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April 15, 2011

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, CG Docket No. 05-231

Dear Ms. Dortch:

On April 4, 2011, Jim House of TDI, Inc., Cheryl Heppner of the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, Lise Hamlin of the Hearing Loss Association of America, Shane Feldman of the National Association of the Deaf (collectively "*TDI et al.*") and Angela Campbell, Adrienne Biddings and Chris Bolyai of the Institute for Public Representation at Georgetown Law met with Rosemary Harold, Tom Curtin and Kata Kertesz of the Office of Commissioner Robert McDowell, to discuss issues related to the above-referenced proceeding.

*TDI, et al.*, urged the Commission to complete the rulemaking in CG Docket 05-231 and adopt quality standards for the closed captioning of video programming on television. Six years have passed since the commission first promulgated a Notice of Proposed Rulemaking. While the docket has languished, captioning quality has continued to diminish. As a result, much of the television programming that is aired is inaccessible to the deaf and hard of hearing.

*TDI et al.* explained how members of the deaf and hard of hearing community described many current issues that are affecting captioning quality. Much of the broadcast industry has chosen to adopt inferior, and cheaper, captioning methods that result in garbled or inaccurate captioning transmissions. In addition, requirements that captions are passed on through each step of the broadcast chain are not enforced and often programs are paired with no captioning at all. This poor captioning affects not only the deaf and hard of hearing, but the millions of people who use captioning as a way to learn English as their second language.

*TDI et al.*, noted how the lack of captioning standards has also created a significant road block as the Commission moves forward with captioning of internet programming, as required

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by the Twenty-First Century Communications and Video Accessibility Act of 2010. *TDI, et al.*, emphasized that without action by the Commission, bad captioning quality would be simply transferred to the internet without improvement. They urged the Commission to act soon in order to ensure that captioning standards for television are in place before Internet rules are adopted. *TDI et al.*, left behind the attached fact sheet and article detailing more of their concerns regarding captioning.

Respectfully submitted,

/s/

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cc: Rosemary Harold

Attachment: Closed Captioning Fact Sheet  
Article -“Petition to FCC on Captioning Quality Issues”

## **Closed Captioning Issues before the FCC**

TDI, along with several national and state organizations representing the interests of 36 million deaf and hard of hearing members of the public, seeks Commission action to improve closed captioning requirements and ensure true accessibility to television programming. The Telecommunications Act of 1996 mandated full accessibility of video programming for the deaf and hard of hearing. Yet, the Commission's 1997 and 1998 regulations implementing closed captioning requirements lacked quality standards and created exemptions allowing large amounts of programming to go uncaptioned. In addition, changed circumstances, including the dramatic decrease in the cost of closed captioning, requires the reevaluation of several of the exemptions. TDI requests the Commission take the following actions:

### **(1) Complete Rulemaking in CG Docket No. 05-231**

*In 2004, TDI filed a Petition for Rulemaking seeking several changes to the closed captioning rules. The Commission issued a NPRM in 2005 and a FNPRM in 2008. In 2010, the Commission issued a Public Notice seeking to refresh the record on the pending Proposed Rulemakings. The Commission should:*

#### **Establish Quality Standards**

- ❖ Current rules have failed to ensure high-quality captioning; the Commission should 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

#### **Disallow the Electronic Newsroom Technique as a Compliant Form of Captioning**

- ❖ By not captioning critical programming like breaking news, weather updates, live reports and other emergency information, the exemption risks the public safety of deaf and hard of individuals

#### **Remove or Modify the \$3 Million Revenue Exemption**

- ❖ The dramatic reduction in the cost of captioning necessitates the removal or lowering of the revenue threshold; if continued, each TV broadcast station's digital allotment should be considered one channel

### **(2) Grant Application for Review of the Anglers for Christ Ministries Order**

*In 2006, The Chief of the Consumer and Government Affairs Bureau effectively created a new exemption for non-profit organizations. The Commission should:*

- ❖ Grant TDI's pending 2006 application for review, which made clear that the order violated the Administrative Procedure Act

### **(3) Seek Comment on TDI's 2011 Petition for Rulemaking**

*In January 2011, TDI filed a Petition for Rulemaking asking the Commission to address several closed captioning exemptions, which continue to exempt large swaths of programming from captioning requirements. The Commission should:*

