

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS OF AT&T**

AT&T Services, Inc., on behalf of its affiliated companies, (collectively “AT&T”) files these comments on the Further Notice of Proposed Rulemaking (“*Further Notice*”) about methods to improve the closed captioning of video programming shown on television.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

The *Further Notice* seeks comment on methods that can be taken by the Federal Communications Commission’s (the “Commission”) to enhance closed captioning for television programming. AT&T supports the Commission’s effort to improve closed captioning, including the Commission’s recent codification of VPDs’ obligation to conduct technical equipment checks. The Commission can promote the effectiveness of the technical equipment checks by allowing VPDs continued flexibility to determine how and when they should be performed. Regulations that setting the specific intervals when VPDs must conduct technical equipment checks would limit VPDs’ flexibility to determine the best manner to comply with the Commission’s new rule and discourage the development and use of new technology, such as VPDs’ use of automated equipment monitoring systems.

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<sup>1</sup> Closed Captioning of Video Programming, *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, CG Docket No. 05-231, 29 FCC Rcd 2221 (2014) (“*2014 CC Report & Order, Declaratory Ruling, and Further Notice*”).

AT&T opposes VPD closed captioning outage reporting, as it would require a VPD to monitor all programs and channels 24 x 7, a substantial burden that is not warranted by the limited utility of the notice. Reporting would be required for VPD caused outages, but not when captions are lacking due to programmer problems or exemptions. Yet, in AT&T's experience, programmer problems alone are the cause of about 50% of all incidences of missing captions. As a result, any reporting will have limited utility, providing no information to consumers in those instances. The result will be confusion among consumers, who will not distinguish between the absence of captions caused by VPDs or other events, and thus will likely attribute all incidences of missing captions to problems with VPDs. In turn, this will result in more complaints against VPDs.

AT&T agrees all VPD should submit contact information to the VPD Registry through the web form method, as it will facilitate the efficient and timely provision of information. AT&T also proposes amending Commission Rule Section 79.1(i) to require VPD's to provide contact information for resolving closed captioning issues only on the VPDs website. This modification would bring the Commission's television closed captioning rules in line with its IP closed captioning rules and minimize the misdirection of non-closed captioning related complaints.

## **II. DISCUSSION**

### **A. VPDs REQUIRE FLEXIBILITY TO CONDUCT TECHNICAL CHECKS OF THEIR EQUIPMENT.**

Newly adopted Commission regulations require VPDs to conduct technical checks of their equipment to ensure that the equipment is operating properly to pass intact captions to

viewers.<sup>2</sup> There is no demonstrated need for the Commission to regulate the frequency of those technical checks, as VPDs will perform the checks in the best manner and at intervals that are set to confirm that captioning is reliably delivered. In fact, VPDs need flexibility to develop the intervals to perform technical checks that work best for their equipment and business. Some VPDs may use specific events, such as hardware and software updates, to trigger the need for a technical equipment check, while other VPDs may conduct testing on a pre-set timeline. Even among those VPDs that conduct technical equipment checks on a pre-set timeline, some VPDs may need more frequent checks than others. Thus, no rule setting the specific intervals for equipment checks should be adopted, as it could not effectively address all situations. Moreover, establishing artificial intervals by regulation could cause VPDs to adopt processes with equipment checks on intervals that are less frequent and less effective than existing, effective processes.

Allowing VPDs the flexibility to determine the best interval to check their equipment allows VPDs to accommodate changes in technology, such as implementing automated checks or monitoring systems to ensure the operational status of equipment.<sup>3</sup> Future technologies may provide more timely, reliable information of equipment performance, allowing VPDs to more quickly resolve problems. Unnecessarily prescriptive regulations could impede or delay the development and deployment of those technologies, potentially necessitating further Commission action.

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<sup>2</sup> 47 C.F.R. §79.1(c)(2).

