

**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)	

COMMENTS OF VERIZON¹

Verizon is committed to providing high-quality closed-captioned programming that meets the diverse needs of our customers, including members of the deaf and hard-of-hearing community. Verizon appreciates the need to improve the quality of closed captioning and thereby the accessibility of television programming. For that goal, the most important rule the Commission should adopt is a rule assigning direct responsibility for its new quality standards to the video programmers and owners who actually produce the programming and insert the captioning. The parties that actually contract for and control insertion of captions should be accountable for the quality of captions, rather than distributors who simply pass through the captioned video stream as received from programmers. This common sense approach is necessary to provide the incentives to ensure that television programming is captioned in compliance with the Commission’s quality standards.

The new quality standards have not yet become effective, and their impact has not yet been assessed. Verizon recommends that the Commission allow its new quality standards to become operational before adopting additional rules. Additional regulatory mandates around the

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

edges of the quality standards are more likely to distract from implementing the new quality standards than improve on closed captioning generally. If the Commission and consumers do not see improvements in the quality of closed captioning after a reasonable period of time, then additional measures, such as those proposed in the *Further Notice*, may be useful, or the Commission may identify a completely different set of solutions for any problems in quality that may arise. In the meantime, the video programming industry has much to accomplish in order to ensure implementation of the new quality standards. Accordingly, with a few exceptions, Verizon recommends against pursuing the additional proposals in the *Further Notice*.

I. THE COMMISSION MUST LOOK TO VIDEO PROGRAMMERS AND OWNERS FOR RESPONSIBILITY FOR CAPTIONING OF LIVE AND NEAR-LIVE VIDEO PROGRAMMING AND RE-FEEDS OF SUCH PROGRAMMING.

The Commission has asked a series of questions concerning how to improve the synchronicity and completeness of captioning in live programming and the quality of captioning in near-live programming and in re-feeds of live and near-live programming.² All of these questions relate to the insertion of captions during the program production phase. As Verizon and other Multichannel Video Programming Distributors (MVPDs) have explained in detail, MVPDs have no control over the insertion and production of captions.³ MVPDs receive programming streams with captions already inserted, and pass through those programming streams to end users. For answers to these questions and compliance with any rules implementing these proposals, the Commission must look to captioning providers and video programmers and owners.

² See *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, ¶¶ 131-135 (2014) (*FNPRM* or *Further Notice*).

³ See Comments of Verizon, at 2-8 (Apr. 28, 2014); Comments of Charter Communications, *et al.*, at 4 (Apr. 28, 2014); Comments of AT&T, at 1 (Apr. 28, 2014); Comments of American Cable Association, at 4 (Apr. 28, 2014); Comments of Comcast Corporation, at 2-3 (Apr. 28, 2014); Comments of DirecTV, at 5 (Apr. 28, 2014) (“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.”).

The Commission's questions and proposals regarding these captioning issues point again to the fact that the Commission's decision in 1997 to rely on video programming distributors to ensure television programming *includes* captions has limitations when it comes to enforcing captioning *quality* standards. Improvements in captioning quality will follow when the Commission makes the parties who produce captions for television programming responsible for compliance with the regulations mandating quality standards for those captions.⁴

II. THE COMMISSION'S RULES REQUIRE REGULAR AND PERIODIC MONITORING OF VIDEO PROGRAMMING DISTRIBUTORS' EQUIPMENT; NO SPECIFIC TIME INTERVAL FOR SUCH MONITORING IS NECESSARY.

The Commission's new rules for maintenance of video programming distributors' equipment already require that distributors "take all steps needed to monitor and maintain their equipment and signal transmissions associated with the transmission and distribution of closed captioning to ensure that the captioning included with the video programming reaches the consumer intact."⁵ In addition, if there is an enforcement action, the distributor must demonstrate that it has taken these appropriate steps to monitor and maintain the equipment.⁶ Distributors must also maintain records of their equipment monitoring activities.⁷

Regular and periodic monitoring of equipment – undertaken voluntarily – will facilitate compliance with these rules. Otherwise, MVPDs may have difficulty demonstrating compliance in the event of problems with the pass-through of captioning. The frequency of an MVPD's regular and periodic monitoring may vary from distributor to distributor, and may depend on the

⁴ Broadcast video programmers assert that they cannot be held responsible "for compliance for online captioning obligations (including captioning quality) for [video] clips that are not within their immediate control." Letter from Ann Bobeck, National Association of Broadcasters (NAB), to Marlene H. Dortch, FCC, MB Dkt. No. 11-154, at 2 (June 13, 2014). MVPDs are similarly situated with respect to the quality of captions on television programming, which is outside their control, leading to the conclusion, consistent with that advanced by NAB, that distributors should not be held responsible for compliance with the captioning quality standards for television programming.

⁵ 47 C.F.R. § 79.1(c)(2).

