

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

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

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)¹ hereby submits its reply comments in response to the comments filed in the above-referenced proceeding.²

DISCUSSION

The cable industry has a strong interest in ensuring that viewers have access to programming with good quality captioning. Industry worked cooperatively to put forth best practices that are intended to achieve this goal – best practices that the Commission incorporated into its recently-adopted caption quality rules. Going forward, industry remains committed to meeting with representatives of deaf and hard-of-hearing viewers to assess whether those practices are achieving the desired effect after they have been in place for an appropriate period of time.

Under these circumstances, the comments of TDI *et al.* do not justify adopting additional rules governing caption quality. The record shows that technological and operational challenges

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$210 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 27 million customers.

² See generally *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, Report & Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (“*Caption Quality Order*,” “*Declaratory Ruling*,” or “*Further Notice*”).

associated with live captioning have not been overcome in the short interval since this issue was last examined. Similarly, proposals for requiring rules dictating when technical checks must be performed or imposing onerous outage reporting requirements are unwarranted. Advocates have failed to make the case that the existing detailed captioning rules are inadequate and that expansion of the rules is necessary.

Finally, the record supports the need for preserving the limited exemptions from captioning. These categorical exemptions serve important public purposes and should be retained.

I. ADDITIONAL QUALITY STANDARDS ARE UNNECESSARY.

TDI *et al.* propose that programmers be required to deliver audio to a live captioner in advance of the video and to briefly fade the program to black to display the end of captions.³ But, as NCTA previously explained, such a requirement would be impractical and unworkable. NAB agrees, explaining that “requiring video delay is not in the public interest and could intrude on important newsroom judgments” and presents serious technical issues.⁴ Mandating a black screen “would be highly disruptive to the video marketplace”⁵ and would cause confusion for consumers.

The record also demonstrates the significant problems with TDI *et al.*’s proposal to require recaptioning of certain live or near live programming when such programming is aired, and the suggestion to limit the circumstances under which real time captioning can be used for “near live” programming.⁶ Rules that would require the use of offline captioning – by

³ See TDI *et al.* Comments at 2-3.

⁴ NAB Comments at 4-5.

⁵ *Id.* at 7.

⁶ See TDI *et al.* Comments at 4-5.

redefining “near live” programming for these purposes or otherwise – would unduly interfere with program production and could limit the type of material presented to viewers. Programmers need flexibility to determine the type of captioning they use based on the program production schedule and time to air. Rather than adopting inflexible rules to address such situations, the Commission should provide programmers discretion to determine the need for and feasibility of using offline captioning or recaptioning a previously live-captioned program when it is re-aired.⁷

As our initial comments showed, many of the programmer best practices are specifically designed to ensure good quality live captioning. Those efforts should first be allowed to proceed, and technology should have time to improve, before the Commission pursues consideration of new requirements in this area.

II. ADDITIONAL RULES REGARDING TECHNICAL EQUIPMENT CHECKS ARE UNWARRANTED.

The record supports NCTA’s position that the Commission need not adopt rules dictating the intervals at which cable operators must check their equipment to ensure that it is passing through captioning.⁸ For example, Verizon explains that the “frequency of an MVPD’s regular and periodic monitoring may vary from distributor to distributor, and may depend on the needs of various equipment installations and placements. And, as equipment evolves and improves over time, the optimal interval may become less (or more) frequent.”⁹ AT&T similarly shows that “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

⁷ See NAB Comments at 9-13.

⁸ See NCTA Comments at 9-10.

⁹ Verizon Comments at 3-4.

software updates, to trigger the need for a technical equipment check, while other VPDs may conduct testing on a pre-set timeline.”¹⁰

There is no evidence in the record that prescribing a specific, artificial interval for testing will yield any benefits beyond the newly-codified rule regarding equipment testing that leaves the time frame for such testing to the operator’s discretion.¹¹ The Commission should not regulate in these circumstances, and should maintain flexibility in the rules allowing MVPDs to test in a manner and at intervals that make the most sense for their particular systems.

III. OUTAGE REPORTING WOULD BE BURDENSOME AND UNNECESSARY.

NCTA showed that outage reporting would be impractical, burdensome, and would do little, if anything, to advance the goal of providing quality captions.¹² Other MVPDs agree. For example, AT&T explains that:

[a]n 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. . . . After VPDs determine what constitutes a closed captioning outage, . . . VPDs would need to confirm the absence of captions, that the absence is caused by the VPD equipment, and that neither the program nor programmers are exempt from the closed captioning rules, a potentially arduous task for VPDs offering hundreds of stations and thousands of programs.¹³

TDI *et al.* offer no evidence that these burdens are necessary to remedy any outages – or, for that matter, that there are captioning outages of any magnitude that would justify imposing this type

¹⁰ AT&T Comments at 3.

