



January 23, 2014

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

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

Dear Ms. Dortch:

This letter is in response to a telephone conversation today between Karen Peltz Strauss of the Consumer & Governmental Affairs Bureau (CGB) and the undersigned discussing closed captioning quality on television,¹ particularly 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 in medium and small markets is of critical concern to broadcasters, due to cost considerations, which are relatively fixed regardless of market size, and the challenges associated with securing quality real-time captioners.²

Again, we propose that the Commission adopt a “safe harbor/deemed in compliance” model similar to that implemented in the Commercial Advertisement Loudness Mitigation (CALM) Act Report and Order for those stations that continue to utilize ENT. See 26 FCC Rcd. 17222, 17241 (2011). To that end, we have previously submitted for consideration Electronic Newsroom Technique Best Practices (“ENT BPs”), an additional copy of which is attached.

The staff requested that broadcasters propose an enforcement ladder for the FCC to use in the event CGB receives complaints evidencing a “pattern or trend” of noncompliance with ENT BPs. We propose:

¹ 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, 2005 at 5-10 (NAB Replies).

² 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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Enforcement Measures

To avail themselves of the “safe harbor/deemed in compliance” standard that would permit continued use of ENT, a station would be required to certify good faith compliance with the ENT BPs. Such certification would protect the station against fines, forfeitures or other penalties in the event the station is subject to one or more complaints about alleged failure(s) to comply with the FCC’s Caption Quality Order.

If the FCC reports to a certifying station an apparent “pattern or trend” of noncompliance with the ENT BPs, the station must respond to the FCC within 30 days regarding such alleged failures, and cite corrective measures it has taken to correct any such failures (including measures a station may have undertaken in response to informal inquiries from viewers). No additional FCC action would be taken.

If, despite these corrective measures, the FCC communicates to the station further evidence of an apparent “pattern or trend” of noncompliance with the ENT BPs, a station would be required to present to the FCC within 30 days of receiving such communication a specific action plan to bring the station’s ENT performance up to industry standards. Action plans could include, for example, training of station personnel, more prominent reminders of the necessity for accessibility, and/or if appropriate, improved equipment. Stations also would be required to conduct spot checks of their ENT performance and report to the FCC on those results 180 days after submission of the action plan.

If subsequent to the implementation of the action plan (and the 180 day report on its impact), the FCC presents continued evidence of an apparent “pattern or trend” of noncompliance with the ENT BPs, CGB would refer the station to the Enforcement Bureau for appropriate action, potentially including admonishments, forfeitures or other corrective actions.

Finally, if a station that has been subject to a formal Enforcement Bureau proceeding continues to violate the ENT BPs, the FCC may revoke that station’s entitlement to the ENT “safe harbor.”

Pattern of Complaints

No complaints shall be forwarded to a station unless they contain sufficient specific information, including:

- The television channel number, call sign and network;
- The name of the subscription service, if relevant;
- The date and time when the captioning problem occurred;
- The name of the program with the captioning problem;
- A detailed description of the captioning problem, including specifics about the frequency and type of problem (e.g., garbling, captions cut off at certain times or on certain days, accuracy problems).

The complaints supporting a “pattern or trend” of alleged noncompliance shall each meet these standards of specificity.

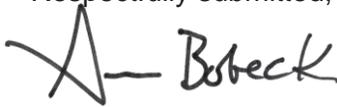
Marlene H. Dortch
January 23, 2014
Page 3

Broadcasters strongly believe that the ENT BPs, coupled with this detailed enforcement regime, will improve the consumer experience much more effectively than a phase-out of ENT. The Commission should adopt this "safe harbor/deemed in compliance" approach and evaluate its effectiveness in the marketplace before any consideration of the elimination of ENT use in medium and small markets.

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, looped initial "A" and a long horizontal stroke extending to the right.

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

Enclosure

cc: Maria Kirby
Kris Monteith
Karen Peltz Strauss
Eliot Greenwald

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.