

Closed Captioning of Video Programming

updated February 2010

Congress mandated in the Telecommunications Act of 1996 the closed captioning of most, but not all, video programming. The following year, the Federal Communications Commission (FCC) issued specific closed captioning rules, which became effective January 1, 1998. See 47 C.F.R. § 79.1. In November 2008, the FCC clarified captioning obligations for digital programming, streamlined the consumer complaint process and required stations to provide and post contact information for closed captioning concerns.

This memo summarizes the primary points of the FCC's closed captioning rules, including compliance requirements, transition schedules, exemptions, technical standards and enforcement. Further information is provided on rules requiring emergency information to be accessible to hearing and visually impaired viewers.

Background

Closed captioning is an assistive technology for the hearing impaired that displays the audio portion of a television signal as printed words on the television screen. Closed captions are hidden as encoded data within the television signal, and a viewer wishing to see the captions must use a set-top decoder or a television with built-in decoder circuitry. Since July 1993, all television sets with screens 13 inches or larger have been manufactured with built-in decoder circuitry.

Responsibility for Compliance

The FCC generally places responsibility for compliance with the closed captioning rules on the entities that provide video programming directly to viewers' homes. These "video programming distributors" include broadcast television stations, cable television operators and satellite television services. Broadcast television stations should note that they are responsible for compliance with the captioning rules for the programming they air. Broadcasters may rely on certifications from programming providers, such as producers, networks or syndicators, stating that a program is captioned to demonstrate compliance with the FCC's rules.

Transition Schedules

The 1997 rules created two categories of programming ("new programming" and "prerule programming") and established transition periods during which the amounts of "new" and "pre-rule" programming required to be captioned gradually increase. (Limited exemptions from the closed captioning requirements apply to both categories of programming. See "Exemptions" below.)

Programs first shown on or after January 1, 1998, are regarded as "new" programming. The rules require that as of January 1, 2006, and thereafter, 100% of new, non-exempt English language programs must be captioned.

Programs first shown before January 1, 1998, are treated as "pre-rule" programming. Effective January 1, 2008, and thereafter, 75% of pre-rule, non-exempt English language programs must be captioned.

For Spanish language programming, the FCC has created the following benchmarks:

- January 1, 2007 to December 31, 2009: 1,350 hours of captioned programming on each channel during each calendar quarter;
- As of January 1, 2010, and thereafter: 100% of all new, non-exempt programming must be captioned.
- January 1, 2005 to December 31, 2011: 30% of pre-rule, non-exempt programming must be captioned.
- As of January 1, 2012, and thereafter: 75% of pre-rule, non-exempt programming must be captioned.

Broadcast television stations must also pass through to consumers any programming they receive with closed captioning when they do not edit the programming, regardless of whether they have already met the established captioning benchmark.

Exemptions

Not all television programs are required to be closed captioned. The FCC exempted from the captioning requirements certain classes of programs, including:

1. Programs in languages other than English or Spanish;
2. Primarily textual programming, such as program schedules or community bulletin boards;
3. Interstitial material, promotional announcements and public service announcements of ten minutes or less;
4. Advertisements of five minutes or less;
5. Programs shown between 2:00 a.m. and 6:00 a.m. local time;
6. Non-vocal musical programming;
7. Locally produced and distributed non-news programming with limited repeat value, such as local parades or school sporting events;
8. Instructional Television Fixed Service programming and certain other educational programming locally produced by public television stations;
9. Programs shown on a new network for the first four years of the network's operation.

Other than the obligation to pass through video programming already captioned when received, no broadcaster is currently required to caption any channel of video programming producing annual gross revenues of less than \$3,000,000.

Regulatory Update: the FCC has a pending rulemaking proceeding to determine whether this per-channel revenue exemption is appropriate for digital television broadcasters that multicast their programming.

In addition, no broadcaster is required to spend on captioning more than 2% of the gross revenues received from any channel of video programming. Stations may also file with the Commission petitions requesting an exemption from the closed captioning rules if the requirements would impose an "undue burden" (i.e., a significant difficulty or expense).

The Transition to Digital Did Not Qualify As An Exemption

In November 2008 the FCC clarified that no digital channel, including a high definition (HD) channel, is automatically exempt from the captioning rules simply because it is transmitted in digital (although the same exemptions listed above still apply to digital channels). After the June 12 nationwide digital transition for full power television, each broadcaster is required to close caption its main digital channel pursuant to the relevant captioning benchmarks, as if there had been no change (and may not, for example, claim a "new network" exemption).

Technical Standards

Television stations are required to deliver intact the closed captioning they receive as part of the programming they distribute to viewers where the captions do not need to be reformatted. Stations must also maintain and monitor their equipment to ensure the technical quality of the closed captioning they transmit. As yet, captioning does not have to meet any particular quality or accuracy standards.

With regard to live programming, the four major broadcast networks (ABC, CBS, Fox and NBC), and television stations in the top 25 television markets that are affiliated with those networks, are not permitted, as of January 1, 2000, to count electronic newsroom captioned programming towards compliance with their captioning requirements. These network-affiliated stations in the largest markets are required to utilize real-time captioning to meet the Commission's requirements. Broadcasters in smaller markets will continue to be allowed to use the electronic newsroom technique to fulfill their captioning requirements.

The Revised Complaint Process

In November 2008, the FCC revised the consumer complaint process.

Effective February 19, 2010, viewers who believe that a television broadcaster has failed to meet its captioning obligations may initiate a complaint process either at the FCC or with the television station directly. Complaints must be in writing, and filed by e-mail, fax or letter, within sixty (60) days of the captioning problem.