<sup>3</sup> See Letter from Jordan Goldstein, Executive Director, Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 05-231 (Feb. 18, 2014).

By way of example, Commission Rule Section 17.47(b), which requires quarterly inspections of cell tower control devices, indicators, and alarm systems, has become outdated and unnecessary due to the development of advanced monitoring systems.<sup>4</sup> The Commission has waived Section 17.47(b) in favor of annual tower lighting inspections in order to encourage the deployment of those superior monitoring systems,<sup>5</sup> and is currently considering a complete waiver of the rule.<sup>6</sup> The Commission should avoid imposing regulations that would similarly restrict VPDs from upgrading their equipment and software in ways that may not be currently contemplated and that would require further Commission action. To the extent that the Commission seeks to adopt an overarching guideline for equipment checks, AT&T would support the proposal submitted by the National Cable & Telecommunications Association in this docket that VPDs perform technical checks on not less than an annual basis, although further Commission action may be needed to waive these requirements in the future if advances in technology render this requirement unnecessary.<sup>7</sup>

**B. CLOSED CAPTIONING OUTAGE REPORTING WOULD IMPOSE OVERLY BURDENSOME REQUIREMENTS ON VPDs AND CREATE CONSUMER CONFUSION.**

Under the rules proposed by Consumer Groups, VPDs would report, in real-time and after the fact, complete closed captioning outages caused by their equipment. The Commission

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<sup>4</sup> See 47 C.F.R. §17.47(b).

<sup>5</sup> Request of Mobilitie, LLC for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and Order*, 24 FCC Rcd 11949 (2009).

<sup>6</sup> Request for Complete Waiver of 17.47(b) of the Commission's Rules, *Public Notice*, WT Docket No. 10-88 (2014).

<sup>7</sup> Letter from Jill Luckett, Senior Vice President, Program Network Policy, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 05-231, Attachment at 4 (Feb. 7, 2014).

should avoid imposing such outage reporting requirements for closed captioning because it would impose an excessive burden on VPDs, would provide minimal value, and would create confusion for consumers. An outage reporting requirement would require VPDs to monitor every program on every channel at multiple locations within the network to constantly assess whether closed captioning is present in the program feed. In its recent closed captioning Report and Order, the Commission recognized that monitoring closed captioning quality 24 x 7 in real-time would impose an excessive burden on VPDs and refused to impose such a requirement.<sup>8</sup> Yet, a closed captioning outage reporting obligation would impose a similar burden. After VPDs determine what constitutes a close captioning outage, e.g. the quantity of missing captions and how long they are missing, VPDs would need to confirm the absence of captions, that the absence is caused by the VPDs equipment, and that neither the program nor programmer are exempt from the closed captioning rules, a potentially arduous task for VPDs offering hundreds of stations and thousands of programs.

Further, contrary to conclusions in the *Further Notice*,<sup>9</sup> a close captioning outage reporting requirement would not adequately inform consumers about the source of the captioning problem and, as a result, would create confusion. Few programs have no captions at all. Even fewer are missing captions due to problems with the VPD's equipment. AT&T's experience has been that most complaints about the absence of closed captioning are caused by either the lack of captions in the programmer feed or because the program or programmer is exempt from closed captioning requirements. Thus, under the outage reporting rules contemplated, an outage report would not be provided for the vast majority of the few programs that are completely missing

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<sup>8</sup> *2014 CC Report & Order, Declaratory Ruling, and Further Notice*, 29 FCC Rcd at 2264, 2278-79, ¶¶ 67, 96, 97.

<sup>9</sup> *Id.* at 2300-01.

captions. In that case, most closed captioning users would still not know why captions are missing. However, because only VPD caused outages will be reported, consumers will assume that VPD equipment problems are the root of all closed captioning outages. This confusion is likely to generate more, not less, complaints and inquiries, especially against VPDs.

