

Federal Communications Commission 445 12th St., S.W. Washington, D.C. 20554

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> DA 10-2050 Released: October 25, 2010

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS TO REFRESH THE RECORD ON NOTICES OF PROPOSED RULEMAKING REGARDING CLOSED CAPTIONING RULES

Pleading Cycle Established

CG Docket No. 05-231, ET Docket No. 99-254

Comments Due: November 24, 2010 Reply Comments Due: December 9, 2010

By this Public Notice, we seek to refresh the record on several issues pertaining to closed captioning that were raised in Notices of Proposed Rulemaking released by the Commission on July 21, 2005, and November 7, 2008.¹ Given the time that has elapsed and technological developments that have occurred since the *2005 Closed Captioning NPRM* and *2008 Closed Captioning NPRM* were adopted, we believe that a refreshed record will better educate the Commission regarding the issues raised for comment in the pending proceedings. As described below, in these proceedings, the Commission sought comment on a broad range of issues concerning closed captioning. Interested parties filed more than 1600 comments, reply comments, and ex parte letters in response to the *2005 Closed Captioning NPRM*, and numerous comments were filed in response to the *2008 Closed Captioning NPRM*.

More than five years have passed since the Commission sought comment on several very important matters relating to closed captioning of video programming. During this period, there have been a number of changes in the provision of closed captioning on video programming. First, many of the Commission's captioning benchmarks have now been met. These include 100 percent captioning of nonexempt new English language programming (as of January 2006); 100 percent captioning of nonexempt new Spanish language programming (as of January 2010); and 75 percent of "pre-rule" English language programming (as of January 2008). In addition, the transition from analog to digital television transpired on June 12, 2009, which brought significant changes in the way that closed captions are transmitted and displayed to viewers. Other advances in captioning technology (such as speech-to-text technologies), along with the significantly expanded availability of captioning services nationwide, have contributed to altering the captioning landscape since issuance of the *2005 Closed Captioning NPRM*. In light of these many changes, we believe that it is necessary to refresh the record in this

¹ See Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, CG Docket No. 05-231, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) (2005 Closed Captioning NPRM); and Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (2008) (2008 Closed Captioning Declaratory Ruling, Order and NPRM; or 2008 Closed Captioning NPRM where just referring to the NPRM portion), Erratum, 24 FCC Rcd 8262 (CGB 2009).

proceeding. We also believe that a refreshed record will help us to better understand the issues that were raised for comment in the 2008 Closed Captioning NPRM.²

First, we seek to refresh the record on several issues raised in the 2005 Closed Captioning NPRM. Specifically, we seek additional comment on whether the Commission should establish quality standards for non-technical aspects of closed captioning, including, but not limited to accuracy of transcription, spelling, grammar, punctuation and caption placement,³ what the adoption of such standards would cost to programmers and distributors, whether the captioning pool consists of an adequate number of competent captioners to meet a non-technical quality standard mandate,⁴ and whether different captioning quality standards should apply to live and pre-recorded programming.⁵

In addition, we seek to refresh the record regarding the need for mechanisms and procedures, over and above the "pass through" rule, to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise,⁶ including current and proposed obligations for video programming distributors to monitor and maintain their equipment and signal transmissions.⁷ We also seek additional comment on whether to establish specific per violation forfeiture amounts for non-compliance with the captioning rules, and if so, what those amounts should be,⁸ and whether video programming distributors (VPDs) should be required to file closed captioning compliance reports.⁹

The 2005 Closed Captioning NPRM also addressed the use of electronic newsroom technique (ENT), and whether the Commission's rules should be revised to disallow the use of this technique for certain television Designated Market Areas (DMAs).¹⁰ We now seek additional comment on these matters, and whether the same rationale that led the Commission to originally permit the use of ENT by

https://esupport.fcc.gov/ccmsforms/form2000.action?form_type=2000C&request_locale=en.

³ See 2005 Closed Captioning NPRM, 20 FCC Rcd at 13218, para. 7.

