

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF CHARTER COMMUNICATIONS, INC., CABLEVISION SYSTEMS CORPORATION, MEDIACOM COMMUNICATIONS CORPORATION, CEQUEL COMMUNICATIONS, LLC D/B/A SUDDENLINK COMMUNICATIONS, AND TIME WARNER CABLE INC.

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Charter Communications, Inc. (“Charter”), Cablevision Systems Corporation, Mediacom Communications Corporation, Cequel Communications, LLC d/b/a Suddenlink Communications and Time Warner Cable Inc. (collectively “Operators”) hereby submit comments in response to questions posed by the Commission in its recent Further Notice of Proposed Rulemaking (“FNPRM”) regarding responsibilities for meeting closed captioning obligations.¹

I. Introduction and Summary

Revising Commission rules governing closed captioning to hold video programmers directly responsible and liable for compliance with captioning production requirements, including the Commission’s new captioning quality standards, will serve to improve consumers’

¹ *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 05-231; PRM11CG, FCC 14-12 (2014) (“Captioning Quality Report and Order and FNPRM”); Notice of Effective Dates of Closed Captioning Quality Report and Order and Declaratory Ruling, and Announcement of Comment and Reply Comment Deadlines for Related Further Notice of Proposed Rulemaking, Public Notice, CG Docket No. 05-231, DA 14-456 (rel. Apr. 3, 2014).*

captioning experience and thereby advance the accessibility of video programming for people who are deaf and hard of hearing. Under either a burden-shifting enforcement model, such as that proposed by Comcast,² or a several liability model, such as that advanced by DIRECTV and DISH Network,³ programmers would be directly responsible and liable for ensuring that non-exempt video programming is captioned in compliance with the Commission’s new quality standards. Video programming distributors (“VPDs”) would remain responsible and liable for ensuring that captions included with programming are “passed through” in a format that can be rendered or displayed by decoders and reach the consumer intact. Such a clear and direct allocation of responsibility and liability to the entity best positioned to fulfill specific captioning tasks would provide the proper structure and incentives necessary to ensure that non-exempt video programming is captioned, the Commission’s new quality standards are met, and captions are delivered intact to consumers.

II. Holding Programmers Directly Accountable for Captioning Non-Exempt Programming and Meeting the Commission’s Quality Standards Will Ensure a Better Captioning Experience for the Consumer

Extending direct compliance responsibilities and liability to programmers for meeting closed captioning rules will improve consumers’ captioning experience by making programmers and VPDs directly accountable for the aspects of closed captioning over which they have actual control. Clear lines of responsibility between entities would help both programmers and VPDs avoid mistakes and resolve captioning problems faster when they do arise. By delineating

² See Letter from Jordan Goldstein, Executive Director, Regulatory Affairs, Comcast Corp. to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231 (Jan. 28, 2014) (“Comcast *Ex Parte* Letter”).

³ See Letter from William M. Wiltshire, Counsel for DIRECTV to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231 (Dec. 9, 2013); Letter from William M. Wiltshire, Counsel for DIRECTV to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231 (Feb. 14, 2014) (“DIRECTV and DISH Network *Ex Parte* Letters”).

responsibility in this way, the Commission would also promote increased transparency and, ultimately, better results for viewers who rely on closed captioning.

A. Programmers Are Better Positioned to Ensure That Programs Are Captioned and That the Commission’s Quality Standards Are Met

Placing compliance responsibility and liability on programmers, which control closed captioning production, will lead to fewer errors and improved accessibility of video programming for consumers. The Commission has long recognized that video programmers control programming content and thus are in a better position both to ensure that non-exempt programming is captioned and to control captioning quality than are VPDs.⁴ In contrast, as

