

Before the
Federal Communications Commission
Washington, DC

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

Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)
American Association of the Deaf-Blind (AADB)
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Summary

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the American Association of the Deaf-Blind (AADB), and Speech Communication Assistance by Telephone (SCT), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP) commend the Commission’s continuing attention to the critical issue of closed caption quality.

We urge the Commission to adopt minimum quality standards for live and near-live programming, including heightened standards for re-fed programming and end-of-program cutoffs, and address the critical issue of captions obstructing text. We also urge the Commission to ensure a level playing field for video programming distributors (“VPDs”) by making non-broadcast distributors subject to the same rules for the use of the Electronic Newsroom Technique (ENT).

To ensure that its rules have adequate coverage, the Commission should revisit and eliminate several exemptions from its rules, including for new networks and those making less than \$3 million a year, late-night programming, advertising, locally produced, non-news programming, interstitials, promotional announcements, and public service announcements. The Commission should ensure compliance with its rules by establishing standards for technical equipment checks, the rapid resolution and forwarding of consumer complaints, and outage reporting. Finally, the Commission should ensure that the equipment used by consumers to access video programming, including next-generation 3D and UltraHD televisions, is designed with closed captioning in mind and facilitates easy access to caption configuration options.

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Discussion

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the American Association of the Deaf-Blind (AADB), and Speech Communication Assistance by Telephone (SCT), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP), respectfully comment on the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-referenced docket, which addresses a number of implementation details for the Commission’s landmark closed caption quality initiative.¹ Consumer Groups seek to promote equal access to video programming for the 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution. We commend the Commission’s attention to the many critical issues raised in the *FNPRM*, and offer our comments on each in turn.

I. Minimum Quality Standards (Part B, ¶¶ 131-135)

We believe minimum quality standards for captioning are critical to fulfilling the promise of equal access to video programming. In particular, we support Commission action to improve the quality of live and near-live programming, including re-feeds of

¹ *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 05-231, PRM11CG, 29 FCC Rcd. 2221 (Feb. 24, 2014) (“*Quality Order*” and “*FNPRM*”), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0313/FCC-14-12A1.pdf.

that programming, which is often delivered at a level of quality so substantially less than prerecorded programming that the programming is effectively inaccessible.

A. Live Programming (Part B(1), ¶¶ 131-132)

We commend the Commission’s solicitation of input on technical solutions to improve the synchronicity between the audio track and captions on live programming.² The significant delay in live captioning substantially impairs the ability of viewers who are deaf or hard of hearing to connect captioned audio content with the visual content of a program, and improvements would undoubtedly and substantially advance equal access to video programming. In particular, we endorse the Commission’s recommendation of providing captioners with delivery of audio several seconds in advance, and would endorse rules that required relevant entities to take the necessary steps to facilitate the technique.³ We look forward to evaluating other recommendations from captioners and video programmers in our reply comments.

We also support the Commission’s efforts to address the “cut-off” problem that occurs when the last—and often critical—seconds of a program’s live captions are cut off by a commercial or subsequent program.⁴ This problem frequently denies viewers who are deaf or hard of hearing access to the ending of a program—leaving them without complete understanding of critical news stories, resolution of critical plot lines, punch lines of jokes, winners of competitions, and other terminal content.

The Commission identifies four possible solutions:

1. “[S]ending the audio feed to the live captioner in a way that alerts the captioner that the program’s end is imminent, so that the captioner can paraphrase or abbreviate the remaining text before the program cuts off;”

² See *FNPRM*, 29 FCC Rcd. at 2296, ¶ 131.

³ See *id.*

⁴ See *id.* at 2296-97, ¶ 132.

2. “[F]ading out the program after its last scene to add a few seconds for the transition to the next program or commercial content;”
3. “[P]roviding advance delivery of the audio to captioners by a few seconds;”
and
4. “[A]llowing captions remaining at the end of a program’s audio to be placed in a location on the screen during the subsequent advertisement (or program) in a manner that does not overlap with the captions on that advertisement or program.”⁵

Of these solutions, we wholeheartedly endorse the third—providing advance delivery of the audio to a live captioner. Doing so would simultaneously address live captioning delay and largely resolve the cut-off problem without requiring any modification to the end of the program.

