

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)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ submits these reply comments to issues raised by parties in the Federal Communications Commission's *Further Notice* in the above-captioned proceeding.² The record in this proceeding does not support new substantive regulatory requirements. Such requirements will not improve the quality of captioning and would impose unnecessary burdens on video programming owners and distributors.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, Further Notice of Proposed Rulemaking, 29 FCC Rcd. 2221 (Feb. 2014) (*Further Notice*).

II. TECHNICAL REGULATIONS ARE NOT NECESSARY

The Commission has proposed several technical regulations that are not necessary because the marketplace has already addressed the issues. For example, The Consumer Electronics Association states that captioning standards for 3D television and Ultra HDTV receivers have already been established.³ We reiterate that with respect to 3D TV, there is currently little or no 3D television programming produced and it is unclear, at this time, when or if technical standards for the over-the-air (OTA) transmission of 3D programs will ever be developed or implemented.⁴ Should 3D and Ultra HDTV OTA and other programming develop, industry has worked to address how consumers will view captions. Government intrusion in this process at this time would impede rather than assist this captioning effort.

Turning to the issue of captioning outage reporting and equipment checks, we agree with the majority of commenters that a restrained approach is appropriate.⁵ Not

³ See Comments of the Consumer Electronics Association, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 3-4 (explaining that ANSI-CEA 708.1 is intended to allow captioners to author captions with 3D positions. Because DTV receivers render captions independent of display resolutions, CEA posits that CEA-708 capabilities will continue to be availability to consumers when viewing programming on 4k receivers).

⁴ While 4k displays have reached the marketplace, the technical standards for 4k OTA broadcasts have not yet been developed for the United States. The Advanced Television Systems Committee (ATSC) is currently developing a new standard for the next generation US television system, called ATSC 3.0, which will include 4k video, and the provision of closed captions. See Comments of National Association of Broadcasters, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 25 (NAB Comments).

⁵ See Comments of the National Cable & Telecommunications Association, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 9, 12 (NCTA Comments); Comments of AT&T, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 2-5 (AT&T

only are broadcasters and other video programmers routinely performing equipment checks, but technical captioning outages are rare and reporting requirements would do little to improve the robust capability of encoder equipment. Again, such a requirement would do more harm than good because it would force video programmers to deploy resources to report an outage instead of working to remedy one. We also agree with many of the industry comments that the *Further Notice*'s⁶ analogy to the Internet TRS service is inapplicable.⁷ In lieu of onerous outage reporting requirements, broadcasters' efforts are better served by timely resolving the rare instances of technical captioning issues and being able to be responsive to consumer inquiries.

III. THE COMMISSION SHOULD RETAIN ITS PROGRAMMING EXEMPTIONS

As for programming requirements, we fully agree with Gray Television Inc., that elimination of any of the limited number of captioning exemptions “would put a station at a tipping point” in terms of being able to provide locally-oriented programming, including local telethons, high school sports, Christmas parades, music programs featuring local artists, etc.⁸ Particularly for small and medium market television stations, captioning requirements with the attendant cost of \$100 to \$500 (for pre-recorded programming)

Comments); Comments of Verizon, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 3, 5-6 (Verizon Comments); NAB Comments at 25.

⁶ *Further Notice* at ¶ 143.

⁷ See NCTA Comments at 13 (“Providing notice to the Commission of outages thus serves the entirely different purpose of ensuring that TRS is not subject to waste, fraud or abuse and that VRS providers are not compensated for service they do not provide.”).

⁸ See Comments of Gray Television, Inc., Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 2-6 (Gray Television Comments).

per hour are prohibitively expensive and could preclude the delivery of high quality, hyper local programming. Moreover, as NCTA states, local programming with no repeat-value may not be able to utilize Electronic Newsroom Technique.⁹ We strongly urge the Commission to retain all of its carefully balanced exemptions.¹⁰

Contrary to the assertions of TDI, Inc., *et al.*, there has not been “widespread proliferation of advanced captioning technology”¹¹ that would warrant the elimination of captioning exemptions. Beyond a broad blanket statement, TDI once again provides no evidence in the record as to the nature of these advances. It offers no new information other than a recitation of either its 2011 Petition¹² or excerpts from the *Further Notice*.

Notably absent in the record is any evidence from captioning providers as to any material technological advances that (1) significantly reduce costs associated with captioning or (2) significantly reduce turnaround times for video programming owners and distributors. To the contrary, the record to date shows that captioning costs remain significant (about \$100 to \$120 per hour for live-captioning and generally three times higher per hour for pre-recorded programming) and that the pool of qualified real-time

⁹ See NCTA Comments at 21.

¹⁰ In addition to the exemptions NAB detailed in our initial comments, we also agree with NCTA that the new network exemption is important for today’s competitive video programming environment. See NCTA Comments at 14-16.