⁵ *Id.* at 13226, para.15.

² The Commission does not seek to refresh the record with regard to matters raised in the 2005 Closed Captioning NPRM that were already addressed by the Commission in the 2008 Closed Captioning Declaratory Ruling, Order and NPRM. These include a requirement for VPDs to submit contact information to the Commission and to make such information available to consumers seeking to reach someone with a closed captioning concern or seeking to file a closed captioning complaint. Similarly, we are not refreshing the record on the process for filing and handling closed captioning complaints. See 2008 Closed Captioning Declaratory Ruling, Order and NPRM, 23 FCC Rcd at 16680-87, paras. 16-34. See also 47 C.F.R. §§ 79.1(g) and (i). We also do not seek to refresh the record on whether the Commission should adopt a standardized complaint form for closed captioning complaints. See 2005 Closed Captioning NPRM, 20 FCC Rcd at 13222, para. 35. The Commission's website contains a form that consumers are permitted, but are not required, to use for such purposes. See

⁴ *Id.* at 13228, paras 49-50.

⁶ *Id.* at 13219, para.20. Section 79.1(c), which has come to be known as the "pass through rule," requires video programming distributors to deliver all programming containing closed captioning that is received from video programming owners or other origination sources to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of part 15 of the Commission's rules. 47 C.F.R. § 79.1(c).

⁷ 2005 Closed Captioning NPRM, 20 FCC Rcd at 13219-21, paras. 21-25.

⁸ *Id.* at 13222-23, para 36.

⁹ *Id.* at 13225-26, paras 40-43.

¹⁰ *Id.* at 13226-28, paras. 44-48.

some distributors is still relevant.¹¹ Lastly, we seek to refresh the record on whether the Commission should require petitions for exemption from the closed captioning requirements to be filed electronically.¹² We direct potential commenters to the *2005 Closed Captioning NPRM* for additional explanation on each of the above issues, and welcome any additional comments pertaining to the issues raised in that NPRM that have not already been addressed by the Commission.

Next, we seek to refresh the record on certain issues raised in the 2008 Closed Captioning NPRM. Specifically, we seek to refresh the record on how the exemption in section 79.1(d)(12) of the Commission's rules for channels producing revenues of less than \$3,000,000 should apply to digital broadcasters that multicast.¹³ In 2008, the Commission sought comment on whether each programming stream on a multicast signal should constitute a separate channel, or whether the broadcaster's entire operations attributable to its digital allotment should be considered one channel for purposes of determining whether the channel had produced more than \$3 million in revenue in the prior year, in which case the channel would not be exempt from the closed captioning rules pursuant to section 79.1(d)(12).¹⁴ We now seek to acquire an updated record in this regard, and specifically seek comment on the potential ramifications of a ruling that would conclude that each multicast stream is a separate channel for purposes of section 79.1(d)(12). We again direct parties who may be interested in commenting on this and other matters raised in the 2008 Closed Captioning NPRM to that document for additional information.¹⁵

Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁶ interested parties may file comments in this proceeding by November 24, 2010, and reply comments by December 9, 2010. When filing comments, please reference **CG Docket No. 05-231 and ET Docket No. 99-254.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal Rulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. In addition, parties must send one copy of each pleading to: the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

¹¹ Id.

¹² Id. at 13227-28, paras. 52-53. See 47 C.F.R. §79.1(f).

¹³ See 2008 Closed Captioning NPRM, 23 FCC Rcd at 16687-89, paras. 35-40.

¹⁴ *Id.* at 16687-88, para. 36.

¹⁵ *Id.* at 16687-89, paras. 35-40.

¹⁶ 47 C.F.R. §§ 1.415, 1.419.

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Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

The full text of this document and copies of any subsequently filed documents in this matter will be 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, D.C. 20554. This document and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at its web site www.bcpiweb.com or by calling 1-800-378-3160.

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For further information, please contact Amelia Brown, Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2799, (202) 418-7804 (TTY), or e-mail at Amelia.Brown@fcc.gov.

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