



January 17, 2014

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

Re: Notice of Ex Parte Communication, CG Docket No. 05-231

Dear Ms. Dortch:

Yesterday, Justin Faulb, Jane Mago, Kelly Williams and the undersigned of the National Association of Broadcasters (NAB), along with Kathleen Kirby, Partner, Wiley Rein, LLP, met with Aaron Garza, Eliot Greenwald, Gregory Hlibok, Kris Monteith, Suzanne Rosen Singleton, Karen Peltz Strauss, and Caitlain Vogus of the Consumer and Government Affairs Bureau; Diana Sokolow of the Media Bureau and Susan Aaron (via teleconference) of the Office of the General Counsel. Additionally, Justin Faulb, Kelly Williams, Kathleen Kirby, Jack Goodman of the Law Offices of Jack N. Goodman, and the undersigned met with Maria Kirby, Legal Advisor to Chairman Wheeler.

The purpose of the meetings was to discuss closed captioning quality on television.<sup>1</sup> Specifically, we continued our discussion on the use of Electronic Newsroom Technique (ENT). Broadcasters share a common goal with the Commission and other stakeholders to improve access to news services for all Americans, including those with disabilities. The ability to continue to utilize ENT, particularly in medium and small markets, is of critical concern to broadcasters, both in terms of cost considerations, which are relatively fixed, regardless of market size, and the challenges associated with securing quality real-time captioners.<sup>2</sup>

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<sup>1</sup> See Comments of the National Association of Broadcasters In the Matter of Closed Captioning of Video Programming, CG Docket No. 05-231, Nov. 10, 2005 at 10-15 (NAB Comments) ; see *also* Reply Comments of the National Association of Broadcasters, CG Docket No. 05-231, Dec. 16 2010 at 5-10.

<sup>2</sup> See NAB Comments at 6-9; NAB Replies at 11-15; see *also* In the Matter of 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, Reply Comments of NAB, Dec. 9, 2010 at 2-6.

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In response to our January 8 staff meeting, we had informally surveyed several television station groups to obtain additional information concerning how ENT systems are currently deployed and utilized. Our findings are detailed below:

### Technology

Based on improvements in technology and fuller utilization of ENT, the majority of content contained in a local newscast can be captioned using existing ENT equipment without significant additional cost, or ramp-up time. There may be breaking news or live interview segments that are not readily captioned, but pertinent information typically is provided in summary form in crawls or otherwise in the lower third of the screen and follow up reports may be captioned. ENT has the added benefit of improved accuracy and no latency.

Stations primarily use one of three newsroom management systems to produce ENT captions: 1) Associated Press ENPS ; 2) Avid iNEWS; and 3) Comprompter. Stations also reported there is no real variance in ENT captioning capabilities among the three systems. All have the ability to send text data to a CC encoder based on the teleprompter rate, as well as the ability to allow a station to fill in unscripted portions of a program with text. Generally, there is no difference in the type of equipment utilized based on market size. Station groups typically utilize the same system in each of their markets, but may have “inherited” different equipment as the result of acquisitions. ENPS appears to be the most widely deployed system, and its capabilities extend beyond ENT captioning to news production and archiving for multiple platforms. Costs for the most widely used system, ENPS, vary between \$1,200 and \$2,500 per month depending on amount of news produced and additional features added (improved captioning ability does not appear to come at an additional cost). Some stations reported that they do have older equipment, but software upgrades are available for relatively nominal cost.

Stations reported that scripts can and are updated within newscasts with relatively minimal lead time (for newer systems, within approximately five seconds and with older systems, generally within 30 to 45 seconds). Scripts are often added, deleted, or updated during the course of any given news program. That said, many stations do not have trained staff or protocols in place to maximize ENT capabilities. Depending on the size of the station staff, there may or may not be someone dedicated to managing script updates.<sup>3</sup>

### Local News Structure and Captioning

In discussing local news formats with station groups, it quickly became clear that there is no “typical” structure for local newscasts. Time devoted to various segments and how they are ordered varies greatly between stations, between markets and between days, depending on a multiple of variables. Simply stated, the news is inherently flexible to be responsive to newsworthy events of interest to the local community. Currently, most anchor dialogue, lead-

