Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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	)	

REPLY COMMENTS OF VERIZON[1]

Assigning responsibility appropriately for compliance with the Commission's new quality standards for closed captioning is critical to effectuating the desired improvements in accessibility of television programming for deaf and hearing-impaired consumers. This goal and the record in this proceeding lead to only one conclusion: The Commission should assign direct responsibility for compliance with the quality standards on the video programmers and owners who actually contract for and produce the captioning. This common sense approach will provide the incentives necessary to ensure that television programming meets the Commission's quality standards.

I. THE RECORD DEMONSTRATES THAT THE BEST APPROACH TO IMPROVING THE QUALITY OF CLOSED CAPTIONING FOR TELEVISION PROGRAMMING IS TO IMPOSE DIRECT RESPONSIBILITY FOR COMPLIANCE ON VIDEO PROGRAMMERS AND OWNERS.

The record is clear that video programmers and owners (VPOs) have the ability to implement and enforce closed captioning quality standards, while video programming

[1] The Verizon companies participating in this filing (Verizon) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

distributors (VPDs) have little or no opportunity to do so. The comments submitted in this proceeding explain this division of responsibility:

> [C]losed 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.[2]

Maintaining an enforcement model for the Commission's new quality standards that is at odds with this clear apportionment of responsibility would undermine efforts to improve the quality of captioning. Therefore, to improve the accessibility of television programming for deaf and hearing-impaired consumers, the Commission should assign direct responsibility for the new captioning quality standards to video programmers and owners who are best positioned to squarely address captioning quality.

Not surprisingly, video programmers and owners recommend that the Commission maintain its current policy assigning responsibility for compliance with the rules for closed captioning of television programming – including for quality standards – on video programing distributors. But, their arguments are rebutted by the record and common sense.

First, the owners claim that distributors are "uniquely suited to address captioning complaints by virtue of their small numbers relative to programmers, their position as the last link and the consumer-facing entity in the distribution chain, and their existing complaint-

[2] Comments of Charter Communications, Inc., *et al*. (Charter), at 4; *see also* Comments of AT&T, at 1; Comments of American Cable Association (ACA), at 4; Comments of Comcast Corporation, at 2-3; Comments of DirecTV, LLC, at 5 ("VPDs do not have the opportunity to review and ensure that programming is captioned before transmitting it to viewers. Nor do they have the opportunity to review the extent and quality of such captioning.").

resolution infrastructure."[3] These points, to the extent they are even accurate, do not support the conclusion that video programming distributors can best bring about the improvements in the quality of closed captioning as intended by the Commission's new rules.

There are hundreds of cable companies that would be subject to the Commission's rules for quality standards.[4] Only half a dozen content provider organizations objected to the Commission's proposal to impose the responsibility for compliance on video programmers and owners.[5] Moreover, the fact that distributors have been interacting with consumers on captioning complaints is simply an artifact of the Commission's decision to impose that responsibility 17 years ago, and generally results in a two-step process where the distributor has to turn around and work with content creators and owners to identify the source of problems.[6] Given how captions are produced, as described above, it would be inefficient to attempt to enforce quality standards by requiring cable companies to serve as customer service representatives for programming owners, and so instead these issues should be addressed directly by the party most often responsible for the issue.[7]

The owners also claim that the "overwhelming majority" of captioning complaints raise issues that must be addressed by distributors.[8] But the affidavits provided to support this claim do not back it up with respect to captioning quality. Quality issues are barely noted in the

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[3] Comments of Viacom Inc., CBS Corporation, *et al.* (CBS), at 2-3.

[4] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, ¶ 17 (2013) (reporting that, as of June 2012, there were "38 cable MVPDs with over 20,000 basic video subscribers each and over 1,000 cable MVPDs with less than 20,000 basic video subscribers each, two DBS MVPDs (DIRECTV and DISH Network), two large telephone company MVPDs (AT&T and Verizon) and numerous smaller telephone company MVPDs").

[5] Those companies commenting are CBS Corporation, Time Warner Inc., The Walt Disney Company, 21st Century Fox, Inc., Viacom Inc., and Scripps Networks Interactive, Inc. *See* Comments of CBS, at 13-14.

