted that

persons with hearing disabilities are concerned that programming often includes the "cc" closed captioning logo even when the version of the program being shown is not captioned. We expect video programming providers to take any steps necessary to ensure that the captioning logo is used only when the version of the programming being shown is captioned. We also expect that video programming providers in conjunction with those publicizing programming and publishing programming schedules will make every effort to correctly label programming as to whether it is captioned. *Order on Reconsideration* at ¶ 83.

There may be other reasons for programming incorrectly being listed as "cc" even when the programming is not closed captioned, but many instances of this problem likely could be avoided, and deaf and hard of hearing individuals would actually have access to the programming, if the Commission required distributors to reformat edited or compressed programming.

video program should not qualify as a captioned program. The Commission should establish procedures as part of the reporting requirements Petitioners propose herein by which video programming distributors must keep track of such occurrences of technical problems that result in already captioned programming not being passed through, whether in whole or in part.

A rule clarifying that garbled, incomplete and/or missing captions during the whole or any portion of a program will disqualify the entire program from counting towards the captioned benchmarks will give providers and distributors greater incentive to ensure that captioning is not interrupted in the first instance. The adoption of the 1997 captioning rules caused a proliferation of technically substandard captioning methods and agencies that provide captioning services at low costs but whose captioning product is garbled, incomplete and often times entirely unreadable. Creating a rule that clarifies that substandard captioning will not count towards compliance benchmarks will put video programming providers and distributors on notice that they are ultimately responsible for their captioning quality.

**E. Live Programming that Uses the “Electronic Newsroom Technique” Should Not Count as Captioned Programming in Terms of Measuring Compliance with the Commission’s Rules**

The Commission already forbids major national broadcast television network affiliates in the top 25 television markets as designated by Nielsen’s Designated Market Areas (“DMAs”) from counting live programming that is transmitted using the “electronic newsroom technique” as captioned programming in terms of measuring compliance with the Commission’s rules.<sup>66</sup>

Petitioners believe that technology has developed to a degree that the use of the “electronic

---

<sup>66</sup> See 47 C.F.R. § 79.1(e)(3). National nonbroadcast networks that serve at least 50% of all homes subscribing to multichannel video programming services are also not permitted to count live programming transmitted with the “electronic newsroom technique” as captioned programming in relation to measuring compliance with the Commission’s rules.

newsroom technique” should be disfavored as it does not provide a quality captioned end product to consumers. Therefore, Petitioners ask that the Commission extend the prohibition of counting “electronic newsroom technique” programming towards meeting compliance standards to markets beyond the top 25 DMAs.

#### **IV. The Commission Should Adopt Non-Technical Quality Standards to Ensure that Video Programming is “Fully Accessible” to Deaf and Hard of Hearing Individuals as Mandated by Section 713 of the Communications Act**

Although five years have passed since the captioning rules became effective, the quality of captioning generally has not improved. The same types of captioning quality problems (both technical and non-technical) that occurred in 1995 when the Commission opened its NOI proceeding continue to occur.<sup>67</sup> When the Commission released its *Report and Order* and its *Order on Reconsideration*, the Commission declined to establish non-technical quality standards for captioning, but stated that it would continue to monitor quality issues and would consider establishing such standards if market incentives did not improve captioning quality.<sup>68</sup> However, the Commission recognized that “[i]nherent in a captioning obligation is the possibility of some

---

<sup>67</sup> See, e.g., *FCC Report to Congress* at ¶ 89-92 (describing numerous problems reported by captioning viewers regarding closed captioning quality.)

<sup>68</sup> In its *Notice of Proposed Rulemaking* (MM Docket 95-176, FCC 97-4, 12 FCC Rcd 1044 (1997)) the Commission tentatively concluded that it should not adopt standards for “non-technical” aspects of closed captioning, including accuracy of transcription, spelling, and placement and style at the beginning of the “phase in period” for closed captioning. Instead, the Commission proposed to “monitor the closed captioning that results from our requirements and, if necessary, revisit this issue at a later date.” In the *Report and Order*, the Commission concluded that “it would be best not to adopt standards relating to the non-technical quality of captioning and to allow market forces establish industry standards. As indicated above, **we intend to monitor the quality of the captions that are provided during the transition period.** Based on information we gather or receive from the public, we may revisit the need for standards for non-technical quality during the transition period. The review during the transition period will allow us to consider whether we have taken the appropriate actions necessary to further the important goal of accessibility of video programming as directed by Congress.” *Report and Order*, 13 FCC Rcd at 3387, ¶ 257 (emphasis added).

definition of a minimal level of quality necessary to demonstrate compliance with the requirement. Thus, we believe that it is well within the Commission's discretion to now adopt rules, standards, or guidelines that address these matters.<sup>69</sup>

In deferring adoption of non-technical captioning quality standards, the Commission reasoned that video programming providers would establish quality standards and quality controls for the non-technical aspects of captioning through their arrangements with captioning suppliers or as part of the requirements of their programming contracts and licensing arrangements:

We expect that this approach will result in high quality captions comparable to the level of quality of other aspects of programming such as the audio and video. We will, however, consider revisiting this issue if, after some period of implementation of our transition rules, it becomes apparent that our assumptions regarding the marketplace incentives for quality captioning are incorrect.<sup>70</sup>

While the Commission reasoned that market incentives could address non-technical quality without the need for quality standards, the Commission also emphasized that it would revisit the need for adopting non-technical quality standards during the phase-in period if warranted.<sup>71</sup> The Commission also recognized that:

captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities. Captions also should not interfere with the viewability of the video portion of the program. However, we believe that there are good reasons to defer action on this issue in order to provide time for the captioning community to adjust and adapt to the new environment created by

---

<sup>69</sup> *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1087, ¶ 104.

<sup>70</sup> *Report and Order* at 3374, ¶ 222.

<sup>71</sup> *Id.* at 3374, ¶ 225 (“Our transition schedule is intended to allow us the flexibility to revisit issues, such as the quality of captioning, as it is implemented, if necessary.”)

our rules. If, after a period of experience, it becomes apparent that quality levels are unsatisfactory, we can revisit this issue.<sup>72</sup>

Now is the time for the Commission to establish quality standards in order to ensure that deaf and hard of hearing individuals have access to video programming in accordance with the mandates of Section 713. By establishing a rulemaking proceeding as requested by this Petition, the Commission will be able to gather information from interested consumers, captioning providers, and the affected video programming industry regarding how best to craft such standards.

Based upon complaints received by the Petitioners, there are widespread problems with non-technical captioning quality. While small and occasional captioning inaccuracies can be tolerated, programs often contain inaccuracies at a level that affect the comprehensibility of a program. It is clear that captions often are not checked for accuracy. For example, the following is a non-exhaustive list of captioning mistakes that occurred in a one-hour pre-produced program on the Discovery Channel entitled “Living with Tigers”:

“scam bellowed” instead of “scrambled”  
“kept tracks” instead of “skeptics”  
“rye no” instead of “rhino”  
“pedal to the medal” instead of “pedal to the metal”  
“posse cat” instead of “pussy cat”  
“what terry” instead of “watery”  
“surface” instead of “suffer”  
“offence” instead of “fence”  
“carin” instead of “carrion”  
“exceed them” instead of “see them”  
“repaired” instead of “prepared”  
“plans” instead of “plains”  
“foul” instead of “fowl”  
“adopt” instead of “adapt.”<sup>73</sup>

---

<sup>72</sup> *Notice of Proposed Rulemaking*, 12 FCC Rcd at ¶ 111.

<sup>73</sup> See Exhibit B9, Complaint received from Terrie LaBarbera on October 7, 2003. Another complaint received from Ms. LaBarbera on August 25, 2003 concerning the Discovery

As a starting point, the Commission should revisit and request comment on the non-technical captioning quality standards previously proposed by commenters in the captioning proceedings in order to determine whether the same types of non-technical quality issues still need to be addressed.<sup>74</sup> In particular, the Commission should consider and examine the feasibility of adopting the following captioning quality standards identified in the *Notice of Proposed Rulemaking*: (a) require that captioned data and information contained in the soundtrack be delivered intact throughout the entire program; (b) require that captioning must transmit information about the audio portion of the program which is functionally equivalent to the information available through the program's soundtrack; (c) require that captions must include all elements of the soundtrack necessary for accessibility, including verbal information, identification of the speaker (if it is not apparent), sound effects, and audience reaction; (d) adopt standards for proper spelling, grammar, timing, accuracy, and placement; and (e) require captions to be provided in the style and standards that are appropriate for the particular type of programming that is being captioned, e.g., real-time captioning should be required for live programming (including local newscasts, as is

---

Channel's program entitled "Nefertiti Resurrected," included in Exhibit B9, listed the following mistakes:

- "hire gliks" instead of "hieroglyphs"
- "mmyfied" instead of "mummified"
- "blasfeme" instead of "blasphemy"
- "sack ri lj" instead of "sacrilege"
- "proeblg" instead of "probably"
- "kosmo" instead of "cosmos"
- "carnation" or "car mac" instead of "Karnak"
- "lane" instead of "lain"
- "rights" instead of "rites"
- "thrown" for "throne".

<sup>74</sup> See, e.g., *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1088-1089, ¶106; *Report and Order* at n.705.

required for major news broadcasters pursuant to Rule 79.1) but should not be used in most cases for pre-produced programming.

In addition, the Commission should consider adopting the following captioning quality standards that were suggested by commenters in the previous captioning proceedings: (a) the placement of captions must reflect the source of audio information contained in the soundtrack; (b) captions must be synchronized with the audio content of the program, with some allowance made for programming that is live or recorded shortly before air time; (c) captioning should not interfere with other visually displayed information;<sup>75</sup> and (d) closed captioned master tapes used for duplication should be labeled as such (e.g., “cc”) as they move through the distribution chain.<sup>76</sup> The time is ripe for the Commission to adopt non-technical captioning quality standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

#### **V. Adoption of the Measures Proposed in this Petition is in the Public Interest**

As discussed above, Congress recognized that closed captioning is vital to deaf and hard of hearing individuals, both with respect to quality of life and safety issues, when it adopted Section 713 of the Communications Act. The Commission has enacted various rules designed to implement Section 713 and thereby increase the availability of closed captioning in video programming. These rules are a good start towards achieving that goal, but quality standards and enhanced enforcement measures with regard to captioning are needed in order to achieve the goals of full access to video programming.

---

<sup>75</sup> For example, the video display often shows a person's name and occupation, a telephone number to call, or other relevant information, that captions obscure or cover completely. This information may not be spoken and thus would not be in the captioning, making it inaccessible to the viewer.

<sup>76</sup> See *Report and Order* at n. 705 for a summary of the captioning quality standards proposed by commenters.

In creating its closed captioning rules, the Commission established certain benchmarks for captioning in video programming and relied upon the premise that market forces will assist in ensuring captioning quality and availability. Unfortunately, in the time since these rules were initially adopted, experience has proven that market forces alone are not enough to ensure that closed captioning achieves sufficient quality standards. As described above, captioning that does not meet an established quality threshold should not be counted in terms of satisfying the benchmark standards for captioning hours. By establishing quality standards, the Commission will ensure that captioned programming is accurate and useful to the viewer, and thereby will achieve the mandate of Section 713 that video programming be fully accessible to those with hearing difficulties.

The Commission should also adopt enhanced enforcement measures to better implement the existing rules and benchmarks. As described above, because the current rules do not require compliance reporting, video providers and distributors may be unaware that they are out of compliance unless and until they receive a customer complaint. Enhanced enforcement mechanisms under the captioning rules will encourage video distributors and providers to self-audit and monitor their captioning to ensure compliance. By adopting the proposals advocated herein, the Commission will better implement the requirements of Section 713 and thereby increase the overall availability and quality of video programming captioning.

### **CONCLUSION**

The time is overdue for the Commission to adopt rules as outlined herein to strengthen enforcement mechanisms and establish quality standards to better ensure implementation of the captioning rules in accordance with the mandates of Section 713 of the Communications Act. In particular, the Commission should revise its captioning rules to facilitate the complaint process and strengthen enforcement measures (including quarterly captioning compliance reporting,

Commission compliance audits, and the establishment of base forfeiture amounts for violations of the captioning rules); specify procedures for ensuring technical quality; and create standards for non-technical quality. Adoption of the proposals set forth herein will ensure that deaf and hard of hearing individuals who rely on closed captioning in order to have access to video programming will have the access that was intended by passage of Section 713 of the Communications Act. Based on the foregoing, Petitioners respectfully request that the Commission grant this Petition for Rulemaking.

Respectfully submitted,



Claude L. Stout  
Executive Director  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Cheryl Heppner, Vice Chair  
Deaf and Hard of Hearing  
Consumer Action Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Nancy Bloch  
Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, Maryland 20910-4500

Lois Maroney, President  
Association of Late Deafened Adults, Inc.  
7545 83<sup>rd</sup> Street North  
Seminole, FL 33777

Dated: July 23, 2004

---

Andrew D. Lipman  
Paul O. Gagnier  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington, D.C. 20007  
(202) 424-7500

Attorneys for  
Telecommunications for the Deaf, Inc.

Brenda Battat  
Director of Public Policy and State Development  
Self Help for Hard of Hearing People  
7910 Woodmont Avenue, Suite 1200  
Bethesda, Maryland 20814

## EXHIBIT LIST

<b>Exhibit A</b>	<b>Sample Complaint Form</b>
<b>Exhibit B</b>	<b>Complaints</b>
<b>B1</b>	<b>Gretchen Butkus (June 4, 2002)</b>
<b>B2</b>	<b>Joan Cassidy (January 1, 2003)</b>
<b>B3</b>	<b>Lisa Tempesta (May 20, 2002)</b>
<b>B4</b>	<b>Diane Edge (December 20-27, 2002)</b>
<b>B5</b>	<b>Jan Boldt (July 20, 2000)</b>
<b>B6</b>	<b>Gretchen Butkus (October 6, 2003)</b>
<b>B7</b>	<b>Lisa Tempesta (June 10, 2002)</b>
<b>B8</b>	<b>Richard Johnson (May 9, 2003)</b>
<b>B9</b>	<b>Terrie La Barbera (August 25 and October 7, 2003)</b>
<b>Exhibit C</b>	<b>2003 Report to the National Captioning Institute Foundation</b>

### TV Captioning Complaint Form

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ check one - ( ) TTY ( ) Voice

Fax Number: \_\_\_\_\_

Preferred Method of contact: \_\_\_\_\_

When did you have this captioning problem? Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Which TV program did you notice had the problem? \_\_\_\_\_

Program was on: TV Station \_\_\_\_\_ Cable Company and channel: \_\_\_\_\_ Satellite provider \_\_\_\_\_

Program lasted from \_\_\_\_\_ p.m./a.m. to \_\_\_\_\_ p.m./a.m.

Captioning problem occurred around on \_\_\_\_\_ p.m./a.m. and ended around on \_\_\_\_\_ p.m./a.m.  
\_\_\_\_\_

What was the problem with captioning?  
\_\_\_\_\_  
\_\_\_\_\_

Did you attempt to contact someone to discuss the problem? Yes \_\_\_ No \_\_\_

Were you successful? Yes \_\_\_ No \_\_\_

If No, why not? \_\_\_\_\_

If Yes, Date of Contact: \_\_\_\_\_

Person contacted: \_\_\_\_\_

Were you given a Reference Number or a Tracking Number? Yes \_\_\_ No \_\_\_

Reference or Tracking Number (if applicable): \_\_\_\_\_

Name of TV Station/Cable Provider/Network: \_\_\_\_\_

What was the response?