Should some delay remain, we believe that the second solution—briefly fading the program to black long enough to display the end of the captions—is the most workable alternative. While the fourth option—overlapping the captions over subsequent program content—would facilitate some level of access, we are concerned that it might be confusing for viewers to try to process captions for both the ending and beginning programs simultaneously.

Finally, we are skeptical that the first solution—alerting the captioner to facilitate paraphrasing or abbreviating the end of a program—is workable. Captions should always provide a verbatim, unabridged transcript of what happens on the screen, and limiting viewers who are deaf or hard of hearing to a mere summary of critical program content would not afford equal access. We are also skeptical that it would even be possible for

⁵ *See id.*

captioners to concisely summarize critical content with mere seconds of warning—a subjective activity that would require the exercise of substantial judgment.

B. Near-Live Programming (Part B(2), ¶¶ 133-134)

While the constraints of live captioning concededly impose constraints on caption quality, we urge the Commission to seriously question the extent to which those constraints are operative for “near-live” programming. At a bare minimum, we strongly urge the Commission to redefine the scope of “near-live” programming in the context, rather continuing to use the definition imported from the Commission’s Internet Protocol (IP)-captioning rules. As we have detailed in previous filings, the IP rules’ definition—programming recorded within 24 hours of air—was crafted solely for the purpose of setting an appropriate schedule of deadlines for the rules.⁶ More importantly, the Commission did not consider when it crafted the IP rules the critical question presented here: what limited category of programming necessitates the use of inferior-quality live captions instead of high-quality offline captions?

As a general matter, we continue to believe the Commission should require high-quality offline captioning for all non-live programming wherever achievable and should set its definition for near-live programming accordingly.⁷ To ensure that determinations of achievability are reasonable, we also reiterate our recommendation that the Commission presumptively limit near-live programming to programming recorded and performed less than double its length prior to air—e.g., two hours before the airing of a one-hour program—and deem “pre-recorded” all programming recorded and performed more than double its length prior to air.⁸ Lastly, we reiterate our recommendation that

⁶ See, e.g., *id.* at 2297, ¶ 134.

⁷ *Ex Parte of TDI, et al.*, at 4 (Jan. 28, 2014) (“*Consumer Groups June 28 Ex Parte*”), available at <http://apps.fcc.gov/ecfs/document/view?id=7521068899>.

⁸ *Id.*

entities providing near-live programming using real-time captions maintain records of the reason that offline captioning is not achievable, which in turn would be presented in response to a complaint that the captions have errors or quality problems.⁹

While we believe it is critical for the Commission to adopt an appropriately narrow scope of near-live programming to require offline captioning in the first instance where possible, we also support the Commission’s investigation of strategies to improve non-offline captioning methods for near-live programming. In particular, we believe techniques such as partial advance captioning and delivery of live feeds during filming for live captioning followed by subsequent improvements to accuracy, synchronicity, completeness, and placement stand to bridge the gap between live and offline captions for near-live programming, and would support rules to require the use of these techniques. Again, we also look forward to evaluating other recommendations from captioners and video programmers in our reply comments.

C. Live and Near-Live Program Re-feeds (Part B(3), ¶ 135)

The use of live captioning is justifiable only by the lack of time for proper offline captioning of live and near-live programming. That justification disappears when live and near-live programs are shown again after their initial airing or made available on-demand—including via IP—at which point those initially “live” and “near-live” effectively become “prerecorded” and should be properly captioned offline.

Accordingly, we encourage the Commission to adopt rules to ensure that the shortcomings of live captioning are not perpetuated when programs are re-aired.¹⁰

⁹ *Id.* The Commission asks whether it would “be more appropriate for programmers who are directly responsible for the delivery of programs with captions to bear this obligation” rather than VPDs. *FNPRM*, 29 FCC Rcd. at 2298, ¶ 134. We clarify here that a recordkeeping obligation should apply to whichever entity the Commission ultimately holds responsible for caption quality in this proceeding. *See FNPRM*, 29 FCC Rcd. at 2292-93, ¶ 123.

