

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF TIME WARNER INC.**

Time Warner Inc. ("Time Warner") submits these reply comments in response to comments submitted to the recent Public Notice to refresh the record with respect to the 2005 and 2008 *Notices of Proposed Rulemaking* in the above-captioned proceedings.<sup>1</sup> Time Warner is a content-focused company which, through its divisions, is involved primarily in the operation of multichannel television networks, the production and distribution of filmed entertainment (including motion pictures, television programming, and video games), and the production and distribution of magazines.<sup>2</sup>

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<sup>1</sup> Public Notice, Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning Rules, CG Docket No. 05-231 & ET Docket No. 99-254, DA 10-2050, (CGB rel. Oct. 25, 2010) ("*2010 Public Notice*"). See also *Closed Captioning of Video Programming: Telecommunications for the Deaf, Inc., Petition for Rulemaking*, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) ("*2005 Notice*"); *Closed Captioning of Video Programming: Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (2008) ("*2008 Notice*"), Erratum, 24 FCC Rcd 8262 (CGB 2009).

<sup>2</sup> Time Warner's motion picture and television production studio assets include Warner Bros. Pictures and Warner Bros. Television. The company's programming networks include Home Box Office and Cinemax, as well as CNN, TNT, TBS, Cartoon Network, and other Turner Broadcasting System, Inc. cable networks. All of Time Warner's businesses, including the Time Inc. publishing business, are actively engaged in the development of digital products and services for multiple platforms.

As discussed below, industry comments filed recently and in 2005 underscore the extent and quality of captioning available to consumers as well as continued concerns with the 2005 Notice's proposals. Indeed, the good faith efforts of hundreds of programmers and video programming distributors to caption millions of hours of programming over the past five years have proven successful in increasing the quality of captions and the overall accessibility of television programming. As both rounds of comments illustrate, certain proposals from the 2005 Notice – including subjective qualitative standards, new monitoring obligations, and recordkeeping requirements – would be unduly burdensome and divert resources away from captioning without any commensurate improvement in quality. In light of these concerns, and the significant progress made with respect to the accessibility of programming over the past several years, additional captioning obligations should not be adopted.

#### **I. RECENT COMMENTS CONFIRM THE INDUSTRY RESPONSE TO THE 2005 NOTICE**

In its 2005 Notice, the Commission sought comment on a variety of new captioning proposals, including: (1) non-technical and technical quality criteria; (2) monitoring, recordkeeping and audit requirements; and (3) specific fines or other defined sanctions for proven captioning violations. In response, a range of industry commenters, including Time Warner division Home Box Office, Inc. ("HBO"),<sup>3</sup> detailed the ever-increasing quality and quantity of closed captioning available to consumers in 2005.<sup>4</sup> Several of these submissions

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<sup>3</sup> Comments of Home Box Office, Inc., CG Docket No. 05-231 (submitted Nov. 10, 2005) ("HBO 2005 Comments"). For clarity, comments referenced in this submission in response to the 2010 Public Notice and the 2005 Notice are denoted, respectively, as "2010 Comments" or "2005 Comments."

<sup>4</sup> See HBO 2005 Comments at 3-6 (illustrating how the "amount of captioning has increased dramatically"); Comments of Motion Picture Association of America, Inc., CG Docket No. 05-231, at 2 (submitted Nov. 10, 2005) ("MPAA 2005 Comments") ("[V]irtually all motion pictures and television programs produced and distributed by MPAA's member companies [were] closed captioned"); Comments of National Cable and Telecommunications Association, CG Docket No. 05-231, at 1 (submitted Nov. 10, 2005) ("NCTA 2005 Comments") ("Cable

highlighted examples of the internal mechanisms and procedures used by programmers and video programming distributors to sustain and improve the accuracy of captioning.<sup>5</sup> Although the methods varied depending on the nature of the programming and the entity involved, these 2005 comments illustrated the multiple means through which the video programming industry continues to seek to improve captioning for consumers. Multiple comments submitted in response to the *2010 Public Notice* affirm the progress and efforts of the industry described in 2005.<sup>6</sup>

Against this backdrop, industry commenters in 2005 and again in 2010 explained how certain proposals in the *2005 Notice* would be counterproductive.<sup>7</sup> Several filings argued that qualitative standards would be inherently subjective, require extensive monitoring and recordkeeping, and “impose unnecessary burdens on programming providers and the Commission to implement and enforce.”<sup>8</sup> Others cited the FCC's own prior findings that

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programmers have not only reached, but have often exceeded, the FCC-established benchmarks for captioned programming.”)