---

---

Other Comments (if needed) \_\_\_\_\_

---

---

**EXHIBIT B**

**Complaints**

**Exhibit B1**

**Gretchen Butkus (June 4, 2002)**

**Subj: List of TV Channels**  
**Date: Tuesday, June 4, 2002 7:08:58 PM**  
**From: GLButkus**  
**To: NVRCheryl**

Cheryl:

Hi! Am growing through an evening of no captions here for ABC. Have misplaced my list of numbers to call for getting help. Called my Time Warner Cable folk and they said it is the Network. The number I got with them was LD and gave me five minutes of alternatives to call and NO satisfaction. Can you send me another copy of the Network phone numbers, please. I guess when I get another copy I will frame it and hang it on the wall! Many thanks for sending on the Deaf Driver cards for the visor through Gay. Will be in touch. Hugs all round! g

**Exhibit B2**

**Joan Cassidy (January 1, 2003)**

Subj: **Still no captions on Hallmark Channel**  
Date: **Wednesday, January 1, 2003 3:57:00 PM**  
From: **JOANCASSDY**  
To: **NVRCheryl**

Happy New Year Cheryl!

It's been a month now and still no captions restored to the Hallmark Channel. Can you put something out asking people in other areas if their cable company is broadcasting with captions and maybe get more people to call Hallmark about it?

Here's the history:

Early in December all captioning stopped on Hallmark (I love the old Perry Mason reruns). At first Adelphia Cable said they had no control over what Hallmark captioned - usual response. Then they told me that their (Adelphia's) equipment was faulty and needed to be "recalibrated" to match the Hallmark signal. Then they called and said it was Hallmark's fault because they were changing the equipment that sent out the captions????????? They suggested I call H at 888-390-7474 and complain. I did this but only got a machine - they never returned my calls.

Up to this time Hallmark captioned about 50% of their shows so I find it hard to believe they suddenly stopped. I also find it hard to believe they are changing their equipment because they continue to broadcast all the usual shows - only thing missing is the captioning.

I suspect Adelphia is the problem but have nothing to back up my suspicions  
grrrrrrrrrr

hugs from Joan

**Exhibit B3**

**Lisa Tempesta (May 20, 2002)**

**Subj: Re: CBS Survivor was not captioned Sunday Night**  
**Date: Monday, May 20, 2002 11:55:34 PM**  
**From: Tempesta**  
**To:**

Cheryl, I've complained in the past about "Sex in the City" and the "Sopranos" captioning working sporadically. I've missed whole seasons because of this. I went to Cox Cable and they told me its not their fault, to check with HBO. I went to HBO and they told me go to Cox. So I always get the round about. Neither know what they are talking about so I have so little patience left with these people because they waste my time. Anyway, I'd like to help anyway I can because I continue to have captioning problems with other channels as well. I think its really Cox. I've had my box changed about 4 times to rule that out. I've had the men come to service my cable. I know its got to be coming from their local office but they won't listen to me.

I've even asked for a reimbursement from Cox for no service but since they believe its not their fault that the captions don't work, they suggested I go to HBO. You know the rest.

Anyway, Thanks for your note. I'll write a letter to Cox and send you a copy.

**Exhibit B4**

**Diane Edge (December 20-27, 2002)**

**Subj: trouble with Pax ?**  
**Date: Friday, December 20, 2002 22:15:57**  
**From:**  
**To:**

Are you getting captioning on the Pax station in VA ? I am not and have sent a email to both my cable and Pax. I would just like them to check it out without having to do the FCC thing but... well, I will do that as well if they don't get their act together- let me know if you are getting captioning as it might be Comcast here messing up.

Hey also congrats on beating out the Wilder Commission.. That was an important win and one that we will have to keep an eye on for this side of the beltway as well.

Happy Holidays  
Diane

Cable provider: FCC code  
Comcast  
Waldorf, MD 20602

Subj: **closed caption- Not**  
Date: **Monday, December 23, 2002 11:23:39**  
From:  
To:  
bcc:

COMCAST

Monday Dec 22,2002

Dear Ms. True,

I contacted Pax TV in Manassas via their customer service line and left a MD Relay message with them about the absent captioning for Pax TV, which comes to your station and then is rebroadcasted.

I also tried in vain to contact your customer service dept via MD Relay and the female voice on the other end had no clue as to what I was talking about.

She insisted that she would have to send out a service tech to look at my cable or tv set, despite the fact that I told her that my captioning on all other stations was fine. Then she left me on hold for 5 minutes in which she then began to tell me that she talked with a tech and was about to explain to me how to turn on my captioning for my tv. I had asked her simply to relay to the engineering dept that the signal feed was not being captioned.

I do know how to turn on my captions, my other channels are being captioned but the regular scheduled programs from Pax that were captioned and show that they are suppose to be captioned - are in fact not. There is no captioning coming through for Pax TV.

I would hope that some additional training could be taken on your customer service level so that in the future when a call comes in from a deaf consumer, these front line people would be knowledgeable about the subject matter. She had no clue as to what she was trying to say and really does not do your company any justice to have people that are not trained to handle out of the normal questions.

She could not "think outside the box" and her remarks were unsatisfactory for what I was simply trying to convey, which was to tell someone in engineering dept. that the captions for channel 41 Pax TV were not coming through. I finally gave up and just drove over to the office on Post Office RD. walked in and gave my concern on paper to the front service windows.

You are well aware that there is a sizeable Deaf community in Charles County and it is with a better outreach to those consumers, if we could get some needed attention when captions do not appear.

Training of staff would be a huge step, making sure the signals are coming through and a way to allow consumers to alert Comcast when they do not, 24/7  
I believe that if we could achieve this level of access and service, it would be most appreciative by all of us. There must be a better way that having to bring this type of information to Comcast.

My concern is to iron out the problems in a pro-active manner, so that in the event of another emergency- we have a system in place before we need it.

Please relay my concerns to those who can follow this up, get ahold of Pax TV and see why there is no captioning signal coming through and then hopefully, you will be motivated to provide the

**Southern MD Deaf community a way to bring to Comcast's attention future issues with captioning.**

**Thank you for reading this e-mail and I hope you will have a safe holiday season**

**Diane Edge  
Advocacy Support League**

**Subj: Monday evening still no captions**  
**Date: Tuesday, December 24, 2002 8:51:27**  
**From:**  
**To:**  
**bcc:**

Comcast - Waldorf, MD

Last night Monday Dec 22, 2002 I again attempted to watch PAX TV - cable #41 to sit back and enjoy the programs. Sue Thomas FBeye which stars a deaf actress and is a captioned show - a repeat from this past Sunday.. again- no captions are coming through ...

This is now well over a week of non captioning that I know of from Comcast -via Pax TV - last Sunday Dec 15 to Tues Dec 24 - programs that appear with captions are not coming through captioned.

I have called your offices, I have appeared in person, I have sent fax and email and no one is doing anything to fix the problem.

The signal is either not getting to Comcast or Comcast is not re-broadcasting it. As a consumer this is very irritating and I am really unsure why this continues to happen.

You must know by now that Pax TV - chan 41 on the Charles County, MD programming has not had any captions on programs that always in past appeared with captions. especially the deaf show Sue Thomas.

Again, you have been asked to call PAX and see what is up or if you are having the problem - then we ask you to adjust that signal feed or whatever is needed.

I would like this fixed and I would also like to see an adjustment on my cable bill because I am not getting the full benefit of what we pay for, More than a weeks worth of shows that I normally enjoy have been without captions and so - I can't enjoy them.

I feel that a refund on my comcast bill is needed - since I did not have full access.

Since Dec 15, 2002= Dec 23, 2002 PAX TV chan 41 in Chas CO has not shown programs with captions coming through. My other stations that show captions do appear to be working normally.. so it is only Pax TV that is a problem right now.

I have appeared in person .. called - faxed, and emailed Comcast. No response except to send out a tech and have my set looked at- which is totally off the wall.

Holiday is here and I am sure it will only get worse ... PAX TV is suppose to be feel good tv and I don't feel good about paying for something that I don't get....

Diane Edge

Waldorf, MD 20602

**Subj: PAX shud be fixed...**  
**Date: Friday, December 27, 2002 2:08:17 PM**  
**From:**  
**To:**  
  
**cc:**

**From:**  
**Subject:RE: closed captioning**  
**Dear Ms. Edge,**

Your closed caption should now be working. Thank you very much for bringing this to my attention. If you have any further problems please feel free to e-mail me directly.

**David Linnemeyer**  
**Chief Engineer- WPXW PAX-66 Fairfax Sta. VA**  
**WWPX PAX-60 Martinsburg WV**

**office:**  
**mob:**  
**page:**

**SO I ASKED HIM WAS IT COMCAST OR PAX>> WHAT HAPPENED ??**  
**HIS REPLY:**

**From:**  
**Subject:RE: re[2]: closed captioning**

No, I have to admit it was a problem at this station. About the time that the problem occurred we had lost commercial power. This apparently caused a programming error in one of our satellite receivers not allowing it to pass the closed captioning. Thank you again for bringing this to my attention.

**David Linnemeyer**

Chief Engineer- WPXW PAX-66 Fairfax Sta. VA  
WWPX PAX-60 Martinsburg WV

office:  
mob:  
page:

12/27/02

: Page 2

**Subj: Captions not appearing on CC depicted shows..master control operator**  
**Date: Thursday, December 26, 2002 10:21:57**  
**From:**  
**To:**  
**cc:**  
**bcc:**

**PAX TV - master control operator**

I have called your tv station, have contacted my local comcast station in waldorf.md and I tried email as well.

since Dec 15th - that I am aware of, pax tv has not shown the accompanying captions to the shows that are indeed captioned and depicted by the CC mark.

The captions are not coming through. This is not feel good tv. This is almost impossible to bring to anyone's attention and I am looking 11 days without benefit of captions- which means I have not been able to enjoy Pax tv.

Since I am dependent on captions this 11 days means that every captioned show that Pax tv has broadcasted, the closed captions did not follow.

If this was a audio signal that was transmitting sound and was missing for more than 24 minutes- I suspect there would be an uproar... But deaf have a hard time getting your attention through that automated voice system and sending emails seems to be unread... So why bother ?

Ironically the deaf show Sue Thomas FBEye is not even captioned and I am not a skilled lipreader...

Something is wrong with the signals or comcast in waldorf is screwing up but they claim they are not.

Can someone = please do something to turn on the captions and correct this problem ?

**Diane Edge**  
**Waldorf,MD**

---

----- Headers -----

**Return-Path:**  
**Received: from**  
**(v90.10) with ESMTp Id**

**: Thu, 26 Dec 2002 10:21:57 -0500**

**Exhibit B5**

**Jan Boldt (July 20, 2000)**

**Subj: Re: NVRC Thurs News - WITH VERY IMPORTANT ACTION ALERT**  
**Date: Thursday, July 20, 2000 8:57:50 AM**  
**From:**  
**To:**

Cheryl,

You might want to ask the FCC why they don't monitor some of our programs to make sure captioning ends at the end of programs, and to see if the captions run with the voices, not before or after....for the past month, for almost all the programs I watch at night, including Channel 4's 5:00 and 6:00 news, captions have ended anywhere from 5 to 10 minutes before the end of the program, depriving viewers of a show's ending. Channel 3, formerly 50, last Sunday on "Relic Hunter," had their captions running a sentence or two behind the actors' voices. "Little" things like this, not to mention programs advertised as being captioned but turn out not to be (movies, for example), make the whole idea of having captions worthless if they don't provide EQUAL ACCESS!!!

Jan Boldt, Falls Church

**Exhibit B6**

**Gretchen Butkus (October 6, 2003)**

**Cheryl Heppner**

**From:**  
**Sent:** Monday, October 06, 2003 7:09 PM  
**To:**  
**Subject:** Re: Captioning problems

In a message dated 10/6/03 2:19:28 PM Eastern Daylight Time, writes:

| in June 2002 when you had problems with captions on ABC

No, that's fine, go ahead and use it and you may use my name as well if that lends more credence to the happenstance. Actually, I am pretty irate with the manner in which captions are performed on our local news programs here in FL.....Orlando, Daytona Beach as NBC and ABC affiliates. The captioners have obviously received the MAJOR news stories from the studio anchors and follow those fairly well. But even with those major stories, if there is any deviation whatsoever, captioners just roll along and ignore the additional news. When it comes to the local weather, we see "loss to weather" and that's the last you read until they come back to the "MAJOR" news again, often starting that while the weathercaster is still on. (How remote is the weathercaster? They appear at the anchor desk soon after their standup delivery!) There is a regular feature with a gardening expert to talk about plants and "answer questions sent in by listeners" and that also is NEVER captioned. I wonder if he is aware of how many listeners are not getting anything from his "advice".

If you watch a nationally syndicated show like "Today" on NBC, the program is captioned in its entirety...EXCEPT when Al Roker finishes up the National weather picture and funnels to the local station. Then, deaf people have no clue, other than the posted pictures with the temperatures and rain, sun, snow icons at the end. "Better than nothing?" you might say? Well, then why bother with anything else for hearing people!

I am grateful to be able to tune in the Weather Channel. But not everyone has that access.

Good luck to you and Claude with your presentation, Cheryl! NVRC (South) hugs, G

I would like to have names and numbers to contact locally when there are these problems. Is the Cable Company supposed to provide those? Often programs are listed in Florida Today newspaper as being captioned and invariably they are not.

10/7/2003

**Exhibit B7**

**Lisa Tempesta (June 10, 2002)**

**Subj: Comcast did not experience Captioning problems as did Cox!**  
**Date: Monday, June 10, 2002 10:27:11 AM**  
**From:**  
**To:**  
**bcc:**

Andrew, please read the email from my sister who was able to watch the Survivor Finale show with full captioning support. I have been working really hard to make Cox realize that the fault of caption anomalies probably lies at Cox. I'd appreciate hearing from you again in regards to why Columbia, Maryland is able to get captions and Vienna and Alexandria are not. Thank you.

Lisa Tempesta

**Subj: Re: Fwd: Technical Support**  
**Date: Wed, 5 Jun 2002 6:47:49 PM Eastern Daylight Time**  
**From:**  
**To:**

Lisa,

Your Cox cable is wrong. Randy and I were able to watch the show with captioned for two full hours!!! I would suggest you tell him that your sister in Baltimore watched that show and her cable is Comcast. Ask them how come the signal feed from the network to comcast worked, not Cox!!! I have heard that sometimes the cable company or local television didn't bother to fix their signal feed. It's their Cox's technical problem that caused captioned missing. Have them take another look into it. I do not think they bother to take a closer look!!!