Ultimately, we believe captions must reach the same quality for offline standards, but reserve judgment as to whether that crucial result might be more quickly or efficiently reached by offline re-captioning live programs from scratch, fixing the problems in existing live captions, or other methods that commenters might suggest.¹¹

We also acknowledge that the Commission’s rules for re-feeds should only apply once programmers have had a sufficient time to bring captions up to a sufficient level of quality. However, we urge the Commission to narrowly tailor the time allowed for improving the quality of captions to the time actually necessary to re-caption the program or correct errors in the original captioning. Accordingly, we reiterate our recommendation that re-feeds occurring longer than double the program’s length after initial airing—i.e., two hours after the airing of a one hour program—be subject to the quality standards for pre-recorded programming.¹²

II. Use of Electronic Newsroom Technique by Non-Broadcast Channels (Part C, ¶ 136)

The Commission seeks comment on whether to require non-broadcast networks eligible to use the Electronic Newsroom Technique (ENT) to comply with the ENT “best practices” now required for eligible broadcast stations under Rule 79.1(e)(11).¹³ We remain skeptical about the Commission’s ongoing tolerance of ENT, which denies

¹⁰ See *FNPRM*, 29 FCC Rcd. at 2298, ¶ 135.

¹¹ See *id.*

¹² See *Consumer Groups June 28 Ex Parte* at 4. Canadian policy requires the correction of caption errors in live programs re-aired longer than double the programs’ length for news and “Reporting and Eventualities” programming and 24 hours for other live programming. Broadcasting Regulatory Policy CRTC 2012-362, at App’x, ¶ 5, available at <http://www.crtc.gc.ca/eng/archive/2012/2012-362.htm>. This policy demonstrates the feasibility of such an approach, though we would encourage the Commission to discard the policy’s content-based distinction and apply a “double-the-length” requirement for all live programming.

¹³ *FNPRM*, 29 FCC Rcd. at 2298-99, ¶ 136.

viewers who are deaf or hard of hearing access to critical programming, including news and weather, in smaller markets and on smaller cable channels.¹⁴ The Commission itself “remain[s] concerned about the inability of ENT, as it is currently used in markets outside of the largest 25 DMAs, to provide full and equal access to news programming for all Americans.”¹⁵

Nevertheless, we remain open to evaluating the improvements to ENT that may result from the implementation of the best practices, and believe that the Commission should act now to level the playing field and ensure that non-broadcast networks must adhere to the best practices on equal terms with broadcasters.¹⁶ To the extent that these practices in fact result in improved caption quality for viewers who are deaf or hard of hearing, we support their extension to non-broadcast networks, while maintaining that the Commission must leave the ultimate phase-out of ENT on the table.

III. Compliance (Part D, ¶¶ 137-152)

We strongly support the Commission’s inquiry into various facets of compliance with its rules. A strong compliance regime is critical to ensure that the promise of the Commission’s rules actually results in the consistent delivery of high-quality captions and rapid remediation and complaint resolution when problems occur.

A. Technical Equipment Checks (Part D(1), ¶ 137)

We commend the Commission’s adoption of requirements for VPDs to perform technical equipment checks.¹⁷ Functional equivalence for consumers with disabilities demands that captions require the same attention and care as audio feeds—a principle that should be reflected by the Commission’s rules for periodic checks of caption feeds

¹⁴ See, e.g., *Quality Order* at 2268, ¶ 75.

¹⁵ *Id.* at 2269, ¶ 77.

¹⁶ See *FNPRM*, 29 FCC Rcd. at 2298-99, ¶ 136.

¹⁷ *Quality Order*, 29 FCC Rcd. at 2277-78, ¶ 94.

and equipment. More specifically: periodic checks should be performed at least as often as periodic checks of audio quality.¹⁸

We also support the use of automated tools to test equipment so that VPDs can detect captioning problems early, especially if they allow for continuous monitoring of the captioning data.¹⁹ However, automated tools are only as good as the processes that are used to build and deploy them. Historically, automated tools have done well at catching regressions—i.e., problems that have previously occurred and been fixed—where the tools’ test suites incorporate a specific test of the fix to the problem. Automated tools also have performed well at catching problems that engineers *anticipated* before deployment. However, automated tools fall woefully short at catching new and unanticipated problems, and there is no substitute for humans to check periodically whether captions are delivered as intended—for the same reasons that many software bugs are first uncovered by humans, rather than automated tools. We encourage the adoption of automated tools as a building block toward improved quality assurance, but oppose their use to take humans out of the equation altogether.

