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Small Entity Compliance Guide

Closed Captioning of Programming on Television: Quality Standards, Responsibilities, Registration and Certification, and Complaint Procedures

FCC 14-12, FCC 16-17
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. This Guide is not intended to replace the rules; 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. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. This Guide may 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) (*This number will not be in service during the pandemic*)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232**

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 the captions on or off. In 1996, Congress added section 713 to the Communications Act of 1934, as amended (the Act), which directed the Commission to establish rules for the closed captioning of televised video programming.¹ In 1997 and 1998, the Commission adopted rules that require video programming distributors (VPDs) to provide captioning for all English and Spanish language programming that is not specifically exempt from the Commission's rules.²

Subsequently, the Commission received a petition for rulemaking concerning widespread problems with the quality of closed captions, alleging that inaccuracies were often severe enough to affect the comprehensibility of television programming, and urging the Commission to put into place non-technical quality control mechanisms and standards.³

This Guide concerns two orders adopted in 2014 and 2016 regarding captioning quality. In the *2014 Captioning Quality Order*, the Commission adopted captioning quality standards and technical compliance rules to ensure that video programming is fully accessible to individuals who are deaf and hard of hearing through the provision of closed captioning.⁴ In the *2016 Captioning Responsibilities Order*, the Commission allocated responsibility for the quality of closed captioning between VPDs and video programmers, making each entity responsible for closed captioning issues that are primarily within its control.⁵

II. KEY DEFINITIONS

Closed Captioning, or Captioning: The visual display of the audio portion of video programming.⁶

Live Programming: Video programming that is shown on television substantially simultaneously with its performance.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 *Closed Captioning and Video Description of Video Programming et al.*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3292-95, paras. 41-47 (1997) (*1997 Closed Captioning Order*), recon. granted in part, Order on Reconsideration, MM Docket No. 95-176, 13 FCC Rcd 19973, 20016, paras. 96-98 (1998) (*1998 Closed Captioning Reconsideration Order*); 47 CFR § 79.1(b).

³ See *Closed Captioning of Video Programming et al.*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2232-40, paras. 15-25 (2014) (*2014 Captioning Quality Order*).

⁴ *2014 Captioning Quality Order*, 29 FCC Rcd at 2223-24, paras. 2-3. The *2014 Captioning Quality Order* also adopted rules governing the use of enhanced Electronic Newsroom Technique for certain live and near-live programming. These requirements are the subject of a separate guide. *Closed Captioning of Live Programming on Television: Enhanced Electronic Newsroom Technique (ENT) Procedures*, CG Docket No. 05-231, Small Entity Compliance Guide, 30 FCC Rcd 1222 (2015), https://apps.fcc.gov/edocs_public/attachmatch/DA-15-208A1.docx.

⁵ *Closed Captioning of Video Programming et al.*, CG Docket No. 05-231, Second Report and Order, 31 FCC Rcd 1469, 1472-73, para. 6 (2016) (*2016 Captioning Responsibilities Order*). The *2016 Captioning Responsibilities Order* also modified the registration and certification requirements. This guide will be updated when these rules take effect.

⁶ 47 CFR § 79.1(a)(2).

⁷ 47 CFR § 79.1(a)(3).

Prerecorded Programming: Video programming that is not “live” or “near-live”.⁸

Near-Live Programming: Video programming that is performed and recorded less than 24 hours prior to the time it is first aired on television.⁹

Video Programmer: Any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or non-broadcast television networks and the owners of such programming.¹⁰

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.¹¹

Video Programming Distributor: Any television broadcast station licensed by the Commission and any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. An entity contracting for program distribution over a video programming distributor that is itself exempt from captioning that programming pursuant to section 79.1(e)(9) of the Commission’s rules¹² will itself be treated as a video programming distributor for purposes of this section. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.¹³

Video Programming Owner: Any person or entity that either: (i) licenses video programming to a video programming distributor or provider that is intended for distribution to residential households; or (ii) acts as the video programming distributor or provider and also possesses the right to license linear video programming to a video programming distributor or provider that is intended for distribution to residential households.¹⁴