In a message dated Mon, 3 Jun 2002 5:26:08 PM Eastern Daylight Time, Tempesta writes:

>In a message dated 5/22/2002 12:08:01 PM Eastern Standard Time,  
> writes:  
>

>  
>> **Subj:Re: Technical Support**  
>> **Date:5/22/2002 12:08:01 PM Eastern Standard Time**  
>> **From:**  
>> **To:**  
>> **Sent from the Internet**  
>>  
>>  
>>  
>> **Dear Ms. Tempesta:**  
>>  
>> Thank you for contacting our Cox Northern Virginia Online Customer  
Care  
>> Team. We had contacted the network about this. They advised us the  
>> ~~Closed Captioning for the show was not working properly~~ for any user.  
>> This was a problem with the signal feed from the network to Cox  
Northern  
>> Virginia.  
>>  
>> If you need additional information on other Cox products or services,  
>> please visit our web site at <http://www.cox.com/fairfax>.  
>> We hope that we have been able to provide you with the information you  
>> requested. If we have not, or if we can be of any additional service to  
>> you, please do not hesitate to contact us again.  
>>  
>> My name is Andrew.  
>> Thank you for choosing Cox Communications!  
>>  
>> Sincerely,  
>> The Cox Northern Virginia Online Customer Care Team  
>>  
>>  
>>  
>> **Original Message Follows:**  
>> -----  
>>  
>> **Form Message**  
>> **subject: Technical Support**  
>> **detail: Cox Cable**  
>> **FirstName: Lisa**

>> LastName: Tempesta  
>> Email Address:  
>> VerifyEmail:  
>> SecondaryEmail:  
>> Phone:  
>> Account:  
>> HomeAddress:  
>> City: Vienna  
>> State: VA  
>> Zip: 22181  
>> UserID:  
>> Comments: The closed captions for the Survivor: Marquesas Finale show  
>> did not work at all during the 2 hours the show was aired on Sunday  
>> evening, May 17 from 8 to 10 pm. I watched this show every week for  
13  
>> weeks only to find out that I could not watch how it all came to an end.  
>> I tried to troubleshoot the problem by turning my TV on and off,  
>> changing channels to see if other shows were captioned (they were),  
>> turned my cable box on and off and nothing succeeded in getting the  
>> captions to work. I found out from a friend that Survivor also was not  
>> captioned within his area in Springfield. He also has Cox Cable service.  
>> His name is Jason Teramae and he lives at 6832 Clowser Court,  
>> Springfield, VA 22150. I asked my sister who is also an avid Survivor  
>> fan if she got closed captioning in her area. She lives in Columbia,  
>> Maryland. She said all of the show (2 hours) except for the last 10  
>> minutes were captioned. I've reported numerous problems with captions  
>> not working, specifically with the shows Sex in the City and The  
>> Sopranos. I've had to give up watching these series and I've missed  
>> entire seasons. I've had to rely on renting the tapes at Blockbuster to  
>> see these shows. I've had Cox technicians replace the cable box - in  
>> fact this was done several times. I've also had the technicians examine  
>> the external connection (poke around in the outside box that joins the  
>> cable from outside to the cable that runs inside my house). I've even  
>> visited your office in Chantilly to voice the problems. I was told by  
>> the Cox representative that the problem was with HBO. The Cox  
>> representative gave me a phone number at HBO to call. I then talked  
with  
>> HBO and they told me that this was a problem that should be fixed by  
Cox

>> Cable. So each party points the finger at each other which is not  
>> productive and I, the customer is left in the rain with a broken  
>> umbrella you've both sold to me. My point is this: There are too many  
>> times when the captions have not worked on a particular show or a  
series  
>> and Cox Cable has ignored my complaints. I implore that you please stop  
>> disregarding my complaints without carefully examining the  
cause/source  
>> of the problem. I look forward to hearing from you. Thank you for your  
>> attention to this matter. Lisa Tempesta  
>> submit: Submit Questions

>

>

>

>

>Subject: Re: Technical Support  
>Date: Wed, 22 May 2002 12:07:33 -0400  
>From: Cox eCare Northern Virginia  
>To: .

>

>Dear Ms. Tempesta:

>

>Thank you for contacting our Cox Northern Virginia Online Customer Care  
>Team. We had contacted the network about this. They advised us the  
>Closed Captioning for the show was not working properly for any user.  
>This was a problem with the signal feed from the network to Cox  
Northern  
>Virginia.

>

>If you need additional information on other Cox products or services,  
>please visit our web site at <http://www.cox.com/fairfax>.  
>We hope that we have been able to provide you with the information you  
>requested. If we have not, or if we can be of any additional service to  
>you, please do not hesitate to contact us again.

>

>My name is Andrew.  
>Thank you for choosing Cox Communications!

>

>Sincerely,  
>The Cox Northern Virginia Online Customer Care Team

>

>

>

>Original Message Follows:

>-----

>

>Form Message

>subject: Technical Support

>detail: Cox Cable

>FirstName: Lisa

>LastName: Tempesta

>Email Address:

>VerifyEmail:

>SecondaryEmail:

>Phone:

>Account:

>HomeAddress:

>City: Vienna

>State: VA

>Zip: 22181

>UserID:

>Comments: The closed captions for the Survivor: Marquesas Finale show

>did not work at all during the 2 hours the show was aired on Sunday

>evening, May 17 from 8 to 10 pm. I watched this show every week for 13

>weeks only to find out that I could not watch how it all came to an end.

>I tried to troubleshoot the problem by turning my TV on and off,

>changing channels to see if other shows were captioned (they were),

>turned my cable box on and off and nothing succeeded in getting the

>captions to work. I found out from a friend that Survivor also was not

>captioned within his area in Springfield. He also has Cox Cable service.

>His name is Jason Teramae and he lives at 6832 Clowser Court,

>Springfield, VA 22150. I asked my sister who is also an avid Survivor

>fan if she got closed captioning in her area. She lives in Columbia,

>Maryland. She said all of the show (2 hours) except for the last 10

>minutes were captioned. I've reported numerous problems with captions

>not working, specifically with the shows Sex in the City and The

>Sopranos. I've had to give up watching these series and I've missed

>entire seasons. I've had to rely on renting the tapes at Blockbuster to

>see these shows. I've had Cox technicians replace the cable box - in

>fact this was done several times. I've also had the technicians examine

>the external connection (poke around in the outside box that joins the  
>cable from outside to the cable that runs inside my house). I've even  
>visited your office in Chantilly to voice the problems. I was told by  
>the Cox representative that the problem was with HBO. The Cox  
>representative gave me a phone number at HBO to call. I then talked with  
>HBO and they told me that this was a problem that should be fixed by Cox  
>Cable. So each party points the finger at each other which is not  
>productive and I, the customer is left in the rain with a broken  
>umbrella you've both sold to me. My point is this: There are too many  
>times when the captions have not worked on a particular show or a series  
>and Cox Cable has ignored my complaints. I implore that you please stop  
>disregarding my complaints without carefully examining the  
>cause/source  
>of the problem. I look forward to hearing from you. Thank you for your  
>attention to this matter. Lisa Tempesta  
>submit: Submit Questions  
>  
>

**Exhibit B8**

**Richard Johnson (May 9, 2003)**

## Cheryl Heppner

**From:** Johnson, Richard  
**Sent:** Friday, May 09, 2003 9:30 AM  
**To:** Cheryl Heppner  
**Subject:** RE: Channel 5 Captioning Errors

Yup. ComCast I think. Actually, last night it was much better than it has been for about 2 weeks. I was thinking, "Gee, Cheryl sure works quickly!" Interestingly enough, I also have ComCast at the beach house --- out of OC I think and it has not been at all bad.

-----Original Message-----

**From:** Cheryl Heppner  
**Sent:** Friday, May 09, 2003 9:10 AM  
**To:** Johnson, Richard  
**Subject:** RE: Channel 5 Captioning Errors

Just out of curiosity, are you getting your captions through a cable provider? I have Cox and had taped a program on Tuesday night on Fox that was followed by the news. I watched the first 10 minutes and saw captioning mistakes but not to the extent you seem to be experiencing.

Cheryl

-----Original Message-----

**From:** Johnson, Richard  
**Sent:** Thursday, May 08, 2003 4:41 PM  
**To:** Cheryl Heppner  
**Subject:** RE: Channel 5 Captioning Errors

Yup. It almost looks like an effort to increase the voice-to-print aspect, but with the volume turned up too high!

Thank you! for your continuing efforts on behalf of deaf folk.

-----Original Message-----

**From:** Cheryl Heppner  
**Sent:** Thursday, May 08, 2003 4:38 PM  
**To:** Johnson, Richard  
**Subject:** RE: Channel 5 Captioning Errors

Thanks, Dick. I'll wait to see if any of our e-mail news readers respond after tonight and then send something out tomorrow. This is so frustrating! These folks are asleep at the switch. We all know that if the audio was that garbled, it would be fixed PDQ.

Warm regards,  
Cheryl

-----Original Message-----

**From:** Johnson, Richard  
**Sent:** Thursday, May 08, 2003 4:20 PM  
**To:** Cheryl Heppner  
**Subject:** Channel 5 Captioning Errors  
**Importance:** High

5/12/2003

**Ms. Heppner:**

**I understand that you have means to convey to various TV stations some feedback on the quality of their captioning efforts. For years I have watched Channel 5 news, from 10PM to 11PM. Of late the quality of their captions has dropped far below any reasonably acceptable level. I do not know what they are doing, or trying to do, but the results is totally unacceptable.**

**Thank you for any attention you can bring on this situation.**

**April 29 -30, 2003 the 10 o'clock news was totally garbled.**

**May 5, 2003 the 10 o'clock news captioning was garbled throughout**

**May 6, 2003 the 10 o'clock news captioning was one solid hour of gibberish**

**May 7, 2003 the 10 o'clock news had a caption error rate so high that the text was totally incomprehensible**

**5/12/2003**

**Exhibit B9**

**Terrie La Barbera (August 25 and October 7, 2003)**

**Re: What's up with Channel 20???**  
**Monday, August 25, 2003 14:38:29**

That would be great...I recently emailed the Discovery channel about the captioning of ~~Mefertiti~~ Resurrected which was just sooo full of misspellings it was amazing...I don't understand why a program that they've obviously spent lots of money producing (and it was very interesting) has such shitty captioning...it's a consistent problem with the Discovery channel programming...I've never seen any notice of who does the captioning...I think it might be done in-house and no one proofs them...

Here are some of the misspellings I noted in my email:

"thrown" for "throne"  
"lane" for "lain"  
"proeblg" for "probably"  
"kosmo" for "cosmos"  
"carnation" for "karnak"  
"car mac" for "karnak"  
"sack ri lj" for "sacrilege"  
"blasfeme" for "blasphemy"  
"rights" for "rites"  
"mmyfied" for "mummified"  
"hire gliks" for "hieroglyphs"

---

"baas chain" for "bastion"  
"praciting ma tist" for "pragmatist"  
"it's true" for "if true"

Terrie

---

Hearlers

**Cheryl Heppner**

---

**From:**  
**Sent:** Tuesday, October 07, 2003 12:54 PM  
**To:**  
**Subject:** Re: Captioning complaint

>>I have kept some good examples in my files and one of them is your list of misspellings from Nefertiti Resurrected. Is it okay if I share this? If you'd like, I can leave out your name.<<

Feel free to share and pass on my name (add my email addy ) if you think they'd find that useful...

Here's an additional list from the Discovery channel's "~~Living with Tigers~~" (this program was captioned by Vitac.com captioning):

surface > suffer  
offence > fence  
what terry > watery  
~~weigh station > way station~~  
carin > carrion  
rye no > rhino  
posse cat > pussy cat  
foul > fowl  
adopt > adapt  
exceed them > see, them  
plans > plains  
scam bellowed > scrambled  
kept tracks > skeptic\$  
repaired > prepared  
pedal to the medal > petal to the metal

One of the worst closed captioning is on the National Geographic specials shown on MSNBC (I think that the channel)...it's so bad that the program is unwatchable...it's as though the captioning is done live because it's sooo slow...

Terrie

**EXHIBIT C**

**2003 Report to the National Captioning Institute Foundation**

## Recommendations

1. **Address technical issues quickly, before video providers move to digital broadcasting and the 2006 mandate for 100 percent captioning is in place.** Our experiences in trying to content analyze the closed captions and the reported experiences of survey respondents illustrate that the medium itself (television transmission, videocassette recording, digital recording) often introduces error that makes it challenging to watch the captions.
2. **Provide better labeling of captioned shows and provide consistent information about caption sponsor and caption provider.** Coders and respondents had no reliable source of information about whether an upcoming show was captioned and there was very little clear or standardized presentation of who paid for the captions or who provided them. Including such information in the program's captions will likely promote the image of the companies but also increase the salience of closed captioning.
3. **Make it clear who audiences can contact and how.** The Federal Communications Commission suggests that audiences with complaints first contact the network or cable company. Yet the industry interviews reveal that they receive very little feedback from audiences. Indeed, it was more often the captioning company, which sometimes provides a website or is a local entity, who gets the complaints. Offering the station's website, with a "link" for closed captioning, might begin a dialogue between audiences who use closed captioning and programmers that provide them.
4. **Increase investment in the provision of high-quality captioning for local news programming.** Our respondents complained that local news captions go too fast, have too many mistakes, and are often garbled or absent. Our content analysis suggests that they are correct in their complaints. It is a difficult genre to caption – due to the pace of the stories and the idiosyncrasies of the people and places – and unique and dedicated captioners may be required to improve the quality. The survey data indicate that an added investment is warranted because local news captions are the most widely used captions by all audiences and respondents say it is more important to caption this genre of television than any other.
5. **Wherever possible, avoid real-time captioning.** Though live genres often warrant live captions, we saw many instances in the content analysis of

prerecorded programs (such as *Ricki Lake* or *Celebrity Justice*) where the captions are done in real time. This style of captioning is significantly more likely to negatively affect the meaning of the captions and is more likely to introduce problems. Though industry interviews suggest that this is a cheaper way to meet the mandate, it is likely not the intent of the policymakers to have captioning done “on the fly.”

6. **Build quality control into the process of closed captioning.** The escalating need for captioning has led to a proliferation in the number of captioning companies. Yet few television stations say they look at the closed captions in a consistent or critical way. (Indeed, one station manager didn’t believe he had a television at the station or at his home that would allow him to access the closed captions.) Quality control must be an integral part of the implementation of the closed captioning mandate. Ideally, it occurs at each stage of the process: from the application of the captions to the reception on screens.
7. **Recognize that the audience for closed captioning goes beyond those who are deaf and hard of hearing.** While hearing impaired audiences are the heaviest users of closed captions, ESL respondents are consistent users of closed captions, too, saying they use captions to help learn English and develop their reading skills. Respondents from the general population also indicate that they use closed captions when they can’t hear the sound, when they don’t want to hear the sound or when they don’t want to disturb someone else.
8. **Though the closed captioning mandate does not extend to prerecorded video programming, it is clear that audiences are making use of the captioning available on videotape and DVD recordings.** Use of captions in these venues is high; and a great deal of interest has been expressed for the provision of closed captioning in Internet audio.
9. **Audiences are, for the most part, pleased with closed captions.** Closed captions are also widely available. It is now important to conduct research that assesses the best practices for closed captioning style and speed to obtain a sense of the type of captioning that is most effective and pleasing. This might include exploring whether different types of captioning conventions should be used for different program genres.
10. **Making communication technologies truly accessible to underserved groups means understanding the audiences who have special needs and addressing them with unique services.** Greater sophistication in digital technology and television set design may provide an opportunity for closed captioning to be more customized to individuals’ needs. Many respondents expressed personal preferences for the captions

-- larger type, all caps, or slower pace, for example. Given the increasingly widespread use of captions across a wide variety of audiences, it is critical to consider creating a technology that can allow the expression of personal preferences with individual programming.

**Caveat: Limitations of the Data**

This research was designed to explore the availability, quality, and reception of closed captioning in the United States today. While we attempted to take a comprehensive look at closed captioning from a variety of perspectives, it is important to keep in mind that there are limits to the generalizability of the conclusions. In particular, the TiVo sample of general programming came from a large broadcast market during a particular period of time. Because of the size of the market and the stations' network affiliations, it is possible that this represents the "best" of closed captioning because of the resources available to programmers. In addition, the respondents used for the audience survey and the industry interviews were carefully recruited to represent a variety of perspectives rather than randomly drawn from a large population. As a result, the findings should be considered exploratory.

Decisions about the sampling of the sample of general programs (recorded via TiVo) and news programs (recorded on videotape from local markets and national markets and transferred to DVD) were made by Annenberg researchers through a random procedure.

