

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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

To: The Secretary

**REPLY COMMENTS**

Entravision Holdings, LLC ("Entravision"), the licensee of television broadcasting Stations, nearly all of which operate as Spanish-language broadcast television Stations, by its attorneys, hereby submits these Reply Comments in response to comments filed in the above-referenced proceeding by various broadcasters and interest groups pursuant to the Public Notice<sup>1</sup> issued by the Commission asking parties to refresh the record on pending closed captioning rulemakings<sup>2</sup> Entravision limits these Reply Comments to a single issue, the use of the electronic newsroom technique ("ENT") by television broadcasters in markets outside the top 25 to satisfy closed captioning requirements. Entravision urges the Commission to maintain its existing ENT provisions, as mandating real-time closed captioning across all markets would

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<sup>1</sup> *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning*, Public Notice, CG Docket No. 05-231, ET Docket No. 99-254, DA 10-2050 (rel. Oct. 25, 2010) ("*Public Notice*").

<sup>2</sup> *See Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) ("*2005 Closed Captioning NPRM*"); and *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (2008) ("*2008 Closed Captioning NPRM*"), Erratum, 24 FCC Rcd 8262 (CGB 2009).

impose a devastating economic burden on many broadcasters, including non-network and smaller-market broadcasters and broadcasters providing Spanish-language programming. In support thereof, Entravision states as follows.

Under the Commission's current Rules, network affiliated Stations in the top 25 markets are required to caption, on a real-time basis, all of their news programming, while other Stations are permitted to use ENT to satisfy their closed captioning obligations.<sup>3</sup> In the *Public Notice*, the Commission asks commenters to revisit this rule:

The *2005 Closed Captioning NPRM* also addressed the use of electronic newsroom technique (ENT), and whether the Commission's rules should be revised to disallow the use of this technique for certain television Designated Market Areas (DMAs). We now seek additional comment on these matters, and whether the same rationale that led the Commission to originally permit the use of ENT by some distributors is still relevant.<sup>4</sup>

Entravision submits that the logic behind the Commission's ENT provision remains valid. In the 1997 *Closed Captioning and Video Description of Video Programming* proceeding, the Commission deliberately chose a balanced, pragmatic set of rules, including the ENT provision, over onerous regulatory mandates, such as a one-size real-time captioning requirement. The Commission chose this path in order to promote cost-effective advances in the quantity and quality of closed captioning without overburdening all video programming distributors, including smaller broadcasters.<sup>5</sup> This balanced approach, as exemplified in the Commission's ENT provision, remains "relevant" today, as many local broadcasters, including Entravision, could not take on the cost of real-time captioning without slashing other critical elements of their

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<sup>3</sup> See 47 C.F.R. ¶ 79.1(e)(3).

<sup>4</sup> *Public Notice* at 2-3.

<sup>5</sup> See Report and Order, 13 FCC Rcd 3272, 3278 (1997) ("*R&O*") (balancing need for closed captioned programming against realities of video marketplace, including limited financial resources of video programming providers and limitations on supply of captioners); Order on Reconsideration, 13 FCC Rcd 19973 (1998) ("*Reconsideration Order*") (generally upholding rules against calls for stricter requirements).

operating budgets or foregoing the broadcasting of news, which is a valuable resource for viewers in general and Spanish-speakers, who depend on the Spanish-language television for their news, in particular. While the cost of live captioning services have decreased somewhat, they remain significant, especially for small and mid-sized broadcasters,<sup>6</sup> and broadcasters specializing in Spanish-language programming.

In Entravision's experience, ENT is not a perfect technology, but it is a sound one. ENT converts teleprompter script into captions (it transcribes the exact script, and is thus not subject to the transcription errors of real-time closed captioning).<sup>7</sup> While scripted material covers a the bulk portion of a news broadcast, it does not cover all of it – interviews and late-breaking news, for example, cannot be scripted and included in ENT-based captions. However, these non-scripted elements are often capable of being communicated to deaf or hearing-impaired viewers through alternate methods, such as graphics or by the visuals of the remote itself. In other words, ENT is not ideal, but it is a workable, cost-effective captioning solution that enables the hearing impaired to receive most of the news programming being offered. The Commission should reaffirm down market use of ENT as a fair and sensible compromise – between the needs of the deaf and hearing-impaired community for quality access to local news and programming on one hand, and the financial and technical limits borne by small-to-midsized video programming distributors, including broadcasters, on the other.