B. Resolution of Consumer Complaints (Part D(2), ¶¶ 138-140)

The swift resolution of consumer complaints about captioning problems is critical to the successful implementation of the Telecommunications Act of 1996 and the Twenty-First Century Communications and Video Accessibility Act (“CVAA”), both of which substitute a consumer-driven complaint process for a private right of action.²⁰ Accordingly, we generally support additional measures to ensure that complaints are quickly resolved, that ongoing problems with captioning do not continue, and that repeated patterns of non-compliance with the Commission’s rules result in swift and

¹⁸ See *FNPRM*, 29 FCC Rcd. at 2299, ¶ 137.

¹⁹ See *id.*

²⁰ See 47 U.S.C. § 613(j).

decisive enforcement measures.²¹ A sound complaint process is essential not only for consumers who are deaf or hard of hearing, but for consumers who are hearing that experience poor caption quality at gyms, hospitals, airports, and other locations where captions serve a critical role in conveying programming content.

Consumer Groups routinely receive feedback from our constituents that they have difficulty contacting representatives of VPDs who are in a position to resolve captioning complaints. Accordingly, we support the Commission requiring VPDs to provide better customer representative training and processes to escalate complaints and identify and remedy ongoing problems.²² Moreover, we urge the Commission to require VPDs to provide phone and e-mail contact information dedicated to handling captioning-related calls, rather than general contact information, and provide appropriate staffing during evenings and weekends, when many viewers watch video programming. Contact information should also be available and easily located under headings and search terms such as “captioning” and “captioning complaints” on customer-facing web portals and printed on bills, including on the portion of paper bills that consumers *keep* rather than the portion that is detached and mailed back to the VPD for payment of service.

Additionally, it is critical for the Commission to facilitate public scrutiny of how successful best practices are in ensuring the ultimate goal of rapid and effective complaint resolution. Accordingly, we reiterate our support for Commissioner Pai’s “dashboard” proposal, which would allow both the Commission and the public to examine information about the resolution of captioning complaints and identify trends with programming, programmers, or distributors that routinely exhibit captioning problems.²³

²¹ See *FNPRM*, 29 FCC Rcd. at 2299-2300, ¶¶ 138-140.

²² See *id.* at 2299-2300, ¶ 138.

²³ See *id.* at 2300, ¶ 140; *Quality Order*, Statement of Commissioner Ajit Pai, 29 FCC Rcd. at 2371.

We also encourage the Commission to collaborate with the Federal Trade Commission, state attorneys general, and other governmental institutions with responsibility for handling consumer complaints to consider best practices in this area.

C. Outages (Part D(3), ¶¶ 141-145)

As the *FNPRM* details, we strongly support a requirement that VPDs both (a) communicate caption outages in real-time to viewers via crawls and website notices and (b) provide reports to the Commission at the outset of any outage and following its resolution.²⁴ We agree with the Commission that “outages deny access to video programming by people who rely on captions to understand a program’s content” and that outage reports would helpfully alert consumers that there (a) is a problem (b) that is not related to consumers’ equipment and (c) notify the Commission that non-compliance with its rules is occurring.²⁵

We commend the Commission’s inquiry into the critical details of outage reporting requirements. We reiterate the earlier comments of deaf and hard of consumer groups that:

[Outage reports] would consist of an initial report and a final report. The initial outage report should be filed within three (3) hours of discovery of the outage and should contain the following information:

- (1) name of the Distributor;
- (2) name of video program(s) affected;
- (3) geographic location of the outage;
- (4) date and start time of the outage; and
- (5) [a] description of the outage.

The final report, which can be substituted for the initial report in the case of an outage that lasts less than three (3) hours, should include:

- (1) name of [the VPD];

²⁴ See *FNPRM*, 29 FCC Rcd. at 2301-02, ¶¶ 145-146.

²⁵ See *id.* at 2300-01, ¶¶ 142-143.

- (2) name of video program(s) affected;
- (3) geographic location of the outage;
- (4) date and start time of outage;
- (5) date and end time of the outage;
- (6) [a] description of the outage;
- (7) explanation of the cause of the outage.²⁶

We continue to believe that all outages should be reported, but would consider supporting a minimum threshold outage period.²⁷ We look forward to evaluating the responses of industry representatives on the other technical questions raised by the Commission and to working with them and Commission staff to develop a workable set of requirements that will serve the needs of consumers and the public without imposing an unreasonable burden on VPDs.

