



Federal Communications Commission
Washington, D.C. 20554

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DA 15-208

Small Entity Compliance Guide

Closed Captioning of Live Programming on Television: Enhanced Electronic Newsroom Technique (ENT) Procedures

FCC 14-12

CG Docket No. 05-231

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

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I. BACKGROUND INFORMATION

Closed captioning is a technology that provides visual access to the audio content of video programs by displaying this content as printed words on the television screen. In addition to displaying text of verbal dialogue, captions generally identify speakers, sound effects, music, and audience reaction. Because closed captioning is hidden as encoded data transmitted within the television signal, consumers can turn on or off such captions. In 1996, Congress added section 713 to the Communications Act (the Act), which directed the Commission to establish rules for the closed captioning of televised video programming.¹ In 1997, the Commission adopted rules that require captioning for all *new* English and Spanish language programming that is not specifically exempt from the Commission's rules.²

The Commission's rules allow for the use of Electronic Newsroom Technique (ENT) for live captioning in some cases, for purposes of meeting the captioning benchmarks.³ ENT is a technique that can convert the dialogue included on a teleprompter script into captions. Often local stations rely on ENT to provide captions for their live news programs. Historically, only material that was scripted was captioned using this technique and thus, within a program, live field reports, interviews, breaking news, weather, and sports remained uncaptioned.

In 1998, the Commission narrowed the ENT rule to prohibit the four major national broadcast networks (*i.e.*, ABC, CBS, Fox and NBC), their affiliates in the top 25 television markets as defined by Nielsen's Designated Market Areas (DMAs), and national non-broadcast networks serving at least 50% of all homes subscribing to multichannel video programming distributor (MVPD) services, from using ENT to caption live programming.⁴ The Commission also indicated its intent to ultimately expand the class of providers that cannot count captions created by ENT toward compliance with the rules, and eventually phase out the ability to use ENT-created captions entirely.⁵

In 2014, the Commission amended the ENT rules to require that broadcast stations using ENT comply with the new enhanced ENT procedures described below, starting June 30, 2014.⁶ The Commission will evaluate the effectiveness of these procedures, which are intended to expand the amount of live programming that must have captions, after the enhanced ENT procedures have been in effect for one year.⁷

¹ Section 713 was added to the Act by section 305 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §613.

² See *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 at 3292-55, ¶¶ 41-47 (1997) (*1997 Closed Captioning Report and Order*), *recon. granted in part*, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*); 47 C.F.R. § 79.1(b). "New" programming refers to analog programming that first aired on or after January 1, 1998, and digital programming that first aired on or after July 1, 2002. 47 C.F.R. § 79.1(a)(5). Also, 75% of all nonexempt *pre-rule* English and Spanish language programming must be closed captioned. 47 C.F.R. §§ 79.1(b)(1)(iv), (b)(3)(iv). "Pre-rule" programming refers to analog video programming first published or exhibited before January 1, 1998, or digital video programming first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(6).

³ 47 C.F.R. § 79.1(e)(3).

⁴ *Id.*; *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 19991, ¶ 38.

⁵ *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 19991, ¶ 40.

⁶ *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2266-74, ¶¶ 71-87 (2014) (*Closed Captioning Quality Order*).

⁷ See *Closed Captioning Quality Order*, 29 FCC Rcd at 2272, ¶ 82.

II. KEY DEFINITIONS

Electronic Newsroom Technique (ENT): A technique that can convert the dialogue included on a teleprompter script into captions.

Enhanced ENT Procedures: Specific best practices that must be implemented by a station using ENT to caption its live programming; often this method is used to caption live local news programming.

Closed Captioning, or Captioning: The visual display of the audio portion of video programming.

Live Programming: Video programming that is shown on television substantially simultaneously with its performance.

Near Live Programming: Video programming that is performed and recorded less than 24 hours prior to the time it is first aired on television.

Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.

III. COVERED PROGRAMMING

Starting June 30, 2014, broadcast stations that are permitted to use ENT for live programming must implement enhanced ENT procedures to provide closed captioning on such programming.⁸ Under the FCC's rules, broadcast stations that are not affiliated with the four major national broadcast networks (*i.e.*, ABC, CBS, Fox and NBC), in the top 25 television markets as defined by Nielsen's DMAs and all broadcast stations in DMAs below the top 25 are permitted to use ENT.⁹ At this time, the enhanced ENT procedures do not apply to non-broadcast networks serving less than 50 percent of all homes subscribing to MVPD services.