#### **Remove the Late Night Programming Exemption**

- ❖ Current viewing patterns and expanded programming, including early morning newscasts, have resulted in larger audiences than anticipated; the exemption undermines incentives to caption by creating an outlet for non-captioned programming

#### **Remove the Commercials and Promotionals Exemptions**

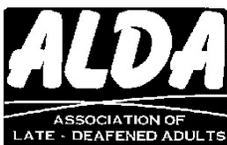
- ❖ Market incentives have not encouraged voluntary captioning resulting in diminished access to political and commercial expression

# Petition to FCC on Captioning Quality Issues

By James D. House

## National Organizations Collaborate with TDI on Captioning Quality Issues

*Eight Years after the Telecommunication Act of 1996, Gaps Remain in Analog and Digital Captioning*



Responding to chronic problems with captioning on broadcast and cable television, Association of Late-Deafened Adults (ALDA), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), National Association of the Deaf (NAD) and Self-Help for the Hard of Hearing People (SHHH) have joined forces with TDI to file a petition to the Federal Communications Commission (FCC), asking that the FCC address long-standing quality issues in closed captioning of all broadcast, cable and satellite television programming for viewers who are deaf, hard of hearing or late-deafened.

On the heels of the Americans with Disabilities Act, the Television Decoder Circuitry Act of 1990 was enacted fourteen years ago. This Act has inserted decoders into virtually every home in the country with TV sets 13" or larger. In addition, Section 713 of the Telecommunication Act of 1996 currently requires that 75% of all new programming be captioned, which will go up to 100% of all new programming in 2006.

Closed captioning is critical to deaf and hard of hearing individuals, both for personal safety, education, and with respect to quality of life. Individuals who rely on closed captioning in order to have access to video programming continue to experience numerous problems with the captioning quality. This has resulted in a

lack of access to video programming that is contrary to the mandates of the Telecommunications Act. The FCC's adoption of the captioning rules was the first step towards increasing the availability of captioned programming. 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 FCC also must adopt quality of service standards in order to ensure that video programming is fully accessible to all viewers who rely on captioning.

"When the FCC implemented the original captioning regulations, the purpose was to get captions on the TV screen. We now ask that the FCC expand on its commitment to monitor and enforce acceptable quality TV captioning", says Claude Stout, Executive Director of TDI. Stout adds, "We also ask that the FCC ensure that timely communication and resolution on captioning issues occur by quickly working in concert with consumers, captioning providers, and program producers and distributors."

"Deviation of accuracy and synchronization between the spoken word and captions presented on the screen is especially noticeable to people who once enjoyed sound", comments Lois Maroney, President of the Association of Late-Deafened Adults, Inc. "It is frustrating to misinterpret important parts of television programs because captions are lacking in quality."

"A TV program where the captioning is too riddled with errors to understand the action, or the captions are cut off in the final minutes so you never know what the ending was, shouldn't be considered acceptable for meeting the captioning requirements," said Cheryl Heppner, Vice Chair of Deaf and Hard of Hearing Consumer Advocacy Network. She adds, "We have seen programs that are virtually unreadable. Other programs have captioning dropped several minutes before the end of the show, leaving us hanging high and dry, wondering what happened at the end."

“Captioning must be treated with the same respect as sound”, emphasized Nancy Bloch, CEO of National Association of the Deaf. She adds, “A viewer who can hear would never accept spoken words that are regularly unintelligible or missing and sound that suddenly stops. Nor would their attempts to call and inform the station of a problem be treated as having no sense of urgency.”

“As we approach the 100% benchmark, captioning quality issues are becoming more apparent”, says Brenda Battat, Senior Director of Policy and Development at Self Help for Hard of Hearing People. Ms. Battat also points out, “Some programs have been listed as being captioned in the newspaper, but this often turns out not to be the case. The petition aims to address those issues and more.”

On July 23, 2004, four national organizations joined TDI in filing a Petition for rulemaking. Specifically, the Petitioners request that the FCC should perform the following actions:

- Establish additional compliance and enforcement measures including the creation of a database with updated contact information for video programming distributors and providers, and the creation of a standard captioning complaint form.
- Establish compliance-reporting requirements and should undertake compliance audits to ensure effective implementation of the captioning requirements and to improve accountability.
- Revise its complaint rules to require responses to consumer captioning quality issues not directly tied to benchmark compliance within 30 days.
- Establish fines/penalties for non-compliance with the captioning rules.
- Require continuous monitoring of captioning by the video programming distributor or provider to ensure that technical problems are remedied promptly and efficiently.
- Require video programming distributors to reformat edited or compressed captioning.