⁴ For instance, in its *1997 Closed Captioning Report and Order*, the Commission acknowledged that “[t]he references to program ‘owners’ in Section 713 reflect Congress’ recognition that it is most efficient to caption programming at the production stage.” *In re Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd 3272, 3286, ¶ 28 (1997) (“*1997 Closed Captioning Report and Order*”). Later in the same Report and Order, the Commission noted that “closed captioning is most likely to be done at the production stage or prior to distribution where it is most economically and technically efficient.” *Id.* at 3364, ¶ 199. And in the IP Captioning proceeding, the Commission agreed with commenters who argued that “‘VPOs are in the best position to assess whether captions are required for a particular program since they have knowledge of which content has been shown on television,’ and ‘as the copyright holders, the VPOs typically possess the necessary legal rights to modify the content and insert closed captions.’” *In re Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-154, 27 FCC Rcd 787, 800, ¶ 19 (2012) (“*IP Captioning Order*”). Along similar lines, in last year’s *Emergency Information Order* the Commission recognized that, in that proceeding, “[t]he record reflects support for allocating responsibility among each of the entities specified in Section 202. A number of commenters emphasize that the allocation of responsibility should be based on the roles that each entity has with regard to making non-newscast emergency information accessible.” *In re Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 12-107; MB Docket No. 11-43, 28 FCC Rcd 4871, 4899, ¶ 35 (2013) (“*Emergency Information Order*”). Similarly, in the recent *Captioning Quality Report and Order* the Commission acknowledges “it is video programmers who enter into contracts with captioning vendors, control when programming is delivered to captioning vendors

Comcast, DIRECTV and DISH Network, and Verizon have noted in filings with the Commission in recent months, VPDs have limited ability to control the captioning process.⁵

Quite simply, closed captioning typically is created and added to a program during the production of that program, before the content reaches VPDs for ultimate distribution to viewers. Thus, programmers, which produce the video programming themselves or have contractual privity with studios and other content providers, are best positioned to make determinations about whether captioning exemptions apply, and if not, to ensure that closed captioning is added to the programming and that the quality of the captioning complies with industry best practices and Commission requirements for accuracy, completeness, synchronicity and placement.

Indeed, the best practices recommended by the National Court Reporters Association (NCRA) highlight the active role programmers can and do assume in improving captioning accuracy (such as by providing certain material including names, scripts and chyron lists of pre-recorded programming in advance, and ensuring that clear audio streams are delivered to captioners) and in monitoring captioning companies' performance.⁶ Similarly, the proposed best practices submitted by the Coalition of Captioning Vendors as well as the Best Practices recently

to be captioned, and incorporate captioning with the programming for delivery to VPDs. In this manner, video programmers typically are the entities with the most direct control over the quality of closed captioning of their programming.” *Captioning Quality Report and Order and FNPRM* at ¶ 52.

⁵ See Comcast *Ex Parte* Letter; DIRECTV and DISH Network *Ex Parte* Letters; Letter from Ian Dillner, Vice President, Regulatory Affairs, Verizon to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231; ET Docket No. 99-254 (Dec. 13, 2014).

⁶ Letter from Adam Finkel, Assistant Director, Government Relations, National Court Reporters Association (NCRA) to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231 (Feb. 11, 2014) at 5-6 (“NCRA Best Practices”).

adopted by the Commission reflect the active role that programmers play in overseeing the captioning process.⁷

Programmers themselves have attested to the degree to which they exercise control over the captioning process and the improved quality of the captioning that results. For example, CBS Broadcasting, Inc. (“CBS”) described its hands-on approach to delivering high-quality captions, including undertaking multiple reviews of finished offline captioning, engaging in ongoing interactions between CBS personnel and captioning agencies to ensure accurate real-time captioning, including contractual provisions covering quality control issues, and taking numerous other “painstaking steps to monitor and ensure the technical quality” of captioning.⁸ CBS also noted that this approach was not novel: “As program providers have adjusted to the steadily increasing benchmarks for captions, the efforts CBS has long made have become more and more representative of what is being undertaken generally by the industry.”⁹

While it is widely accepted that captions are controlled by programmers at the production stage, the rules as currently structured do not provide programmers with the maximum incentives to ensure that all non-exempt programs include high quality captions. Adoption of either a burden-shifting or a several liability model would allocate responsibility and incentives for ensuring high quality captions to the party best positioned to control the captioning process.

⁷ See Coalition of Captioning Vendors *Ex Parte* Letter Attachment, CG Docket No. 05-231 (Jan. 10, 2014); *Captioning Quality Report and Order and FNPRM* at ¶¶ 60-64 and Appendix B (to be codified at 47 C.F.R. § 79.1(k)(1)).

⁸ Reply Comments of CBS Broadcasting, Inc., CG Docket No. 05-231 (Dec. 16, 2005) at 2-3.

⁹ *Id.* at 4.