[6] *See* Comments of Verizon, at 2-8.

[7] *See* Comments of ACA, at 6 ("By holding the programmer directly responsible when the captioning problem is due to its own error, the programmer will have the appropriate direct exposure to any enforcement actions when closed captioning issues arise, as well as being subject to public scrutiny when it fails to provide appropriate captioning.").

[8] Comments of CBS, at 3.

affidavits. And, to the contrary, in Verizon's experience, captioning quality issues generally do not arise from the actions of distributors.[9] Captions are delivered within the data for the video and audio feeds. If the distribution equipment is negatively affecting captioning quality, then it will also impact the video and audio feeds. What the equipment cannot do is insert misspelled words, grammatical errors, failures to follow the spoken words, etc. The equipment also does not change the frame rate of the captions: if the captions are not inserted at the same frame rate as the video and audio data, then the captions will drift. Again, the distributor is simply passing through the data streams it receives from the programmer. There are multiple ways that captioning quality can go awry without any involvement of the video programing distributor. The affidavits submitted by the programming owners do not dispute this point.

Suggestions by content owners that most captioning complaints so far have related to distributor actions are misleading and irrelevant.[10] The principal issue for captioning of television programming for the past 17 years has been inclusion of captions, not quality. And, it should not matter to the Commission's decision here what percentage of complaints arises from equipment pass-through or captioning quality issues. The entity responsible for the error, which is in a position to fix it, should be the entity responsible for compliance with the Commission's rules. As the Commission noted while implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010, "the Commission has the authority to 'assign entities responsibility for compliance in accordance with their roles in any alleged

[9] *See* Comments of AT&T, at 3 (explaining why "VPDs have a limited ability to directly impact closed captioning quality"); Comments of ACA, at 4-5.
[10] *See* Comments of CBS, at 3.

noncompliance.'"[11] The same is true here, and the Commission should adopt the same position on allocation of responsibility for meeting quality standards.[12]

Finally, pointing to the existing captioning rules, the owners argue that consumers should "receive the benefit of this history and existing infrastructure."[13] But, the Commission has already found that the current approach to closed captioning has left something to be desired in the case of the quality of closed captioning, and so, decided to adopt quality standards.[14] Thus, because the "nature of the MVPD ecosystem" has been altered by adoption of these new rules, it would not be arbitrary and capricious for the Commission to change its compliance model, as the owners claim.[15] Rather, the change in the requirements for the television programming ecosystem justifies the Commission revising the existing infrastructure in order to best effectuate compliance with its new quality standards for closed captioning on television programming.

Moreover, as the public interest groups point out, the Commission's new rules will only indirectly enforce the quality standards.[16] Under the new rules, programming owners only need to certify that they are following best practices to achieve captioning quality, and programming distributors only need to collect those certifications to comply with the rule. While such safe harbors are beneficial to create appropriate incentives for compliance and to avoid piecemeal

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[11] *See Accessibility of User Interfaces, and Video Programming Guides and Menus,* Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 47 (2013) (quoting Comments of Verizon and Verizon Wireless, MB Dkt. No. 12-108, at 13 (July 15, 2013)); *see also Closed Captioning of Internet Protocol-Delivered Video Programming,* Report and Order, 27 FCC Rcd 787, ¶ 18 (2012). The Commission has clear legal authority to impose compliance responsibility on video programmers and owners. *See* Comments of Verizon, at 3-4; Comments of ACA, at 3-4; Comments of Charter, at 12-17; Comments of DirecTV, at 2-5.

[12] The owners claim that the "repurposing of linear programming" by distributors to non-television devices in the home, which may involve reformatting and signal processing of the program stream, dictates that distributors remain liable for captioning. Comments of CBS, at 9-10. Because captioning is embedded in the video and audio data received by the distributor, there is again no chance for the quality of the captioning to be modified in these contexts as long as the device itself has the capability to render and pass through captioning.

[13] *Id.*, at 4.

[14] *See Closed Captioning of Video Programming,* Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, ¶ 22 (2014) (*Captioning Quality Order*).