- Require that for a program to be considered “captioned” under the existing rules, it must meet minimum standards set by the FCC for completeness, accuracy, readability and synchronicity with the audio portion of the program.
- Adopt non-technical quality standards to ensure that video programming is “fully accessible” to deaf and hard of hearing individuals.

**RESULT** In conjunction with its petition, TDI plans to meet with representatives of the broadcast, cable, and satellite television industries to encourage their memberships to undertake enhanced efforts to provide quality captioning. American Association of People with Disabilities (AAPD) has affirmed their support of this Petition.



### AAPD Lends Support to TDI Petition

American Association of People with Disabilities (AAPD), the leading consumer organization for 58 million Americans with disabilities has united with the growing ranks of television viewers calling for better captioning quality on television programming. AAPD joins a cadre of organizations serving Americans who are deaf or hard of hearing, Association of Late-Deafened Adults (ALDA), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the National Association of the Deaf (NAD) and Self-Help for the Hard of Hearing People (SHHH).

“The FCC needs to make it fully clear that provision of inferior quality of captioning is discriminatory and exclusionary,” says Andrew J. Imparato, AAPD President and CEO. “The FCC must emphasize clearly that full access to television for all viewers is a top priority.”

## Excerpts from the Captioning Petition

### Captioning Mandates Under Section 713 of the Communications Act & Current Captioning Rules

#### 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 Federal Communications Commission (“FCC”) 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.

In a Report and Order released in August 1997, the FCC 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). Pursuant to the FCC’s subsequent *Order on Reconsideration*, as of January 1, 2006, 100% of video programming distributors’ new non-exempt programming must be closed-captioned. The FCC established a ten-year transition period for pre-rule programming, requiring that at least 30% of a channel’s pre-rule programming be captioned beginning on January 1, 2003, and 75% of all pre-rule programming delivered to consumers must be captioned as of January 1, 2008 and thereafter.

The FCC 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.

#### Current Complaint Procedures

With respect to enforcement, the FCC 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 complaint 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 FCC until 30 days after the time allotted for the video programming distributor to respond has ended. As a result, based on communications Petitioners continue to receive from deaf and hard of hearing individuals, consumers continue to be extremely frustrated in their efforts to resolve captioning problems in an efficient and expeditious manner. It is also very 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. In the vast majority of cases, it is impossible for a television viewer of captions to independently determine the root cause of the problem. To compound problems, video programming distributors and providers often point fingers at one another and send the complainant on an often fruitless paper chase without making much (or any) effort to assist in remedying the captioning problems.

### **Benchmark Captioning Audit Reports**

The current captioning rules also do not require video programming distributors or providers to file with the FCC benchmark compliance audit reports. The absence of such reporting and record-keeping requirements make it impossible for deaf and hard of hearing individuals or the FCC 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.

### **Technical Quality Standards**

While the rules require video programming distributors to pass through captions of already captioned programs, and require basic technical compatibility,

the rules do not include an effective mechanism for ensuring that video programming distributors and providers continuously monitor captioning and engineering equipment in order to avoid the occurrence of technical captioning problems in the first instance. 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). The rules currently also do not require that edited or compressed captioned programming be reformatted in order to make the cap-

<b>New Programming Benchmarks</b>		
<i>Year</i>	<i>Hrs/Ch/Qtr</i>	<i>Percentage</i>
2000	450 hrs	25%
2002	900 hrs	50%
2004	1,350 hrs	75%
2006	1,800 hrs	100%
<b>Pre-Rule Programming Benchmarks</b>		
2003	500 hrs	30%
2008	1,350 hrs	75%
<b>Spanish Programming Benchmarks</b>		
<i>Year</i>	<i>Hrs/Ch/Qtr</i>	<i>Percentage</i>
2001	450 hrs	25%
2004	900 hrs	50%
2007	1,350 hrs	75%
2010	1,800 hrs	100%
<b>Spanish Pre-Rule Benchmarks</b>		
2005	500 hrs	30%
2012	1,350 hrs	75%

tions accessible to deaf and hard of hearing individuals (except where required in order for a distributor to meet its benchmark hours).

