

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Consumer &)	
Governmental Affairs Bureau Seeks to)	
Refresh the Record on Notices of)	CG Docket No. 05-231
Proposed Rulemaking Regarding)	ET Docket No. 99-254
Closed Captioning Rules)	

To: The Commission

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction.

The National Association of Broadcasters (“NAB”)¹ submits these reply comments in response to the Commission’s *Public Notice* in the above-captioned proceeding.² As evidenced by all comments in this proceeding, the common goal of video programming providers, caption service providers and consumer groups is to ensure that all Americans, including those who are deaf and hard of hearing, have access to video programming. To that end, NAB encourages the Commission to find practical, balanced means by which to increase caption availability and quality. This includes encouraging and facilitating discussions amongst all stakeholders as they

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

² *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning Rules*, Public Notice, CG Docket No. 05-231, ET Docket No. 99-254, rel. October 25, 2010 (“*Public Notice*”).

continue working on the complex issues surrounding captioning, including those associated with online captioning in the future.

As the comments demonstrate, the desire for perfect or near-perfect captioning must be balanced against the very real practical limitations of broadcast stations and other video programming providers. Expanding existing or creating new closed captioning requirements cannot be done without cost, or without pragmatic difficulties. Several commenters note that if the closed captioning requirements were increased or expanded in our current technological world, broadcasters would be forced to make real world business decisions that could unfortunately include the reduction or loss of local news and other local programming. Especially problematic to broadcasters are the possible expansion of the real-time captioning requirement for local news to small and medium market stations and the possibility of severe penalties for any closed captioning violation, including those for common technical and non-technical errors.

II. Commenters Agree That Eliminating Electronic Newsroom Technique and Extending Closed Captioning Requirements to Multicast Channels Will Likely Result in Fewer Local Programming Options for Viewers.

Commenters agree that real-time captioning – while slightly cheaper than it was five years ago – is still cost prohibitive for many local news and public affairs programming produced by stations in small and medium-size markets.³ Stations that are operating with razor-thin margins for their news operations often cannot afford to add real-time captioning without a commensurate loss somewhere else – either in news personnel, news coverage or both.

³See Comments of The Radio Television Digital News Association at 4-6 (filed Nov. 23, 2010), and Comments of California Oregon Broadcasting Inc. at 2-3 (filed Nov. 24, 2010) (“COBI”).

According to an informal Radio Television Digital News Association (“RTDNA”) survey of its membership, stations outside the top 25 markets, where electronic newsroom technique (“ENT”) is allowed, would be put under “tremendous financial strain” if required to use real-time captioning for all local news programming.⁴ More than half of respondents to the survey indicated they would have to consider reducing news staff to cover the costs of real-time captioning.⁵ According to COBI, which runs stations that serve viewers in smaller communities in southern Oregon and northern California, a new requirement for real-time captioning would likely cut news programming to “no more than one hour of evening news per day,” down from the 4.5 hours its stations currently air. Additionally, according to COBI, local programming like its *Academic Challenge*, a local high school trivia program, and *Up Close*, a locally-produced interview program, would likely be eliminated.⁶ Foreign language stations also heavily rely on ENT and ENT subtitles to delivery high-quality programming. KTSP, licensee of a commercial independent television station, for example, delivers four 24/7 multicast programming streams in several Asian languages, all free-over-the-air, to serve its substantial and growing television audience in San Francisco, CA.⁷ Elimination of the ENT exemption for captioning in foreign language programming could affect the ability of local stations in even larger markets to deliver high-quality local

⁴ Comments of RTDNA at 5.

⁵ *Id.*

⁶ Comments of COBI at 2.

⁷ See Comments of Lincoln Broadcasting Company (KTSP-DT), San Francisco, California) at 2-3 (filed Nov. 24, 2010).

news and other programming to their viewers due to the complexities associated with real-time captioning in multiple languages, irrespective of market size.

Caption Colorado argues that because local stations in smaller markets tend to have fewer hours of local news programming compared to those in larger markets, there would be less of a burden if the Commission were to further restrict ENT use (for English language) outside the top 25 markets.⁸ In this regard, Caption Colorado misperceives the predicament of smaller market stations. Simply put, the cost of producing local news is significant. Thus, it is not surprising that studies have found that television “[s]tations in larger markets tend to provide more local news programming than stations in smaller markets,” likely due to “the greater revenue potential for stations in larger markets,” and have also expressly found that public affairs programming “is a function of station revenues.”⁹ Unsurprisingly, stations’ financial struggles – particularly in smaller markets – have resulted in the reduction or

⁸ Comments of Caption Colorado at 13 (filed Nov. 24, 2010).