---

<sup>1</sup> The rules exempt video program providers who have revenues of less than \$3 million per year, programs which are in a language other than English or Spanish, programs for which the audio content is displayed visually, programs shown on new networks for the first four years of the networks' operation, locally produced non-news programs, programs shown between 2am and 6am, and commercials which are no more than 5 minutes long.

<sup>2</sup> Differences are considered significant if the p value is less than or equal to .05.

<sup>3</sup> Because the survey was not randomly distributed, the findings must be treated as exploratory and illustrative of the groups from which they were drawn. The data allow us to make comparisons between groups and suggest avenues for further exploration, but cannot be interpreted as representative of a national population of closed captioning users.

<sup>4</sup> One industry interview was conducted in August 2002 because of scheduling difficulties.

# ATTACHMENT 2

Reply Comments of TDI et al., *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, Notice of Proposed Rulemaking, CG Docket No. 05-231  
(filed Dec. 16, 2005)

**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**

Claude L. Stout  
Executive Director  
TDI (also known as Telecommunications for  
the Deaf and Hard of Hearing, Inc.)  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Andrew D. Lipman  
Paul O. Gagnier  
Brett P. Ferenchak  
Swidler Berlin LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Attorneys for TDI

Cheryl Heppner, Vice Chair  
Deaf and Hard of Hearing  
Consumer Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Nancy Bloch  
Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, Maryland 20910-4500

Brenda Battat  
Associate Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, Maryland 20814

Dr. Jane Schlau, President  
Association of Late Deafened Adults, Inc.  
8038 Macintosh Lane  
Rockford, IL 61107

Dated: December 16, 2005

## SUMMARY

TDI (also known as Telecommunications for the Deaf and Hard of Hearing, Inc.), National Association of the Deaf, Hearing Loss Association of America (formerly known as Self Help for Hard of Hearing People, Inc.), the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network are not persuaded that the Commission's rules governing closed captioning provide the captioning quality that is necessary to meet Congress' goal that "all Americans ultimately have access to video services and programs." While captioning has improved since Section 713 of the Communications Act of 1934 was enacted, deaf and hard of hearing individuals who rely on closed captioning continue to experience numerous problems. Indeed, the hundreds of individual Commenters in this proceeding successfully contradict the assertions by those in, or representing, the Video Industry that high quality captioning is consistently being provided. Thus, in order to move beyond the status quo and ensure that the mandate of Section 713 is being met, the Commission must impose additional requirements on video programming distributors ("Distributors") and video programming providers ("Providers") (Distributors and Providers, together, the "Video Industry").

Specifically, the Commission should establish non-technical standards that focus on understandability to improve the quality of captioning. To determine whether captioning is understandable, the following elements must be considered: completeness, accuracy and timeliness. Petitioners support using established guidelines and standards as a starting point for determining whether the three elements of understandability have been fulfilled. Petitioners advocate that captioning for pre-recorded programming should be virtually error-free (a maximum error rate of 0.5% to 0.1% or functional equivalency rate of between 99.5% to 99.9%), while captioning for live programming may have a slightly higher incidences of errors (a maximum error rate of at most 3% or functional equivalency rate of at least 97%).

The Commission should also establish technical standards to ensure proper transmission and reception of closed captioning. The technical standards should require that (1) captioning be properly encoded pursuant to industry standards, (2) captioning be passed through, and (3) captioning be transmitted to the consumer using the standard industry techniques and practices so that consumers receive all captioning intact. The result should be that a consumer with a properly functioning decoder is able to receive all captioning for the entire video program. In order to ensure that the technical standards are being met, the Commission should require Distributors to monitor the transmission of captioning.

Petitioners also support a revised complaint process that would (1) provide appropriate complaint contact information so that consumers will know how to lodge their complaints with Distributors or the Commission, (2) provide methods appropriate for all persons to file a complaint, (3) require certain standard information to be provided in a complaint, and (4) reduce the timeframe for responses to complaints to a maximum of 30 days. The focus of these proposed procedures is the timely identification and resolution of technical and non-technical problems with captioning.

A quarterly reporting requirement will assist the Commission in determining whether Distributors are meeting their closed captioning obligations. Except for the existing ineffective complaint process, the Commission has no way of knowing whether the captioning requirements

are being met. Quarterly reports would simply require the filing of certain information that the Distributors should already be compiling and, therefore, not be overly burdensome on Distributors. Petitioners also suggest that Distributors file, with the quarterly report, any certifications that they rely on from Providers and a complaint log. Finally, Petitioners recommend that Distributors file outage reports within three hours of a complete loss of captioning.

In response to Commenters who oppose the elimination of the electronic newsroom technique (“ENT”) for MSAs above the top 25, Petitioners counter that ENT omits significant portions of newscasts and, therefore, should be eliminated or at a minimum, phased out of all MSAs. While eliminating ENT may initially strain the supply of stenocaptioners, there is reason to believe that the capacity to create real-time captioning will increase to meet the demands. In addition, there may be technical solutions available.

Finally, Petitioners continue to believe that specific fines and/or penalties are necessary to deter non-compliance with the closed captioning rules, particularly failing to meet the benchmarks. The base forfeitures, when combined with the reporting requirements, will motivate Distributors to ensure that high quality captioning is transmitted to consumers. Petitioners note that the Commission should retain the flexibility in its forfeiture guidelines determining the actual amount of the forfeiture for violations of the benchmarks.

## TABLE OF CONTENTS

I.	Non-Technical and Technical Standards Must Be Adopted to Ensure That Comprehensible Captioning is Provided.....	3
A.	The Marketplace Does Not Generate High-Quality Captioning In Many Instances .....	3
B.	Non-Technical Standards Can Be Crafted to Allow for Flexibility in Closed Captioning Depending on the Program Format.....	5
1.	Non-Technical Standards Should Focus on Understandability As Measured by Completeness, Accuracy and Timeliness. ....	6
2.	Pre-Recorded Programming Should Have the Highest Standard of Captioning and be Virtually Error-Free .....	7
3.	Edited and Compressed Programs Should be Properly Reformatted to Include Original Captions. ....	8
4.	Real-Time Captioning May Allow for the Human Factor But Must Maintain High Quality	9
5.	Rapid-Fire News Programming May Require Special Considerations .....	11
C.	Technical Standards Should be Established to Ensure Proper Transmission and Reception of Closed Captioning.....	11
II.	Monitoring is Necessary to Ensure Proper Transmission of Captioning.....	12
III.	Revised Complaint Procedures Will Help Identify and Resolve Technical and Non-Technical Problems in a More Timely Manner.....	13
A.	Revised Complaint Procedures will Facilitate the Ability and Willingness of Consumers To Bring Captioning Problems to the Attention of the Commission and the Video Industry .....	14
B.	A Standard Complaint Form Will Benefit All Parties.....	15
C.	Prompt Attention and Response Will Benefit All Parties.....	16
IV.	Quarterly Reporting Will Assist the Commission In Determining Whether Closed Captioning Requirements are Being Met .....	17
A.	Quarterly Reports Would Primarily Include Information That Video Programming Distributors Already Should Be Keeping To Evaluate Whether They are Complying With the Benchmarks.....	17
B.	The Quarterly Reporting Requirements for Video Programming Distributors Should Reflect Their Captioning Responsibilities.....	18
1.	Suggested Quarterly Reporting Requirements for Video Program Distributor.....	18
2.	Requirements for Quarterly Certifications by Video Programming Providers .....	19
C.	The Commission Should Also Consider Requiring Outage Reports.....	19
V.	ENT Should Not Count As Qualifying Captioned Programming or At a Minimum ENT Should Be Phased Out of All MSAs .....	20
VI.	Specific Fines And/Or Penalties Are Necessary to Deter Non-Compliance .....	22

VII. Other Issues Raised by Commenters .....	23
A. Requests for Waiver of Closed Captioning Rules Should be Filed Electronically.....	23
B. Closed Captioning Requirements for Emergency Situations Already Exist and Any New Standards Should Not Override Those Existing Requirements.....	23
VIII. Conclusion .....	25

**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**

TDI (also known as Telecommunications for the Deaf and Hard of Hearing, Inc.), National Association of the Deaf, Hearing Loss Association of America (formerly known as Self Help for Hard of Hearing People, Inc.), the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network (collectively “Petitioners”)<sup>1</sup> submit these reply comments to address certain issues raised in the Comments filed in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“Commission”) on July 14, 2005 in this proceeding.

As numerous comments have shown, the Commission’s current rules governing closed captioning do not, and will not in the future, provide the captioning quality that is necessary to meet Congress’ goal that “all Americans ultimately have access to video services and programs.”<sup>2</sup> The Comments made by individuals in the proceeding unequivocally support Petitioners’ positions, as do Comments from consumer groups advocating on behalf of deaf and

---

<sup>1</sup> These Reply Comments are also supported by Communications Services for the Deaf (CSD), Dr. Benjamin J. Soukup Jr., Chief Executive Officer and American Association of People with Disabilities, Andrew J. Imparato, President & Chief Executive Officer.

<sup>2</sup> H.R. Report 104-458 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 183-84 (*Conference Report*) (Aug. 22, 1996).

hard of hearing persons. In addition, the captioning industry and organizations support many of Petitioners' suggested changes to the existing rules. As expected, video programming distributors ("Distributors")<sup>3</sup> and video programming providers ("Providers")<sup>4</sup> (Distributors and Providers, collectively, the "Video Industry") generally oppose changes to the existing rules. There are, however, some notable exceptions, including support by the National Association of Broadcasters for a reduced timeframe for responses to complaints.

Petitioners continue to believe that (1) non-technical and technical quality standards must be adopted for closed captioning; (2) monitoring must be required to ensure that captions are passed through and that technical problems are promptly resolved; (3) reporting is necessary for the Commission to evaluate compliance with the existing and any future rules; (4) new complaint procedures must be established to (a) facilitate the ability of consumers to bring captioning problems to the attention of video programming distributors and the Commission in a format that is meaningful to all parties and (b) require more prompt attention and response to complaints by the responsible parties; (5) the use of Electronic Newsroom Technique should not qualify as captioned programming in order to meet the captioning threshold requirements, or at a minimum, should be phased out of all MSAs; and (6) the Commission should impose fines/penalties for non-compliance with the captioning rules. In addition to addressing Comments filed on each of these subjects, these Reply Comments will also address other issues including the availability of captioners and reformatting of closed captions.

---

<sup>3</sup> As defined in 47 C.F.R. § 79.1(a)(2).

<sup>4</sup> As defined in 47 C.F.R. § 79.1(a)(3).

**I. Non-Technical and Technical Standards Must Be Adopted to Ensure That Comprehensible Captioning is Provided.**

Based on the hundreds of Comments submitted in this proceeding, the public overwhelmingly supports the adoption of non-technical and technical standards for closed captioning. The captioning industry also supports certain non-technical and technical standards. The Video Industry, however, generally opposes any standards for closed captioning because it asserts that “the market” will correct problems with closed captioning. By refusing to acknowledge problems and by failing to provide consistently high-quality captioning, the Video Industry, in essence, advocates a status quo. As the Comments demonstrate, however, the market has failed to bring ubiquitous high-quality captioning. From the perspective of the deaf and hard of hearing communities, the status quo is unacceptable.

**A. The Marketplace Does Not Generate High-Quality Captioning In Many Instances**

Contrary to the assertions from members of the Video Industry,<sup>5</sup> the marketplace has not guaranteed high-quality captioning.<sup>6</sup> The Petition for Rulemaking provided a number of examples of recurring problems with captioning.<sup>7</sup> The Video Industry disputes the existence of such problems, offering as “evidence” the low volume of errors and complaints. This focus is misplaced for two reasons. First, the volume of errors should not be the primary focus, but rather a component of the primary focus: understandability of the program, which is discussed in more

---

<sup>5</sup> See e.g., Comments of United State Telecom Association at 5 (*USTA*); Comments of The Motion Picture Association of America, Inc. at 3 (*MPAA*).

<sup>6</sup> One Commenter described the marketplace for closed captioning services as “dysfunctional, predatory, and non-competitive in its normal course of operation” in part because (1) some video programmers, broadcast and cable are reluctant to pay for closed captioning services and some captioning companies improperly use federal funds to subsidize predatory bidding. Comments of Media Captioning Services at 3-5 (*MCS*).

<sup>7</sup> Petitioner at 26-27, 37, Exhibit B.

detail with regard to non-technical standards below. Second, the volume of complaints is not an accurate indicator of the quality of captioning because consumers do not have an easy mechanism to voice their complaints.

The Video Industry cannot claim that the volume of captioning errors is low<sup>8</sup> because, to date, no quantitative evaluation of captioning errors has even been undertaken. Petitioners, who are all non-profit organizations, do not have the resources to conduct such a study. Further, since much of the Video Industry does not monitor video programs for non-technical or technical issues with captioning<sup>9</sup> and the Video Industry is not easily accessible for consumer complaints, the Video Industry does not have accurate information regarding such problems. The Commission must rely, to a certain extent, on the Comments of those Commenters such as Global Translation, Inc. d/b/a TranslateTV (“TranslateTV”), which translates English captioning into Spanish, and the hundreds of individual Commenters who have described real problems they experience with captioning.<sup>10</sup> In its Comments, TranslateTV indicates that, while it finds that pre-recorded captioning is accurate, its “logs of local station’s newscasts indicate that between 25% and 60% of all captioning sentences contain errors that substantially impede

---

<sup>8</sup> See Comments of AZN Television *et al.* at 16 (*AZN*), Comments of Home Box Office, Inc. at 8 (*HBO*); Comments of The National Assoc. of Broadcasters at 11 (*NAB*).

<sup>9</sup> Petitioners commend the effects of Distributors who have established quality control mechanisms. See Comments of *HBO* at 5 (“*HBO* follows specific practices to ensure that the closed captioning on each program is of the highest quality. Closed captioning is managed and monitored closely by *HBO*’s Network Quality Control department to ensure that *HBO* meets or exceeds the Commission’s requirements for captioned programming each quarter. This department tracks: (i) categorization and captioning amounts; (ii) quality control; and (iii) program monitoring.”); Comments of at 17-18 (*AZN*). Unfortunately, Petitioners believe *HBO*’s practice is the rare exception in the Video Industry.

<sup>10</sup> Petitioners have provided, as Exhibit A, a summary of a small sample of the hundreds of Comments from individuals.

understandability.”<sup>11</sup> Further, reliance on market forces to provide high-quality captioning assumes that the affected consumers, in this case deaf and hard of hearing people, can sufficiently exert pressure on the market. Unfortunately, for the reasons described by WGBH National Center for Accessible Media (“WGBH”), these consumers cannot.<sup>12</sup> Since the marketplace has failed to consistently provide high-quality captioning, the Commission must establish minimum standards to ensure high-quality captioning.

**B. Non-Technical Standards Can Be Crafted to Allow for Flexibility in Closed Captioning Depending on the Program Format**

A number of Commenters argued that if non-technical standards are implemented, the standards must differentiate between pre-recorded programming and real-time captioning.<sup>13</sup> Petitioners acknowledge the differences and agree with that assessment. Petitioners, however, disagree with those Commenters that argue that non-technical standards are unworkable and arbitrary.<sup>14</sup> The Commission has provided workable standards for more complex issues than this

---

<sup>11</sup> Comments of Global Translations Inc. d/b/a TranslateTV at 3 (*TranslateTV*).

<sup>12</sup> The Commission’s prior assumptions regarding the power of the market for closed captioning have proved to be faulty: (1) consumers can not demonstrate their satisfaction or lack of satisfaction with what is shown through their purchase of advertised products because the number and diversity of advertisers on a TV program would require an intense and national coordination to have any effort to have any effect and (2) consumers do not exert pressure on program providers by canceling their subscriptions to program services because caption consumers do not have market strength and would have to punish themselves. Comments of WGBH National Center for Accessible Media at 4-5 (*WGBH*).