<sup>5</sup> See, e.g., NCTA 2005 Comments at 3-4 (“Programmers employ several methods to ensure caption quality. . . . Cable programmers continually review the performance of captioning services they use.”); MPAA 2005 Comments at 4, 6 (noting that the video programming industry “has every incentive to continue to provide high-quality captioning” and uses “several layers of market-based quality controls.”); Comments of DIRECTV, Inc., at 2-3 (submitted Nov. 20, 2005) (“DIRECTV 2005 Comments”).

<sup>6</sup> See, e.g., Comments of DIRECTV, Inc., CG Docket No. 05-231, at 3, 5 n.5 (submitted Nov. 24, 2010) (“DIRECTV 2010 Comments”) (detailing internal efforts to address captioning questions and noting that DIRECTV receives “very few complaints” about non-technical captioning matters); Comments of National Association of Broadcasters, Inc., CG Docket No. 05-231, at 6 (submitted Nov. 24, 2010) (“NAB 2010 Comments”) (agreeing that, given the “thousands of hours of television programming . . . aired each month,” the overall number of complaints is “exceptionally small”); Comments of National Cable & Telecommunications Association, CG Docket No. 05-231, at 3 & n.8 (submitted Nov. 24, 2010) (“NCTA 2010 Comments”) (outlining the variety of steps that industry has taken to ensure caption accuracy).

<sup>7</sup> See, e.g., NAB 2010 Comments at ii (suggesting that new rules would not be “realistic” or “productive”); Comments of Radio Television Digital News Association, CG Docket No. 05-231, at 8 (submitted Nov. 23, 2010) (“Further regulation of closed captioning as it pertains to news programming . . . is both unnecessary and counterproductive.”); HBO 2005 Comments at 9-10; MPAA 2005 Comments at 8 (“proposed rules would be unnecessary and counter-productive”).

<sup>8</sup> HBO 2005 Comments at 11 (quoting *Closed Captioning and Video Description Implementation of Section 305 of the Telecommunications Act of 1996 et al.*, Memorandum Order and Opinion, 13 FCC Rcd 19973, 19993 (1998) (“*Reconsideration Order*”). See NCTA 2010 Comments at 3-4; NAB 2010 Comments at 12-14; Comments of National Association of Broadcasters, CG Docket No. 05-231, at 10 (submitted Nov. 10, 2005) (“NAB 2005

mandatory compliance reports would be “unduly burdensome and administratively cumbersome”<sup>9</sup> and demonstrated how new requirements would divert resources away from actual captioning efforts without any corresponding improvements or benefits.<sup>10</sup> Some comments questioned the need for any change to the FCC's captioning enforcement procedures, which ensure that the Commission has appropriate flexibility to tailor potential sanctions to the specific circumstances of a proven violation.<sup>11</sup> All of these submissions remain relevant to the issues raised by the *2010 Public Notice*, and Time Warner hereby incorporates by reference HBO's comments and reply comments submitted in response to the *2005 Notice*.

## **II. DEVELOPMENTS SINCE 2005, INCLUDING INCREASES IN THE QUANTITY AND QUALITY OF CLOSED CAPTIONING, FURTHER OBLIATE THE NEED FOR NEW REGULATORY REQUIREMENTS**

Today, the good faith efforts of hundreds of programmers and video programming distributors to caption millions of hours of programming continue to be very successful. Consumers have access to more captioned programming than ever, including 100 percent of new, non-exempt English-language and Spanish-language programming. Time Warner supports these efforts to promote accessibility of its content to a wider audience.<sup>12</sup>

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Comments”); MPAA 2005 Comments at 7-8; Comments of KJLA, LLC at 2-3 (submitted Nov. 10, 2005) (“KJLA 2005 Comments”).

<sup>9</sup> See, e.g., DIRECTV 2010 Comments at 5 & DIRECTV 2005 Comments at 7 (quoting *Closed Captioning and Video Description, Implementation of Section 305 of the Telecommunications Act of 1996 et al.*, Notice of Proposed Rulemaking, 20 FCC Rcd at 13224 (¶ 40) and citing Report and Order, 13 FCC Rcd 3272, 3383 (¶ 244) (1997), *aff'd on reconsideration*, 13 FCC Rcd 19973, 20026-27 (¶ 118) (1998)); NAB 2010 Comments at 15 (quoting Report and Order for same point); KJLA 2005 Comments at 4.

