Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CGB Docket No. 05-231

COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association ("NCTA") submits these comments on the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding. The Further Notice seeks comment, among other things, on issues related to responsibility for caption quality. Regardless of which entity is ultimately held responsible for compliance, the Commission should adopt a "compliance ladder" that focuses on problem solving and remediation by responsible entities, rather than on initiating enforcement proceedings.

DISCUSSION

The cable industry is committed to advancing the common goal of providing good quality captions to viewers. However, even with renewed industry focus on quality issues, problems can occur that affect caption quality at numerous points along the chain from when captions are first created to when they are viewed by a consumer. Live captioning by its very nature cannot be error-free. Captioning of pre-recorded programming, while not as error-prone as live captioning, may contain occasional mistakes.[1] The Caption Quality *Report and Order* extends the informal complaint process (with beneficial improvements requiring the submission of more specific information) to the new caption quality requirements, noting that "in the past, the informal

[1] *See Closed Captioning of Video Programming, CG Docket No. 05-231 (Feb. 24, 2014)* at ¶ 36 n. 149 ("*Report and Order*").

complaint process has been an effective tool in identifying problems that need to be addressed, and we hope that these measures will improve upon this process for the speedy and effective resolution of captioning problems in the future."[2] We anticipate that the vast bulk of potential complaints in this area will relate to occasional captioning problems that can be informally worked out by the responsible entity or entities.

The Further Notice asks whether to adopt a "safe harbor"/compliance ladder approach that would apply in other circumstances – where a "pattern or trend" of complaints has been detected. The proposed approach would "entitle [a VPD or programmer] to take corrective action to demonstrate compliance prior to being subject to enforcement action…."[3] We agree that a safe harbor/compliance ladder is both necessary and appropriate in these circumstances.

Responsible entities should have opportunities to cure any alleged deficiencies in the event of a potential pattern or trend of non-compliance with the quality rules. The Commission adopted precisely this type of approach earlier in this proceeding, incorporating a "compliance ladder" in the event of a "pattern or trend" of non-compliance with the new electronic newsroom technique ("ENT") captioning rules. That approach allows for multiple steps aimed at remediation prior to the Commission determining whether to consider an enforcement proceeding. These steps consist of (1) notice of identification of a "pattern or trend" of possible noncompliance and a 30-day opportunity to respond, including a description of corrective measures; (2) if further evidence of a pattern or trend is found, subsequent submission of an "action plan" describing specific measures aimed at coming into compliance followed by "spot checks"; and (3) in the event of continuing evidence of a pattern or trend of noncompliance after

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[2] *Report and Order* at ¶ 66.

[3] *Further Notice* at ¶ 129.

submission of an action plan, consideration of appropriate enforcement action.[4] As the Commission explained, "the compliance ladder … strikes the appropriate balance between [stations and consumers] … by giving stations two opportunities to correct a pattern or trend of captioning quality problems before being subject to enforcement action, while at the same time holding stations accountable for caption quality failures."[5]

A similarly balanced approach is warranted here. Commission and industry resources will be better spent focused on fixing systemic issues apparent through a "pattern or trend"[6] of caption quality complaints rather than addressing these captioning anomalies through a more formalized process. Consumers will also benefit from this type of approach. It will enable parties to more quickly address and remedy problems without worrying that in so doing they may be subject to fines or forfeitures. Moreover, by creating an atmosphere of cooperation rather than contention, a system focused on fixing problems rather than trying to affix blame will be more effective in achieving the common goal of providing high quality captions to viewers. And such an approach will free up more resources to be spent on quality captioning rather than on Commission proceedings.

Respectfully submitted,

/s/ Rick Chessen
Rick Chessen
Diane B. Burstein
National Cable & Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

Jill M. Luckett
Senior Vice President
Program Network Policy

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4 47 C.F.R. § 79.1(e)(11)(iv).

5 *Report and Order* at ¶ 85.

6 The Commission adopted a similar requirement for CALM Act enforcement. For those purposes, it defined a "pattern or trend" to mean "complaints sufficiently numerous and specific to justify focused review by the station/MVPD and the Commission." *CALM Act Report and Order*, 26 FCC Rcd 17222 at n. 183 (2011).