Video Programming Provider: Any video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or non-broadcast television network and the owners of such programming.¹⁵

III. CLOSED CAPTIONING QUALITY STANDARDS

Quality Standards. Pursuant to the *2014 Captioning Quality Order*, captions for all television programming must adhere to new quality standards. Captions must be:

- **Accurate:** Captions must match and mirror the spoken words in the dialogue, in their original language (English or Spanish), to the fullest extent possible, and include full lyrics when provided on the audio track. Captions must also provide nonverbal information that is not observable, such as who is speaking, the existence of music (even when there are no lyrics to be captioned), sound effects, and audience reaction, to the greatest extent possible, given the nature of the program.
- **Synchronous:** Captions must appear at the time that the corresponding speech or sounds begin and end to the greatest extent possible. In addition, the captions must be displayed on the screen at a speed that can be read by viewers.

⁸ 47 CFR § 79.4(a)(7).

⁹ 47 CFR § 79.1(a)(4).

¹⁰ 47 CFR § 79.1(a)(9).

¹¹ 47 CFR § 79.1(a)(10).

¹² 47 CFR § 79.1(e)(9); *see 1997 Closed Captioning Order*, 13 FCC Rcd at 3287, para. 29.

¹³ 47 CFR § 79.1(a)(11).

¹⁴ 47 CFR § 79.1(a)(12).

¹⁵ 47 CFR § 79.1(a)(13).

- **Complete:** Captions must run from the beginning to the end of the program to the fullest extent possible.
- **Properly placed:** Captions may not block other important visual content on the screen, overlap one another, or run off the edge of the video screen.¹⁶

Application of Standards to Types of Programming. The *2014 Captioning Quality Order* distinguished between pre-recorded, live, and near-live programming and explained how the new standards apply to each type of programming.

- *Pre-recorded Programming.* Full compliance with the above quality standards must be achieved for pre-recorded programming because of the extra time available to review and edit captions offline.¹⁷
- *Live and Near-Live Programming.* The Commission will consider the greater hurdles involved with captioning live and near-live programming in determining compliance.¹⁸ In the event of a complaint, the Commission will consider:
 - *Accuracy:* The overall accuracy of the program and the ability of the captions to convey the aural content in a manner equivalent to the aural track;¹⁹
 - *Synchronicity:* The measures taken, to the extent technically feasible, to keep any delay to a minimum, consistent with an accurate presentation with what is being said, so that any delay does not interfere with the ability of viewers to follow the program;²⁰
 - *Completeness:* The steps taken, to the extent technically feasible, to minimize the lag time so that captions are not cut off when the program transitions to a commercial or another program;²¹ and
 - *Placement:* The nature of the programming and its susceptibility to unintentional blocking by captions.²²

The Commission also encouraged, but did not require, the use of offline captioning techniques to improve the quality of captions for near-live programming and re-feeds of live programming. This could, for example, include editing the captioning for errors and adjusting the synchronicity of the captioning.²³

IV. CLOSED CAPTIONING BEST PRACTICES

In the *2014 Captioning Quality Order*, the Commission adopted Best Practices for (1) video programmers, (2) real-time (live) captioning vendors, (3) real-time (live) captioners, and (4) offline (pre-recorded) captioning vendors and captioners.²⁴

Video Programmers Best Practices. Video programmers adopting Best Practices will adhere to the following practices:

¹⁶ *2014 Captioning Quality Order*, 29 FCC Rcd at 2240-45, paras. 26-33; 47 CFR § 79.1(j)(2).

¹⁷ *De minimis* errors are permitted. In determining whether or not a captioning error is *de minimis*, the Commission will consider the particular circumstances presented, including the type of failure, the reason for the failure, whether the failure was one-time or continuing, the degree to which the program was understandable despite the error, and the time frame within which corrective action was taken to prevent such failures from recurring. 47 CFR § 79.1(j)(3).