<sup>13</sup> See Comments of *WGBH* at 8 (“There can be some variation in accuracy rates for live vs. offline, or pre-recorded, captioning.”); Comments of National Captioning Institute at 3 (*NCI*); Comments of Accessible Media Industry Coalition at 2 (*AMIC*); Comments of *MCS* at 9-10.

<sup>14</sup> Comments of *Cosmos* at 9 (“Determining what constitutes an ‘error’ for Commission enforcement of viewer complaints would prove difficult, if not impossible.”) (*Cosmos*); Comments of *AZN* at 21; Comments of *MPAA* at 7; Comments of NBC Telemundo License Co. at 16 (*NBC*).

and there is no reason to think that appropriate non-technical standards cannot be developed for closed captioning.

**1. Non-Technical Standards Should Focus on Understandability As Measured by Completeness, Accuracy and Timeliness.**

Although different non-technical standards may be adopted for pre-recorded and real-time captioning, the underlying criteria should remain the same. As suggested by a number of Commenters, Petitioners support a non-technical standard that focuses on whether the captioning is as “understandable to the non-hearing person as it is to the person who is able to hear the audio that accompanies it.”<sup>15</sup> In order to determine whether captioning is understandable, the following elements must be considered: completeness, accuracy and timeliness.<sup>16</sup>

Petitioners support using an established guideline such as AMIC’s “16-CARAT Approach to Caption Quality”<sup>17</sup> or the standards developed by the U.S. Department of Education’s Captioned Media Program<sup>18</sup> as a starting point for determining whether the three elements of understandability have been fulfilled. Such standards have been developed through careful consideration of the elements described above and are already familiar to the captioning industry. While captioners should have flexibility in determining the placement of captioning, the Commission should require that captions be placed in a way that does not interfere with other visual aids on the screen.

---

<sup>15</sup> Comments of *AMIC* at 5.

<sup>16</sup> See Comments of *WGBH* at 8-11; Comments of *AMIC* at 6; Comments of American society for Deaf Children at 1 (*ASDC*)

<sup>17</sup> See Comments of *AMIC* at 2 & Appendix B.

<sup>18</sup> See Comments of Caption Perfect at 1 (citing the “2005 Captioning Key”).

## 2. Pre-Recorded Programming<sup>19</sup> Should Have the Highest Standard of Captioning and be Virtually Error-Free

Most of the Comments filed in opposition to non-technical standards focused on problems associated with real-time captioning rather than problems associated with captioning of pre-recorded programming. Petitioners see no reason why pre-recorded programming should not be virtually error-free. Presumably, pre-recorded programming can be reviewed and edited prior to distribution to correct any mistakes that may have been made during the captioning process. All pre-recorded programming should be captioned offline rather than real-time. Some companies have apparently instituted quality control programs that screen pre-recorded programs for captioning quality provided by the video program producer.<sup>20</sup> Unfortunately, such processes do not appear universal within the industry and, therefore, captioning of pre-recorded programming is not always of high quality. Non-technical standards are necessary to ensure high quality captioning for all video programming.

Petitioners agree with those Commenters who argue that because captioning of pre-recorded programming can be done in advance the standard should reflect the ability to review and edit the video program prior to distribution and, therefore, the error rate should be virtually nil.<sup>21</sup> In fact, a number of captioning providers advocate a maximum error rate of 0.5% to 0.1%

---

<sup>19</sup> Petitioners understand that some pre-recorded video programs are aired on the same day that they are produced, sometimes within a few hours. Such programs may include late-night comedy programs such as “The Late Show with David Letterman” and “The Tonight Show with Jay Leno.” The Commission may consider excluding these types of programs from the definition of pre-recorded programming and allow for real-time captioning as if they were live programs, provided that the Commission require editing of the captioning to the maximum extent possible prior to airing.

<sup>20</sup> See Comments of *HBO* at 4-6; Comments of *AZN* at 17-18.

<sup>21</sup> See Comments of National Captioning Institute at 4 (*NCI*); Comments of Alexander Graham Bell Assoc. for the Deaf and Hard of Hearing at 4 (*AG Bell*).

or functional equivalency rate of between 99.5% to 99.9%.<sup>22</sup> Assuming that an error rate incorporates the three criteria described in the discussion of general standards above, Petitioners support such a rate. If a program meets the error rate then it should be presumed understandable; conversely, if it does not meet the error rate then it should be presumed that it is not understandable. These presumptions can be overcome by clear and convincing evidence of the actual understandability of the program. The Commission would make the final determination of the understandability of the video program.

### **3. Edited and Compressed Programs Should be Properly Reformatted to Include Original Captions.**

Few Commenters considered the captioning problems associated with edited and compressed programs. Those that did explained why problems exist<sup>23</sup> and supported an explicit requirement that such programs be properly reformatted so that such programs would include the original captioning.<sup>24</sup> Petitioners agree that the reformatting requirement should be explicit so that video program distributors do not deliver programs whose captions do not follow the program content due to editing or compression.

---

<sup>22</sup> See Comments of MCS at 9 (stating “The accuracy guidelines necessary to achieve functional equivalency should be . . . 99.5% [verbatim accuracy] for pre-produced captioned programming”); Comments of Caption Colorado, Inc. at 21 (*Caption Colorado*) (recommending “an overall Total Quality Rating Standard for Offline Captioning (as determined in accordance with [its] formula . . . ) of 99.5%”); Comments of Caption Perfect, Inc. at 2 (*Caption Perfect*) (stating “that a maximum error rate of 1 out of every 1,000 words (or .1%) is easy to achieve for most captioning companies”); Comments of AMIC at 12 (supporting average error rate of 0.2% for pre-recorded programming).

<sup>23</sup> Comments of National Court Reporters Association at 7 (quoting the website of the National Captioning Institute) (*NCRA*).

<sup>24</sup> See e.g. Comments of WGBH at 17.

#### 4. Real-Time Captioning May Allow for the Human Factor But Must Maintain High Quality

Petitioners recognize that real-time captioning is created in a manner that does not allow for prior review and corrections and that real-time captioning therefore may never achieve the same level of quality as captioning for pre-recorded programming. In part, this is because of the human factor involved with real-time captioning. Petitioners agree that, while the standards for real-time captioning should apply the same general criteria as pre-recorded programming, the minimum error rate should not be as high. Petitioners submit that the maximum error rate should be no more than 3% (at least 97% functional equivalency), with an ultimate goal of a 0% error rate (100% functional equivalency).<sup>25</sup> Petitioners concur with Caption Perfect that if the Commission adopts a lower standard advocated in some comments,<sup>26</sup> the Commission should require phased improvements in quality over one to two years.<sup>27</sup> Petitioners stress that real-time captioning should not be permitted for pre-recorded programming as a way to avoid the more stringent non-technical standards that may be associated with offline captioning of pre-recorded programming.

Petitioners also believe that certain standard practices can improve the quality of stenocaptioning. For instance, stenocaptioners should be provided summaries or “scripts” of the anticipated subjects of the live program prior to the actual program whenever possible. These summaries would include key terminology and spellings for names and places. Providing a

---

<sup>25</sup> Petitioners note that Caption Perfect indicated that a 3% error rate for real-time captioning is 6 times Caption Perfect’s minimum standard. *Caption Perfect* at 3.

<sup>26</sup> Comments of *MCS* at 9; Comments of *AMIC* at 12.

<sup>27</sup> Comments of *Caption Perfect* at 3.

stenocaptioner prior knowledge of the subject of the program will assist them in providing understandable captioning.

In addition, the Commission should encourage the development of technologies that provide the same function as a stenocaptioner, such as voice recognition technologies. While it is debatable whether such technologies have advanced enough to meet the 3% error rate for real-time captioning discussed above,<sup>28</sup> the Commission could consider, on a case-by-case basis, granting limited waivers of the non-technical standards as applied to such technology (to a 5% error rate, for example) – possibly (1) in situations where there otherwise would be no captioning (such as when a program otherwise qualifies for an exemption), (2) as part of a transition from ENT to live captioning, or (3) for real-time captioning of emergencies, where it may be difficult to obtain stenocaptioning services. Petitioners emphasize that the error rate must remain low in order for the programming to be understandable and, therefore, Commission should not grant limited waivers for technological solutions that do not produce understandable captions. In addition, any waiver of the standards should be reduced over time to encourage improvements in the technology.

A number of local broadcasting companies expressed concern over the cost of real-time captioning of their newscasts and breaking news.<sup>29</sup> Petitioners discuss this issue in more detail below with regard to eliminating the use of ENT, but feel that it is also appropriate to mention it in the context of standards. Imposing standards on real-time captioning should not increase the cost of real-time captioning significantly. In cases where real-time captioning is already being used for local programming, the only significant change in cost is if a local broadcaster uses an

---

<sup>28</sup> See Comments of Hubbard Broadcasting, Inc. at 7 (*Hubbard*); compare Comments of NBC at 2; Comments of ENCO Systems, Inc. at 1.

<sup>29</sup> See e.g. NBC at 12-13; *Cosmos* at 11.

inexperienced stenocaptioner who does not produce captioning to the standards set by the Commission, thereby, exposing the local broadcaster to potential fines. Petitioners believe, however, that experienced stenocaptioners should be able to consistently meet the standards as proposed and, therefore, the potential additional costs due to fines should be minimal.

#### **5. Rapid-Fire News Programming<sup>30</sup> May Require Special Considerations**

Petitioners recognize that certain types of live shows are particularly problematic for real-time captioning. For instance, rapid-fire news programming may move too quickly or have multiple persons speaking at the same time. The Commission may consider relaxed standards for such programs, provided that these standards work to improve the availability and understandability of such programs as much as possible. Petitioners, however, submit that instead of relaxing standards, the Commission (and the Video Industry) should explore creative methods to solve issues with captioning these types of programs, such as using of multiple stenocaptioners for these programs.

#### **C. Technical Standards Should be Established to Ensure Proper Transmission and Reception of Closed Captioning**

Technical problems with captioning continue to be a frustrating problem for deaf and hard of hearing persons. More frustrating is that such problems are often easily preventable.<sup>31</sup> The Commission, therefore, must adopt technical standards (1) that captioning be properly encoded pursuant to industry standards, (2) that captioning be passed through (see also the discussion above regarding reformatted programs), and (3) that captioning be transmitted to the consumer using the standard industry techniques and practices so that consumers receive all

---

<sup>30</sup> Captioning for emergency situations was also discussed by Commenters and is addressed in Section VII(B), below.

<sup>31</sup> See e.g., Comments of *WGBH* at 14.

captioning intact. Each of these standards are met, if at the time of transmission (i.e., the moment the program leaves the last distribution facility before being received by the consumer), a consumer with a properly functioning captioning decoder is able to receive all captioning for the entire video program. Captioning that starts or stops part way through a program is simply unacceptable, particularly since it is usually the result of human error.

Petitioners understand that there may be occasional unavoidable breakdowns of equipment resulting in the degradation of captioning. Such occurrences should not count against a Distributor assuming that (1) the breakdown is not part of a pattern of breakdowns, (2) the Distributor has properly maintained such equipment, and (3) the Distributor files an outage report with the Commission as described in more detail below. Should a Distributor have a pattern of equipment breakdowns (or frequently claim that technical problems are caused by equipment breakdowns), however, the Commission should investigate these instances and determine whether the technical standards are in fact being violated.

## **II. Monitoring is Necessary to Ensure Proper Transmission of Captioning**

While Petitioners would prefer Distributors to monitor for compliance with non-technical standards for captioning, Petitioners only requested that the Commission require the monitoring of the transmission of captioning. The current feedback system is woefully inadequate because technical problems with captioning can go undetected until a viewer observes a problem and complains,<sup>32</sup> assuming the consumer can even determine the proper party to complain to. By the time a complaint is lodged it is almost always too late to correct the problem. A requirement for proactive monitoring for technical problems should be implemented so that such problems are immediately recognized by the Distributor and corrected as quickly as possible.

---

<sup>32</sup> Comments of *TranslateTV* at 3, 5.

The video program distributors that complained that monitoring the quality of captioning would be too burdensome and expensive,<sup>33</sup> have misunderstood Petitioners' request.<sup>34</sup> Since Distributors presumably monitor the transmission of the audio and video components of a program, additional monitoring to ensure the captioning is being provided is not overly burdensome. In addition, various Commenters have indicated that monitoring for technical problems can be automated.<sup>35</sup> Clearly, automated monitoring would not be too burdensome.

### **III. Revised Complaint Procedures Will Help Identify and Resolve Technical and Non-Technical Problems in a More Timely Manner**

Petitioners continue to assert that existing complaint procedures should be revised to (1) provide appropriate complaint contact information so that consumers will know how to lodge their complaints with Distributors or the Commission, (2) provide methods appropriate for all persons, including deaf and hard of hearing persons, to file a complaint; (3) require certain standard information to be provided in a complaint, while allowing flexibility for a Distributor to expand upon that information to suit their needs; and (4) reduce the timeframe for responses to complaints. The focus of these proposed procedures is the timely identification and resolution of technical and non-technical problems. The current procedures do not encourage or result in the timely correction of captioning problems. The current procedures fail in part because those who would complain often do not know who to complain to or have no means to communicate with the

---

<sup>33</sup> Comments of *NAB* at 14; Comments of *USTA* at 10.

<sup>34</sup> Petitioners expect that Distributors will confirm, either through certifications from the Providers or otherwise, that the non-technical standards are met prior to running a program and, therefore, the focus of monitoring should be for technical issues. To the extent possible, Petitioners encourage Distributors to monitor for quality.

<sup>35</sup> Comments of *WGBH* at 18; Comments of *TranslateTV* at 5 (“Because closed captions can be monitored using software, the cost of monitoring is inexpensive.”).

appropriate contact person.<sup>36</sup> As a result, it is not surprising that complaints rarely reach a video program distributor.<sup>37</sup>

**A. Revised Complaint Procedures will Facilitate the Ability and Willingness of Consumers To Bring Captioning Problems to the Attention of the Commission and the Video Industry**

In order to bring a complaint, a consumer needs to (1) know to whom a complaint should be directed, and (2) have the means of transmitting the complaint to that person. At a minimum, consumers should be able to direct a complaint either to the Commission and/or to the Distributor. The methods by which complaints can be made should include all of the following, with the expectation that such complaints are investigated upon receipt: email, fax, TTY, mail, phone, and, preferably, a website designed to process such complaints. Consumers often have difficulty determining where they need to file their complaints. Because of the complexities of television programming distribution, the average consumer often does not know who is responsible for compliance with the captioning obligations – most consumers are at a loss as to whether a complaint needs to go to the local station, a national network provider, a cable network or the local cable franchise. While it may be advantageous for consumers who are savvy enough to know how to bring their complaints to the appropriate entity in the Video Industry to do so before going to the FCC, all consumers should have the option of bringing their complaints to the FCC, wherein the complaint can be re-directed to the appropriate Distributor for response.

---

<sup>36</sup> See e.g. Comments of *Dana Mulvany* at 3 (stating that “Many consumers have attempted to complain to their provider but have not been able to navigate the voice menu system because of their hearing loss, and have thought they could not file a complaint with the FCC due to not having a written complaint to their provider.”).

<sup>37</sup> Comments of *WGBH* at 6.

