



PUBLIC NOTICE

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

This Public Notice responds to questions concerning the scope and meaning of the August 7, 2006, Public Notice addressing the captioning of emergency information.¹ The August Public Notice served as a reminder that, given the transition to 100% closed captioning under Section 79.1,² which occurred on January 1, 2006, distributors 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.³

We provide, for purposes of illustration, some examples of the types of steps that video programming distributors may take to help obtain closed captioning resources quickly:

(1) Enter into arrangements or contracts with services that are capable of generating closed captions on very short notice to ensure the prompt availability of these services in the event of an emergency;

(2) Establish internal policies that add the requirement to immediately contact the above closed captioning services to the station's check list of top priorities for exhibiting emergency information;

¹ See *Clarification of Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning*, Public Notice, DA 06-1600 (Aug. 7, 2006) (2006 79.2 Clarification PN); see also *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 Reminder PN); National Association of the Deaf (NAD) *et al.*, *Application for Review of Clarification of Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning*, CG Docket No. 05-231 (Aug. 14, 2006).

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

³ See *2006 79.2 Reminder 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).

(3) Maintain visible postings on television sets in the newsroom to remind employees or other designated staff who are responsible for initiating action for the production of emergency programming to contact the designated closed captioning service immediately at the onset of an emergency and include the telephone number for the captioning service on such postings;

(4) Maintain a labeled speed-dial button on telephones in the newsroom with a direct connection to the captioning service;

(5) Distribute an emergency visual presentation policy to all employees on a regular basis;

(6) Train employees regarding visual presentation policies.

We recognize that 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. The Commission has recognized that “there may be times when it will be difficult for a video programming [distributor] to present 100% of its new nonexempt programming with captions,” including situations involving “the inability to obtain captioning resources on short notice.”⁴

To address such circumstances, Section 79.1(e)(10) of the closed captioning rules provides that “[i]n evaluating whether a video programming [distributor] 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 Therefore, to the extent a distributor may be unable to initially caption emergency information, the distributor could assert that the lack of required captioning was de minimis (insignificant, in this context, in terms of the amount of uncaptioned broadcast time) and reasonable under the circumstances. To be considered reasonable, a distributor subject to this closed captioning requirement under Section 79.1 must make its best efforts to ensure that coverage of an emergency is captioned as soon as possible. This can be achieved by making arrangements in advance for the provision of closed captioning on short notice and by contacting the captioning service promptly before, or contemporaneously with, the airing of emergency information, as that term is defined in Section 79.2.⁶ We also recognize that the determination of whether a distributor’s efforts were reasonable may be affected by the nature and magnitude of the emergency situation. For example, to the extent a weather emergency makes it more difficult for video programming distributors to secure live captioning resources, a longer period of time without captioning may be reasonable. For instance, a weather emergency may bring down telephone lines that are used to deliver remote closed captioning. Under this circumstance, a longer period of time without captioning may be considered reasonable.

Nevertheless, we emphasize that, when closed captioning services are not provided, Section 79.2 requires all distributors to make emergency information accessible by some other visual

⁴ *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973, 19979, at para. 10 (Oct. 2, 1998).

⁵ See 47 C.F.R. § 79.1(e)(10).

⁶ See 47 C.F.R. § 79.2 (titled “Accessibility of programming providing emergency information”).

presentation method, in a manner that ensures the same access to emergency information for persons with hearing disabilities as for any other viewer.⁷ For example, under Section 79.2, when a distributor does not use closed captioning, it can make the emergency information provided in the audio portion of the video programming accessible using open captioning, crawls, scrolls that appear on the screen, already prepared signs, charts, or even handwritten information on a whiteboard.⁸ Visually accessible information is critically important so that viewers who are deaf or hard of hearing can be informed about, and know how to respond to, an emergency both for themselves, as well as to assist in protecting the life, health, safety and property of family members, work associates and others with whom they are in contact. There are no exemptions from complying with this rule.⁹

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.bcpweb.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.

⁷ See 47 C.F.R. § 79.2(b)(1)(i). See also 47 C.F.R. § 79.2(b)(3)(i) (“Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning”).

⁸ *Id.*

⁹ See 2000 Order, 15 FCC Rcd at 6622-6623, para. 12. See also NBC Telemundo License Co., Licensee of WRC-TV Washington D.C., File No. EB-04-TC-101, Order/Consent Decree, DA 06-358 (Feb. 22, 2006); Waterman Broadcasting Corp. of Florida, Inc., Licensee of WBBH-TV Fort Myers-Naples, FL, File. No. EB-04-TC-145, Notice of Apparent Liability for Forfeiture, and Montclair Communications, Inc., Licensee of WZVN-TV Fort Myers-Naples, FL, File. No. EB-04-TC-150, Notice of Apparent Liability for Forfeiture, DA 05-2258 (Aug. 9, 2005); Fox Television Stations, Inc., Licensee of WTTG-TV Washington D.C., File. No. EB-04-TC-104, Notice of Apparent Liability for Forfeiture, DA 05-1513 (May 25, 2005); NBC Telemundo License Co., Licensee of WRC-TV Washington D.C., File No. EB-04-TC-101, Notice of Apparent Liability for Forfeiture, DA 05-1512 (May 25, 2005).

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