¹⁸ *2014 Captioning Quality Order*, 29 FCC Rcd at 2245-53, paras. 34-49; *see* 47 CFR § 79.1(j)(3).

¹⁹ 47 CFR § 79.1(j)(3)(i).

²⁰ 47 CFR § 79.1(j)(3)(ii).

²¹ 47 CFR § 79.1(j)(3)(iii).

²² 47 CFR § 79.1(j)(3)(iv).

²³ *See 2014 Captioning Quality Order*, 29 FCC Rcd at 2253-54, para. 50.

²⁴ *2014 Captioning Quality Order*, 29 FCC Rcd at 2257-63, paras. 60-65; 47 CFR § 79.1(k).

- *Agreements with captioning services.* Through new or renewed agreements with captioning vendors:
 - *Performance requirements.* Include performance requirements designed to promote the creation of high-quality closed captions for video programming comparable to the Captioning Vendor Best Practices as described below.
 - *Verification.* Include a means of verifying compliance with the above performance requirements such as through periodic spot checks of captioned programming.
 - *Training.* Include provisions designed to ensure that captioning vendors’ employees and contractors who provide caption services have received appropriate training and that there is oversight of individual captioners’ performance.
- *Operational best practices.*
 - *Preparation materials.* To the extent available, provide captioning vendors with advance access to preparation materials such as show scripts, lists of proper names (people and places), and song lyrics used in the program, as well as to any dress rehearsal or rundown²⁵ that is available and relevant.
 - *Quality audio.* Make commercially reasonable efforts to provide captioning vendors with access to a high-quality program audio signal to promote accurate transcription and minimize latency.
 - *Captioning for pre-recorded programming.*
 - The presumption is that pre-recorded programs, excluding programs that initially aired with real-time captions, will be captioned offline before air except when, in the exercise of a programmer’s commercially reasonable judgment, circumstances require real-time or live display captioning. Examples of commercially reasonable exceptions may include:
 - A programmer’s production is completed too close to initial air time to be captioned offline or may require editorial changes up to air time (*e.g.*, news content, reality shows).
 - A program is delivered late.
 - There are technical problems with the caption file.
 - Last minute changes must be made to later network feeds (*e.g.*, when shown in a later time zone) due to unforeseen circumstances.
 - There are proprietary or confidentiality considerations.
 - Video programming networks or channels with a high proportion of live or topical time-sensitive programming, but also some pre-recorded programs, use real-time captioning for all content (including pre-recorded programs) to allow for immediate captioning of events or breaking news stories that interrupt scheduled programming.
 - Make reasonable efforts to employ live display captioning²⁶ instead of real-time captioning for pre-recorded programs if the complete program can be delivered to the caption service provider in sufficient time prior to airing.
- *Monitoring and remedial best practices.*
 - *Pre-air monitoring of offline captions.* As part of the overall pre-air quality control process for television programs, conduct periodic checks of offline captions on pre-recorded programs to determine the presence of captions.
 - *Real-time monitoring of captions.* Monitor television program streams at point of origination (*e.g.*, monitors located at the network master control point or electronic monitoring) to determine presence of captions.

²⁵ A “rundown” is a quick review or summary of main points of information, usually oral.

²⁶ “Live-display” captioning is used when an accurate script or videotape is available prior to the time a program is telecast. Captions are prepared in advance and stored on a computer disk. As the program is telecast, a captioner operates the captioning system to display each caption.

- *Programmer and captioning vendor contacts.* Provide to captioning vendors appropriate staff contacts who can assist in resolving captioning issues. Make captioning vendor contact information readily available in master control or other centralized location, and contact captioning vendor promptly if there is a caption loss or obvious compromise of captions.
- *Recording of captioning issues.* Maintain a log of reported captioning issues, including date, time of day, program title, and description of the issue. Such log shall reflect reported captioning issues from the prior year.
- *Troubleshooting protocol.* Develop procedures for troubleshooting consumer captioning complaints within the distribution chain, including identifying relevant points of contact, and work to promptly resolve captioning issues, if possible.
- *Accuracy spot checks.* Within 30 days following notification of a pattern or trend of complaints from the Commission, conduct spot checks of television program captions to assess caption quality and address any ongoing concerns.