[15] Comments of CBS, at 8.

[16] *See* Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al*. (TDI), at 1-2; *see also* Comments of Charter, at 7-8.

enforcement actions,[17] the Commission still needs to change this approach and let those with the ability to improve captioning quality hold the responsibility for improving captioning quality.[18]

Advocates for the deaf and hearing-impaired communities also recommend that the Commission apply its "tried-and-true VPD-centric model to the context of quality absent substantial evidence that a divided responsibility model will better incentivize high-quality captioning, aid the complaint process, and facilitate enforcement."[19] Yet, at the same time, they note that "[m]ore than a decade of experience with poor-quality captions, illustrated in painful depth by the extensive record in this proceeding, has undeniably shown that enforceable rules are the only viable path toward the quality necessary to ensure equal access."[20]

These statements contradict each other because the "tried-and-true VPD-centric model" has not generally addressed the quality of closed captioning, and is not well positioned to do so. The record of this proceeding details that distributors have virtually no opportunity to improve the quality of closed captioning. It is unrealistic to suggest that video programming distributors have the leverage necessary to enforce captioning quality standards because, in theory, they can refuse to carry programming if there are misspellings or out-of-sync captions.[21] If the Commission and the deaf and hearing-impaired communities want to see improvement in the

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[17] *See* Comments of the National Cable & Telecommunications Association (describing importance of compliance ladders); Comments of ACA, at 12-13 (discussing importance of safe harbor for VPDs); Comments of DirecTV, at 8-9 (explaining the need for safe harbors for programming owners and distributors).

[18] *See* Comments of AT&T, at 1 ("allocating to video programmers some responsibility for providing quality captions would have a positive impact on the long term quality of closing captioning").

[19] Comments of TDI, at 7.

[20] *Id.*, at 2.

[21] *See* Comments of AT&T, at 4 ("VPDs are put in the untenable position of passing through programming as receiv[ed], with the embedded closed captioning, or being the only VPD, or one of the few VPDs, without the programming, placing the VPD at a competitive disadvantage vis-a-vis other VPDs"); Comments of ACA, at 5; *cf.* Comments of Comcast, 4 (VPO-VPD contract-based approach unlikely to significantly impact quality); Comments of TDI, at 6 (acknowledging "VPD-centric model is not perfect").

quality of closed captioning, then direct responsibility for compliance must be placed on those that can influence the quality of closed captioning at the time of production.[22]

II. THE COMMISSION AND CONSUMERS SHOULD BE ABLE TO ADDRESS COMPLAINTS REGARDING THE QUALITY OF CLOSED CAPTIONING DIRECTLY TO VIDEO PROGRAMMERS AND OWNERS AS WELL AS DISTRIBUTORS.

Assuming the Commission agrees that the responsibility for compliance with captioning quality standards should rest with video programmers and owners, one issue for the Commission to decide is how to reach video programmers and owners for responses to consumer complaints. Several video programming distributors recommend some form of "burden shifting" in which distributors are on the front lines to respond to a complaint, and, if they report back to the Commission that they were not involved in the specified problem, then the Commission would reach out to the appropriate video programming owner.[23] On the other hand, Verizon[24] and the American Cable Association[25] recommend that the Commission or consumers should have the opportunity to contact video programmers and distributors directly, whenever appropriate, as dictated by the subject matter of the complaint.

Importantly, both approaches allow consumers to address complaints regarding quality standards directly to the Multichannel Video Programming Distributor (MVPD) with whom they have a relationship; no one has suggested that consumers should not be able to bring complaints regarding captioning inclusion or quality to their MVPDs. That feature should be present in whatever compliance model the Commission adopts.

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[22] Advocates for the deaf and hearing-disabled communities express concern that a VPO-centric model will not produce results based on one unresolved complaint under the IP-delivered video captioning rules. *See* Comments of TDI, at 5. Obviously, those rules are new, and only one complaint is noted. Moreover, the television programming rules have not produced the desired quality level over 10 years, and so, a new approach is warranted.