⁹ Philip Napoli, “Television Station Ownership Characteristics and News and Public Affairs Programming; An Expanded Analysis of FCC Data,” 6 *Info: The Journal of Policy, Regulation, and Strategy for Telecommunications, Information and Media* 112, 119 (2004) (concluding that “[t]hose stations in better financial standing are more inclined to incur the expense of providing local public affairs programming”). See also FCC, 2007 Ownership Study No. 4, Daniel Shiman, “The Impact of Ownership Structure on Television Stations’ News and Public Affairs Programming” at 21 (July 24, 2007) (an FCC study conducted in connection with its 2006 quadrennial ownership review found that the “financial strength of the parent” of a television station, “measured by its revenues, is associated with a larger news output.”). NAB’s 2010 survey of local news economics confirmed that the amount of local news programming appears correlated with market size. See “The Economic Realities of Local Television News,” filed as Attachment B, GN Docket No. 10-25 at 11 (May 7, 2010) (local news hours per week for all surveyed markets was about 26.6 hours, with 35.8 hours of local news in the top 25 markets, and approximately 19.5 hours in the smallest markets).

loss of local news.¹⁰ Lower-rated newscasts in smaller markets face particular financial difficulties and are increasingly vulnerable to cutbacks or elimination.¹¹ For these reasons, eliminating ENT as a captioning option for medium and small market stations would be particularly burdensome and likely to reduce the amount of local news.

NAB thus disagrees with the Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, call for the elimination of ENT in all markets.¹² The record clearly indicates that real-time captioning would be an economic burden to stations in small and medium-sized markets, as well as foreign language programming in markets of all sizes. TDI provides no substantiation that “cost concerns are outdated and no longer justify the use of ENT.”¹³ To the contrary, and as evidenced in this record, real-time captioning remains a substantial expense; an across-the-board elimination of ENT would have the direct consequence of reducing both the quantity and quality of locally produced news programming. This does not benefit the public interest. ENT helps these medium and small market stations deliver timely and relevant news programming to the local communities they serve. Because much of the programming in local news

¹⁰ See Coalition of Smaller Market Television Stations Comments, MB Docket No. 06-121 *et al.*, at 9-10 (Oct. 23, 2006); Media General *Ex Parte* in MB Docket No. 06-121 (July 26, 2006); NAB Comments in MB Docket No. 06-121 at 14-15 (Dec. 11, 2007).

¹¹ See, e.g., S. Schenecher and R. Dana, “Local TV Station Face a Fuzzy Future,” *The Wall Street Journal*, (Feb. 10, 2009) (noting that stations have ended some news shows in markets such as Lexington, KY and Yakima, WA and that, even with these cuts, there are more local newscasts than the market can bear”); M. Malone, “WYOUS Disbanded News Operation May Be The first of Many,” *Broadcasting & Cable* (April 13, 2009) (reporting that it is increasingly unprofitable to continue a “fourth-place” newscast and quoting SmithGeiger as stating that at some stations, news is “totally unprofitable, and that the station is not making money because of the cost of news”).

¹² Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.* at 12 (filed Nov. 24, 2010) (“TDI”).

¹³ *Id.* at 11.

and public affairs is scripted, ENT conveys the primary substance of news broadcasts. Additionally, some stations utilizing ENT supplement it with live captioning of weather, traffic and late-breaking news.¹⁴

Along with the use of ENT, numerous commenters stressed the critical importance of revenue exemptions for multicast channels. The *Public Notice* asks whether the current rule that exempts from closed captioning requirements all channels with gross revenue of less than \$3 million per year should apply to each multicast channel separately, or whether the \$3 million threshold should apply to a broadcaster's digital offerings as a whole (including any and all multicast channels).¹⁵ COBI describes the impact most succinctly – if multicast channels are no longer considered as separate for purposes of the \$3 million threshold exemption, it would be forced to “eliminate multicast streams for our stations.”¹⁶ RTDNA also notes that its member stations “are committed to offering local programming on their digital multicast channels,” but can “only do so where it makes economic sense.”¹⁷ As NAB showed in its most recent comments, multicast channels remain very much a nascent service. Most stations

¹⁴ In addition to broadcast stations, local cable news networks rely on the use of ENT to deliver local programming to their viewers. See Comments of The National Cable & Telecommunications Association at 10 (filed Nov. 24, 2010).

¹⁵ See 47 C.F.R. § 79.1(d)(12). Under this exemption, “[n]o video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received”

¹⁶ Comments of COBI at 3.

¹⁷ Comments of RTDNA at 7.

make no more than \$60-\$70,000 per year on their multicast channels.¹⁸ For many stations, requiring that all locally-produced programming on multicast stations be captioned by the station virtually guarantees that stations will be unable to sustain the same levels of local, niche programming at this time. As WTVF explained, eliminating closed captioning revenue exemptions for multicast would, in many instances, create a “Hobson’s choice of cutting staff or reducing or eliminating local programming.”¹⁹ Again, neither result would benefit local viewers.²⁰

NAB therefore continues to encourage the Commission to apply the \$3 million gross revenue exemption to each channel separately for those broadcasters that choose to serve the public by offering additional channels of free, over-the-air programming. Multicast channels will become subject to all captioning requirements if and when they become established in the marketplace and increase their gross revenues past the \$3 million threshold. In addition, all multicast channels, regardless of their revenues, are already subject to the “pass-through” requirement, which ensures that certain amounts of the programming on these channels is captioned. See 47 C.F.R. § 79.1(c).