Distributors, therefore, should provide appropriate contact information for each of these methods on their invoices (if any) and on their websites, as well as providing this information to the Commission for inclusion on the Commission's website.<sup>38</sup> In addition, the Commission should have an online complaint form that, when completed by the consumer, automatically transmits the information to the appropriate persons at the Commission and at the Distributor. The Commission also should require the Distributor to file with the Commission a log of complaints each quarter.

Petitioners agree with other Commenters that the Distributor is best equipped to evaluate and respond to a complaint.<sup>39</sup> Because many technical problems can be remedied shortly after a Distributor is notified of the problem, the Petitioners respectfully request that the Commission make it mandatory for Distributors to make their personnel available at all times (24/7) to receive and address/correct these problems. If the problem lies beyond the Distributor, then the Distributor can contact the responsible entity, whether it is the Provider or the captioning company, and bring that entity into the complaint process.

#### **B. A Standard Complaint Form Will Benefit All Parties**

A number of Commenters agree with Petitioners' suggestion for a standard complaint form.<sup>40</sup> A standard complaint form will ensure that all critical information is collected so that the captioning problem can be quickly identified and resolved. This will reduce the frustration of all parties. The Distributor will have the necessary information to identify the source of the problem, thereby reducing the resources necessary to investigate a complaint with insufficient

---

<sup>38</sup> Comments of *MCS* at 11.

<sup>39</sup> Comments of *AMIC* at 4.

<sup>40</sup> See e.g. Comments of *WGBH* at 20.

information. Presumably, if a Distributor is able to identify the source of the problem more quickly, it will be able to correct that problem more efficiently and respond to the consumer in a satisfactory manner.

In its Comments, *AMIC* has indicated that the critical information requested by a complaint form should include the “exact time and date of the problem, the program involved, the source of the signal received by the consumer, data about the consumer’s equipment, and, of course, as detailed as possible a description of how the problem manifested itself.”<sup>41</sup> The sample complaint form provided in the Petition includes all of this information except for information about the consumer’s equipment. Nevertheless, Petitioners submit that the sample complaint form includes all the information necessary for a Distributor to begin its investigation of a complaint.

### **C. Prompt Attention and Response Will Benefit All Parties**

Commenters in both the Video Industry and general public agree that the timeframe for a response to a complaint can be reduced. While Petitioners would hope that the responsible party would respond as quickly as possible, Petitioners generally agree with Commenters, such as the National Association of Broadcasters, that have proposed giving a Distributor a maximum of 30 days to respond, which period could be shortened or lengthened by Commission staff in a particular case.<sup>42</sup> This new complaint timeframe would correspond with the timeframe already in place for complaints alleging a violation of the rule governing the accessibility of programming providing emergency information.<sup>43</sup> Moreover, a timeframe that is shorter than the

---

<sup>41</sup> See Comments of *AMIC* at 13.

<sup>42</sup> Comments of National Association of Broadcasters at 5 (*NAB*); see also Comments of *AG Bell* at 6; Comments of *Dana Mulvany* at 3; Comments of *ASDC* at 1.

<sup>43</sup> 47 C.F.R. § 79.2 (“The Commission will notify the video programming distributor of the

current timeframe is reasonable for the Distributor and will reduce the considerable frustration experienced by previous complainant. While Petitioners support a 30 day timeframe for responses to complaints, Petitioners suggest that the Commission consider a 14 day timeframe some time in the future.

#### **IV. Quarterly Reporting Will Assist the Commission In Determining Whether Closed Captioning Requirements are Being Met**

In the Petition, Petitioners expressed concern that the Commission and the public currently have no method for determining whether video programming distributors are meeting the required benchmarks for closed captioning. Even as the deadline for 100% captioning of new non-exempt English-language programming approaches, this concern remains. Not only will quarterly reporting assist the Commission in determining whether Distributors are complying with the non-exempt, English-language programming benchmark, but it will help to confirm compliance with the benchmarks for pre-rule non-exempt and Spanish-language programming.

##### **A. Quarterly Reports Would Primarily Include Information That Video Programming Distributors Already Should Be Keeping To Evaluate Whether They are Complying With the Benchmarks**

The primary argument of Commenters opposed to benchmark reporting requirements is that it would be overly burdensome.<sup>44</sup> Petitioners, however, contend that Distributors must already collect data in order to determine whether they are complying with the benchmarks. Surely, inserting such data that a Distributor already collects into a standard report would not be overly burdensome. If a Distributor does not collect and maintain any data to determine its

---

complaint, and the distributor will reply to the complaint within 30 days.”).

<sup>44</sup> Comments of *USTA* at 10; Comments of National Cable & Telecommunications Assoc. at 12-13 (*NCTA*); Comments of *HBO* at 10; Comments of *Hubbard* at 12-13; Comments of *KJLA, LLC* at 4 (*KJLA*).

compliance with the benchmarks, then Petitioners question how the distributor can argue that it “self-polices” its compliance with the benchmark. In such a case, it is even more imperative that the Commission require reporting.

**B. The Quarterly Reporting Requirements for Video Programming Distributors Should Reflect Their Captioning Responsibilities**

Distributors are required to caption certain programs. In many cases, Distributors rely on certifications from the Provider to confirm that captioning was provided on a particular video program for purposes of meeting the benchmarks. While Petitioners agree with those Commenters that argue that certifications should continue to be accepted,<sup>45</sup> Petitioners believe that certain information should be included in such certifications in order for Distributors to rely on them. Further, these certifications should be attached to the quarterly reports filed by Distributors.

**1. Suggested Quarterly Reporting Requirements for Video Program Distributor**

The quarterly report filed by the Distributor should be organized by channel and then by program. For each video program the following should be provided: (1) channel; (2) name of program; (3) list of episodes; (4) name of video program provider; (5) program format (i.e., live or pre-recorded); (6) whether program is captioned – if not captioned, explain why; (7) whether relying on certification of captioning by video program provider – if relying on a certification, the certification should be attached; if not relying on a certification, the following information should be provided (a) whether the program is exempt from captioning, including type of exemption and date exemption granted if based on undue burden; (b) the captioning format (i.e., real-time captioning, pop-up, roll-up, ENT, or other); and (c) the name of the captioning

---

<sup>45</sup> See Comments of AZN at 34-35; Comments of DIRECTV at 3-4; Comments of EchoStar Satellite, LLC at 10.

company. Distributors should also be required to attach a log of complaints received, which would include, among other information, both the description of the complaint and its resolution.

## **2. Requirements for Quarterly Certifications by Video Programming Providers**

Any quarterly certification provided by a Provider to a Distributor should include certain information. Each Provider should include the following information for each video program:

(1) name of the program; (2) list of episodes; (3) program format (i.e., live or pre-recorded); (4) whether the program is exempt from captioning, including type of exemption and date exemption granted if based on undue burden; (5) the captioning format (i.e., real-time captioning, pop-up, roll-up, ENT, or other); and (6) the name of the captioning company.

### **C. The Commission Should Also Consider Requiring Outage Reports**

The Commission should require Distributors to also provide an “outage report” to the Commission when the Distributor has an unexpected equipment failure that results in the complete loss of captioning. (The Petitioners are willing to meet with the Commission and Video Industry representatives to discuss the definition of “complete loss of captioning” and what would constitute an outage.) An outage report would assist the Commission and the Distributor in resolving complaints related to the outage, as well as help to identify Distributors that may not be meeting the technical standards. Captioning outages should be communicated to viewers in real-time, for example, through the Distributor’s website and/or a crawl during the outage, so that consumers can understand the reason for a lack of captions in a particular instance. Similar to messages provided when there are technical difficulties related to audio or video problems, one possible crawl regarding captioning could read: “Please stand by. We are experiencing technical difficulties with our closed captioning.”

The outage report would be similar to the reports required for telecommunications carriers in that it would consist of an initial report and a final report. The initial outage report should be filed within three (3) hours of discovery of the outage and should contain the following information: (1) name of the Distributor; (2) name of video program(s) affected; (3) geographic location of the outage; (4) date and start time of the outage; and (5) description of the outage. The final report, which can be substituted for the initial report in the case of an outage that lasts less than three (3) hours, should include: (1) name of Distributor; (2) name of video program(s) affected; (3) geographic location of the outage; (4) date and start time of outage; (5) date and end time of the outage; (6) description of the outage; (7) explanation of the cause of the outage. While the Petitioners believe that all outages should be reported, the Commission may consider establishing a minimum threshold outage period that would require reporting.

**V. ENT Should Not Count As Qualifying Captioned Programming or At a Minimum ENT Should Be Phased Out of All MSAs**

Petitioners are not persuaded by the gloom and doom scenarios presented by Commenters representing broadcasters and the cable industry who argue that eliminating the use of ENT in favor of real-time captioning of news programs is too costly to support and would therefore result in reduction of local programming.<sup>46</sup> For instance, one Commenter argues that real-time captioning would add only a marginal amount of closed captioning at a disproportionate cost.<sup>47</sup> The issues belie the problem that ENT does not provide captioning for much of the live news, weather, and sports segments in newscasts.<sup>48</sup> Clearly, all persons should have the same access to

---

<sup>46</sup> See e.g., Comments of *Cosmos* at 5-6; Comments of Block Communications, Inc. at 1; Comment of the Radio-Television News Directors Assoc. at 5, 7 (*RTNDA*).

<sup>47</sup> Comments of *Cosmos* at 7.

<sup>48</sup> Comments of *MCS* at 12.

this important information. Further, captioning companies paint a different picture of costs, as they have shown that market rates for real-time captioning have decreased.<sup>49</sup>

The Commenters that oppose eliminating ENT also argue that the supply of stenocaptioners is insufficient to meet the current needs of stations and would be even more strained if the use of ENT was eliminated.<sup>50</sup> Comments from the captioning industry, however, challenge this assessment. For instance, one non-profit captioning company indicated that “there has not been a widespread shortage of individuals to create captions” and “that the capacity to create real-time captioning by the industry has risen to match the increase in the captioning mandate levels.”<sup>51</sup> Other captioning organizations also believe that there should not be any widespread shortage of qualified stenocaptioners to meet the additional demand.<sup>52</sup> As a number of Commenters acknowledged, the use of real-time captions for pre-recorded shows could strain the availability of stenocaptioners.<sup>53</sup> In addition, given adequate governmental funding and salaries for stenocaptioners, Commenters from the captioning industry expect the number of graduates qualified for stenocaptioning to grow over time, thus reducing any strain on supplies.<sup>54</sup>

Petitioners, however, recognize the concerns of the Commenters opposed to the elimination of ENT. Petitioners, therefore, suggest that at a minimum the use of ENT be phased

---

<sup>49</sup> Comments of *MCS* at 13.

<sup>50</sup> Comments of *NAB* at 9; Comments of *Cosmos* at 4-5.

<sup>51</sup> Comments of *NCI* at 5.

<sup>52</sup> Comments of *AMIC* at 11.

<sup>53</sup> Comments of *NCI* at 5; Comments *AMIC* at 11; Comments of *MCS* at 15; Comments of *AG Bell* at 6.

<sup>54</sup> Comments of *NCI* at 5; *see* Comments of *NCRA* at 10.

out over a period of at most two years.<sup>55</sup> A broadcaster or local cable network could be eligible for a waiver or extension of time, but only if able to prove that meeting this deadline would create an undue burden. All such requests should be made at least 30 days prior to deadline to allow enough time for the Commission to consider why the applicant cannot meet the deadline and to provide the public with an opportunity to comment in response to the request.

## **VI. Specific Fines And/Or Penalties Are Necessary to Deter Non-Compliance**

Similar to many Commenters' misunderstanding of Petitioners' intentions for reporting, a number of Commenters misunderstand Petitioners' intentions with respect to base forfeiture amounts. Petitioners had proposed "that the Commission establish a base forfeiture amount for violations of the captioning benchmark requirements,"<sup>56</sup> as set forth in 47 C.F.R. § 79.1(b). Petitioners continue to believe that base forfeitures are the best method, particularly when combined with the reporting requirements, to ensure compliance with the benchmarks. Although some Commenters have raised concerns that the Commission will lose its flexibility in assessing fines if a base forfeiture is established,<sup>57</sup> the Commission's Forfeiture Guidelines allow for the Commission to adjust forfeitures based on individual circumstances.<sup>58</sup> Base forfeitures for failure to meet the captioning benchmarks can become subject to those guidelines and may be adjusted as needed, depending on the circumstances of each case.

While Petitioners have not proposed base forfeitures for failure to meet the proposed non-technical standards, Petitioners believe that the Commission's general power to impose penalties

---

<sup>55</sup> Comments of *WGBH* at 24.

<sup>56</sup> Petition at 23.

<sup>57</sup> See Comments of *AZN* at 30; see also Comment of Florida Association of Broadcasters at 7 (*FAB*).

<sup>58</sup> 47 C.F.R. § 1.80.

is sufficient. Nevertheless, the case may arise where violation of non-technical standards could result in the failure to meet the benchmark requirements. In that case, it may result in a base forfeiture against the Distributor. Again, the Commission has some discretion as to the amount of forfeiture.

## **VII. Other Issues Raised by Commenters**

### **A. Requests for Waiver of Closed Captioning Rules Should be Filed Electronically**

Petitioners generally agree with *NAB* that requests for waivers of closed captioning rules should be filed electronically.<sup>59</sup> Petitioners are typically the only party commenting in such petitions. Since the Public Notices of such petitions do not also include the actual petition or details about the petition, the Petitioners (and any other interested party) must obtain the petition from the Commission's Reference Information Center. Until recently, the petitions for waiver were not readily available on the Commission's website. If the petitions are consistently made available on the Commission's website concurrently with the public notice of the petition, Petitioners feel that it may not be necessary (though it will still be desirable) to require electronic filing. If, however, the Commission is unable to consistently make the petitions available on its website concurrent with the public notice, then electronic filing should be mandated. In such cases, electronic filing will make it less cumbersome for interested parties to obtain a copy of the petition.

### **B. Closed Captioning Requirements for Emergency Situations Already Exist and Any New Standards Should Not Override Those Existing Requirements**

Some Commenters note that the adoption of stricter non-technical rules for emergency situations could expose them to liability in emergency situations and possibly cause them to not

---

<sup>59</sup> See Comments of *NAB* at 6 ("Exceptions based on undue burden should be filed electronically.").

provide coverage of emergency situations at all.<sup>60</sup> Petitioners believe that these concerns are overblown and this type of threat should not be tolerated by the Commission. Moreover, Section 79.2 of the Commission's Rules<sup>61</sup> already covers visual access to emergency programming in a manner that will provide viewers with comprehensive information that is comparable to emergency information provided over audio feeds. Providers that are transmitting anything less than this are violating existing Commission rules. Petitioners do not believe that this rule should to be amended at this time.

---

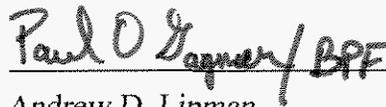
<sup>60</sup> Comments of *FAB* at 4; Comments of *RTNDA* at 10-11.

<sup>61</sup> 47 C.F.R. § 79.2.

## VIII. Conclusion

In summary, Petitioners agree with those Commenters that advocate non-technical and technical standards, monitoring and reporting requirements, revise complaint procedures, elimination of ENT, and the establishment of base forfeiture amounts for violations of captioning benchmarks. Petitioners are cognizant that the changes will require some additional expenditures related to captioning. But these measures are necessary to ensure that “all Americans ultimately have access to video services and programs,” which is not currently the case.