Captioning Vendor Best Practices. Video programmers certifying adherence to Best Practices must have agreements with captioning vendors that include performance requirements that are comparable to the Captioning Vendor Best Practices set forth below. These are divided into three sets of Best Practices – for captioning vendors, individual captioners who generate real-time captions, and the generation of offline captioning.

Best Practices for Real-Time (Live) Captioning Vendors.

- Create and use metrics to assess accuracy, synchronicity, completeness, and placement of real-time captions.
- Establish minimum acceptable standards based upon those metrics while striving to regularly exceed those minimum standards.
- Perform frequent and regular evaluations and sample audits to ensure those standards are maintained.
- Consider “accuracy” of captions to be a measurement of the percentage of correct words out of total words in the program, calculated by subtracting number of errors from total number of words in the program, dividing that number by total number of words in the program and converting that number to a percentage. For example, 7,000 total words in the program minus 70 errors equals 6,930 correct words captioned, divided by 7,000 total words in the program equals 0.99 or 99% accuracy.
- Consider at a minimum mistranslated words, incorrect words, misspelled words, missing words, and incorrect punctuation that impedes comprehension, and misinformation as errors:
 - Captions are written in a near-as-verbatim style as possible, minimizing paraphrasing.
 - The intended message of the spoken dialogue is conveyed in the associated captions in a clear and comprehensive manner.
 - Captioning of music lyrics should accompany artist performances.
- Consider synchronicity of captions to be a measurement of lag between the spoken word supplied by the program origination point and when captions are received at the same program origination point.
- Ensure placement of captions on screen to avoid obscuring on-screen information and graphics (e.g., sports coverage).
- Ensure proper screening, training, supervision, and evaluation of captioners by experienced and qualified real-time captioning experts.
- Ensure there is an infrastructure that provides technical and other support to video programmers and captioners at all times.
- Ensure that captioners are qualified for the type and difficulty level of the programs to which they are assigned.
- Utilize a system that verifies captioners are prepared and in position prior to a scheduled assignment.
- Ensure that technical systems are functional and allow for fastest possible delivery of caption data and that failover systems are in place to prevent service interruptions.
- Regularly review discrepancy reports in order to correct issues and avoid future issues.
- Respond in a timely manner to concerns raised by video programmers or viewers.

- Alert video programmers immediately if a technical issue needs to be addressed on their end.
- Inform video programmers of appropriate use of real-time captioning (*i.e.*, for live and near-live programming, and not for pre-recorded programming) and what is necessary to produce quality captions, including technical requirements and the need for preparatory materials.
- For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including VPDs, video programmers, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.
- Ensure that all contracted captioners adhere to real-time captioner Best Practices.

Best Practices for Real-Time (Live) Captioners.

- Caption as accurately, synchronously, completely, and appropriately placed as possible.
- Ensure they are equipped with a failover plan to minimize caption interruption due to captioner or equipment malfunction.
- Be equipped with reliable, high speed Internet.
- Be equipped with multiple telephone lines.
- Prepare as thoroughly as possible for each program.
- File thorough discrepancy reports with the captioning vendor in a timely manner.
- To the extent possible given the circumstances of the program, ensure that real-time captions are complete when the program ends.
- Engage the command that allows captions to pass at commercials and conclusion of broadcasts.
- Monitor captions to allow for immediate correction of errors and prevention of similar errors appearing or repeating in captions.
- Perform frequent and regular self-evaluations.
- Perform regular dictionary maintenance.
- Keep captioning equipment in good working order and update software and equipment as needed.
- Possess the technical skills to troubleshoot technical issues.
- Keep abreast of current events and topics that they caption.

Best Practices for Offline (Pre-recorded) Captioning Vendors and Captioners.