D. Amending Section 79.1(i)(3) to Require All Contact Information Be Submitted to the VPD Registry (Part D(4), ¶¶ 146-147)

We support the Commission's proposal to require VPDs to submit contact information directly to the Commission's VPD Registry in lieu of other filing methods.²⁸ This common-sense approach would ensure that all required information is available to consumers who need to contact a VPD and would minimize burdens on the collection and coding of information by the Commission without imposing any significant burden on VPDs.²⁹

E. Treatment of Consumer Complaints by a VPD that Is Not the Responsible Party (Part D(5), ¶¶ 148-152)

We are concerned about the Commission's proposal to amend Rule 79.1(g)(3) to block VPDs from forwarding consumer complaints to a responsible party about

²⁶ *Reply Comments of TDI, et al.*, at 20 (Dec. 16, 2005), available at <http://apps.fcc.gov/ecfs/comment/view?id=5513341126>.

²⁷ *See id.*

²⁸ *See FNPRM*, 29 FCC Rcd. at 2302-03, ¶¶ 146-147.

²⁹ *See id.*

captioning problems with programming under the situations enumerated in Rule 79.1(e)(9).³⁰ Of course, we share the Commission’s goal of ensuring strong privacy protections for consumers who are deaf or hard of hearing. Moreover, we agree with the Commission that 47 U.S.C. §§ 338(i)(4)(A) & 551(c)(1) generally bar the disclosure of personally identifiable information (“PII”) about a satellite carrier’s or cable operator’s customer without the customer’s prior consent, and that a closed captioning complaint to a satellite carrier or cable operator contains PII.³¹

However, requiring a consumer to “either (1) as[k] the VPD to forward the complaint to the appropriate party electronically or in writing, or (2) submit[t] the complaint directly to the appropriate party on his or her own” would essentially pass the buck back to the consumer, dramatically compounding the already significant burden of filing a complaint, increasing the likelihood of further delays and errors in processing the complaint, and decreasing the likelihood that the complaint will ultimately be resolved. Moreover, it would cut the one class of entities with whom consumers have contractual relationships—i.e., satellite carriers and cable operators—out of the loop and force consumers to deal with other parties with whom they have no relationship.

Consumer Groups’ constituents routinely urge the simplification of the Commission’s complaint process, and implementing these changes would be a step in the wrong direction. As the Commission itself acknowledges, the changes are obviously not “a consumer-friendly way to get the complaints to the correct parties.”³² In the long run, these changes would do little more than discourage consumers from filing complaints with VPDs and instead file complaints directly with the Commission, which can forward

³⁰ *See id.* at 2305, ¶ 152.

³¹ *See id.* at 2303-04, 2304-05, ¶¶ 149 & n.529, 151.

³² *See id.*

complaints to the appropriate entity without intervention from consumers.³³ Such a result would unnecessarily burden the Commission’s resources with no positive impact on consumers’ privacy interests.

Instead of requiring a consumer to re-initiate his or her complaint from scratch, we urge the Commission to adopt a low-impact process directed at quickly obtaining a consumer’s consent to forward the complaint with minimal effort on the consumer’s part. Indeed, the Commission has held that “procedures can be established for *seeking the consent* of subscribers” in situations where disclosure is necessary.³⁴ Specifically, the Commission should require a VPD who believes it is not the responsible party for a captioning problem under one of the situations enumerated in Rule 79.1(e)(9) to immediately contact the complaining consumer and ask for consent to forward the complaint to the appropriate entity and the Commission. The provision of consent need not be elaborate; a click on a button on web form personalized for the user’s complaint or a brief affirmative response to an e-mail request should suffice in most cases.

Moreover, the VPD should suggest to the consumer that he or she take direct responsibility for re-forwarding his or her own complaint *only* if the consumer refuses to consent to the VPD forwarding the complaint itself—a situation we imagine will be exceedingly rare. In every other case, the Commission should oblige VPDs to stay in the loop on all complaints even where they are not responsible, rather than unfairly placing consumers in the middle of a game of “hot potato” between VPDs and their program suppliers. Regardless of whether the Commission adopts this or another approach, it should never be incumbent on the consumer to write to the VPD and request that his or her complaint be forwarded.

³³ See 47 C.F.R. §§ 79.1(e)(9), (g)(2).