IV. ENHANCED ENT PROCEDURES

A broadcast station that is permitted to use ENT to provide closed captioning for live programming shall be deemed in compliance with the Commission's rules requiring captioning of live programming or programming originally transmitted live if it adheres to the following enhanced ENT procedures in the ordinary course of business, as stated in the Commission's rules:

- In-studio produced news, sports, weather, and entertainment programming will be scripted.
- For weather interstitials where there may be multiple segments within a news program, weather information explaining the visual information on the screen and conveying forecast information will be scripted, although the scripts may not precisely track the words used on air.
- Pre-produced programming shall be scripted (to the extent technically feasible).
- If live interviews, live on-the scene, or breaking news segments are not scripted, stations will supplement them with crawls, textual information, or other means (to the extent technically feasible).

⁸ *Notice of Effective Dates of Closed Captioning Quality Report and Order and Declaratory Ruling, and Announcement of Comment and Reply Comment Deadlines for Related Further Notice of Proposed Rulemaking*, CG Docket No.05-231, Public Notice, 29 FCC Rcd 3656 (CGB 2014).

⁹ See 47 C.F.R. §79.1(e)(3).

- The station will provide training to all news staff on scripting for improving ENT.
- The station will appoint an “ENT Coordinator” accountable for compliance.¹⁰

These enhanced ENT procedures are established to ensure that most in-studio programming, such as weather, sports, news and entertainment, as well as breaking news and on-the-scene programming, will be made accessible to viewers who benefit from captioned programming.¹¹

The enhanced ENT procedures do not relieve stations of their obligations to make emergency information accessible to persons who are deaf, hard of hearing, blind, or visually impaired in accordance with section 79.2 of the Commission’s rules.¹²

V. COMPLAINT AND COMPLIANCE PROCEDURES

Informal complaints. Starting March 16, 2015, if an informal complaint regarding the use of ENT by a broadcast station is first filed with the Commission, the Commission will forward the complaint to the station only if the informal complaint contains the following information: the television channel number, network, or call sign; the name of the subscription service, if relevant; the date and time of the captioning problems; the name of the affected program; and a detailed and specific description of the captioning problem, including the frequency and type of problem.¹³ When the station receives a complaint forwarded from the Commission, the station must respond in writing to the Commission and complainant within 30 days of such receipt.¹⁴

If an informal complaint is first filed with the broadcast station, the station must respond in writing to the complainant within thirty (30) days after receipt of the complaint.¹⁵ If the station fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the station to respond.¹⁶ If a consumer re-files the complaint with the Commission (after filing with the station), the Commission will forward the complaint to the station (if the complaint contains the information described above), and the

¹⁰ 47 C.F.R. §79.1(e)(11)(i).

¹¹ *Closed Captioning Quality Order*, 29 FCC Rcd at 2270, ¶ 78.

¹² 47 C.F.R. § 79.2; *see also* 47 C.F.R. § 79.1(e)(11)(ii); *Reminder Regarding Video Programming Distributors’ Obligation To Make Emergency Information Accessible to Persons Who Are Deaf, Hard Of Hearing, Blind, or Visually Impaired*, Public Notice, 29 FCC Rcd 10596 (CGB 2014). Entities that are permitted to and are using captions created with ENT for their live programming are reminded that if the ENT method does not automatically caption non-scripted news, the provider must either caption or make the emergency information accessible by some other form of visual presentation as required by section 79.2. *See Accessibility of Emergency Programming*, Second Report and Order, 15 FCC Rcd 6615, at 6623-24, ¶ 16 (2000). Also, a distributor that is permitted to use ENT, but chooses to use real-time captions rather than ENT for its live programming, must provide closed captions on emergency information contained in that programming. *Reminder To Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities*, Public Notice, 21 FCC Rcd 7994, 7997 (CGB 2006).