⁶ *See id.*

⁷ *See id.* § 79.1(c)(3).

needs of various equipment installations and placements. And, as equipment evolves and improves over time, the optimal interval may become less (or more) frequent. Ultimately, the adequacy of the monitoring will be tested by a distributor's response to any complaints of equipment pass-through problems. Accordingly, the proposal to mandate a monitoring interval is not necessary.⁸

If the Commission does impose a time interval for monitoring distributor equipment, then it should specify exactly what equipment is subject to monitoring and at what point in the distribution process. The definition of "video programming distributors" includes broadcast stations and MVPDs, which use a variety of equipment and technologies for distribution of video programming, and so, the Commission should clearly identify what equipment is subject to mandatory reports at any specified time intervals. Additionally, any such requirement should be adopted as a safe harbor, that is, a video programming distributor whose records demonstrate monitoring at the specified intervals would not be held responsible for certain pass-through failures. A safe harbor would put in place incentives to maintain complete and accurate records, and allow the Commission and distributors to avoid expending resources pursuing minor equipment failures.

III. THE COMMISSION DOES NOT NEED TO ADOPT "BEST PRACTICES" TO GUIDE VIDEO PROGRAMMING DISTRIBUTORS IN RESPONDING TO CONSUMER COMPLAINTS.

As of 2014, video programming distributors have had over a decade of experience in responding to customer complaints regarding closed captioning. Such complaints are usually very specific as to the problem, resulting in a targeted response. Providing this customer service, as well as fielding complaints and inquiries about numerous other issues, is a necessary commercial practice that can be a differentiator in the highly competitive marketplace for

⁸ See *FNPRM*, ¶ 137.

delivery of video programming. Moreover, training, maintaining and monitoring customer service representatives implicates additional company-wide issues, such as allocation of resources and labor relations, that may complicate any attempt to regulate such practices.

Given the existing requirements to respond to complaints and the years of experience by MVPDs in developing internal procedures to meet those requirements, the Commission does not now need to adopt “best practices” for how video programming distributors implement customer services for closed captioning complaints. However, as the industry implements the new captioning quality standards, issues may arise that can be addressed by developing targeted best practices through collaboration among the Commission, video programming owners and distributors, and the deaf and hard-of-hearing community. In the meantime, there are many ways to develop superior customer service. The Commission should avoid putting in place a rule that may unintentionally restrict companies that have already developed procedures for serving customers, or that are developing new procedures depending upon the specific needs of their customers.

IV. OUTAGE REPORTING FOR CLOSED CAPTIONING IS UNNECESSARY.

The Commission asks whether it should adopt two types of “outage reporting” requirements for video programming distributors: (1) a real-time alert that informs end users of captioning outages when a program is in progress; and (2) a post-hoc report to the Consumer & Governmental Affairs Bureau (CGB) regarding captioning outages that rise to some to-be-specified level.⁹ Verizon recommends against adoption of either type of outage reporting.

A real-time alert would have limited utility. First, any proposal for alerts of real-time captioning failures must take into account how digital cable systems operate. MVPDs receive captioned programming with the captions included in the audiovisual data stream. If there are

⁹ See *id.*, ¶¶ 141-145.

technical difficulties with the program stream affecting captions, the same technical difficulties will also affect the audiovisual content. In other words, viewers will receive the audiovisual content with captions, or there will be an outage affecting both. Because an outage alert would not be useful on its own, there is generally no reason to require MVPDs to provide a scrolling alert about the lack of captions.

On the other hand, if the programming originator knows of and inserts information about a captioning outage, then an MVPD will deliver that alert in the programming stream. For the same reason that video programmers and owners should be responsible for compliance with standards for quality of captions, insertion of any real-time outage alert should be the responsibility of the program originator.

Even though an alert inserted by the programming originator would be possible, it would likely have limited utility because of how such real-time alerts would appear to viewers. An information scroll over the program itself would be irrelevant to those not attempting to access closed captioning, and could be an unwelcome distraction. If, on the other hand, the captioning outage information were made available through the applicable closed captioning access protocol, then, depending on the cause of the outage, that feature may not be working. Thus, it is not at all clear that real-time outage alerts are practical or useful.

Post-hoc outage reporting also does not appear to provide any benefits that cannot be captured through existing requirements. First, as noted above, since viewers would not experience stand-alone captioning outages on digital cable systems, there would be no captioning outages for MVPDs to report as their responsibility. If any such reports are required, they should be the responsibility of the video programmer or owner, who knows what happened and why.

Second, any such informational report is likely to be redundant. The Commission’s closed captioning complaint processes will provide the Commission with the best information on significant captioning outages that may occur. And, in investigating those complaints, the Commission will learn the details of such outages, including the cause of the outage and any remedial steps that were taken to ensure that such an outage does not recur. The Commission notes that outage reports may assist in resolving complaints, but, an independent report to CGB would be unnecessary when the Commission can already receive the information it needs to resolve complaints.

Moreover, before imposing the costs of a new information collection on video programming distributors, and developing a Commission-based submission portal, the Commission should identify a substantial regulatory need for the collection. Section 713(b) of the Communications Act (47 U.S.C. § 613(b)) directs the Commission to adopt regulations to make video programming “fully accessible through the provision of closed captions.” As important as the presence of captioning is to those that rely on it, the Commission has not identified how post-hoc outage reporting assists in improving the accessibility of video programming.