³⁴ See *Cable Television Technical and Operational Requirements*, Memorandum Opinion and Order, 7 FCC Rcd 8676, 8862 at ¶ 39 (Nov. 24, 1992) (emphasis added).

IV. Captioning Exemptions (Part E, ¶¶ 153-159)

We applaud the Commission’s review of several categorical exemptions from the television closed captioning rules—a review long-awaited by the deaf and hard of hearing community. We note that the Commission first adopted these categorical exemptions in 1997 and has not meaningfully revisited their continued necessity since its 1998 Order on Reconsideration—a more than 15-year vacuum.³⁵ In the meantime, the exemptions have served to deny viewers who are hard of hearing access to a wide swath of television programming.

The Telecommunications Act of 1996 and the CVAA permit the existence of categorical exemptions only upon a specific determination that the provision of closed captions for programs or services within the category would pose an untenable economic burden.³⁶ The Commission’s original promulgation of the existing exemptions was crafted on a flimsy foundation that has eroded to dust in the ensuing 15 years. Thus, we encourage the Commission to eliminate categorical exemptions unless the record developed in response to the *FNPRM* establishes conclusively that the modest cost of providing closed captioning establishes such a substantial economic burden that it outweighs the critical importance of affording equal access to people who are deaf or hard of hearing.

A. Elimination of the New Network Exemption (Part E(1), ¶¶ 153-158)

We strongly support the Commission’s inquiry into the long-unnecessary new network exemption under Rule 79.1(d)(9), and encourage the Commission to eliminate the exemption.³⁷ In adopting the new network exemption nearly 17 years ago, the

³⁵ *Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd. 3272 (Aug. 22, 1997), *modified on reconsideration*, Order on Reconsideration, 13 FCC Rcd. 19,973 (Oct. 2, 1998).

³⁶ See 47 U.S.C. § 613(d)(1).

³⁷ See *FNPRM*, 29 FCC Rcd. at 2306, ¶ 154.

Commission afforded new networks four years the ability to go totally captionless without any substantive evidence of real economic need to do so, rather than sensibly requiring new networks to adhere to universal design principles and build the modest cost of captioning into their initial business plans.³⁸ As a result, viewers who are deaf or hard of hearing are denied access to many new networks every year; for example, the exemption has eliminated captioning requirements for a wide variety of new networks over the last year, including news, lifestyle, sports, and entertainment-focused networks.³⁹ Moreover, exempting new networks by default sends the message that captioning need not be a primary consideration like audio quality and equalization, lighting and color, and other important attributes of video programming, feeding into a cycle of low expectations that ultimately result in the quality problems the Commission is trying to address in this proceeding.

In response to the Commission's specific inquiries:

- We would not object to a reasonable phase-out of the exemption *if* any new networks assert on the record in good faith that they are actually planning on relying on the existing exemption and provide detailed financial information to substantiate their claims.⁴⁰ However, the Commission should reject any general or speculative claims by trade associations or other commenters about the need for the rule and should eliminate the exemption immediately if the record does not strongly support the need for a phase-out.

³⁸ *Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd. 3346, ¶ 154.

³⁹ *E.g.*, Jeanine Poggi, *New TV Networks Scorecard: Eight Cable Channels to Watch in 2014* (Dec. 26, 2013), <http://adage.com/article/media/tv-networks-scorecard-channels-watch-2014/245770/>.

⁴⁰ *See FNPRM*, 29 FCC Rcd. at 2306, ¶ 154.

- Instead of reconfiguring the exemption to incorporate a confusing array of criteria to limit it to only certain new networks, the Commission should simply remind new networks of the availability of individual exemptions under Rule 79.1(f).⁴¹ Given the limited number of networks, if any, that are likely to genuinely qualify for an exemption on economic burden grounds, the Commission can adopt appropriate criteria on a case-by-case basis rather than undertaking the difficult task of predicting them in advance in this proceeding.
- Should the Commission continue the exemption—an outcome to which we would strenuously object—it should limit it to the first year of a network’s operation to ensure that networks build captioning into their plans as early as possible in their lifecycles and minimize the denial of access to popular new networks for viewers who are deaf or hard of hearing.⁴² It should also calculate the year from the network’s initial launch, whether in the U.S. or otherwise, to avoid affording long-operating foreign networks an unnecessary exemption when they launch in the U.S.⁴³ Finally, it should peg the exemption to the earlier launch date of the two networks involved in a merger and decline to apply the exemption in the event of a network restructuring to avoid affording long-operating, profitable networks an unnecessary exemption when they acquire a new network.⁴⁴

⁴¹ *See id.* at 2306, ¶ 155; 47 C.F.R. § 79.1(f).