Respectfully submitted,



Claude L. Stout  
Executive Director  
TDI (also known as Telecommunications for  
the Deaf and Hard of Hearing, Inc.)  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Andrew D. Lipman  
Paul O. Gagnier  
Brett P. Ferenchak  
Swidler Berlin LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Attorneys for TDI

Cheryl Heppner, Vice Chair  
Deaf and Hard of Hearing  
Consumer Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Nancy Bloch  
Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, Maryland 20910-4500

Brenda Battat  
Associate Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, Maryland 20814

Dr. Jane Schlau, President  
Association of Late Deafened Adults, Inc.  
8038 Macintosh Lane  
Rockford, IL 61107

Dated: December 16, 2005

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
Mitchel Buergel	12/02/05	Captions stop and start in the midst of TV shows, causing many of the words to go missing from the captions.
Jennifer Oleson	11/23/05	Garbled closed captioning occurs during most news and television programs.
Elizabeth Shuey-Morgan	11/23/05	Commenter asks the FCC to adopt standards for the quality of closed captioning service. Commenter uses captioning in her home every day, and is often disappointed by garbled and/or out-of-sync captions. Commenter has called the television stations to let them know there is a problem, but they are either disinterested or do not know to whom commenter should be referred. There needs to be a standard way to alert them of problems and a required response.
Dr. Jana Lollis	11/23/05	Hard of hearing individuals cannot hear most television programs, and thus do not watch anything not captioned. Commenter therefore supports the FCC's decision to develop standards for the accuracy of captioning.
Joseph Innes	11/23/05	Commenter owns a digital HD television set (which cost over \$3,000.00 dollars) and is a subscriber to cable television that provides digital HD signals at an extra cost per month. All too often the captions on this television are of poor quality, suddenly start and stop, disappear during programming, or don't appear at all in HD format. The cable company will not respond to commenters concerns.
Marty Fahncke	11/23/05	Commenter's child who is learning to read is upset by poor quality of captioning, which is only 60% accurate. Need improved standards.
Matthew Gwynn	11/23/05	Captioning made a big difference in his life. Prior to captioning, he always had to rely on siblings to interpret television shows. For example, he was on a plane on September 11 <sup>th</sup> and could not understand what had happened to the twin towers for an hour or so due to lack of captioning. Someone had to explain it to him. Captioning is a very valuable tool to provide him with

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
		access to information.
Sharaine J. Rawlinson Roberts	11/23/05	Deaf citizen requests stricter regulations regarding accuracy of captioning. Frustrated when watching Wheel of Fortune and has to guess at garbled words.
Ronald C. Burdett	11/23/05	Resident of St. George, Utah was put in danger because of lack of closed captioning. Flood hit his town last year (Jan. 8), and the water became unsafe to drink. However, his local stations KTVX (ABC) Channel 4 and KCSG (PAX) Channel 6 were not captioned with emergency information, and he had to find out about the water from friends.
Harmon P. Menkis	11/23/05	“CNN apparently ceased captioning their news after 9 or 10 pm. I live in Marion, Il. Also our local Channel 3 TV station omits a lot of captioning on local news and local weather news ... overall quality of captions suck .... did a fine job with the recent storm we had for hearing, but for us deafies, we were out of s**t luck .... I am angry enough to not mind my language here ....”
Barbara Boelter	11/23/05	Parent of 15 year-old deaf daughter is upset by having to explain to her daughter ridiculous, erroneous captioning that is often garbled or completely wrong. Also, fears for her daughter because of the lack of emergency captioning in the event of a disaster.
Farley Warshaw	11/22/05	Parent angered by the misspellings that are common to television captioning. On a children’s program, “six” was misspelled as “sex” and the parent had to explain the definition of “sex” to his eleven year old son.
Nathaniel Winegar	11/22/05	Man writing on behalf of her sister - who became deaf later in life – wants the FCC to ensure that all closed captioning is accurate. His sister is in law school, and relies heavily on closed captioning to keep abreast of breaking news, which is essential to her success.
Theresa Morello	11/22/05	Mother of two deaf children finds the captioning on Nickelodeon to be of very poor quality, often containing misspellings or mangled dialogue.

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
Jackie Williams	11/22/05	Complains of garbled captioning, misspelled captioning, and a complete lack of captioning. She is especially concerned about lack of captioning during emergencies.
Delores Gonzales	11/22/05	Complains of lack of captioning on news programs. For example, there was once a tornado watch in her area, but no captioning on the news program from which she could glean information.
Charla Dowds	11/22/05	A mother of a deaf adult asks that the FCC impose standards that ensures the accuracy of closed captions. She often sees mistakes in captions that are so bad a non-hearing person could not understand what is being said.
Wesley Johnson	11/22/05	Commenter's brother is deaf and many times when they watch TV. the captioning is not clear, slow, and doesn't cover all the material. This problem is comparable to a hearing person not understanding or listening to certain words in a sentence or watching a old kung-fu movie where their lips don't match the words.
Janice Cobb	11/22/05	Any time the program or news was not captioned, they take away her right to be fully educated or informed at that time. The impact of loss from non-captioned program or news caused undue burden on deaf persons. To consider that a person be well-informed consumer, all programs and news must be captioned at all times.
Meryl Troop	11/22/05	Commenter is a sign language interpreter who supports FCC efforts to increase the accuracy of closed captioning. For deaf professionals who are responsible for educating our deaf children and caring for deaf adults with mental illness or mental retardation, it is essential that accurate, timely information be available, indeed it can save lives.
Carrie Morgan	11/14/05	Improvements should be made so that no parts of broadcasts are scrambled and ENTIRE programs are made accessible to everyone in this country. Deaf and Hard of Hearing citizens in this country should have a convenient way to make complaints about captioning of

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
		poor quality which either provides mis-information, garbles words/phrases, or omits messages completely.
Tracy Gallipo	11/10/05	During the recent natural disasters in our country commenter noticed something disturbing. While key important people were presenting information to the public there was a sign language interpreter in the lower right hand part of the television screen. The lower right hand corner is where television stations show a station logo at almost all times but commercials. The interpreter was completely blocked by the logo in most cases. As a high school guidance counselor who has worked with deaf families, commenter realizes how important that interpreter can be. Please alert TV stations, cable and local, to this problem. It does not afford the deaf community equal access to crisis information if the interpreter is blocked out of the picture.
Dana Mulvany	11/10/05	We need nationwide standards to enforce the quality of closed captioning. Captioning is often garbled, or of low quality, and there is often no way to get a hold of the station to report problems.
Janice Hughes	11/10/05	Someone should be responsible for the technical problems associated with captioning. Captioning is often of poor quality. Deaf individuals should have a means to report problems, and there should be repercussions such as fines if such problems are not remedied within 30 days.
Phillip Moos	11/10/05	Captioning must have quality. It must meet for completeness, accuracy, readability, synchronicity with the audio in full. There should also be a way to report problems, and fines for poor quality.
Mitche Louise Bove	11/10/05	Commenter enjoys watching many shows on television as long as she has access to closed captioning. Commenter likes to be able to keep up with the plot or to get the joke. Without closed captioning, commenter is unable to enjoy television.

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
Gary Bootay	11/09/05	Last night while watching prime time TV commenter was angered that the closed captions dropped off the screen every time the general election voting results appeared on the top 1/3 of the screen. All TV stations MUST learn NOT to ever drop closed captions. They could follow CNN's news scrolling on the bottom of the screen which does not affect the captions. Please do something.
David G. Myers	10/24/05	Commenter is upset that most captioning occurs in the top 1/3 of the screen, where the captions interfere with the faces of the actors. This makes captions annoying to those who are not hard of hearing.
Marsha Taylor	10/24/05	Commenter strongly urges stricter enforcement of captioning rules, especially in important areas such as news broadcasts, breaking news/alerts, etc. commenter is the last to know when a breaking story or important information is given because such are not captioned.
John Anderson	10/17/05	Very little of the local news is captioned, and none of the local weather is captioned. Neither are the local PBS broadcasts.
Libby Marks	10/12/05	Commenter is an elderly retiree who complains that the captions on the TV Guide Channel completely obscure the programming, which is on the bottom 1/3 of the screen. Commenter has requested that TV Guide place the caption on the top 2/3's where the advertising is, but TV guide refused.
Trudy Zahn	10/11/05	Commenter is a hard of hearing person who can't have equal access to important information, social influences, current events, and many other facets of American society without television captioning. The quality, consistency, and availability of the captioning is of the utmost importance in determining her ability to use it. Commenter wants the FCC establish standards that television captioning must meet so that the quality of the captioning doesn't prevent her access to television programming.

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
Hermine Willey	10/11/05	Captioning on the TV is important to people who are deaf and hard of hearing. Commenter needs this service for all programs and especially when news is presented at a moment's noticed. News reporters on the street where the action is occurring are not captioned.
Larry Sivertson	10/11/05	Commenter is hard of hearing and relies on captioning to supplement his hearing. Complains that delays between what is spoken and what is captioned can be unacceptably long, portions of the spoken message are sometimes completely dropped, and the words that show up in the captioning sometimes bear no discernable relationship to the spoken words. In these cases the provided captioning clearly does not meet the Commission mandate that "that captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities."
Lawrence J. Brick	10/05/05	Commenter is upset when a section of a TV program ends and the ads begin because the captions stop and are not complete. This happens all the time and it's very frustrating for Commenter.
Peggy Hlibok	10/04/05	Commenter complains that the Oprah Program # 24133 or 97076 airing an interview with Chris Kennedy was not closed captioned on September 26 and 27. Commenter tried to call ABC, but could not communicate with someone at the ABC office. The New York Times Television Guide stated that these programs would be shown with closed captioning.
Ted A. Czanderna	09/20/05	Commenter would like the FCC to update the closed captioning regulations to encompass composite video and S-video receiver signals for satellite or cable boxes. Companies such as Dish Network only have captioning available through 75 ohm coaxial cable, and thus deaf viewers with sophisticated equipment cannot have captioning unless they use poorer quality coaxial cable.
Joan Haber	08/29/05	Commenter feels quality of captioning on many TV programs is very poor. Sometimes it cannot be read at

**EXHIBIT A**

<b>Comment Summary for FCC NPRM on Expanding Closed Captioning Requirements</b>		
<b>Name</b>	<b>Date Filed</b>	<b>Comment Summary</b>
		all, or the captioning drops off the screen as the program goes to commercial, so the last few sentences are missed altogether. The TV station in her community does not provide captioning of emergency weather alerts, nor are it's regular weather reports captioned.
Wayne Scott	8/03/05	Commenter complains about the captioning on the TV Guide Channel. TV Guide has advertisements on the top 2/3's of its screen, and program listings on the bottom 1/3. The close captions for the advertisements cover up the actual program listings, and caller must turn off captions to see them. TV Guide has not responded to his complaints.
<b>Form Comments</b>		
Betty Bartlett	11/23/05	No standards exist to regulate closed caption requirements. There should be a standard complaint form for consumers to use for complaints about poor quality captions or lack of captions. The FCC should establish compliance reporting requirements and minimum standards for a program to be considered "captioned." Please support the original petition filed by: NAD, TDI, SHHH, DHHCAN, and ALDA.
Erin Moran	11/23/05	
NaVee Lange	11/23/05	
Kelly Junc	11/23/05	
Adrian Kantor	11/23/05	
Katherine Firkins	11/22/05	
Norma B. Garcia	11/22/05	
Brenda Mitchiner	11/22/05	
Nina Treiman	11/22/05	
Stevie Gash	11/17/05	
Ernest C. Northup	11/17/05	
Mike Lee Fissette	11/14/05	

# ATTACHMENT 3

Comments of TDI et al., *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, CG Docket No. 05-231, ET Docket No. 99-254 (filed Feb. 12, 2009)

**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  
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.;  
ASSOCIATION OF LATE-DEAFENED ADULTS, INC.;  
NATIONAL ASSOCIATION OF THE DEAF;  
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK;  
CALIFORNIA COALITION OF AGENCIES SERVING  
THE DEAF AND HARD OF HEARING;  
HEARING LOSS ASSOCIATION OF AMERICA;  
COMMUNICATION SERVICE FOR THE DEAF; AND  
AMERICAN ASSOCIATION OF THE DEAF-BLIND**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through its undersigned counsel; Association of Late-Deafened Adults, Inc. (“ALDA”); National Association of the Deaf (“NAD”); Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”); California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”); Hearing Loss Association of America (“HLAA”); Communication Service for the Deaf (“CSD”); and American Association of the Deaf-Blind (“AADB”) (collectively, the “Consumer Groups”), hereby respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding.<sup>1</sup>

---

<sup>1</sup> *In the Matter of Closed Captioning of Video Programming, Closed Captioning Requirements for Digital Television Receiver, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC 08-255 (November 7, 2008) (“NPRM”).*

The Commission must require closed captioning for *all* digital video programming streams, including “multicasts.” The closed captioning rules have been in place for a decade. Yet people who are deaf or hard of hearing have never had equal access to video programming. The implementation of the closed captioning rules has finally achieved a measure of access that, while not complete, is significant. At this point in time, the failure of the existing closed captioning rules to provide complete and equal television access results in viewers who are deaf and hard of hearing being treated as marginalized, second-class citizens, and calls into question whether existing exemptions are justifiable. While the Consumer Groups believe it may be time to revisit the current closed captioning rules and move closer to 100% captioning of all broadcast programming, these comments are necessarily limited to the issues raised in this NPRM related to multicast streams.

With the transition to digital, a broadcaster will have the ability and choice to multicast several streams of programming over its digital allocation, and as described herein, the Commission must ensure that a broadcaster’s choice to multicast carries with it the obligation to close caption all of its video programming. A broadcaster’s business decision to multicast must include consideration of its concomitant public interest obligations. The Consumer Groups are emphatic that the Commission’s closed captioning rules must be equally applied to digital television and rigorously enforced. Therefore, if a broadcaster chooses to multicast, the Commission should apply the existing \$3 million annual gross revenue exemption, pursuant to Section 79.1(d)(12),<sup>2</sup> to the overall operations of a broadcaster’s digital allocation, rather than its individual multicast streams of programming.

---

<sup>2</sup> 47 C.F.R. § 79.1(d)(12).

The Consumer Groups appreciate the Commission’s acknowledgement that “where a licensee chooses to multicast, the multicast channels do not constitute a new network.”<sup>3</sup> The Section 79.1(d)(9) exemption is intended only for networks that are truly new to video programming,<sup>4</sup> and using a digital allocation to multicast does not, and should not, qualify.

The Consumer Groups also appreciate the Commission’s affirmation that multicast programming is subject to the captioning pass through requirement and propose that the Commission similarly affirm that the pass through requirement applies to edited programming. In order to assist broadcasters in their efforts to locate programs that have been captioned in the past, the Consumer Groups recommend the creation of a national database for captioned programming. Finally, the Consumer Groups request that the FCC reaffirm the requirement for multicast programming to comply with the requirement, contained in Section 79.2 of the Commission’s rules, to provide emergency information in a visual form, without any exceptions.<sup>5</sup>

**I. APPLY SECTION 79.1(d)(12) EXEMPTION TO BROADCASTER’S OVERALL OPERATIONS FOR ITS DIGITAL ALLOCATION**

More than 10 years ago, the Commission adopted the closed captioning rules.<sup>6</sup> When, a few years later, the Commission extended these rules to digital broadcasting, it declined to adopt requirements that would differ from the captioning requirements that apply to analog

---

<sup>3</sup> *NPRM* at fn. 43.

<sup>4</sup> 47 C.F.R. § 79.1(d)(9).

<sup>5</sup> 47 C.F.R. § 79.2.