[23] *See* Comments of Comcast, at 6-8; Comments of Charter, at 10-11; Comments of AT&T, at 5-6; Comments of DirecTV, at 7.

[24] *See* Comments of Verizon, at 11-12.

[25] See Comments of ACA, at 8-9.

Verizon's approach offers a number of advantages with respect to quality standards over the burden-shifting model. First, under the burden-shifting plan, there is little opportunity for complaints to have an immediate impact. The Commission's rules contemplate that some complaints would get an immediate response,[26] but it is unlikely that a call to an MVPD about the quality of captioning will have any impact during the course of a program, because the MVPD would also have to contact the programmer. In contrast, direct calls to the programmer may be able to have an immediate impact.[27]

Second, the Verizon approach is more efficient. When the source of a problem is obvious, e.g., multiple complaints about the quality of captioning in a single program distributed over various networks, the Commission or consumers more efficiently can go directly the source, rather than having to contact multiple MVPDs first to get the same answer that the MVPD was not responsible. "[T]he Commission should have the discretion to deduce from the situation that VPDs are not responsible for the captioning quality problem and forward the complaints directly to the video programmer responsible for captioning the programming."[28]

Third, this approach provides stronger incentives for improving captioning quality. If video programmers have to establish customer service intake processes for complaints, investigate the complaints and respond publicly, they will have greater incentives to make sure quality standards are met.[29] In the burden-shifting model, video programming owners are sheltered from front-line attention to consumers. The Commission's stated goal,[30] as well as the

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[26] *See* 47 C.F.R. § 79.1(i)(1) (requiring VPDs to make available contact information "for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program").
[27] *Cf.* Comments of TDI, at 3 (compliance model must "permit[] swift and decisive enforcement action to determine non-compliance").
[28] Comments of ACA, at 8.
[29] *See id.*, at 6.
[30] *See Captioning Quality Order*, ¶¶ 23-25.

stated goal of the public advocates,[31] is to provide incentives to improve captioning quality, and, it therefore makes sense to adopt a model that places video programmers on the front line of enforcing the quality standards.

Finally, in this era of instant communications, with multiple forms and avenues of contact available to consumers, there is little reason to use a process that forces consumers to funnel complaints and comments to someone who cannot readily address or remedy the cause of the problem. That process – even if it made sense two decades ago – now stands as a barrier to incentivizing video programmers to improve captioning quality and accelerating the resolution of consumer complaints. Accordingly, the Commission's rules should allow the Commission and consumers to contact video programmers and owners directly with complaints about the quality of closed captioning.

III. VIDEO PROGRAMMERS AND OWNERS OF TELEVISION PROGRAMMING SHOULD BE RESPONSIBLE FOR BOTH INCLUSION AND QUALITY OF CLOSED CAPTIONING.

The distributors filing comments generally agree with Verizon that the Commission should impose direct responsibility for both *inclusion* and quality of closed captioning on video programmers and owners.[32] Revising the rules for captioning of television programming to impose compliance responsibility for both inclusion and quality of captioning on video programmers and owners will better serve the original goals of Section 713 (47 U.S.C. § 613). A uniform complaint and enforcement model for all closed captioning issues on television programming will improve the efficiency and effectiveness of the Commission's complaint

[31] *See* Comments of TDI, at 3 (compliance model must "[i]ncentivize[] the appropriate entities in the video programming ecosystem to provide high-quality captions").
[32] *See* Comments of ACA, at 9; Comments of Charter, at 12; Comments of Comcast, at 5; Comments of DirecTV, at 8; *cf.* Comments of Verizon, at 12-13.

procedures, streamline the rules and clarify all parties' obligations.[33] Therefore, the Commission should make this revision apply generally to all captioning obligations for television programming.

IV. CONCLUSION.

For the reasons set forth above and in Verizon's initial comments, the Commission should modify its rules to impose direct responsibility for compliance with its closed captioning quality standards on video programmers and video programming owners.

Respectfully submitted,

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[33] *See* Comments of Comcast, at 5; Comments of Charter, at 12. As Comcast notes, this model will require both VPOs and VPDs to provide contact information to the Commission. Comments of Comcast, at 6, note 18.