

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf and Hard of Hearing, Inc.)	PRM11CG
Petition for Rulemaking)	

COMMENTS OF COMCAST CORPORATION

Comcast Corporation and NBCUniversal (“Comcast”) hereby file comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding on closed captioning.¹ The *FNPRM* invites comment on compliance responsibilities for caption quality issues, including the burden-shifting model proposed by Comcast.² Comcast urges the Commission to adopt the burden-shifting proposal. The proposal, which builds on the shared-responsibility compliance models adopted in the *Online Captioning Order* and the *Emergency Information Order*³ and is well grounded in the Commission’s captioning authority under the

¹ See *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 Dkt. No. 05-231, FCC 14-12 (rel. Feb. 24, 2014) (“*FNPRM*” or “*Caption Quality Order*”).

² See Letter from Jordan Goldstein, Comcast Corporation, to Marlene H. Dortch, FCC, CG Dkt. No. 05-231 (Jan. 28, 2014) (“Comcast Letter”); see also *FNPRM* ¶¶ 122-130 (inviting comment on the Comcast proposal and other issues relating to compliance responsibilities).

³ See *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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 4871 ¶ 34 (2013) (“*Emergency Information Order*”); *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, 27 FCC Rcd. 787 ¶ 15 (2012) (“*Online Captioning Order*”).

Communications Act,⁴ will provide strong incentives for programmers and video programming distributors (“VPDs”) to work cooperatively to improve caption quality and ensure prompt investigation and effective resolution of captioning issues.⁵ The proposal also is consumer friendly because it would establish an initial point of responsibility (the VPD) and lead to better resolution of captioning issues. Comcast reiterates its request that the Commission adopt the proposal on an expedited basis so that the compliance regime can become effective at the same time as other rules adopted in the *Caption Quality Order* (i.e., January 15, 2015).⁶

I. THE COMCAST PROPOSAL WILL ENSURE THAT CAPTIONING ISSUES ARE RESOLVED PROMPTLY AND LEAD TO BETTER CAPTIONS.

The Comcast proposal allocates compliance responsibilities in a way that will lead to the prompt and efficient resolution of captioning issues, and thereby improve the overall captioning experience for consumers. Responsibilities are allocated based on which party in the distribution chain is best positioned to address the relevant captioning issue. VPDs are in the best position to deal with equipment-related problems and have responsibility for addressing those types of issues. Programmers, in turn, are in a better position to ensure that their programs are captioned

⁴ See *FNPRM* ¶ 126 (noting, in discussion of Comcast proposal, that “section 713 of the Act allows the Commission to place closed captioning obligations on multiple entities associated with the production and delivery of video programming to the public”); see also *id.* ¶ 126 n.475 (noting that the legislative history indicates that Congress intended the provisions to apply broadly to MVPDs, broadcasters, and programmers, among others). The Commission itself has long recognized the broad grant of authority conferred by Section 713 in other caption proceedings. See *Online Captioning Order* ¶ 20 (“Similar to the [statute authorizing the online captioning rules], the closed captioning statute governing broadcast television and MVPD services authorizes the Commission to regulate closed captioning of programming by providers and owners of video programming.”); see also *In re 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, 12 FCC Rcd. 1044 ¶ 29 (1997) (noting that the reference “to ‘program providers and owners’ . . . may have been intended to provide the Commission with jurisdiction over [parties other than the distributor] in the production and distribution chain”).

⁵ The *FNPRM* invites comment on how the terms VPD and programmer should be defined. See *Caption Quality Order* ¶¶ 122-124 & nn.470, 472-473. Comcast believes VPDs should be defined to include both MVPDs and local broadcast stations, while programmers would cover any person or entity that licenses the video programming to a VPD that makes the programming available directly to the end user.

⁶ See Comcast Letter at 3.

and that the captions meet quality standards. Programmers have a more direct relationship with the entities that provide captioning services and are more likely to have the rights to modify the content and to correct captions.⁷ In contrast, placing all compliance obligations on the VPD would make the resolution process more inefficient because the VPD would essentially have to act as a middleman in resolving programmer-related issues. This would lead to delays in the resolution process.

VPDs and programmers will have strong incentives to meet their obligations under this regime and work cooperatively to resolve issues. As the Commission noted in the *Online Captioning Order*, “placing obligations on [video programming owners] will ensure that the Commission may hold a responsible party accountable for violations of the CVAA.”⁸ Stated another way, if VPDs and programmers *both* face potential liability for non-compliance under the rules, *each* party will be highly motivated to resolve caption issues for which it is responsible. Under the burden-shifting model, VPDs will be the entry point for consumer complaints and will investigate the source of the problem. This avoids “finger-pointing” about who is responsible for handling complaints. If the investigation shows that there is a pass-through issue, the VPD will address the problem, and customers will be advised of the fix. If the investigation shows there is a programmer issue, the VPD will notify the programmer and the programmer will be responsible for fixing the issue. The programmer will notify the Commission and customer once the programmer has resolved the issue.