<sup>10</sup> See, e.g., NCTA 2010 Comments at 3-7; HBO 2005 Comments at 10; MPAA 2005 Comments at 7-8 (“Government-imposed quality standards would result in uniformity at the expense of quality and would reduce the effectiveness of closed captioning.”)

<sup>11</sup> See, e.g., NCTA 2010 Comments at 8-9; HBO 2005 Comments at 11; NCTA 2005 Comments at 10-11.

<sup>12</sup> See Time Warner 2008 Corporate Social Responsibility Report at 12-13 (available at [http://www.timewarner.com/corp/citizenship/index.page/tw\\_csr\\_report08.pdf](http://www.timewarner.com/corp/citizenship/index.page/tw_csr_report08.pdf)).

The quality of captioning is also continuously improving. Although minor errors are a result of the human intervention involved in captioning, such issues are best addressed through the continued training and development of individual captioners, and ongoing competition among captioning services to provide the best services possible.<sup>13</sup> Overall, the quality of captions and the accessibility of television programming have increased since 2005, and will continue to do so in the absence of additional requirements.<sup>14</sup>

Other recent developments reinforce this conclusion. For example, the Commission's establishment of a video programming distributor contact information database helps consumers alert distributors whenever there are any questions or issues regarding captioning.<sup>15</sup> Distributors also provide consumers with contact information in local phone directories, on websites, and as part of their billing statements.<sup>16</sup> This type of direct and timely interaction between distributors and consumers can quickly address any minor captioning issues that may arise.<sup>17</sup> The Commission should continue to promote such informal mechanisms, which are best suited to provide tangible consumer benefits by focusing resources towards immediate solutions.

### **III. NEW CAPTIONING REQUIREMENTS WOULD IMPOSE UNNECESSARY BURDENS ON THE COMMISSION AND PROVIDERS WITHOUT CORRESPONDING CONSUMER BENEFITS**

As detailed above, the majority of programmers and video programming distributors work hard and commit significant resources to provide high-quality captioning.<sup>18</sup> These efforts

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<sup>13</sup> See, e.g., NCTA 2010 Comments at 3-4.

<sup>14</sup> As NCTA notes in its 2010 Comments, a conservative estimate is that "the typical cable subscriber receives over 600,000 hours of captioned linear programming per year." NCTA 2010 Comments at 6 n.17. In contrast, NCTA cites a recent FCC staff report indicating that the Commission received a total of 107 captioning complaints nationwide in a one year period. See *id.*

<sup>15</sup> See, e.g., <http://esupport.fcc.gov/vpd-search/search.action#scrollThere> (offering consumers the means to search for captioning contact information for local video programming distributors).

<sup>16</sup> See 47 C.F.R. §79.1(i).

<sup>17</sup> See, e.g., NAB 2010 Comments at 8-9; DIRECTV 2010 Comments at 3; Comments of Verizon Companies, CG Docket No. 05-231, at 1 (submitted Nov. 24, 2010).

and resources should not be diverted towards new obligations without corresponding consumer benefits. Specifically, the Commission should decline to adopt the proposals outlined in the *2005 Notice* and instead promote case-by-case informal resolution of specific captioning issues raised by consumers.

In particular, new qualitative requirements would impose significant costs on all programmers and video programming distributors but be unlikely to result in meaningful improvements in closed captioning. As noted in both 2005 and 2010, the subjective nature of non-technical qualitative standards (*i.e.*, 'letter perfect,' 'functional equivalence,' or 'understandability') would be challenging and cumbersome for programmers to implement, and inhibit flexibility and innovation in the provision of captioning.<sup>19</sup> Further, qualitative standards would require extensive monitoring and divert resources away from quality captioning.

These challenges would be particularly acute for live and near-live programming, such as news and sporting events. Live and near-live programming requires special consideration, as it demands captioning at high speeds, up to 250 words per minute, with no time to correct for

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<sup>18</sup> See *supra* note 14.