In the *Further Notice*, the Commission suggests the rationale for captioning outage reporting is that deaf and hearing-impaired consumers “have an interest in knowing when captioning services are suspended.”¹⁰ But, the example provided by the Commission reflects additional concerns. As the Commission notes, reports of TRS outages are important to consumers because TRS is a common carrier service that is supposed to be available 24 hours a

¹⁰ *Id.*, ¶ 143.

day, seven days a week.¹¹ When it adopted TRS outage reporting, the Commission also noted concerns that providers of TRS were not complying with the requirement to be available 24/7, and that since TRS is funded through a federal program, the Commission wanted to be able to monitor concerns with waste, fraud and abuse.¹²

Unlike the scenario described for TRS, neither the Commission nor consumers have had a chance to evaluate the effectiveness of the new quality standards and other new rules for closed captioning. In any event, a post-hoc report of a captioning outage will report on an outage that is likely remedied, for which no consumer will need to find substitute programming. And, while consumers may want to complain about outages, complaints should (and will) come from consumers who actually experience the outage. Given the burden of this proposed information collection on the Commission's resources and the business of video programming distributors, and the limited benefit identified for consumers, the Commission should not adopt a post-hoc outage reporting requirement at this time. Rather, the Commission should first allow the industry to implement the new captioning rules and quality standards, allow the Commission and consumers to evaluate the effectiveness of the new rules over a reasonable period of time, and then consider, based on such actual experience, whether outage reporting would be useful.

V. THE COMMISSION SHOULD USE ITS VPD REGISTRY FOR ALL CONTACT INFORMATION AND EXPAND IT TO INCLUDE CONTACT INFORMATION FOR VIDEO PROGRAMMERS AND OWNERS.

Verizon supports the proposal to require that video programming distributors submit contact information directly to the VPD registry.¹³ Additionally, for the reasons explained in our previously filed Comments and Reply Comments on the *Further Notice*, Verizon recommends

¹¹ See *Structure and Practices of the Video Relay Service Program*, Second Report and Order, 26 FCC Rcd 10898, ¶¶ 53-54 (2011).

¹² See *id.*

¹³ See *FNPRM*, ¶¶ 146-147.

that the Commission require collection of similar contact information from video programmers and owners, and use this information to allow consumers and the Commission to contact video programmers and owners with complaints regarding closed captioning, for both inclusion of closed captioning and adherence to the new quality standards.

VI. CONSUMERS SHOULD DETERMINE HOW THEIR COMPLAINTS ARE DIRECTED WHEN THEIR INITIAL INQUIRY REACHES A PARTY NOT RESPONSIBLE FOR THE SUBJECT OF THE COMPLAINT.

The Commission seeks recommendations on how a video programming distributor should direct a consumer's complaint after the distributor determines that it is not the party responsible for the subject of the complaint.¹⁴ Verizon agrees with the proposed procedure that, in these circumstances, a distributor should inform the consumer of the entity to whom the complaint should be addressed, and allow the complainant to decide whether to have the distributor forward the complaint to that entity or for the consumer to assume responsibility for redirecting the complaint.

In facilitating this procedure, the distributor should obtain a clear expression of consent if the consumer asks the distributor to forward the complaint. To allow distributors to respond promptly to customer concerns, the Commission should accept any written, oral or electronic methods as expressions of consent, such as an email, a recorded voice message, a notation recorded in a provider's systems documenting consent obtained during a telephone conversation, etc. Requiring a consumer to submit a formal written document would in all likelihood delay the processing of the complaint. The distributor would bear the burden of demonstrating consent was received if any question arises.

Once a distributor has returned the complaint to the customer or forwarded it to another video programming distributor or video programmer or owner, the distributor should have no

¹⁴ See *id.*, ¶ 152.

further responsibility to the customer for that complaint (assuming no potential liability arises after further review). Under either the “burden shifting” or “direct responsibility” models discussed in the prior round of comments,¹⁵ video programming owners as well as distributors can be held directly responsible for compliance with the Commission’s closed captioning rules. Accordingly, there is no reason for the initially-contacted distributor to remain in the middle between the responsible distributor or programmer and the consumer.

Verizon recommends against adopting the proposal for requiring the initially-contacted distributor automatically to inform the Commission that it has provided these options to the complainant, if the complainant did not include the Commission in the initial submission. It should be the consumer’s decision whether to include the Commission on the complaint, and/or whether to have the complaint forwarded to the Commission if he/she did not do so initially.

VII. CONCLUSION.

For the reasons set forth above, 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, and, with the exceptions detailed above, should monitor the effectiveness of its closed captioning quality standards before adopting additional rules.

Respectfully submitted,

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July 9, 2014

¹⁵ See Comments of Comcast, at 6-8 (Apr. 28, 2014); Comments of Verizon, at 2-8 (Apr. 28, 2014).