<sup>6</sup> *Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 13 FCC Rcd 3272 (1997) (“Closed Captioning R&O”); *Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (“Closed Captioning Order on Reconsideration”).

broadcasters. The Commission took this action even though, at that time, both the FCC and the industry were well aware that digital broadcasting would allow secondary streams of programming<sup>7</sup> and that these streams would not exist without the broadcaster's "main channel." Notwithstanding this industry practice, the FCC did not rule that each separate stream of digital multicast programming was a "channel" for purposes of the closed captioning rules because it would have been unrealistic and impractical to do so. It remains impractical to do so as the completion of the digital transition nears. Accordingly, the existing captioning rules must be applied to digital broadcast programming, and the Section 79.1(d)(12) exemption for a channel earning less than \$3 million annual gross revenue for the prior calendar year should apply to the overall operations for the broadcaster's digital allocation.

A broadcaster's authorization to distribute digital programming presents both new options, such as multicasting, that were not available when providing analog programming, and new opportunities for broadcasters to expand and improve their overall operations. For example, a broadcaster may choose to provide high-definition programming or multicast programming or both high-definition programming and multicast programming at certain times of the day. A broadcaster choosing to multicast expects to earn revenue from the additional streams of programming and/or to obtain more viewers for its main programming stream. In other words, the choice to multicast may positively impact a broadcaster's overall operations even though an individual multicast stream may not receive \$3 million in annual revenues under Section 79.1(d)(12). It therefore makes sense to apply the Commission's \$3 million exemption rule only

---

<sup>7</sup> See e.g., *Annual Assessment of the Status of Competition in Markets for Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, ¶ 95 (1998); *Annual Assessment of the Status of Competition in Markets for Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd 24284, ¶ 101 (1998).

to a broadcaster's overall operations for a digital allocation, rather than applying this exemption to individual multicast streams.<sup>8</sup>

Even more importantly, the Section 79.1(d)(12) exemption should apply to a broadcaster's overall operations to avoid reducing the relative amount of captioned programming that is made available to the public. The United States is entering a new television generation with the digital transition that promises many new services and programming capabilities, including opening new avenues to enhance and expand captioning access. *All* Americans must be able to access services and programming that are available as a result of the digital transition, and no segment of the population should be left behind. The Commission, as well as Congress and others, have repeatedly recognized "the important role that video programming plays in American society today as a source of information and entertainment" and have sought to maximize the accessibility of video programming to the nation's deaf and hard of hearing population.<sup>9</sup> Digital broadcast technology, including multicasts, will provide opportunities and significant benefits directly to individuals with disabilities and indirectly to society as a whole by providing critical information to individuals with hearing loss, which in turn can lead to greater access in employment, education, recreation and other areas.<sup>10</sup> Allowing a captioning exemption for individual multicast streams would adversely affect the millions of deaf and hard of hearing

---

<sup>8</sup> Moreover, it may be difficult to confirm whether an individual multicast stream has met the \$3 million revenue threshold if a broadcaster uses consolidated financials and does not have separate financial statements for each stream.

<sup>9</sup> *Closed Captioning R&O* at ¶ 11. See also, *Closed Captioning Order on Reconsideration; Chartering the Digital Broadcasting Future*, Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, <http://govinfo.library.unt.edu/piac/piacreport.pdf> (1998).

<sup>10</sup> *Chartering the Digital Broadcasting Future*, Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, <http://govinfo.library.unt.edu/piac/piacreport.pdf>, pp. 61-62, 78-79 (1998).

individuals who rely on getting their information through closed captioning. The consequence of such an exemption would be to leave this segment of the population behind as the rest of America surges ahead in benefiting from the digital television revolution – certainly a consequence that is not intended by the FCC.

In making its determination about how to best apply the Section 79.1(d)(12) exemption to a multicasting broadcaster's operations, it is critical for the Commission to take into consideration the public interest obligations of all digital television broadcasters to preserve free over-the-air programming for the entire American population,<sup>11</sup> an obligation that should and must include multicast programming. Many Americans, especially those who are deaf and hard of hearing – who statistically have lower incomes than the rest of the American population – rely on free over-the-air broadcasts for television rather than pay television video services. Indeed, an even greater number are likely turning to over-the-air broadcasts in light of the current economic crisis. As the Commission is well aware, television broadcasters have obtained their spectrum licenses at no cost. In return for these licenses, these broadcasters have certain obligations to the public – one of which is to make programming accessible by providing closed captioning. It would be contrary to broadcasters' public interest obligations to allow the Section 79.1(d)(12) exemption to apply to individual multicast streams. Rather, by ensuring that the entire population has access to all of the new types of programming that multicast channels have to offer, a rule that applies the exemption to the overall operations of a parent channel will guarantee that these broadcasters are fulfilling their public interest obligations to millions of Americans who are deaf and hard of hearing and who wish to enjoy digital television services to

---

<sup>11</sup> *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, ¶ 5 (1997) (noting the Commission's desire "to promote and preserve free, universally available, local broadcast television in a digital world").

the same extent as their family members, friends, colleagues and others who hear. The Commission must continue to take steps toward maximizing such accessibility, rather than take steps backward by expanding the scope of an existing exemption.

The Consumer Groups have reason to believe that costs of captioning programming on multicast channels will be contained. First, much, if not most of the multicast programming that is now available may already have been previously captioned. Accordingly, a broadcaster's cost to caption the remaining multicast programming should be relatively small as compared to the overall multicast programming costs. In addition, over the past 10 years, there has been an increase in the availability of competition among captioners, and the cost of captioning technology has decreased, which has driven down total captioning costs. It is perhaps for these reasons that several PBS stations already caption their multicast streams – further suggesting that for-profit broadcasters should be able to afford multicast captioning costs. Thus, applying the Section 79.1(d)(12) exemption to the overall operations of a broadcaster's digital allocation, rather than the broadcaster's individual multicast programming streams will promote accessibility and should not unduly affect that broadcaster's overall costs.

## **II. PASS THROUGH REQUIREMENTS APPLY TO ALL PREVIOUSLY-CAPTIONED PROGRAMMING DISTRIBUTED ON MULTICASTS**

The Consumer Groups appreciate the Commission's affirmation that a video distributor, including a broadcaster, is obligated to pass through *intact* any captioning it receives and that the obligation applies regardless of any potential self-implementing exemption.<sup>12</sup> It is expected that a majority of multicast programming presently shown on secondary streams should be captioned as a result of this pass through requirement. The Commission should acknowledge that this pass

---

<sup>12</sup> *NPRM* at ¶¶ 11, 37. *See also*, 47 C.F.R. § 79.1(c).

through requirement also applies to any edited programming. The benefits to viewers who need captions are far greater than the costs to adjust captioning time frames of edited programming.

### **III. ESTABLISH A NATIONAL DATABASE FOR CAPTIONED PROGRAMS**

The Consumer Groups recommend that the Commission establish a national database for captioned programs or work with another agency to set up a national database. As noted above, it is anticipated that much of the programming provided on multicast channels – at least initially – will be re-runs or repeats of pre-recorded captioned programming. A national database of captioned programming will make it easier for broadcasters to locate and utilize captioned programming.

### **IV. MULTICAST PROGRAMMING MUST COMPLY WITH SECTION 79.2**

The Commission should reaffirm that multicast programming must provide emergency information required by Section 79.2, which requires video programming distributors to make emergency information accessible to persons with hearing and visual disabilities and prohibits emergency information from blocking any closed captioning.<sup>13</sup> These emergency access mandates have never allowed any exemption and, given the critical importance of ensuring access to timely and accurate emergency information by all Americans, the Commission should not permit any exemptions from these requirements now. Section 79.2 must apply to every multicast video stream to the same extent as it applies to main video streams.

### **V. CONCLUSION**

For the reasons discussed above, the Consumer Groups urge the Commission to apply the Section 79.1(d)(12) exemption to the overall operations of a broadcaster's digital allocation, rather than its individual multicast streams, to ensure the continued availability of closed

---

<sup>13</sup> 47 C.F.R. § 79.2.

captioned programming for all Americans, especially Americans who are deaf or hard of hearing.

Claude L. Stout  
Executive Director  
Telecommunications for the  
Deaf and Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Cheryl Heppner  
Vice Chair  
Deaf and Hard of Hearing  
Consumer Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Brenda Battat  
Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814

Christine Seymour  
President  
Association of Late-Deafened Adults, Inc.  
10916 62nd Avenue Ct. E, #17-104  
Puyallup, WA 98373

Ben Soukup  
CEO  
Communication Service for the Deaf  
102 North Krohn Place  
Sioux Falls, SD 57103

Respectfully submitted,



Paul O. Gagnier  
Danielle Burt  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006  
(202) 373-6000

*Counsel to Telecommunications for the  
Deaf and Hard of Hearing, Inc.*

Nancy J. Bloch  
Chief Executive Officer  
National Association of the Deaf  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20190-4500

Jamie Pope  
Executive Director  
American Association of Deaf-Blind  
8630 Fenton Street, Suite 120  
Silver Spring, MD 20910

Sheri Ann Farinha  
Vice Chair  
California Coalition of Agencies Serving  
the Deaf and Hard of Hearing  
4708 Roseville Road, Suite 111  
North Highlands, CA 95660

Elizabeth T. Spiers  
Director of Information Services  
American Association of the Deaf-Blind  
8630 Fenton Street, Suite 121  
Silver Spring, MD 20910

Dated: February 12, 2009

# ATTACHMENT 4

Reply Comments of TDI et al., *Closed Captioning of Video Programming;*  
*Closed Captioning Requirements for Digital Television Receivers,*  
Declaratory Ruling, Order, and Notice of Proposed Rulemaking, CG Docket  
No. 05-231, ET Docket No. 99-254 (filed Feb. 27, 2009)

**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

**REPLY COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.;  
ASSOCIATION OF LATE-DEAFENED ADULTS, INC.;  
NATIONAL ASSOCIATION OF THE DEAF;  
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK;  
CALIFORNIA COALITION OF AGENCIES SERVING  
THE DEAF AND HARD OF HEARING;  
HEARING LOSS ASSOCIATION OF AMERICA;  
COMMUNICATION SERVICE FOR THE DEAF; AND  
AMERICAN ASSOCIATION OF THE DEAF-BLIND**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through its undersigned counsel; Association of Late-Deafened Adults, Inc. (“ALDA”); National Association of the Deaf (“NAD”); Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”); California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”); Hearing Loss Association of America (“HLAA”); Communication Service for the Deaf (“CSD”); and American Association of the Deaf-Blind (“AADB”) (collectively, the “Consumer Groups”), hereby respectfully submit these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding.<sup>1</sup>

---

<sup>1</sup> *In the Matter of Closed Captioning of Video Programming, Closed Captioning Requirements for Digital Television Receiver, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC 08-255 (November 7, 2008) (“NPRM”).*

As explained in the Comments, the Commission's closed captioning rules must apply to digital video programming, and if a broadcaster chooses to multicast, the \$3 million annual gross revenue exemption should apply to the overall operations of a broadcaster's digital allocation.<sup>2</sup> Millions of deaf and hard of hearing individuals rely on closed captioning to access video programming, including many who use free over-the-air broadcasts. Steps must be taken to continue to maximize accessibility, ensure that no segment of the population is left behind as a result of the digital transition, and avoid reducing the relative amount of captioned programming available to the public. While the Consumer Groups believe it may be time to revisit the current closed captioning rules and move closer to 100% captioning of all broadcast programming, until such time that such revisions are made, the existing \$3 million annual gross revenue exemption should apply to a broadcaster's overall operations, rather than individual streams.

Should the Commission decline to apply the \$3 million annual gross revenue exemption to the overall operations of a broadcaster, it should not raise the revenue threshold as it applies to any single video programming channel, including individual multicast streams.<sup>3</sup> The Commission adopted the existing \$3 million revenue threshold after careful consideration of the hourly costs of captioning programming that were prevalent in the captioning provider industry at the time that it first developed its captioning rules.<sup>4</sup> Improvements in captioning technologies as well as expanded competition in the captioning provider industry over the past 10 years have

---

<sup>2</sup> See Comments of Consumer Groups, CG Docket No. 05-231 and ET Docket No. 99-254 (filed Feb. 12, 2009). See also, 47 C.F.R. § 79.1(d)(12).

<sup>3</sup> See Comments of National Association of Broadcasters, CG Docket No. 05-231 and ET Docket No. 99-254 at pp. 8-9 (filed Feb. 12, 2009) (advocating a revenue measure but suggesting that the current amount be raised because of inflation).

<sup>4</sup> *Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 13 FCC Rcd 3272, ¶ 164 (1997) (finding captioning costs of \$500 per hour allows about 2 hours of programming per week with \$3 million annual gross revenues).

drastically driven down the costs of captioning.<sup>5</sup> For example, a public broadcaster and a captioning company indicate that both off-line and real-time captioning costs are **half** of what they were in 1998 and that real-time captioning costs range between \$200 and \$400 per hour and as low as \$100 per hour for large-volume contracts. Accordingly, a broadcaster with annual gross revenue of \$3 million or more should be able to caption more programming today than 10 years ago, a fact that argues in favor of reducing or eliminating, rather than raising, the \$3 million revenue exemption threshold.

Moreover, transmitting digital programming to third-party captioning providers for captioning should be easier, less expensive, and more timely than transmitting analog programming.<sup>6</sup> Digital programming may be electronically sent to captioning providers which results, and will continue to result, in fewer and fewer tapes of analog programming being sent for captioning. With fewer tapes being sent, the time and cost of captioning digital programming should be significantly less than captioning analog programming. The ease of transmitting digital programming also allows it to be sent anywhere in the world for captioning and increases the pool of competitive captioning providers. As the choice of captioning providers increases, the cost of captioning will continue to be driven down.

## V. CONCLUSION

For the reasons discussed above and in the initial Comments submitted in this proceeding, the Consumer Groups urge the Commission to apply the Section 79.1(d)(12) exemption to the overall operations of a broadcaster's digital allocation. Under no circumstances should the Commission raise the \$3 million revenue threshold for any channel, including

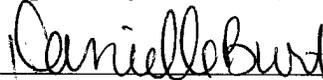
---

<sup>5</sup> Comments of Consumer Groups at p. 7. *See also*, Comments of National Association of Broadcasters at fn.6 (acknowledging per hour captioning costs may be lower than \$500).

<sup>6</sup> *See* Comments of National Association of Broadcasters at fn. 6 (claiming that using third-party captioning services for off-line captioning adds time and expense).

individual multicast streams; if anything, given the maturity of the captioning industry and the increased reliance on captioning in our society, it is time for the FCC to consider eliminating this exemption in its entirety.

Respectfully submitted,



---

Paul O. Gagnier  
Danielle Burt  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006  
(202) 373-6000

Claude L. Stout  
Executive Director  
Telecommunications for the  
Deaf and Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

*Counsel to Telecommunications for the  
Deaf and Hard of Hearing, Inc.*

Cheryl Heppner  
Vice Chair  
Deaf and Hard of Hearing  
Consumer Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030

Nancy J. Bloch  
Chief Executive Officer  
National Association of the Deaf  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20190-4500

Brenda Battat  
Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814

Jamie Pope  
Executive Director  
American Association of Deaf-Blind  
8630 Fenton Street, Suite 120  
Silver Spring, MD 20910

Kathy Schlueter  
President  
Association of Late-Deafened Adults, Inc.  
10916 62nd Avenue Ct. E, #17-104  
Puyallup, WA 98373

Sheri Ann Farinha  
Vice Chair  
California Coalition of Agencies Serving  
the Deaf and Hard of Hearing  
4708 Roseville Road, Suite 111  
North Highlands, CA 95660

Ben Soukup  
CEO  
Communication Service for the Deaf  
102 North Krohn Place  
Sioux Falls, SD 57103

Elizabeth T. Spiers  
Director of Information Services  
American Association of the Deaf-Blind  
8630 Fenton Street, Suite 121  
Silver Spring, MD 20910

Dated: February 27, 2009