⁴² *See id.* at 2306, ¶ 155.

⁴³ *See id.* at 2307, ¶ 157.

⁴⁴ *See id.* at 2307-08, ¶ 158.

B. Consumer Groups’ 2011 Petition Requesting Elimination of Certain Self- Implementing Exemptions from the Captioning Rules (Part E(2), ¶ 159)

We strongly encourage the Commission to grant the 2011 petition of several deaf and hard of hearing consumer groups (the “*Universal Captioning Petition*”) to eliminate a variety of other categorical exemptions from the closed captioning rules.⁴⁵ We believe the rationales outlined in the *Universal Captioning Petition* hold true today—and in many cases are stronger than when the *Petition* was filed in 2011. We incorporate the *Petition* by reference here, but reemphasize the following points for the record:

- The costs of captioning have declined over the past 15 years, thanks in part to the widespread proliferation of advanced captioning technology, warranting the elimination or reduction in scope of a variety of existing exemptions from the Commission’s rules.⁴⁶
- Rule 79.1(d)(5)’s exemption for late-night programming continues to deny viewers who are deaf or hard of hearing access to a variety of programming based solely on the time of day during which it is delivered, and now denies access to early-morning news and weather programming and breaking information. This exemption also creates a perverse incentive for late-night programmers not to caption their programming, and should be eliminated.⁴⁷
- Rule 79.1(a)(1)’s exemption for advertisements of five minutes’ duration or less continues to deny viewers who are deaf or hard of hearing access to the very content that economically underpins the delivery of a variety of television

⁴⁵ *See id.* at 2308, ¶ 159; *Petition for Reconsideration of TDI, et al.*, CG Docket No. 05-231 (Jan. 27, 2011) (“*Universal Captioning Petition*”), available at <http://apps.fcc.gov/ecfs/comment/view?id=6016167106>.

⁴⁶ *Id.* at 9-10.

⁴⁷ *Id.* at 11-14.

programming—notwithstanding the recommendation from the Association of National Advertisers that television commercials be captioned.⁴⁸ Canadian policy also expects broadcasters to ensure that advertisements are captioned as part of the license renewal process.⁴⁹ The Commission should follow suit by eliminating this exemption.

- Rule 79.1(d)(8)'s exemption for locally produced, non-news programming continues to deny viewers who are deaf or hard of hearing access to critical local programming, in contravention of the Commission's policies on localism, and should be eliminated.⁵⁰
- Rule 79.1(d)(6)'s exemption of interstitials, promotional announcements, and public service announcements denies viewers information about forthcoming programming, important public information, and more without economic justification, and should be eliminated.⁵¹
- Rule 79.1(d)(12)'s exemption for channels producing revenue of under \$3 million permits the complete omission of captioned programming by entities who could still caption substantial quantities of programming under the Rule 79.1(d)(11)'s 2% revenue exemption, and should be eliminated.⁵²

⁴⁸ *Id.* at 14-19.

⁴⁹ Broadcasting and Telecom Regulatory Policy CRTC 2009-430, at ¶ 75 (July 21, 2009); *see also* Stacy K. Marcus, *Canada Requires Closed Captioning for all TV Commercials*, Adlaw by Request (July 1, 2014), <http://www.adlawbyrequest.com/2014/07/articles/industry/canada-requires-closed-captioning-for-all-tv-commercials/>.

⁵⁰ *Universal Captioning Petition* at 27-28.

⁵¹ *Id.* at 28-29.

⁵² *Id.* at 29-30.

V. Technical Standards for the Display of Closed Captions (Part F, ¶¶ 160-161)

The *FNPRM* seeks comment on “experiences that caption users have had since adoption of [digital television captioning] standards, including the extent that such consumers have succeeded in using these features to improve their television experience.”⁵³ Where available, digital captions facilitate substantially improved user experiences by permitting users to adjust caption sizes, fonts, colors, and other features that maximize readability—a critical result for viewers who are deaf or hard of hearing who are also visually impaired.