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<sup>3</sup> We note that there may be some stations that were not surveyed that may need additional time or consideration for implementing so-called “improved or enhanced ENT” because of equipment-related issues.

ins, etc. are scripted and the anchors generally stick to the script (with occasional banter). With respect to so-called “gaps” in ENT captioning, we learned the following: *Weather* Whether or not weather is scripted varies by station. Many reported that because they are preparing scripts for use on the web or for other platforms (e.g., radio), these scripts could readily be updated and entered into the ENT system. Because of the logistics surrounding meteorologist reports, weather persons may not always be able to follow prompter text verbatim, but all pertinent information (such as forecast information) is contained in the text entered into the prompter.

#### *Live: Breaking News, On-the-Scene, Interviews*

Many stations script live stand-ups from the field, depending on their nature. When a crew is sent out to a highway multiple car crash, for example, where details are sketchy and news is breaking, the reporter might speak to what he or she is seeing, and the segment would not be scripted/captioned. Most stations would highlight pertinent information with crawls or text in the lower third (and would also detail emergency information pertinent to the issue as required in the rules per 47 C.F.R. § 79.2). However, if the program is sent back to the studio and then returns to the scene of the car crash to cover the event, current ENT technology allows for reporters in the field to script their next segment and send that back to the studio provided an internet connection is available, and that next stand up will be captioned. While not all stations have made such scripting part of their protocol, it appears that, with certain training and changes to the way a newscast is produced, this could become a more common practice.

Live interviews, whether in-the-field or in-studio however, present challenges. Questions are scripted, but answers are not for obvious reasons. Often stations pre-record certain interviews and the resulting scripts are placed in the ENT system prior to broadcast. In other cases, pertinent information from the interviewee typically is provided using crawls or text in the lower third.

#### Sponsorship and Hybrid Captioning

Stations all reported that they have made significant attempts over the past decade to find sponsors for real-time captioning of local news (in markets of all sizes). Given the finite nature of local advertising dollars, most have been unsuccessful or the sponsorship fails to cover a substantial part of the captioning cost.

We also asked stations about the possibility of switching between ENT and live captioning during a given local newscast. Most reported that this is an involved technical process that would result in confusion in the on-air display (as live-captions would not be in sync with ENT captions) and thus would not be a practical option.

We also note that that not all stations have live captioners “on call” to satisfy 47 C.F.R. §79.2 (emergency information) but instead rely on open captions or crawls and text in the lower third. This practice is not linked to market size, and has resulted not only because of cost considerations but also because local stations have found that the on-call captioning service is unreliable in times of emergency and otherwise (connections fail, or captioners miss assignments). Moreover, because it often takes 20 minutes or more to get a captioner online for emergency assignments, to have a captioner on standby for “breaking news” would require

a station to secure the services of a captioner at a rate for the entire newscast regardless of how much content actually is live-captioned. Stations also indicated that it is unrealistic at this point to suggest that sufficient captioners are available to fulfill this “standby” pool role, and that given the economic and synchronization challenges, a hybrid of captioning types within programming is not a viable option.

Turning our attention to the constructive feedback the Bureaus and the Office of General Counsel have offered for our “best practices” draft, we are resubmitting a revised version for the Commission’s consideration. Many of the permissive elements have been removed and we have added a commitment on the part of the National Association of Broadcasters to include ongoing training as well as convening of stakeholders to regularly evaluate the improved ENT process.

Again, we specifically propose that the Commission adopt a “safe harbor/deemed in compliance” model as per the Commercial Advertisement Loudness Mitigation (CALM) Act Report and Order for stations that opt to continue to utilize ENT. See 26 FCC Rcd. 17222, 17241 (rel. Dec. 13, 2011). To that end, we submitted for consideration Electronic Newsroom Technique Best Practices (please see attached).

