

CLOSED CAPTIONING - FURTHER DEVELOPMENTS

The Federal Communications Commission has issued a three-part document to update its rules for closed captioning of video programming as a result of the digital transition.

A *Declaratory Ruling* clarifies certain rules in light of technological changes. In an accompanying *Order*, the Commission adopts more efficient procedures for consumer closed captioning complaints. Finally, the Commission has issued a *Notice of Proposed Rulemaking* to determine how the exemption for channels with revenues of under \$3 million should apply to digital multicasting.

Subject to certain exceptions for older programming, video programming distributors are required to embed in their transmissions text that viewers can elect to display. The current rules have been in effect since 2002 and require such closed captioning of most video programming so as to ensure access for persons with hearing disabilities.

The Declaratory Ruling - The Commission notes that there is no “digital exemption” to the general obligation to caption digital programming. Accordingly, all digital programming –including high definition programming – must be captioned unless it is subject to one of the exemptions contained in Section 79.1(d) of the Commission’s rules. Exemptions currently apply to certain programming first aired prior to July 1, 2002, public service announcements, instrumental music, and programming in a language other than English or Spanish. These exemptions will continue to apply to the distribution of digital programming. However, two of the exemptions in Section 79.1(d) will no longer apply automatically – channels that generated less than \$3 million in revenues during the prior year and channels that comprise a “new network” – where such channels simulcast or are substituted for existing analog channels, as the purpose of those exemptions (to encourage the creation of new competitive outlets) would not be served.

As part of its declaratory ruling, the Commission reminded multi-channel video program distributors that all customer premises equipment must transmit all available captions to television sets for both analog- and digital-formatted programs, fully intact and in a way that can be displayed by captioning decoders. The Commission notes that, as a practical matter, captions must continue to be transmitted in the CEA-608 analog standard even after the digital transition is complete.

The Order – To simplify and accelerate the process, the Commission has adopted new procedures for alleged violations of the closed captioning rules. Complaints may be filed either directly with the video distributor or with the Commission. To enable complaints to be filed immediately, distributors will have to designate a telephone number, fax number and e-mail address for purposes of receiving and responding promptly to any closed captioning concerns. They also must have personnel available, either on site or remotely, during standard business hours to address any technical problems that may arise. Inquiries received at other times must be addressed within 24 hours. The contact information must be designated on web sites, in telephone directories and in billing statements. The same information will have to be provided to the Commission’s Disability Rights Office, which will advise consumers how to obtain access to the contact information, including upon telephone inquiry. Distributors will be obligated to advise the Commission of any changes in previously reported contact information within 10 business days.

Complaints not requiring immediate attention will be filed in writing, either with the Commission or directly with the distributor. The Commission’s Disability Access Complaint form (Form 2000C), recently approved by the Office of Management and Budget, may be used for captioning complaints but will not be required. Consumers are to file their complaints within 60 days of the captioning problem. The distributor must respond within 30 days after receipt or, if it

does not exercise editorial control over the program in question, it must forward the complaint within seven days to the appropriate party and inform the complainant. In the absence of a satisfactory response, the consumer may re-file the complaint with the FCC within 30 more days, and then the Commission will forward the complaint to the distributor, which will be afforded an additional 30 days to respond. Once a complaint has been filed, the programming distributor will bear the burden of demonstrating to the Commission that it is in compliance with the appropriate Commission requirements. There is no time frame for the Commission to resolve unsatisfied complaints.

The Notice of Proposed Rulemaking – Section 79.1(d)(12) exempts from the closed captioning rules video programming channels that produced annual gross revenues of less than \$3 million during the previous calendar year. The Commission recognizes that the notion of a separate “channel” is shifting now that broadcasters may use their digital allotment to multicast several streams of programming rather than only a single analog channel. Therefore, the Commission seeks to determine whether for purposes of this rule each programming stream in a multicast signal should be deemed to constitute a separate channel or whether a broadcaster’s entire operation is attributable to its digital allotment and thus should be regarded as a single channel. The Commission is concerned that considering each multicast stream as a separate channel may result in less captioned programming available. At the same time, if the majority of programming aired on secondary multicast streams is already captioned, then the current rules require that it must be aired with all captions intact. The Commission also will consider revising the \$3 million threshold or whether a different non-revenue approach should be used instead, such as taking into account the general nature of programming on a given channel or the amount of free programming being offered on all of the broadcasters’ multicast channels.

The new rules are to take effect, and comments on the rulemaking are due, 30 days after publication in the Federal Register. The new information collection for complaint contacts will require prior approval of the Office of Management and Budget.

If you would like a complete copy of the Declaratory Ruling, Order and Notice of Proposed Rulemaking, please contact [Peter Gutmann](mailto:pgutmann@wcsr.com) (pgutmann@wcsr.com, (202) 857-4532) or one of our other Womble Carlyle [Telecommunications](#) professionals

A copy can also be downloaded directly from the Commission’s web site at:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-255A1.pdf.

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