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<sup>6</sup> See *Comments of the National Association of Broadcaster*, Docket No. CG 05-231, ET 99-254 (Nov. 24, 2010) ("NAB Comments") at 22 (noting that captioning technology has not advanced significantly since the Commission's 1997 *R&O*, and that small to medium-sized broadcasters often pay more for captioning services than large broadcasters who may receive a bulk discount).

<sup>7</sup> Given the susceptibility of live captioning to transcription errors, it is far from clear how much benefit real-time captioning actually provides. See *Comments of the Radio Television Digital News Association*, Docket No. CG 05-231, ET 99-254 (Nov. 23, 2010) ("RTDNA Comments") at 4 (noting news director's observation that not always a correlation between substantial expense of real-time captioning and the benefit, due to poor quality transcription).

The devastating impact of a prohibition on the use of ENT is made plain in the comments submitted by broadcasters in response to the *Public Notice*. As reported by the Radio Television Digital News Association:

Small and medium market stations still believe that if the requirement for realtime captioning of local newscasts is expanded beyond network affiliates in the top 25 markets, their local news operations will be placed under tremendous financial strain. Most of the stations indicated that they have researched the costs of real-time captioning, with eighty-three percent (83%) of the station's indicating that it would result in more than \$100,000 in additional costs annually and some saying the additional cost could reach almost \$300,000 annually.<sup>8</sup>

And broadcasters are unanimous in their agreement that such costs could be absorbed – if at all – only by making drastic cuts in the production and distribution of local news programming itself. For example, in describing the effects of a live captioning mandate on Station KOB(TV), Medford, Oregon, licensee COBI states as follows:

The unintended consequences of such a requirement could include the elimination of most, if not all, locally produced content including much of the live breaking local news. Such an outcome would create hardships for the poorest citizens – the very people that rely on free television news, information and entertainment.<sup>9</sup>

While proponents of a real-time captioning requirement wish to promote quality access to news programming for deaf and hard of hearing individuals, such a requirement would overburden many already struggling Stations, resulting in less of the very news programming advocates wish to see live-captioned.<sup>10</sup> Further, many broadcasters fear even if they maintain

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<sup>8</sup> RTDNA Comments at 5. *See also Comments of California Oregon Broadcasting, Inc.*, Docket No. CB -5-231, ET 99-254 (Nov. 24, 2010) ("COBI Comments") at 2 (estimating cost of live captioning Station news programming at \$160,000).

<sup>9</sup> COBI Comments at 3.

<sup>10</sup> "RTDNA's members indicate that further limiting the circumstances under which ENT is permissible would result in staff cuts, diminished newsgathering capabilities, fewer local newscasts and even cessation of news operations." RTDNA Comments at 3. *See also* NAB Comments at 24 (eliminating ENT would reduce local programming, contrary to Commission's localism goals).

news programming, that a live captioning mandate would lead to staff cutbacks or the elimination of non-scripted elements which benefit the viewing public.<sup>11</sup>

In its Comments, Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") suggests that costs of real-time closed captioning are sufficiently low that the benefits to deaf and hearing-impaired viewers outweigh the costs to video programming providers.<sup>12</sup> TDI's claims are wide of the mark. TDI's discussion of the falling costs of real-time closed captioning is unilluminating. While TDI cites a significant decrease in hourly captioning rates over the past 14 years,<sup>13</sup> this statistic hardly captures the economic reality of forced real-time closed captioning for small-to-medium broadcasters in markets outside the top 25. As noted above, the current cost of real-time captioning using professional captioners or sophisticated voice-recognition software is beyond the means of all but the most profitable broadcasters, easily exceeding \$100,000 a year.<sup>14</sup> Most small-to-midsize broadcasters could not undertake the expense of real-time closed captioning without making significant cuts in other areas, including the production of local news.<sup>15</sup>

Spanish-language broadcasters such as Entravision face these same pressures, only the logistical and economic burden of real-time closed captioning is even greater for foreign-language Stations, as the closed captioning markets for the Spanish language remains less

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<sup>11</sup> See RTDNA Comments at 5 ("Fifty-five percent (55%) of respondents said their stations would have to at least consider reducing their news staff to cover the expense of real-time captioning, with almost one-third indicating they would definitely reduce their news staff").