### **Non-Technical Quality Standards**

The FCC's rules currently do not include non-technical quality of service standards. The FCC 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. More than five years have passed since the FCC'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 FCC 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 FCC 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.

### ***I. The FCC Should Establish Additional Compliance and Enforcement Measures***

Petitioners applaud the FCC'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 FCC's captioning rules, additional enforcement and compliance measures must be adopted.

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

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

In order to ensure the effective implementation of the captioning mandates, Petitioners propose that the FCC establish procedures to make reliable contact information readily available to captioning consumers. Specifically, Petitioners propose that the FCC require all video programming providers and distributors to provide the FCC with (and to post on their websites) the complete contact information for the person(s) responsible for addressing captioning complaints and resolving captioning problems, including the name, address, TTY/toll-free telephone number, facsimile number, and

E-mail address. The FCC also should establish an ongoing requirement that video programming distributors and providers update the contact information within 7 days of any changes.

The FCC should maintain video programming distributor and provider contact information (and updates thereto) on its website. The FCC also should include on its website the name(s), address, TTY/toll-free telephone number, facsimile number, and E-mail address for the FCC contact person(s) responsible for addressing captioning complaints. In addition, the FCC should require video programming distributors that send bills to customers to include on consumer bills (or via bill inserts) specific contact information for 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).

## **2. Captioning Complaint Form**

In order to enhance the enforcement/complaint procedures set forth in the captioning rules and in turn, better ensure implementation of the captioning requirements, the FCC 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. (form is provided at end of the excerpts.)

### ***B. The FCC 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 FCC previously elected not to establish specific record-keeping and public reporting requirements applicable to video programming distributors and providers. 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 FCC itself to monitor compliance with the captioning rules. Specifically, the FCC should revise the captioning rules to require video programming distributors and providers to file with the FCC (and to make available on their websites) captioning compliance reports, on a calendar quarter basis, within 30 days following the end of the previous calendar quarter, to be maintained and accessible on the FCC's website. 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 consistent effective enforcement and accountability throughout the video programming industry.

#### ***2. Benchmark Compliance Audits***

In addition to establishing compliance reporting requirements as discussed above, the FCC 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.

At the time when the FCC elected not to adopt benchmark compliance reporting requirements, it stated that it would conduct such compliance audits. However, Petitioners are unaware of any FCC actions to conduct such audits. The lack of compliance audits and compliance reporting requirements seriously undermines enforcement of the captioning rules, and in turn undermines the effectiveness of the captioning rules overall.

#### ***C. The FCC Should Revise its Complaint Rules to Require Responses to Consumer Complaints Regarding Captioning Quality Issues (and Other Issues Not Directly Tied to Bench-***

#### ***mark 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 1st, and immediately thereafter files a written complaint with the relevant video programming distributor, the video programming distributor is not required to respond until May 15th.

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 FCC 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.

#### ***D. The FCC 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 Communications Act, the FCC should establish additional enforcement measures, including punitive measures such as specific fines, for noncompliance with the FCC's captioning rules. Specifically, Petitioners propose that the FCC

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 FCC'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. (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.) 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.

## ***II. The FCC 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 FCC 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). However, in light of reported problems with captioning not being transmitted properly, the FCC stated that it would "adopt and enforce a rule to ensure that captioned programming is always delivered to viewers complete and intact. Petitioners applaud the FCC's decision to extend the requirements of 76.606 to apply to all video programming providers, regardless of distribution technology. 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.

Unfortunately, based on the communications Petitioners continue to receive from deaf and hard of hearing individuals regarding problems with captioning technical quality, such technical problems (including, but not limited to the same problems highlighted in the 1997 Report and Order) still 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). Accordingly, the FCC 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 based on the personal experience of Petitioners' own principals) include the following:

1. Captions are turned off ten minutes before the end of national network programming.
2. Captions disappear one hour into a two-hour movie.
3. Captions are absent although listed on TV programming schedules as having closed captions.
4. Captions are illegible; include white boxes, and overtypes.
5. Captions appear on a national program in one locality, but not another.

6. Captions are missing from repeats of previously aired captioned programming or have scrambled and unreadable captions.