¹¹ See Comments of TDI, *et al.*, Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing Inc., Petition for Rulemaking, July 9, 2014 at 17 (TDI Comments).

¹² TDI, *et al.*, *Petition for Reconsideration*, CG Docket No. 05-231 (Jan. 27, 2011).

captioners is very limited (about 500).¹³ At this time it is not realistic to eliminate these exemptions until more automated solutions can be implemented.¹⁴

IV. THE COMMISSION SHOULD NOT ADOPT QUALITY STANDARDS FOR LIVE, NEAR-LIVE, OFFLINE AND RE-FED CAPTIONS

Finally, with respect to live and near-live programming, we agree with NCTA that the Commission should neither attempt to adopt minimum quality standards or require off-line captioning or re-feeds.¹⁵ As we noted in our initial comments video programmers have affirmatively pledged via the codified best practices to make reasonable efforts to utilize both pre-recorded captions, and in the case of live-captioning, make reasonable efforts to employ live display captioning where possible.¹⁶ Thus, we strenuously disagree with TDI's repeated urging that the Commission limit "near-live programming to programming recorded and performed less than double its length prior to air...."¹⁷ The record does not support changing the definition of near-live programming. The underlying rationale for defining near-live as "video programming performed and recorded less than 24 hours prior to the time it was first aired on television" in other CVAA proceedings¹⁸ remains valid. As demonstrated in NAB's

¹³ See NAB Comments at 13; NCTA Comments at 18-22; Gray Television Comments at 6.

¹⁴ Given the potentially hundreds of thousands of additional materials that would need to be captioned on short notice – interstitials, advertisements, promotions, local programming, late-night programming, etc., the Commission must have an adequate cost/benefit record upon which to move forward.

¹⁵ See NCTA Comments at 2-7.

¹⁶ NAB Comments at 10.

¹⁷ TDI Comments at 4. Nor is it pragmatic to suggest that a program could be re-fed 1-2 hours after airing to correct any captioning errors.

¹⁸ See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility

initial comments,¹⁹ not only are 1-2 hour turnaround timeframes for pre-recorded captions wholly unachievable, there is absolutely no method by which a video programming distributor can review copy to achieve the higher quality of captions standards mandated by the February 2014 Order.²⁰

Moreover, it is not practical in broadcast production to advance some or “the bulk of the program”²¹ to captioners for near-live programming. For example, news magazines such as ABC’s *20/20*, CBS’ *60 Minutes* and NBC’s *Dateline* include pre-recorded segments that may have been produced prior to the day of airing. However, throughout the production of the program, right until airing, many changes occur. Additional elements may be added, including other pre-taped segments, anchor-read introductions, update of tags, and importantly, breaking news elements.

Because a broadcaster cannot edit a caption file in-house to reflect these changes, they would be reliant upon a captioning agency to finalize changes – thus, necessitating a cut-off schedule of several hours, if not days in advance of airing to ensure timely delivery of captions for pre-recorded programming.²² Not only would this

Act of 2010, Report and Order, 27 FCC Rcd 787, ¶¶ 57-58 (2012). See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order, 26 FCC Rcd 11847, ¶¶ 40-42 (2011). The Commission should avoid adopting different definitions for the same terms in similar proceedings. Otherwise, it will create an untenable regulatory regime where compliance is nearly unachievable depending on arbitrary differences.

¹⁹ NAB Comments at 12-13.

²⁰ See 47 C.F.R. § 79.1(j)(3).

²¹ *Further Notice* at ¶ 133. See also TDI’s suggestion that video programmers “partial advance captioning and delivery of live feeds during filming.” TDI Comments at 5.

²² See NAB Comment at 12-13 (discussing the association’s challenges with securing timely delivery of pre-recorded programming).

impede the flow of news production, but it would deny viewers access to the most up-to-date information. The consequence of such a regulatory regime would be that by the Commission would be dictating substantive journalistic editorial choices based on the type and timing of the broadcast programming. This raises First Amendment concerns. A much more prudent course of action would be for the Commission to (1) allow the quality best practices to take effect, and (2) allow sufficient time to pass for a comprehensive examination to determine whether all elements of the best practices have improved the quality of closed captioning before considering additional regulations.

V. **CONCLUSION**

NAB pledges to continue to work together with our members, other industry sectors, the Commission, and the disability community to improve the viewer experience while watching captioned programming. At the present stage, the Commission can best serve the interests of the deaf and hard-of-hearing community by working with the industry to address remaining technical challenges, such as synchronicity, and to resolve unexpected problems. The resources and efforts of all parties are better directed toward collaboratively improving captions via the quality best practices.

Respectfully submitted,

A handwritten signature in black ink that reads "Ann West Bobeck". The signature is written in a cursive style with a large, stylized initial "A".

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, D.C. 20036
(202) 429-5430

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
Justin L. Faulb
Kelly Williams

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