⁷ The Commission allocated certain compliance obligations to video programming owners in the *Online Captioning Order* for similar reasons. In that context, the Commission reasoned that video programming owners – who own the programming or are closer in the chain of custody to the owner – are better positioned than distributors to obtain the necessary rights and information and provide captions since they are higher up in the distribution chain. See *Online Captioning Order* ¶¶ 7, 21, 24. Furthermore, the Commission concluded that, as copyright holders, video programming owners also typically have the necessary legal rights to modify the content and insert closed captions. See *id.* ¶ 19.

⁸ *Id.* ¶ 18.

In contrast, leaving the programmers' captioning "responsibilities to be defined entirely by private contractual arrangements would be more costly and less efficient than appropriately allocating certain responsibilities among both [video programming owners and distributors] by Commission rule."⁹ A contract-based approach – along the lines of what was adopted for the basic TV captioning rules – is predicated on the enforcement of caption requirements through indemnification and other terms in VPD contracts with programmers.¹⁰ There are a number of shortcomings with this approach. First, existing contracts are unlikely to address caption quality issues directly given the newness of the Commission's regulations in this area.¹¹ Second, even if such 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. And many quality issues will ultimately relate to actions by the captioning service provider, which means programmers will be much better positioned than VPDs in the distribution chain to address such issues. And third, there is no assurance that contractual remedies will actually result in the caption issue being fixed. For example, a programmer could elect to indemnify the VPD rather than resolve the issue. Comcast's burden-shifting approach will avoid these limitations.

⁹ *Id.* ¶ 17; *see also id.* ¶ 16.

¹⁰ *See 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, 13 FCC Rcd. 3272 ¶ 28 (1997) ("TV Captioning Order"). For example, if the programmer fails to meet the relevant caption requirements and the VPD is fined for non-compliance, the VPD can seek indemnification under such contractual remedies.

¹¹ To the extent programming contracts contain caption-related provisions, they are likely to relate to whether the programmer is providing captioned programming consistent with the Commission's basic TV captioning requirements. The Commission has previously noted the difficulties in modifying contracts to address new captioning requirements. *See Online Captioning Order* ¶ 22 ("We are not confident that all VPDs of IP-delivered video programming (including online video distributors and other new media companies) have sufficient leverage and ability to obtain similar contract clauses or even have privity of contract with the entity with captioning rights.").

The Commission asks whether the burden-shifting approach should apply generally to all TV captioning obligations.¹² Comcast believes that it should. The burden-shifting approach, which builds upon the shared responsibility model in the online captioning context, will provide for a simpler consumer experience (i.e., consumers can follow the same basic process for filing complaints) and improve efficiencies in how the Commission oversees its TV captioning rules. In this regard, the Commission has underscored the need to improve the efficiency and effectiveness of its complaint procedures.¹³ Establishing a uniform complaint and enforcement regime for all TV captioning issues would advance that goal.

Applying a burden-shifting compliance model across-the-board also will help eliminate any potential “liability gap” in the Commission’s existing compliance regime for TV captions.¹⁴ Comcast recognizes that the existing regime has generally resulted in the widespread captioning of TV programming, as Congress and the Commission envisioned. However, to the extent that there are captioning issues, the existing regime does not provide a clear path to resolution. The burden-shifting proposal, on the other hand, clearly delineates which party is responsible for compliance with the relevant TV captioning requirements – i.e., the VPD is responsible for pass-

¹² See *FNPRM* ¶ 127.

¹³ See *Report on FCC Process Reform*, GN Dkt. No. 14-25, at 24-29 (Feb. 14, 2014) (“*Process Reform Report*”) (recommendations relating to informal consumer complaints).

¹⁴ See *FNPRM* ¶ 128.

through, and the programmer is responsible for basic caption compliance and caption quality.¹⁵
This approach improves upon the existing TV captioning compliance model.¹⁶

II. COMCAST BURDEN-SHIFTING PROPOSAL

Comcast provides in this section a more detailed description of how the complaint investigation and resolution procedures could work under Comcast's burden-shifting proposal. Under the proposal, VPDs will have the initial burden and responsibility to investigate complaints that have been filed with the Commission. As in the complaint procedures for online captions and ENT-related caption quality issues, the Commission will forward to the VPD those complaints that include the information necessary to investigate the complaint.¹⁷ The Commission would also send a copy of the complaint to the cited programmer.¹⁸

¹⁵ Furthermore, if the Commission replaced the existing regime with a shared-responsibility model, there would no longer be a need for VPDs to obtain certifications from programmers stating that programming is captioned or exempt from the captioning requirements. This would reduce paperwork burdens on both VPDs and programmers alike, thereby advancing another Commission goal. *See Process Reform Report* at 29-33 (recommendations relating to the Paperwork Reduction Act and Regulatory Flexibility Act).