<sup>19</sup> See, e.g., NCTA 2010 Comments at 3-4; NAB 2010 Comments at 20 (noting that accuracy requirements may "discourage innovation and experimentation"); Reply Comments of Home Box Office, Inc. CG Docket No. 05-231, at 4-6 (submitted Dec. 16, 2005); Reply Comments of CBS Broadcasting, Inc., CG Docket No. 05-231, at 4-7 (submitted Dec. 16, 2005) ("[I]t would be extremely difficult and time consuming to define by regulation what should be considered an 'error' worthy of counting against the permissible total."); Reply Comments of National Association of Broadcasters, CG Docket No. 05-231, at 6 (submitted Dec. 16, 2005) ("NAB 2005 Reply Comments") (concurring with other comments that establishing non-technical requirements will not yield benefits, but rather "will place 'a huge administrative compliance burden on the FCC, video programmers and caption companies.'"). See also NAB 2005 Comments at 12 (concluding that any perfect-caption requirement might delay or risk important coverage). The ongoing lack of uniformity among non-technical accuracy metrics five years after the *2005 Notice* underscores the implementation and compliance challenges inherent to any non-technical standard. See NAB 2010 Comments at 11-14; compare Comments of Caption Colorado, L.L.C., CG Docket No. 05-231, at 16-23 (submitted Nov. 24, 2010) with Comments of the WGBH National Center for Accessible Media, CG Docket No. 05-231, at 8-10 (submitted Nov. 24, 2010) (detailing competing and complicated potential non-technical guidelines).

errors.<sup>20</sup> In light of these unique challenges, the imposition of subjective qualitative requirements would be particularly burdensome for this type of programming and unlikely to result in any captioning improvements.

Further, any subjective quality standard would increase the risk of arbitrary, inconsistent, or untimely enforcement by the Commission for all types of programming. The FCC would be regularly placed in the difficult position of determining whether a typographical error or misplaced word in one program was better or worse than a similar error in a different context or genre. These types of subjective determinations would likely complicate and protract enforcement proceedings.<sup>21</sup> Meanwhile, conscientious programmers would be forced to make decisions based on potentially ambiguous and changing Commission precedent, and face the risk of forfeitures that would limit support for their overall captioning efforts.

New recordkeeping or audit requirements also would impose complicated administrative burdens on programmers, video programming distributors, and the Commission itself. Indeed, nothing has changed with respect to the cost burdens or minimal benefits of new recordkeeping obligations since the Commission rejected them more than a decade ago.<sup>22</sup> The Commission should reach the same conclusion today, and instead ensure the continued flow of both industry and its own resources to efforts that directly promote quality captions.

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<sup>20</sup> See, e.g., NCTA 2005 Comments at 3-4 (citing [http://main.wgbh/pages/mag/resources/guides/mag\\_guide\\_vol9.html](http://main.wgbh/pages/mag/resources/guides/mag_guide_vol9.html)) (link no longer available); Reply Comments of The Walt Disney Company, CG Docket No. 05-231, at 7 (submitted Dec. 16 2005) (applying non-technical requirements to live programming "would be counterproductive and would only add additional monitoring costs — not to mention fines for an occasional error — to no possible end because the captioners are doing the best they can to prevent human error (which is inevitable)."); NAB 2005 Reply Comments at 6-7 ("Particularly problematic is establishing accuracy rates for real-time captioners."); Comments of Florida Association of Broadcasters, CG Docket No. 05-231, at 5 (submitted Nov. 10, 2005) ("Real time captioning poses unique challenges.").

<sup>21</sup> See, e.g., Comments of California Oregon Broadcasting, Inc., CG Docket No. 05-231, at 4 (submitted Nov. 23, 2010).

<sup>22</sup> See, e.g., *Reconsideration Order*, 13 FCC Rcd at 19993; NCTA 2010 Comments at 9 (noting that reasons expressed in *Reconsideration Order* "remain valid today" and, if anything, the "potential burden has increased").

In sum, the Commission's limited resources are best spent as they are today – informally facilitating resolution of any minor captioning issues that may arise – and taking enforcement action in response to material violations. This will enable the majority of conscientious programmers and video programming distributors to continue fine-tuning their already diligent captioning efforts, while reserving enforcement action for the most serious violations by truly ‘bad actors.’ The resulting benefits will redound to consumers in the form of ongoing improvements and the sustained flow of resources to quality captioning.

### CONCLUSION

The past five years have demonstrated that programmers and video programming distributors remain committed to increasing the quality and quantity of closed captioning available to consumers. The Commission should support these ongoing efforts and decline to impose new and burdensome obligations without corresponding consumer benefits.

Respectfully submitted,

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