B. Video Programming Distributors Should Focus on Pass-Through and Related Transmission/Equipment Responsibilities

Unlike programmers, VPDs do not control the captioning production process. They do, however, have significant other responsibilities for ensuring the pass-through of previously captioned programming. Specifically, pursuant to Section 79.1(c) VPDs must deliver programming in a format that can be rendered or displayed by customer equipment, and must ensure that captioning included with video programming reaches the consumer intact.¹⁰ The Commission has also ruled that VPDs deploying applications, devices (including set-top boxes) or plug-ins to deliver video programming to consumers must ensure that captions can actually be displayed on the screen, and be capable of enhanced functionality.¹¹ VPDs also must take steps to monitor and maintain equipment and signal transmissions associated with closed captioning, and maintain records of these efforts.¹²

Allowing VPDs to focus resources on pass-through and related transmission/equipment issues – issues over which VPDs have actual control – would reduce the chance of captioning glitches related to signal transmission and thereby advance accessibility goals. It is therefore no surprise that the NCRA’s best practices recommend that VPDs focus on signal transmission and equipment-related issues, while allocating the responsibility for monitoring compliance with captioning requirements and standards to programmers.¹³

¹⁰ 47 U.S.C. § 79.1(c).

¹¹ See *IP Captioning Order*, 27 FCC Rcd at 805, ¶ 27 n.128; 47 C.F.R. § 79.4(c)(2)(i).

¹² See *Captioning Quality Report and Order and FNPRM* at ¶¶ 88-104 and Appendix B (to be codified at 47 C.F.R. § 79.1(c)(2), (c)(3)).

¹³ See NCRA Best Practices at 6-7 (detailing recommended best practices for VPDs).

C. Making Programmers Directly Liable Will Better Incent Their Compliance Than the Current Contract/Certification Model

The existing certification model is inefficient, primarily because it results in indirect enforcement of captioning requirements by VPDs, rather than direct liability for non-compliance by the parties with actual control over the captioning production process. Under the current rules, VPDs not only must ensure that captions are passed through and transmitted intact to consumers they also are legally responsible for ensuring that non-exempt programs are captioned and that programmers are complying with best practices for quality. VPDs are expected to assign the actual captioning decision making and production responsibilities to programmers contractually.¹⁴ But as Comcast has noted, “[e]ven if the necessary contractual provisions could be put in place, they are too blunt and indirect an instrument to deal with the complex and nuanced issues involved in ensuring (and assessing) caption quality.”¹⁵ Indemnification clauses are simply not as effective as direct liability.¹⁶ The Commission, too, has recognized as much, stating in the IP Captioning Order that “[w]e find ... that it is more efficient and less costly to

¹⁴ See *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3286, ¶ 28 (“Although we are placing the ultimate responsibility on program distributors, we expect that distributors will incorporate closed captioning requirements into their contracts with producers and owners, and that parties will negotiate for an efficient allocation of captioning responsibilities.”).

¹⁵ Comcast *Ex Parte* Letter at 2. Such contractual provisions may well not be in place, as existing contracts are unlikely to include language that sufficiently covers the recent captioning quality standards. In addition, there remains the possibility that a party to a contract might seek to avoid its captioning obligations, which would leave the Commission unable to impact that party’s behavior directly.

¹⁶ See *id.* (noting that “there are strong policy reasons for pursuing this enforcement model rather than relying solely on the notion that VPDs will indirectly enforce captioning quality through indemnification clauses in contracts with VPOs”).

place appropriate obligations on VPOs and on VPDs, rather than to expect the parties to enter into contracts mandating the same obligations.”¹⁷

The new quality rules also require VPDs to use best efforts to obtain programmer certifications to compliance with best practices.¹⁸ VPDs may avoid liability by relying on certifications produced by programmers.¹⁹ But the certification mechanism does not provide VPDs with an effective means of monitoring compliance. Currently, certifications lack sufficient detail to permit VPDs to discern whether all programming that should be captioned is being captioned, as the certifications typically state only that programmers are complying with the Commission’s captioning rules. They do not, for instance, provide information about particular programs that fall within the Commission’s exemptions. It would be virtually impossible for the VPD to discern whether a program has not been captioned because it falls within the Commission’s per-channel revenue based exemption, for example.²⁰ While the new rules require VPDs to obtain from each programmer a certification that specifies the exact

¹⁷ *IP Captioning Order* at 799, ¶ 16. The Commission went on to note that “leaving VPOs’ responsibilities to be defined entirely by private contractual arrangements would be more costly and less efficient than appropriately allocating certain responsibilities among both VPOs and VPDs by Commission rule.” *Id.* at ¶ 17 (citing Reply Comments of Google, Inc., which argued that “[c]ontinued reliance on the types of negotiations involving closed captioning for television programming would be inefficient, would not result in consistent caption quality, and would fail to adequately address the needs of consumers”).