¹⁶ The Commission invites comment in the *FNPRM* on whether it should extend the "compliance ladder" to VPDs and programmers so that they can "take corrective actions to demonstrate compliance prior to being subject to enforcement action." *FNPRM* ¶ 129. Comcast believes that the Commission should take this approach where VPDs and programmers are working to resolve systemic issues that have been identified by the Commission. This would track the model adopted in the Electronic Newsroom Technique ("ENT") context. *See Caption Quality Order* ¶ 84.

¹⁷ This includes: (1) the name of the channel; (2) the name of the VPD; (3) the date and time that the captioning issue occurred; (4) the name of the program involved; and (5) a detailed description of problem. *See Online Captioning Order* ¶ 87; *Caption Quality Order* ¶ 83. This approach is also consistent with the recommendation in the FCC Process Reform Report that the Commission's complaint intake procedures "ensure[] that only complete and actionable complaints are accepted." *See Process Reform Report* at 26 (Recommendation 2.17). To the extent that any of this information is missing, the Commission can work with the customer to supply such information, which would help fulfill another recommendation in the *Process Reform Report*. *See id.* ("Consumers should receive assistance in filing complete and actionable complaints through immediate prompts and feedback."). MVPDs will receive complaints involving MVPD issues, and broadcast stations will receive complaints involving broadcast station issues.

¹⁸ In order to facilitate this process, programmers should have an obligation to provide contact information to the Commission and to keep that information current, just like MVPDs and TV stations must do now. *See* 47 C.F.R. § 79.1(i). Copying the programmer on the complaint will also avoid the privacy issues identified in the *FNPRM*. *See FNPRM* ¶¶ 148-152.

VPDs will have initial responsibility for investigating complaints. Comcast envisions that VPDs will have flexibility in how they handle these investigations given the variations in network architectures and other differences among VPDs. Regardless of these differences, the investigation will need to ensure that the VPD is properly passing through captions to the consumer as required under the Commission's rules. Comcast anticipates that *its* investigations will typically include the following components:

- *Equipment Check*: Comcast will check the set-top box model used by the customer for potential captioning issues.
- *Program Stream Check*: Comcast will capture program streams of the programming network identified in the complaint, and check those streams for any caption-related impairments.
- *Processing Equipment Check*: If there is an issue with the program stream, Comcast will check post-processing equipment at the relevant headend or other video distribution facility to see if the issue was introduced by Comcast or was present in the stream when it was received by Comcast from the programmer.

If the investigation reveals that the issue is caused by the VPD's set-top box, processing equipment, or is otherwise within the VPD's control, the VPD will be responsible for fixing the problem pursuant to its pass-through obligations under the rules.¹⁹ So, for example, this might involve the re-set of a headend encoder that is functioning improperly. The VPD will advise the customer and the Commission as to the resolution of the issue.

However, if the VPD's investigation reveals that the captioning issue is within the control of the programmer, then the compliance burden will shift to the programmer, and the programmer will have the duty to investigate and fix the problem and bear any associated liability. The VPD will promptly notify the programmer about the results of the investigation.

¹⁹ See 47 C.F.R. § 79.1(c).

The VPD will provide the notice in writing, which can include e-mail, among other methods,²⁰ and forward a copy to the Commission.²¹ The VPD should help troubleshoot the issue, but the responsibility for resolving the issue will rest with the programmer.

The programmer will advise the VPD when it has resolved the issue. The VPD will conduct follow-up checks of the program stream to confirm that fact. The programmer will also advise the customer and the Commission that the programmer has resolved the issue. Having the programmer communicate this information directly to the customer and the Commission is far simpler and more efficient than placing that responsibility on the VPD. In the latter case, the VPD would essentially be acting as a middleman in getting updates from the programmer and passing that information along to the customer and the Commission, resulting in delays in the update process.²²

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Comcast urges the Commission to adopt its burden-shifting proposal prior to the effective date of the new caption quality rules. The Comcast proposal will facilitate the prompt and efficient resolution of captioning issues, provide incentives for VPDs and programmers to work collaboratively to address such issues, and achieve these objectives in a consumer-friendly manner.

²⁰ The Commission noted that the acceptability of e-mail to satisfy notice requirements elsewhere in the *Caption Quality Order* (¶ 54 n.203), and should take the same approach here.

²¹ Providing a copy to the Commission will address the Commission’s questions in the *FNPRM* about “how the Commission can be assured that when responsibility for captioning problems are shifted to other programming entities, VPDs will have appropriately transferred such liability” and whether VPDs “[s]hould . . . be obligated to report to the Commission when they shift this burden[.]” *FNPRM* ¶ 126.

²² In cases where the VPD investigation reveals that both the VPD and the programmer are responsible for the issue, then resolution will proceed on coordinated tracks – i.e., the VPD will be responsible for fixing the issue on its end, and the programmer would be responsible for fixing the issue on its end. The compliance regime set forth above would apply to each track.

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