¹³ 47 C.F.R. §§ 79.1(e)(11)(iii) and (g)(2); *see also Notice of Effective Dates of OMB-Approved Rules Pertaining to the Closed Captioning Quality Report and Order and Declaratory Ruling*, CG Docket 05-231, Public Notice, DA 14-1896 (CGB Dec. 29, 2014) (specifying that March 16, 2015 is the effective date for 47 C.F.R. § 79.1(e)(11)(iii)) (*December 29, 2014 PN*).

¹⁴ 47 C.F.R. § 79.1(g)(2).

¹⁵ 47 C.F.R. § 79.1(g)(4).

¹⁶ 47 C.F.R. § 79.1(g)(4).

station shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.¹⁷ In response to a complaint, a station is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.¹⁸

Pattern or trend of possible ENT noncompliance. Starting March 16, 2015, the following compliance ladder will be used to address instances when the Commission finds a pattern or trend of a broadcast station's noncompliance with the new ENT rules:

- *Initial response to pattern or trend of noncompliance.* If the Commission notifies a broadcast station that the Commission has identified a pattern or trend of possible ENT noncompliance, the station shall respond to the Commission within 30 days regarding such possible noncompliance, describing corrective measures taken, including those measures the station may have undertaken in response to informal complaints and inquiries from viewers.
- *Corrective action plan.* If, after the date for a broadcast station to respond to a Commission notification of a pattern or trend of possible ENT noncompliance, the Commission subsequently notifies the broadcast station that there is further evidence indicating a pattern or trend of ENT noncompliance, the broadcast station shall submit to the Commission, within 30 days of receiving such subsequent notification, an action plan describing specific measures it will take to bring the station's ENT performance into compliance. In addition, the station shall be required to conduct spot checks of its ENT performance and report to the Commission on the results of such action plan and spot checks 180 days after the submission of such action plan.
- *Continued evidence of a pattern or trend of noncompliance.* If, after the date for submission of a report on the results of an ENT action plan and spot checks pursuant to an ENT corrective action plan, the Commission finds continued evidence of a pattern or trend of noncompliance, additional enforcement actions may be taken, which may include admonishments, forfeitures, and other corrective actions, including, but not limited to, requiring the station to cease using ENT and to use real-time captioning for live programming.¹⁹

VI. PROGRESS REPORT REQUIRED

No later than June 30, 2015, broadcast stations subject to the new enhanced ENT procedures shall jointly prepare and submit to the Commission, in consultation with individuals who rely on captions to watch television and organizations representing such individuals, a report on their experiences with following such procedures, and the extent to which they have been successful in providing full and equal access to live programming.²⁰ The progress report should include data to demonstrate the extent to which ENT captioning meets the principles of accuracy, completeness, synchronicity, and placement, the percentage and quantity of uncaptioned programming by stations using ENT, the impact of ENT usage on the ability of consumers who are deaf and hard of hearing to access programming, complaints filed about ENT, the state of the market for real-time captioners, the economic need for stations to continue using ENT in lieu of real-time captioning, and technological progress toward achieving improvements with ENT.²¹

¹⁷ 47 C.F.R. § 79.1(g)(4).

¹⁸ 47 C.F.R. § 79.1(g)(5).

¹⁹ 47 C.F.R. §79.1(e)(11)(iv); *see also* December 29, 2014 PN.

²⁰ 47 C.F.R. §79.1(e)(11)(v).

²¹ *Closed Captioning Quality Order*, 29 FCC Rcd at 2272, ¶ 82.

INTERNET LINKS

Report and Order (paragraphs 71-87)

- <http://www.fcc.gov/document/closed-captioning-quality-report-and-order-declaratory-ruling-fnprm>

Chairman and Commissioner Statements

- Chairman Wheeler: <http://www.fcc.gov/article/fcc-14-12a2>
- Commissioner Clyburn: <http://www.fcc.gov/article/fcc-14-12a3>
- Commissioner Rosenworcel: <http://www.fcc.gov/article/fcc-14-12a4>
- Commissioner Pai: <http://www.fcc.gov/article/fcc-14-12a5>
- Commissioner O’Rielly: <http://www.fcc.gov/article/fcc-14-12a6>

Effective Date of Enhanced ENT Rules Announced

- <http://www.fcc.gov/document/comment-deadlines-and-effective-dates-closed-captioning-order>

ENT Rules

- Electronic Code of Federal Regulations: <http://www.ecfr.gov/> (Search for 47 C.F.R. §79.1)