<sup>12</sup> *Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al.*, Docket No. CG 05-231, ET 99-254 (Nov. 24, 2010) ("TDI Comments") at 8-12.

<sup>13</sup> *Id.* at 11.

<sup>14</sup> See RTDNA Comments, *supra* at 5.

<sup>15</sup> See COBI Comments, *supra*; RTDNA Comments, *supra*.

developed than for English.<sup>16</sup> In Entravision's experience, fewer closed captioning services are available in Spanish, and the quality of existing is less consistent. Such problems notwithstanding, Spanish-language closed captioning services remain prohibitively expensive. If forced to provide real-time captioning for its local news segments, Entravision's ability to produce and distribute quality local programming would be greatly diminished.

In its Comments, TDI suggests that the exemptions listed in Section 79.1(f) of the Commission's Rules provide an adequate safety net for video programming providers unable to cope with the costs of real-time closed captioning.<sup>17</sup> Contrary to TDI's claims, the case-by-case exemptions listed in Section 79.1(f) do not constitute a suitable substitute for the Commission's bright-line ENT provision.<sup>18</sup> TDI's approach would force financially vulnerable broadcasters to expend scarce funds on exemption requests while simultaneously increasing demand on the Commission's resources, thereby raising administrative costs all around. The safety net TDI offers cash-strapped video programming providers is no safety net at all.

Entravision recognizes the importance of making video programming, including local news, weather and emergency alerts, accessible to deaf and hearing-impaired viewers, and respects the efforts of TDI and the Commission to enhance the quality and scope of closed captioning services. But, as described above, potential gains in the provision of closed captioning services would require substantial investment by small and medium-sized

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<sup>16</sup> See *Comments of Lincoln Broadcasting Company*, Docket No. 05-231, ET 99-254 (Nov. 24, 2010) at 3 (noting that its foreign-language programs could not be aired if they were required to be real-time closed captioned).

<sup>17</sup> See TDI Comments at 12.

<sup>18</sup> Entravision wishes to note that the gross revenue numbers have not been adjusted since they were originally adopted and do not reflect the expense increases that broadcasters are subject to. Entravision believes that maintaining the ENT provision is preferable to adjusting the gross revenue or percentage of gross revenue provisions, though the Commission should also consider making such adjustments as well.

broadcasters, and the bill for such services could only be paid by substantial cuts in other areas of the operating budget, including local news and payroll. Entravision submits that the costs of an across-the-board mandate of real-time closed captioning exceed the benefits. Given the current quality and availability of ENT, and the cost-benefit imbalance of real-time closed captioning, Entravision supports retention of the Commission's existing rules. The perfect should not be the enemy of the good – the existing rules create a fair and efficient system for closed captioning of video programming, while the changes proposed by TDI are overly burdensome and, under current economic conditions, would surely prove counterproductive.

Since its adoption, the Commission's ENT Rule has helped bring closed captioning to hearing-impaired television viewers without shifting an undue burden onto video programming providers. Entravision understands that it is TDI's job not to settle for this achievement. But TDI still has not shown that mandated real-time closed captioning across all markets is necessary, or that it such a burdensome rule would even be effective.<sup>19</sup> In the absence of any demonstrable evidence that the current rules are not a well-crafted response to the needs of the hearing-impaired community and changes are absolutely necessary and will significantly improve closed captioning services, the Commission must not abandon its current rules for a new set of requirements that will significantly raise the costs and impair the ability of smaller broadcasters to operate in service to the public.

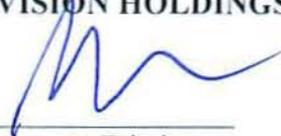
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<sup>19</sup> See RTDNA Comments, *supra* at 4.

Respectfully submitted,

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By: \_\_\_\_\_



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