Unfortunately, confusing, poorly-designed user interfaces and the inconsistent availability of captions delivered in digital format have practically hindered the benefits of digital captioning standards. Consumer Groups routinely receive complaints from our constituents that they are unable to locate the configuration options for digital receivers on their televisions and set-top boxes, which are often buried several levels deep in inscrutable or poorly labeled menus, lack intuitive controls, and omit real-time previews of caption appearance, requiring users to engage in laborious trial and error to adjust captions. Some set-top boxes lack caption configuration options altogether, requiring consumers to rent or lease more expensive boxes simply to access the options. As we have noted in the Commission’s ongoing user interface proceeding, it is critical that the Commission adopt rules that facilitate quick and easy access to digital caption configuration options on all apparatuses.⁵⁴

Unfortunately, those constituents who are able to enable and configure digital captions also regularly report that the vast majority of programming they receive does not

⁵³ *FNPRM*, 29 FCC Rcd. at 2309, ¶ 160.

⁵⁴ *E.g.*, *Comments of the National Association of the Deaf (NAD), et al.*, MB Docket No. 12-108, at 11 (July 15, 2013).

include digital captions. Thus, we encourage the Commission to take action to ensure the delivery of video programming with digital captions.

VI. Caption Obstructions (Part G, ¶ 162)

The *FNPRM* seeks comment “on the extent to which on-screen visual changes or textual depictions, including, but not limited to, split screens, pop-on advertisements and promotions, credits, graphic overlays, or contact information, have caused a problem for caption viewers.”⁵⁵ Consumer Groups routinely receive complaints from constituents that captions obstruct on-screen text on a variety of programming, including emergency alerts, and often in a way that makes both the captions and the onscreen text impossible to read.

The causes of caption obstructions are various, but at a bare minimum, the careful utilization of digital positional captioning features by programmers and captioners can ensure that a viewer’s video apparatus can display captions without blocking critical text on the screen. We encourage the Commission to adopt rules that require digital captions to include positioning information that ensures captions do not overlay text over either text or critical action on the screen in most cases. We also encourage the Commission to ensure that user interfaces for televisions and set-top boxes permit the rapid toggling of captions so that users can quickly view relevant text in the event of a positioning error.

VII. New Technologies (Part H, ¶¶ 163-167)

The Commission has consistently updated its captioning rules to ensure that captions are consistently delivered as new video programming formats are released. We encourage the Commission to do the same in light of the growing popularity of 3D and Ultra High Definition (Ultra HD) programming.

A. Captioning on 3D Television Programming (Part H(1), ¶¶ 163-165)

We agree with the Commission’s assessments that:

⁵⁵ *FNPRM*, 29 FCC Rcd. at 2310, ¶ 162.

- “VPDs must be able to reliably encode, transport, and render closed captions on video programming, including programming delivered using 3D protocols, in accordance with Commission requirements governing technical standards for the provision of closed captioning”;
- “VPDs and providers must permit the pass through or rendering of closed captions in a manner that will allow viewers to activate and deactivate such captions when video programming is played back on television receivers with 3D capability”; and
- “[I]nterconnection mechanisms and standards for video source devices, including 3D video source devices, must be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions.”⁵⁶

In short, consumers should be able to access video programming on equal terms through the provision of closed captions when the programming is delivered in 3D. To do so, the Commission’s rules should ensure that no part of a 3D picture covers up the captions. The Commission’s rules should also ensure that there is not a significant disparity between scene and caption depth on a 3D program’s Z-axis, which could require excessive refocusing of the viewer’s eyes when switching between captions and scenes and result in missed content. At a minimum, the Commission’s rules should require controls that allow users to override and manipulate caption depth in real-time to address any problems that may arise with depth placement.

⁵⁶ *FNPRM*, 29 FCC Rcd. at 2310, ¶ 164.

B. Captioning on Ultra High Definition Television Programming (Part H(2), ¶¶ 166-167)

As with 3D television, we believe that consumers should be able to access video programming on equal terms through the provision of closed captions when the programming is delivered in Ultra HD formats. Again, we are aware of no aspect of Ultra HD programming that dictates a fundamentally different approach to captioning, and the Commission should ensure that viewers' Ultra HD captioning experiences are equivalent or superior to standard definition and high definition captioning experiences. We support the implementation of rules that further that principle.

Respectfully submitted,

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