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 FCC 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, as discussed above, the process is onerous, lengthy, and rarely (if ever) results in the prompt and efficient resolution of a captioning technical problem. 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.

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). 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.

The FCC should clarify and confirm that its captioning rules require video pro-

gramming 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 FCC 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.

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

The FCC previously elected not to require video programming distributors to reformat captioned programming that has been edited or compressed. However, the FCC 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. In the Order on Reconsideration, the FCC 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). However, the FCC clarified that as the benchmarks increase, distributors will have to reformat the captions to comply with the rules.

The FCC reasoned that by giving distributors until 2006 to gradually begin to reformat edited/compressed programming as required in order to meet the benchmark levels, distributors would then have the procedures in place to undertake reformatting in all cases as of January 1, 2006. Petitioners respectfully submit that, to the contrary, if distributors essentially 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. In addition, ... technology has progressed to the point that it is not problematic or cumbersome for providers to be required to caption edited or compressed programming. Moreover, Petitioners submit that the FCC 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 programming as required by Section 713 of the Communications Act.

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

Under the FCC’s current rules, to the extent technical problems occur which result in programs that were already cap-



tioned 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 FCC 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.

A rule clarifying that garbled, incomplete and/or missing captions during the whole or any portion of programming does not qualify as captioned programming 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 FCC’s Rules***

The FCC 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 FCC’s rules. Therefore, Petitioners ask that the FCC extend the prohibition of counting “electronic newsroom technique” programming towards meeting compliance standards to markets beyond the top 25 DMAs.

### ***III. The FCC 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***

The same types of captioning quality problems (both technical and non-technical) that occurred in 1995 when the FCC opened its NOI proceeding still continue to occur. When the FCC released its *Report and Order* and its *Order on Reconsideration*, the FCC 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. However, the FCC recognized that “[i]nherent in a captioning obligation is the possibility of some definition of a minimal level of quality necessary to demonstrate compli-

ance with the requirement. Thus, we believe that it is well within the FCC's discretion to now adopt rules, standards, or guidelines that address these matters."

In deferring adoption of non-technical captioning quality standards, the FCC 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.

While the FCC reasoned that market incentives could address non-technical quality without the need for quality standards, the FCC also emphasized that it would revisit the need for adopting non-technical quality standards during the phase-in period if warranted. The FCC 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 our rules. If, after a period of experience, it becomes apparent that quality levels are unsatisfactory, we can revisit this issue."*

Now is the time for the FCC 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 FCC 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 prob-

lems 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 are a list of captioning mistakes that were recently reported within a one-hour pre-produced program on the Discovery Channel entitled "Living with Tigers":

*"scam bellowed" for "scrambled"*

*"kept tracks" for "skeptics"*

*"rye no" for "rhino"*

*"peddle to the medal" for  
"pedal to the metal"*

*"posse cat" for "pussy cat"*

*"what terry" for "watery"*

*"surface" for "suffer"*

*"offence" for "fence"*

*"carin" for "carrion"*

*"exceed them" for "see them"*

*"repaired" for "prepared"*

*"plans" for "plains"*

*"foul" for "fowl"*

*"adopt" for "adapt"*

In particular, the FCC should consider and examine the feasibility of adopting the following captioning non-technical 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<sup>1</sup>; 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 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 FCC 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. (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.) and
- (d) Closed captioned master tapes used for duplication should be labeled as such (e.g., "cc") as they move through the distribution chain.

#### ***IV. 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 FCC 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.

In creating its closed captioning rules, the FCC 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. 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 FCC 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 FCC 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 FCC will better implement the requirements of Section 713 and thereby increase the overall availability of, and quality of, video programming captioning.

## Sample TV Captioning Complaint Form

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

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

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

Phone Number: \_\_\_\_\_ [ ] TTY [ ] Voice

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

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

When did you have this captioning problem? Date \_\_\_\_\_

Which TV program were you watching that had the problem?  
\_\_\_\_\_

Program was on: TV Station: \_\_\_\_\_

Cable Company: \_\_\_\_\_

Channel: \_\_\_\_\_

Satellite provider: \_\_\_\_\_

Program ran from \_\_\_\_\_ PM / AM to \_\_\_\_\_ PM / AM

Captioning problem occurred around on \_\_\_\_ PM/AM and ended on \_\_\_\_ PM/AM

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) \_\_\_\_\_  
\_\_\_\_\_