For a complaint first filed directly with a broadcaster, stations must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a station's response does not satisfy the consumer, the complainant may then file a complaint with the FCC.

If the complaint is first filed at the FCC, the FCC will promptly forward the complaint to the station. The station must respond in writing to the FCC and the complainant within thirty (30) days of receipt of the complaint from the FCC.

Note: For this portion of the complaint process, the FCC has suspended the effective date, pending outcome of the further notice of proposed rulemaking on forwarding complaints between programming distributors. If the complaint is first filed at a video programming distributor regarding programming of a broadcast station, that provider (e.g., cable or satellite company), must forward the complaint within seven (7) days to the appropriate party (i.e., the station) and inform the complainant that it has forwarded the complaint. The distributor must also inform the FCC that it forwarded the complaint. Stations that receive complaints from video programming distributors must respond in writing to the complainant within thirty (30) days of the forwarding date of the complaint.

Station Contact Information

In November 2008, the FCC adopted new consumer-oriented information requirements. To assist consumers in resolving captioning concerns, the FCC requires stations to designate a telephone number, fax number and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns (e.g., captions suddenly disappear or become garbled). ***Stations must comply with these new contact information requirements by March 22, 2010.***

The FCC is not requiring stations to alter their hours of operation or hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they must also be knowledgeable about and able to address captioning concerns.

The FCC expects that calls or inquiries received through dedicated contact information, where station personnel are not immediately available, to be returned or otherwise addressed within 24 hours. Further, the FCC expects all stations to take measures to readily accommodate incoming calls placed through a Telecommunications Relay Service (TRS) operator.

In addition, stations must make contact information available for the receipt and handling of written captioning complaints made under the revised process. This contact information must include:

Name of a person with primary responsibility for captioning issues and who can ensure compliance with FCC rules, as well as person's title or office, telephone number, fax number, postal mailing address and e-mail address.

Stations must include the contact information described above (for both immediate concerns and written complaints) on their Web sites, if they have a Web site. Stations must also, *if they pay for expanded listings or ads in telephone directories*, include contact information for closed captioning comments and complaints in the next edition of telephone directories.

Stations must provide the required contact information, for both immediate concerns and written captioning complaints, with the FCC. Although stations can send such information directly to the Chief of the Disability Rights Office, Consumer and Affairs Bureau or CLOSEDCAPTIONING POC@fcc.gov. the FCC has developed an electronic webform. Stations are strongly encouraged to visit

<http://www.fcc.gov/cgb/dro/caption.html> and fill out their station information online.

This information must be submitted to the FCC by March 22, 2010.

Stations must keep their contact information current and must update any changes as promptly as possible, within 10 business days for Web sites and to the FCC. Stations must also provide, on a timely basis, updated contact information for paid for or expanded listings or ads in telephone directories.

Enforcement

Although no specific recordkeeping requirements are imposed on broadcasters, a station will, if a complaint is filed, be obligated to provide the FCC with sufficient records and documentation to demonstrate compliance with the captioning rules. If the FCC determines that a violation of the captioning rules has occurred, a station may be subject to penalties, including a requirement that the broadcaster deliver programming containing captioning in an amount exceeding that required by the rules.

EMERGENCY INFORMATION: ACCESSIBILITY FOR THE HEARING AND VISUALLY DISABLED

In 2000 the FCC issued additional rules regarding the accessibility of emergency programming for the hearing impaired. Unlike the general closed captioning rules, they have no exemptions or phase-in period. The FCC subsequently adopted similar rules regarding access to emergency information for persons with visual disabilities, which became effective in 2001. See 47 C.F.R. § 79.2.

Requirements

These emergency information rules generally require video programming distributors, including broadcast stations that choose to provide local emergency information to make the "critical details" of that information accessible to persons with hearing and visual disabilities. The rules do not require a broadcast station to provide any emergency information, but where a broadcaster chooses to do so, that information must be accessible to viewers with hearing and visual disabilities.

Emergency information is information that helps to protect life, health, safety or property. The FCC did not precisely define what constitutes a "critical detail," but gave several examples (e.g., details about the areas affected by the emergency; evacuation orders and routes; road closures; etc.). These accessibility rules apply to emergency information primarily intended for distribution to an audience in the geographic area where the emergency is occurring.

More specifically, broadcasters are required to make the critical details of emergency information that is provided in the audio portion of the programming accessible to persons with hearing disabilities through closed captioning or other methods of visual presentation, such as open captioning, crawls or scrolls. Any crawls or scrolls providing emergency information should not block any closed captioning, and any closed

captioning provided should not block any emergency crawls or scrolls. Stations should be careful when "crawling" emergency information during regular programming to place the crawl on a part of the screen not used for closed captioning.

When providing local emergency information during regularly scheduled newscasts, or during unscheduled newscasts that preempt regularly scheduled programming, then broadcast stations must also make the critical details of that information accessible to visually disabled viewers through aural presentation. For example, evacuation routes and road closures identified during newscasts should not just be listed on the television screen, but should be aurally announced as well, so they are accessible to visually disabled viewers. If, however, a station does not interrupt its regular programming to provide emergency information via a newscast, but instead runs an emergency crawl or scroll during its regular programming, the station is then required to accompany that emergency information with an aural tone to alert visually impaired viewers to tune to a radio or other source for more information.

Enforcement

Complaints asserting violations of these emergency information rules are made directly with the FCC, in contrast to complaints regarding non-emergency closed captioning violations, which may be first directed to the broadcaster or other video programming distributor. Upon receipt of a complaint from a viewer, the FCC will notify the broadcaster about the complaint, and the broadcaster will have thirty (30) days to respond.

NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcast industry. Broadcasters seeking information on how the principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.