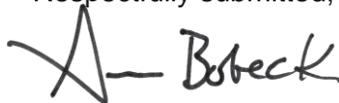
What is critical to this discussion, and the revised best practices, is that broadcasters are committed to “closing the gaps” in scripting to the best of their ability.

We view these steps not only as a means to improve the viewer’s experience, but also as metric by which the Commission could then set a reasonable date to examine whether communities are qualitatively better served by improved ENT.

We thank the Commission staff for their continued efforts to balance all interests to work towards practical solutions to increase caption availability and quality.

Please direct any questions regarding these matters to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ann West Bobeck". The signature is stylized with a large, sweeping initial letter.

Ann West Bobeck  
Senior VP and Deputy General Counsel  
Legal and Regulatory Affairs

Enclosure

cc: Maria Kirby

## Electronic Newsroom Technique Best Practices

- Currently, the FCC’s prohibition on the use of Electronic Newsroom Technique (ENT) is limited to the Top 25 television markets as defined by Nielsen’s Designated Market Areas (DMAs). See 47 C.F.R. § 79.1(e)(3).
- Local broadcasters are concerned that a phase-out of the use of ENT in DMA markets outside the Top 25 would result in a loss of diverse and competitive local news programming. In particular, small and medium market stations may not be able to procure real-time captioners or absorb exponentially increased costs (real-time captioning costs remain generally fixed regardless of market size), resulting in reduction or elimination of local news programming. *Moreover, the risk of cancelled newscasts would not likely be outweighed by any significant benefit to viewers.* Real-time captioning of live-programming is subject to human error, and is commonly less accurate and complete than ENT captions derived from scripts. In addition, real-time captioning has significant latency problems, while ENT captions are better synced with the audio of news programming.
- We strongly believe that, given the current state of captioning technology, a solution that offers broadcasters the flexibility to use news production/captioning systems that are already in place would best serve both the Commission’s and the public’s objectives. First, because ENT systems already are deployed at station facilities, there would be no significant ramp-up time in implementing best practices that will result in fewer gaps in local news content that is captioned. Second, the use of scripted programming can be universally expanded to ensure that most in-studio programming, such as weather, sports, news and entertainment, and some remote programming, are made more accessible without extraordinary cost. Third, such a solution would avoid inevitable problems that would either prevent medium and smaller market stations from implementing live captioning, most notably the recognized shortage of quality real-time captioners. Finally, the captions created using scripted news and ENT result in a better quality product.
- We propose that the Commission adopt a “safe harbor/deemed in compliance” model as per the Commercial Advertisement Loudness Mitigation (CALM) Act Report and Order for stations that opt to continue to utilize ENT. See 26 FCC Rcd. 17222, 17241 (rel. Dec. 13, 2011).

- Broadcast licensees would be deemed in compliance/safe harbor for use of ENT if the following conditions are met:
  - In-studio produced programming will be scripted. These scripted elements will include in-studio news, sports, weather, and entertainment programming.
  - For weather interstitials where there may be multiple segments within a news program, weather information explaining the visual information on the screen and conveying forecast information will be scripted, although the scripts may not precisely track the words used on air.
  - Pre-produced programming will be scripted (to the extent technically feasible).
  - If live interviews, live on-the scene and/or breaking news segments are not scripted, stations will supplement them with crawls, textual information, or other means (to the extent technically feasible). These deemed in compliance/safe harbor provisions do not relieve stations of their obligations to comply with requirements regarding the accessibility of programming providing emergency information under 47 C.F.R. § 79.2.
  - Stations will provide training to all news staff on scripting for improving ENT.
  - Stations will appoint an "ENT Coordinator" accountable for compliance.
  
- The National Association of Broadcasters (NAB) pledges to support local television stations with training resources and programs targeted to improve ENT. Additionally, NAB pledges to work with all interested stakeholders to collaboratively assess the use of improved ENT on an ongoing basis.
  
- We believe that preserving stations' ability to use ENT with certain enhancements would not only be the best means through which to improve the viewer's experience, but also serve as a metric by which the Commission could then set a reasonable date to examine whether communities are qualitatively better served by improved ENT.