¹¹ TDI *et al.* propose that the Commission specify how frequently cable operators and other MVPDs must perform “technical equipment checks” and specifically urge that “periodic checks should be performed at least as often as periodic checks of audio quality.” TDI *et al.* Comments at 7-8. But operators typically would not routinely perform any such prophylactic audio quality tests once the equipment to pass through the audio is in place. Thus, there is no reason to adopt specific intervals for checking based on TDI *et al.*’s principle of “functional equivalence.”

¹² See NCTA Comments at 12-13.

¹³ AT&T Comments at 5; *see also* Verizon Comments at 5-8.

of burden on cable operators. While industry appreciates that the lack of captioning of a particular program may be confusing to consumers, unfortunately outage reporting is not the cure. Instead, customers would be better served by applying resources to preventing problems in the first instance and quickly resolving any issues that may arise.

IV. THE COMMISSION’S PROPOSAL FOR HANDLING MISDIRECTED COMPLAINTS IS PROBLEMATIC.

The record shows that the Commission’s proposal with respect to misdirected complaints should not be adopted. Albeit for different reasons than NCTA, TDI *et al.* explain that they are “concerned” about the proposal, and describe it as a “step in the wrong direction.”¹⁴ Verizon takes issue with the proposal in that “[i]t 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.”¹⁵ As we explained in our comments, the Commission should adopt a simpler approach in this area: it should allow cable operators to return any misdirected captioning complaints directly to consumers, providing the name and address of the correct party to whom the complaint should be sent.¹⁶

V. THE COMMISSION SHOULD RETAIN THE LIMITED EXEMPTIONS FROM THE CAPTIONING REQUIREMENTS AND SHOULD PRESERVE ENT.

The record supports retaining the exemptions built into the captioning rules.¹⁷ While TDI *et al.* suggest that certain categorical exemptions may no longer be warranted,¹⁸ the record shows

¹⁴ TDI *et al.* Comments at 11-12.

¹⁵ Verizon Comments at 10.

¹⁶ See NCTA Comments at 12.

¹⁷ In particular, the Commission sought comment on whether it should revise or eliminate exemptions applicable to new networks; interstitials, promotional announcements and public service announcements; late night programming; channels with revenues under \$3 million; and locally produced and distributed non-news programming with no repeat value. See *Further Notice* ¶¶ 153-59. It also sought comment on whether it should retain the exclusion from the captioning rules for advertisements of five minutes or less in duration. See *id.* ¶ 159.

that these limited exemptions are an important part of the well-established ecosystem for television captioning requirements, and that they continue to be necessary today. NAB supports retention of the exemptions, noting that, “technology and the cost of captioning have not yet materially changed.”¹⁹ Gray Television further explains that

captioning technology has not evolved sufficiently to increase the availability of captioning – and reduce costs associated with captioning – such that the programming subject to these exemptions would continue to be made available to the broader public. It remains “the case that there are certain kinds of services where the addition of extensive captioning obligations would either make the service nonviable or adversely impact the content of the service provided.”²⁰

Indeed, as NAB describes, elimination of the exemptions “would offset the carefully crafted balance between the need for captioning programming and the potential for hindering the production and distribution of programming.”²¹ Gray Television points out that, in the *Caption Quality Order* in the instant proceeding, the Commission formally extended the \$3 million revenue exemption to individual broadcast multicast streams to “promote the continued development of local programming” and prevent the captioning rules “from becoming economically burdensome.”²² As Gray observes, the “same reasoning applies to the remainder of the limited number of categorical closed captioning exemptions allowed by the Commission’s existing rules.”²³

¹⁸ TDI *et al.* Comments at 14-18.

¹⁹ NAB Comments at 15; *see also* Gray Television Comments at 4 (“[C]aptioning technology and availability has not advanced to the degree some had envisioned in 1998, and certainly not to the point where closed captioning is readily available at a reasonable cost for all programs.”) NAB also reports that “there continues to be a finite pool of qualified stenocaptioners and voice writers.” NAB Comments at 15-16.

²⁰ Gray Television Comments at 2-3 (citing *In re Closed Captioning and Video Description; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, Report & Order, 13 FCC Rcd 3272 ¶ 143 (1997)).

²¹ NAB Comments at 15.

²² Gray Television Comments at 3 (citing *Caption Quality Order* ¶ 107).

²³ *Id.* at 4.

The record does not include any evidence justifying elimination of the exemptions.²⁴ The Commission should retain the captioning exemptions as-is.

Furthermore, TDI *et al.* provide no reason to extend the enhanced electronic newsroom technique (“ENT”) requirements to local cable operations.²⁵ NCTA showed the difficulties posed by an enhanced ENT requirement on small local news channels.²⁶ These channels already often voluntarily supplement ENT with live captioning, and there is no evidence that additional rules are needed.

CONCLUSION

For the foregoing reasons, the Commission should not adopt any additional captioning rules.

Respectfully submitted,

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²⁴ See generally TDI *et al.* Comments (resubmitting arguments made previously).

²⁵ See *id.* at 7 (supporting extension of enhanced ENT requirements to non-broadcast networks).

²⁶ See NCTA Comments at 7-9.