- Caption as accurately, synchronously, completely, and appropriately placed as possible.
- Ensure they are equipped with a failover plan to minimize caption interruption due to captioner or equipment malfunction.
- Ensure offline captions are verbatim.
- Ensure offline captions are error-free.
- Ensure offline captions are punctuated correctly and in a manner that facilitates comprehension.
- Ensure offline captions are synchronized with the audio of the program.
- Ensure offline captions are displayed with enough time to be read completely and that they do not obscure the visual content.
- Ensure offline captioning is a complete textual representation of the audio, including speaker identification and non-speech information.
- Create or designate a manual of style to be applied in an effort to achieve uniformity in presentation.
- Employ frequent and regular evaluations to ensure standards are maintained.
- Inform video programmers of appropriate uses of real-time and offline captioning and strive to provide offline captioning for pre-recorded programming.
- Encourage use of offline captioning for live and near-live programming that originally aired on television and re-feeds at a later time.
- Encourage use of offline captioning for all original and library pre-recorded programming completed well in advance of its distribution on television.
- For better coordination for ensuring high quality captions and for addressing problems as they arise,

understand the roles and responsibilities of other stakeholders in the closed-captioning process, including VPDs, video programmers producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

V. REGISTRATION AND CERTIFICATION

Until the video programmer registration rules adopted in the *2016 Captioning Responsibilities Order* take effect,²⁷ the following requirement adopted in the *2014 Captioning Quality Order* remains in effect: VPDs must exercise best efforts to obtain from each video programmer, and video programmers will provide, certifications that the programmer complies with the captioning quality standards, adheres to the Best Practices, or is exempt from the closed captioning rules. Certifications of exemption must specify the exact exemptions being claimed. These certifications must be made widely available on websites or through other widely available means.²⁸ For any video programmers that do not provide certifications to the corresponding VPD within 30 days of the request, the VPD must notify the Commission. The Commission will add the name of the programmer to its list of noncompliant programmers available at: <https://www.fcc.gov/general/video-programmers-without-certifications-captioning-quality>.²⁹

VI. OTHER REQUIREMENTS

Video programming distributor equipment monitoring, reporting and recordkeeping. Pursuant to the *2014 Captioning Quality Order*, VPDs must monitor and maintain their equipment and signal transmissions associated with the transmission and distribution of closed captioning, perform technical equipment checks, and take any corrective measures necessary to ensure that such equipment is in proper working order to ensure that captioning is passed through to the viewers intact. VPDs must keep records of these activities for a minimum of two years and submit them to the Commission upon request.³⁰

Exemptions for Multicast Streams. Channels producing revenues of less than \$3 million for the prior calendar year are exempt from the closed captioning requirements but are not exempt from the requirement to pass through to their viewers captioning of a program that is already captioned. In the *2014 Captioning Quality Order*, the Commission specified that each multicast program stream of a digital television station is considered separately for purposes of the \$3 million limit.³¹

Electronic Filing of Exemption Requests. Pursuant to the *2014 Captioning Quality Order*, requests for exemption from the captioning requirements based on the economically burdensome standard, as well as comments and replies addressing those exemption requests, must be filed electronically at: CLOSEDCAPTIONING_POC@fcc.gov.³²

²⁷ The video programmer registration rules are not yet in effect. The Commission will publish a notice in the Federal Register of the effective date after it obtains approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995. *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1515, para. 92. The Commission will release a Public Notice of the effective date once the Federal Register notice is published.

²⁸ *2014 Captioning Quality Order*, 29 FCC Rcd at 2255-56, para. 54.

²⁹ *2014 Captioning Quality Order*, 29 FCC Rcd at 2255-56, paras. 53-57.

³⁰ *2014 Captioning Quality Order*, 29 FCC Rcd at 2274-83, paras. 88-104; 47 CFR § 79.1(c)(2)-(3).

³¹ *2014 Captioning Quality Order*, 29 FCC Rcd at 2283-86, paras. 105-09; 47 CFR § 79.1(d)(12).