Moreover, the Commission's reliance on the outage reporting requirements for Internet-based telecommunications relay service ("iTRS") providers to support outage reporting for closed captioning is misplaced. Closed captioning outages are not conducive to the types of outage reporting that attaches to iTRS. iTRS providers control all aspects of their provision of relay service and utilize communications assistants that have immediate knowledge of a cessation of service. When CAs report the absence of relay service, iTRS providers know that it is an outage. They need not evaluate the reason for the absence of relay service and whether it qualifies as an outage. In contrast, VPDs are one link in the closed captioning delivery chain, merely passing through content from video programmers. They would have to evaluate the reason for the absence of captions, whether it qualifies as an outage, and whether an exemption applies. VPDs do not monitor all programs on all channels at all times for the presence of closed captioning, and thus, do not immediately become aware of every closed captioning outage on those rare occasions when they occur. VPDs may not be able to provide outage reports to assist consumers in real-time.

If the Commission imposes outage reporting on VPDs, the rule should be limited to after the fact notice on the VPD's website. Except for those rare outages lasting for hours or more, it is unlikely that VPDs could provide real-time notice due to the time needed to identify an outage and its cause and to craft and distribute the notice. Further, real-time notice via a periodic crawl on the screen is inadvisable. Even if VPDs could provide a real-time outage notice, it would be

provided as an open-caption that is visible to all viewers, whether or not they utilize closed captioning. Viewers who do not utilize closed captioning should not be involuntarily subjected to service impacting text on the screen.

**C. CLOSED CAPTIONING CONTACT INFORMATION ON WEBSITES PROVIDES ADEQUATE NOTICE FOR CONSUMERS.**

The Commission proposes that VPDs submit contact information to the VPD Registry through the web form method. AT&T agrees with this proposal and believes that it will facilitate the efficient and timely provision of information. AT&T also proposes amending Commission Rule Section 79.1(i) to limit the location where VPDs must list contact information for resolving closed captioning issues to only a VPD's website. This modification would bring the Commission's television closed captioning rules in line with its IP closed captioning rules and reduce the quality of misdirected complaints/inquiries.

Commission Rule Section 79.1(i) requires VPDs to place contact information, including e-mail address and phone number, on websites, in telephone directories, and in billing statements.<sup>10</sup> In AT&T's experience, over 90% of the inquiries received at the e-mail address and phone number provided for resolving television closed captioning complaints concern issues other than closed captioning. AT&T suspects that persons making these non-caption related inquiries obtain the contact information from a cursory review of the telephone directory or billing statement and merely call the first number they see rather than finding the best number to make their inquiry or complaint. Needless to say, although AT&T monitors the e-mail address and telephone number provided for making closed captioning inquiries, making non-caption related inquiries and complaints to that contact location delays their resolution. It also distracts

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<sup>10</sup> See 47 C.F.R. §79.1(i).

the AT&T representatives fielding the inquiries from focusing on closed captioning related issues.

In the Commission's IP CC Report and Order, the Commission agreed with AT&T that "a general notice on the VPP's/VPD's website with contact information for making inquiries/complaints regarding closed captioning" is sufficient notice, provided that it is placed in a conspicuous location.<sup>11</sup> AT&T proposes similarly modifying Section 79.1(i) of the Commission's Rules to remove the requirement that VPDs provide closed captioning contact information in telephone directories and billing statements. Contact information would be limited to VPD websites, where most consumers now look for information. Such a change would minimize the incidences of misdirected inquiries, and still provide contact information on the VPDs' websites where users can direct their closed captioning concerns to VPD personnel who can best address them.

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Respectfully submitted,



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Robert Vitanza  
Gary L. Phillips  
Lori Fink

AT&T Services, Inc.  
208 S. Akard Street  
Rm 2914  
Dallas, Texas 75202  
(214) 757-3357 (Phone)  
(214) 746-2212 (Fax)

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<sup>11</sup> 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, 838, ¶90 (2012).