¹⁸ *See Captioning Quality Report and Order and FNPRM* at Appendix B (to be codified at 47 C.F.R. § 79.1(j)(1)).

¹⁹ *See id.*; 47 C.F.R. § 79.1(g)(6).

²⁰ Furthermore, it would be more efficient for programmers to be responsible for providing details like these when questions arise rather than funneling the issue through VPDs, which takes additional time and needlessly complicates the process.

exemption a programmer is claiming,²¹ it remains to be seen whether this untested and burdensome requirement will facilitate effective policing by VPDs.²²

As such, under the current rules, VPD resources that otherwise could be directed toward fulfilling the captioning functions over which they have actual control (such as signal transmission and captioning pass-through) are spent instead monitoring programmers over which they have relatively little leverage. Enforcement via contract requires VPDs to monitor hundreds of agreements while relying on vague certifications that say little more than that the programmer is in compliance. Not only is the current model less efficient than it could be, the result is less clearly defined roles, less clearly assigned responsibility and an increased chance that errors will occur. Placing direct liability on programmers would squarely address the shortcomings of the contract based enforcement/certification model.

Under a regulatory model that assigns liability according to actual responsibility, each participant involved in the creation and delivery of captioned programming would be incented to focus entirely on fulfilling its specific regulatory charge. Programmers are best positioned to make determinations about whether programming should be captioned or exempt, and to ensure that captioning is accurate, synchronous, complete and properly placed. VPDs, meanwhile, are best positioned to ensure that their processing equipment does not interfere with the transmission of captions in the program stream and that captions included with programming reach the consumer intact.

²¹ See *Captioning Quality Report and Order and FNPRM* at Appendix B (to be codified at 47 C.F.R. 79.1(j)(1)).

²² Nor is it equitable to subject VPDs to enforcement actions for failing to use best efforts to police programmers, when the Commission itself has found that programmers “are in a better position to ensure compliance with the captioning quality rules.” See *Captioning Quality Report and Order and FNPRM* at ¶¶ 53-54.

III. A Complaint Process That Assigns Liability According to Responsibility Will Facilitate Prompter Resolution of Complaints and Transparency

A regulatory model that assigns specific liability to programmers is likely to achieve a more prompt and effective resolution of captioning transmission, omission and quality problems. Under the new captioning quality rules, complaints must include the channel number, channel name, network or calls sign as well as the name of the VPD.²³ Accordingly, under either a burden-shifting or several liability model, both the VPD and programmer could be provided with copies of the complaint.²⁴

Once the complaint is received, the VPD would be incented to conduct a prompt investigation to determine the cause of the problem in order to either (1) demonstrate its compliance, and pass responsibility on to the programmer; or (2) identify non-compliance, and rectify it promptly to fulfill its responsibility to pass-through captions to its customers and to limit its liability. If the problem is one that the VPD can remedy, it would do so without further involvement from the programmer. If, however, the VPD determines that the issue stems from something within the programmer's control, the VPD would then notify both the Commission and the programmer that its responsibilities had been fulfilled. Meanwhile, the programmer, having received the complaint, could simultaneously undertake its own investigation or could wait to receive notice from the VPD that the compliance burden had shifted, as proposed in Comcast's burden-shifting model. Upon receiving notice, the programmer would be incented to conduct a prompt investigation and resolution, both to fulfill its responsibilities and to limit the extent of its liability.

²³ See *Captioning Quality Report and Order and FNPRM* at Appendix B (to be codified at 47 C.F.R. § 79.1(j)(4)).

²⁴ The Commission's rules governing complaints about captioning omissions, 47 C.F.R. § 79.1(g), should be amended to require similar information be included with complaints.

The transparency generated by this proposed reporting mechanism would be beneficial in several ways. First, as noted above, it would provide added incentives for responsible parties to act promptly and with care. Second, it would ensure that the Commission, programmer, VPD and consumer all would be fully apprised of efforts to resolve captioning problems. Third, because the issue would be fully documented, the Commission would be better positioned to determine whether the VPD, the programmer (or both) should be liable for a captioning violation. Finally, the reporting mechanism's transparency would aid consumers by demonstrating that their concerns are being met in real time.

IV. Operators' Proposal Does Not Require Wholesale Changes

Amending the regulations to place direct liability on programmers would not constitute a dramatic change in the regulatory landscape because responsibility for performance of captioning functions would not change. Indeed, compliance currently is measured on a per channel basis, and video programming producers and owners may petition directly for full or partial exemptions.²⁵ Broadcasters would remain liable for production/quality, but that liability would fall under their content function as opposed to their distribution function.