³² *2014 Captioning Quality Order*, 29 FCC Rcd at 2287-88, paras. 112-13; 47 CFR § 79.1(f)(4). Covered entities may petition for an exemption from the captioning requirements when compliance with the rules would be economically burdensome. Exemptions may be granted, in whole or in part, when the petition is supported by sufficient evidence. The following factors are considered in making an economically burdensome determination: (1) the nature and cost of closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. 47 CFR § 79.1(f).

VII. COMPLAINT PROCEDURES AND ENFORCEMENT

The *2016 Captioning Responsibilities Order* adopted rules modifying the processes for handling closed captioning complaints to allocate the responsibilities of VPDs and video programmers with respect to the provision and quality of closed captioning.³³ Under the burden-shifting approach, the VPD and video programmer will remedy the captioning problem that may be within their respective controls.³⁴ The procedures differ slightly depending on if the complainant filed with the Commission or with the VPD.

Informal complaints filed with the Commission. When the Commission receives a closed captioning complaint, it will serve the complaint on the named VPD and the appropriate video programmer simultaneously.³⁵ After being served with a consumer complaint, the VPD must conduct an investigation to identify the source of the captioning problem and, at a minimum, check its program stream, its processing equipment, and the consumer premise equipment for any caption-related impairments.³⁶ The VPD must provide a response to the complaint within thirty days after the date the Commission forwarded the complaint.³⁷ In its response the VPD must do one of the following: (1) acknowledge responsibility and describe steps taken to resolve the problem; (2) certify that the VPD conducted an investigation and the problem is not within its control but the problem was present in the stream when received by the VPD; or (3) certify that the VPD conducted an investigation and the problem was caused by a third party device or system not within its control.³⁸

If the VPD's investigation reveals that the problem is not within the VPD's control and appears to be present in the program stream when received by the VPD, the burden for addressing the complaint shifts to the video programmer.³⁹ The video programmer then must conduct its own thorough investigation of the closed captioning problem and provide a response within thirty days of the date of the VPD's certification.⁴⁰ The response must be in writing to the VPD, the Commission, and the complainant.⁴¹ Such response either must describe the steps taken by the video programmer to correct the captioning problem or certify that the video programmer has conducted an investigation into the closed captioning problems and that the captioning problem was not within its control.⁴² If the problem is not within the programmer's control, the VPD and the video programmer must work together to determine the source of the captioning problem, and both the VPD and video programmer will correct those aspects of the captioning problems within their respective controls.⁴³

Informal complaints filed with the VPD. If the consumer files directly with the VPD, the same VPD investigation procedures described above remain, but the VPD would respond only to the complainant regarding the results of the VPD's investigation and the steps taken to resolve the problem.⁴⁴ If the VPD

³³ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1493-1509, paras. 44-76; 47 CFR § 79.1(g)(1)-(9). See also *Notice of Effective Date for Closed Captioning Rules Subject to the Paperwork Reduction Act*, CG Docket No. 05-231, Public Notice, 32 FCC Rcd 10437 (CG 2017) (announcing the effective date of these rules).

³⁴ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1493-94, paras. 45-47; 47 CFR § 79.1(g).

³⁵ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1496, para. 51; 47 CFR § 79.1(g)(3).

³⁶ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1496-97, para. 53; 47 CFR § 79.1(g)(4)(i).

³⁷ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1497-99, paras. 54-55; 47 CFR § 79.1(g)(4)(ii).

³⁸ *Id.*

³⁹ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1498-99, para. 55; 47 CFR § 79.1(g)(4)(ii)-(iii).

⁴⁰ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1499-1500, paras. 56-57; 47 CFR § 79.1(g)(4)(iii).

⁴¹ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1500, para. 57; 47 CFR § 79.1(g)(4)(iii)(B).

⁴² *Id.*

⁴³ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1500, para. 58, 47 CFR § 79.1(g)(4)(iii)(C).

