



PUBLIC NOTICE

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CLARIFICATION OF OBLIGATION OF VIDEO PROGRAMMING DISTRIBUTORS TO MAKE EMERGENCY INFORMATION ACCESSIBLE TO PERSONS WITH HEARING DISABILITIES USING CLOSED CAPTIONING

On July 20, 2006, the Commission issued a Public Notice reminding video programming distributors – including broadcasters, cable operators, and satellite television services – of their obligation to make emergency information accessible to persons with hearing and vision disabilities.¹ The Public Notice also addressed the impact of the 100% closed captioning benchmark² on certain television stations' obligations to make emergency information accessible pursuant to Section 79.2 of the Commission's rules.³ The Public Notice stated that “[g]iven the transition to 100% closed captioning, which occurred on January 1, 2006, television stations that are not permitted by Commission rules to count captions created using the electronic newsroom technique (ENT) are now required to close caption all new non-exempt programming, including breaking news and emergency alerts. In other words, for these non-ENT stations, critical details of emergency information *must be closed captioned*.”⁴

We recognize, however, that in emergency situations it may not be feasible for video programmers on short notice to secure captioning resources and immediately provide closed captioning. Moreover, in those situations, we should not place video programmers in a position where they are forced to choose between broadcasting emergency information and violating our closed captioning rules or failing to provide their viewers with vital emergency information. Accordingly, we clarify in this Public Notice that in evaluating whether a video programmer has complied with our closed captioning rules, we will not consider any lack of captioning that results from a de minimis or reasonable failure to caption emergency information, so long as critical emergency information is provided through some method of visual presentation.

¹ See *Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities*, Public Notice, DA 06-1483 (July 20, 2006) (2006 79.2 PN); see generally 47 C.F.R. § 79.2 (“Accessibility of programming providing emergency information”).

² See 47 C.F.R. § 79.1(b)(1)(iv) (requiring that all “new” non-exempt programming to be closed captioned).

³ 2006 79.2 PN at 3-4. These television stations are those that are not permitted by Commission rules to count captions created using the electronic newsroom technique (ENT) in meeting their closed captioning obligations. See 2006 79.2 PN at 3 n.18.

⁴ 2006 79.2 PN at 3-4 (footnotes omitted; emphasis in original).

Section 79.1(e)(10) of the closed captioning rules provides that “[i]n evaluating whether a video programming provider has complied with the requirement that all new non-exempt video programming must include closed captioning, the Commission will consider a showing that any lack of captioning was de minimis and reasonable under the circumstances.”⁵ In this regard, the Commission has recognized that “there may be times when it will be difficult for a video programming provider to present 100% of its new nonexempt programming with captions,” including situations involving “the inability to obtain captioning resources on short notice.”⁶ Emergency information is the type of information that is typically not available in advance and available only on short notice as contemplated by our rules.

Consistent with Section 79.1(e)(10), during an emergency situation, we will not hold against a video programmer any de minimis or reasonable failure to caption emergency information so long as critical emergency information is provided by some other method of visual presentation. In order to ensure that video programmers are neither deterred from providing viewers with vital emergency information nor are penalized for doing so, the Commission intends to defer to the good faith determinations of video programmers in this regard. Video programmers should assess whether they are able to obtain captioning resources on short notice, and, if not, make good faith efforts to secure captioning resources and provide closed captioning within a reasonable period of time. We note that what is de minimis or reasonable may be affected by the nature and extent of the emergency situation. For example, to the extent that a weather emergency makes it more difficult for video programmers to secure live captioning resources, a longer period of time without captioning would be de minimis and reasonable. The Commission will not second-guess determinations made by video programmers in emergency situations so long as their determinations were made in good faith. Under such circumstances, however, we emphasize that non-closed captioned emergency information must be made accessible by some other visual presentation method.

The closed captioning and access to emergency information rules, and related Factsheets summarizing these rules, are available at the FCC Consumer & Governmental Affairs Bureau's websites, <http://www.fcc.gov/cgb>, <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html>, and <http://www.fcc.gov/cgb/consumerfacts/emergencyvideo.html>.

The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. Copies may be purchased by contacting the FCC's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington D.C. 20554, telephone 1-800-378-3160, facsimile 202-488-5563, or via e-mail www.bcpiweb.com.

To request this *Public Notice* or the rule in accessible formats for persons with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For further information, please contact: Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, (202) 418-1475 (voice), (202) 418-0597 (TTY), e-mail thomas.chandler@fcc.gov.

⁵ See 47 C.F.R. § 79.1(e)(10).

⁶ *Closed Captioning and Video Description of Video Programming*, Order on Reconsideration, 13 FCC Rcd 19973, 19979, at para. 10 (Oct. 2, 1998).