Further, as Comcast has noted, a burden-shifting model would fit well with the Best Practices already adopted by the FCC.²⁶ As Comcast has explained, “[g]iven the important role of VPOs in implementing the best practices, their inclusion in this [burden-shifting] enforcement proposal is logical and will lead to better resolution of captioning issues and, ultimately, better captions.”²⁷ Because the Best Practices for video programmers primarily concern the process of

²⁵ 47 C.F.R. § 79.1(e)(1), (f).

²⁶ See Comcast *Ex Parte* Letter at 2 (“We also explained that this proposal would work well in conjunction with the NCTA and NAB best practices approach for industry participants....”).

²⁷ Comcast *Ex Parte* Letter at 2.

obtaining and applying captioning to programming via agreements with captioning services and operational means by which captioning is facilitated, the critical role programmers play in the captioning process already is codified in the Commission's Rules. Thus a burden-shifting or several liability model, which holds the entities best suited to carry out a task responsible for doing so later in the timeline (at the enforcement stage), would complement the Best Practices approach that would typically have its greatest effect much earlier in the captioning process.

Nevertheless, a regulatory model that assigns responsibility for captioning production directly to programmers should supplant the existing certification/best efforts models under the Commission's 1997 closed captioning rules as well as under the recently adopted captioning quality rules. As explained above, a burden-shifting enforcement or several liability model would better align legal responsibility with real-world roles than the rules currently in place. Placing directly liability on programmers would streamline the rules and clarify the obligations for both VPDs and programmers while offering increased benefits to consumers by making one party or the other clearly responsible for each step in the captioning process.

Because the proposed changes represent moderate adjustments to the Commission's rules rather than major transformations, these amendments can and should be implemented promptly. More specifically, changes to the responsibilities and liability of programmers and VPDs should be enacted before the recently adopted captioning quality rules take effect.

V. The Commission Has Sufficient Legal Authority to Hold Programmers Directly Liable for Closed Captioning

The Commission and numerous commenters have noted in various contexts that the Commission has ample legal authority to place captioning responsibility on programmers. Congress clearly intended to provide the Commission with broad authority to ensure that video programming was captioned by whichever entity was best suited to do so. Most importantly,

Section 713 of the Communications Act (47 U.S.C. § 613) explicitly states that its provisions apply to “providers” or “owners” of video programming. Specifically, the statute requires that the Commission “shall ensure that – ... video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions....”²⁸ Meanwhile, subsections (d)(2) and (d)(3) cover exemptions whereby “a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on February 8, 1996” and “a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome,” respectively.²⁹

The Commission repeatedly has acknowledged the authority it holds under Section 713. In the *1997 Closed Captioning Report and Order*, the Commission noted the references in Section 713 to “providers” and “owners,” explaining that “Section 713 refers to the closed captioning of programming by providers and owners of video programming.”³⁰ The Commission also cited the legislative history, which “defines the term ‘providers’ to include the specific television station, cable operator, cable network or other service that provides programming to the public.”³¹ And, while the Commission in 1997 opted not to define “owner”

²⁸ 47 U.S.C. § 613(b)(2).

²⁹ 47 U.S.C. § 613(d)(2), (d)(3).

³⁰ *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3286, ¶ 27.

³¹ *Id.* (citing House Report at 114).

for purposes of its rules, it considered a broad definition that would have included producers, copyright holders, syndicators or distributors.³²

Indeed, the Commission already has asserted its authority over programmers in several contexts related to closed captioning. Although it acknowledged Congress' recognition that it would be most efficient to caption video programming during its production, the Commission in its *1997 Closed Captioning Report and Order* nonetheless opted instead to centralize responsibility on VPDs.³³ Still, the Commission's implementation of Section 713 included the undue burden exemption, which is available to programmers directly.³⁴ More recently, the Commission extended some captioning responsibilities to program owners in the *IP Captioning Order*. In deciding that it would require VPOs to provide program files to VPDs that contain the requisite captions, the Commission explained that "[w]hile the CVAA does not direct the Commission to impose captioning obligations on VPOs, it clearly authorizes the Commission to

³² See *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Notice of Proposed Rulemaking, MM Docket No. 95-176, 12 FCC Rcd 1044 ¶ 29 (1997).