⁴⁴ *2016 Captioning Responsibilities Order*, 31 FCC Rcd at 1501, para. 60; 47 CFR § 79.1(g)(5)(i).

determines that the issue was not within its control but may be resolved by the programmer, within thirty days of the complaint, the VPD must: (1) assign the complaint a unique complaint identification number; (2) forward the complaint with the complainant's personally identifiable information redacted or provide sufficient information contained in the complaint to achieve an investigation and resolution and the results of its investigation to the appropriate video programmer or other responsible entity; and (3) inform the complainant of the referral and the assigned number.⁴⁵ Subsequently, the video programmer must investigate the problem, and respond to the VPD in writing in a form that can be forwarded to the complainant within thirty days after the VPD's forwarding date of the complaint.⁴⁶ Then, the VPD must forward the video programmer's response to the complainant within ten days after the date of the video programmer's response.⁴⁷ If the video programmer does not respond to the VPD within thirty days after the forwarding date of the complaint, the VPD must inform the complainant of the programmer's failure to respond within forty days after the VPD's forwarding date of the complaint.⁴⁸ If the VPD or the programmer fails to respond to the complainant, or the complainant is not satisfied with the VPD's or the video programmer's response, the complainant may file directly with the Commission within sixty days after the time allotted for the VPD to respond to the complainant.⁴⁹ The Commission will then handle the complaint pursuant to its complaint procedures.⁵⁰

Pattern or trend of possible noncompliance. The following compliance ladder will be used to address instances when the Commission finds a pattern or trend of possible noncompliance with the captioning quality rules:

- *Initial response to pattern or trend of noncompliance.* If the Commission notifies a VPD or a video programmer of a pattern or trend of possible noncompliance with the Commission's captioning quality rules, the VPD or video programmer must respond within thirty days describing the corrective actions taken.
- *Corrective action plan.* If, after the date for the VPD or the video programmer to respond to a Commission notification of a pattern or trend of possible noncompliance, the Commission subsequently notifies the VPD or the video programmer of further evidence indicating a pattern or trend, a formal corrective action plan is required. In this instance, the VPD or the video programmer must respond to the Commission within thirty days with a written corrective action plan describing specific corrective actions that will be taken, including spot checks, and submit a report to the Commission 180 days after its submission of the corrective action plan.
- *Continued evidence of a pattern or trend of noncompliance.* If there is continued evidence of a pattern or trend after the Commission receives the 180-day report, the Commission may take additional enforcement actions such as admonishments, forfeitures, and other corrective actions.
- *Enforcement action.* In cases of systemic closed captioning quality problems or intentional and deliberate violations of the Commission's closed captioning quality standards, the Commission may bypass the compliance ladder and pursue enforcement action.⁵¹

⁴⁵ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1501-03, paras. 61-63; 47 CFR § 79.1(g)(5)(i)(B), (ii).

⁴⁶ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1503, paras. 64-65; 47 CFR § 79.1(g)(5)(iii).

⁴⁷ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1503, para. 65; 47 CFR § 79.1(g)(5)(iii)(A).

⁴⁸ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1503, para. 65; 47 CFR § 79.1(g)(5)(iii)(B).

⁴⁹ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1503-04, para. 66; 47 CFR § 79.1(g)(5)(iv)-(v).

⁵⁰ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1503-04, para. 66; 47 CFR § 79.1(g)(5)(iv)-(v).

⁵¹ 2016 Captioning Responsibilities Order, 31 FCC Rcd at 1505-09, paras. 69-76; 47 CFR § 79.1(g)(9).

INTERNET LINKS

2014 Captioning Quality Order

Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking

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

Effective Date of Rules

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

Rules (published in the Code of Federal Regulations)

<http://www.ecfr.gov/> (browse for Title 47, then for 79.1)

2016 Captioning Responsibilities Order

Second Report and Order

<https://www.fcc.gov/document/closed-captioning-second-report-and-order>

Effective Date of Compliant Procedures and Enforcement Rules

<https://www.fcc.gov/document/effective-date-closed-captioning-rules-subject-pra>

Rules (published in the Code of Federal Regulations)

<http://www.ecfr.gov/> (browse for Title 47, then for 79.1)