³³ See *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3286, ¶ 28 (discussing references to "owners" in Section 713). In placing compliance responsibility on VPDs, however, the Commission noted that numerous commenters advocated a different approach. Not only did VPDs "assert that the consensus that closed captioning can be most efficiently and accurately accomplished at the production stage dictates placement of the captioning burden on producers, not distributors," but several commenters representing persons with hearing disabilities "note[d] that placing responsibility for captioning at the production stage would be the most efficient method for ensuring compliance. For example, [League of the Hard of Hearing] state[d] that closed captioning when handled by the original program producers will ensure efficiency and accuracy, and will avoid duplication of efforts. Similarly, [National Association of the Deaf] note[d] that there may be instances where captioning costs could be too burdensome for the distributor, but not for the producer, and contend[ed] that Congress intended producers to provide closed captioning in such situations." *Id.* at 3284, ¶ 23; 3283-84, ¶ 21.

³⁴ See *id.* at 3363-66, ¶¶ 198-205; 47 C.F.R. § 79.1(f).

promulgate rules directly affecting VPOs as well as VPDs.”³⁵ The Commission acknowledged that placing responsibility on both program owners and distributors was a sensible approach: “[W]e believe that imposing responsibility on VPOs as well as VPDs is both consistent with the Commission’s authority to identify the responsibilities of VPOs under the statute and necessary to further the statutory purpose of helping to ‘ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.’”³⁶ The Commission also noted that, in its view, “placing obligations on VPOs will ensure that the Commission may hold a responsible party accountable for violations of the CVAA.”³⁷ Each of these rationales employed in the IP-delivered video programming context is equally applicable to the captioning quality rules and, indeed, to the Commission’s captioning rules in general: the Commission has statutory authority to apply captioning rules to VPOs; a construct in which VPOs and VPDs both have direct liability advances the Commission’s goal of ensuring that video programming is fully accessible to individuals with disabilities; and a burden-shifting or several liability model would make certain that a party who violates the captioning rules will be held accountable.

Similarly, the Commission’s recent *Emergency Information Order* also places certain responsibilities on program owners. Remarking that “Section 202 of the CVAA directs us to impose accessible emergency information requirements on video programming providers and program owners, as well as on video programming distributors,”³⁸ the Commission determined that it would “revise the portions of Section 79.2 applicable to accessibility of emergency

³⁵ *IP Captioning Order* at 798, ¶ 16 (citing the CVAA as codified at 47 U.S.C. § 613(c)(2)(D)(iv)).

³⁶ *Id.* at 799, ¶ 16.

³⁷ *Id.* at 799, ¶ 18.

³⁸ *Emergency Information Order* at 4898, ¶ 34.

information for individuals who are blind or visually impaired accordingly to add video programming providers (which includes program owners) and to more clearly specify the obligations of covered entities.”³⁹ Again, similar considerations that informed the Commission’s decision making in the emergency information proceeding apply here. As discussed above, the Commission has ample statutory authority to implement a burden-shifting or several liability model. And as in the emergency information context, it would be in the best interests of all parties, particularly people who are deaf and hard of hearing, for the Commission to properly allocate and define the responsibilities for all entities involved in the captioning process.

The Commission initially placed compliance responsibility on VPDs to allow it “to monitor and enforce these rules more efficiently.”⁴⁰ However, the anticipated advantage of turning to a single entity and avoiding the “need for tracking the entities responsible for producing programs alleged to violate the rules” has proven unnecessary.⁴¹ The few closed captioning complaints that have required formal proceedings over the years typically have named both the VPD and the programmer, either as separate entities or because the entity was both a programmer and a distributor.⁴² As the experience of the past 17 years suggests, neither consumers nor the Commission have had any difficulty identifying the parties responsible for alleged violations because the names of the VPD and the channel upon which the relevant program appeared are readily available and sufficient for identification purposes. Moreover, as

³⁹ *Id.* at 4899, ¶ 36.

⁴⁰ *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3286, ¶ 27.

⁴¹ *Id.*

⁴² See e.g., *Kelby Nathan Brick v. Comcast Cablevision of Maryland and Courtroom Television Network*, Memorandum Opinion and Order, 17 FCC Rcd 570 (Cable Serv. Bur. Jan. 11, 2002); *In re Shop At Home Network Complaint Regarding Compliance with Closed Captioning Requirements*, Memorandum Opinion and Order, 17 FCC Rcd 1698 (Cable Serv. Bur. Jan. 29, 2002).

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