¹⁸ See Initial Comments of NAB at 28 (filed Nov. 24, 2010) (citing 2010 NAB Television Financial Survey).

¹⁹ See Comments of WTVF at 2 (filed Nov. 24, 2010) (where the local broadcaster explains that the locally-produced multicast channel generates limited revenue, and captioning costs estimated at over \$95,000 would be unsustainable should either the \$3,000,000 exemption or the two percent gross revenue exemptions be eliminated).

²⁰ TDI incorrectly asserts that the current exemption means that 75-80 percent of broadcaster digital programming is left uncaptioned. See Comments of TDI at 13-14. In addition to captioning requirements on broadcasters’ main digital channels, the pass-through rule ensures that much of the more popular programming on multicast channels is captioned at its source.

III. The Commission Should Not Establish Rigid Caption Quality Standards.

Turning to the issue of caption quality standards, while all parties may share the common goal of working to improve the quality of closed captioning, the record in this refreshed proceeding does not support the establishment of rigid, non-technical caption quality standards.²¹ As threshold matter, there is no agreement among caption service providers as to how a non-technical quality metric could be quantified. For example, the National Center for Accessible Media (“NCAM”) states that their methodology measures caption errors against a reference transcript of a program’s audio, dividing the number of errors in the caption file by the total number of words in that reference transcript.²² Media Caption Services (“MCS”) on the other hand, in one analysis, tallies the number of errors against the number of words in the caption file.²³ And, in yet another approach, Caption Colorado proposes a methodology that evaluated errors referenced to a yet-to-be-established, standardized number of words spoken for a specific type of programming.²⁴ Indeed, as NCAM plainly states, currently there is not a standard way to define or measure caption quality.²⁵ Thus, based on the record of this proceeding,

²¹ Nor should the Commission attempt to set technical standards due to the myriad of technical challenges associated with the captioning chain. See Initial Comments of NAB at 12-14.

²² See Comments of NCAM at 6 and 7 (filed Nov. 24, 2010).

²³ See Comments of MCS at 11 (filed Nov. 24, 2010).

²⁴ See Comments of Caption Colorado at 12.

²⁵ Comments of NCAM at 13. Respectfully, while NCAM did present its Caption Accuracy Metrics project to major stakeholders in September, there is not wide consensus as to how caption quality standards should be defined, nor is there stakeholder consensus that the government should define those standards. See Comments of NCAM at 17.

the Commission has little quantitative basis or other evidentiary basis on which to establish a non-technical quality metric.

In addition, commenters have indicated that it would be extremely impractical to apply a rigid quality standard to real-time captioning because it would likely frustrate the creativity and judgment of stenocaptioners who typically: (1) paraphrase sentences and (2) drop non-essential utterances but nonetheless still correctly communicate the meaning of the spoken words in a program.²⁶ As MCS points out, real-time captioners are not providing a product that can be “benchmarked.”²⁷ Moreover, as noted by MCS, the imposition of unreasonable performance requirements (including rigid quality standards) could have the real-world consequence of driving skilled captioners out of the industry, thus frustrating the Commission’s overall goal of improving caption quality.²⁸

NAB thus urges the Commission to refrain from adopting rigid quality metrics or benchmarks. As evidenced by the record such a metric cannot be easily quantified and would be difficult to apply in any reasonable time frame, especially not in real-time or even near real-time. For example, MCS notes that their process takes two people approximately two to three hours to evaluate a single half-hour news program.²⁹ Consequently, this complexity makes a rigid quality standard practically impossible to enforce. Instead, NAB urges the Commission to continue to work toward practical solutions amongst stakeholders to improve caption quality.

²⁶ See Comments of NCAM at 13; Comments of Caption Colorado at 7.

²⁷ Comments of MCS at 12.

²⁸ *Id.* at 16.

²⁹ *Id.* at 11.

IV. Conclusion.

Based on the record, as refreshed and revised, in this proceeding and for the above-described reasons, NAB urges the Commission to continue to work toward pragmatic solutions for resolving the myriad of complex, technical issues surrounding captioning, including continuing to encourage discussions amongst all relevant stakeholders. The adoption of additional, inflexible regulatory requirements at a time of economic challenges are unlikely to lead to improvements in either captioning quality or video programming quality or diversity overall.

Respectfully submitted,

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A handwritten signature in black ink, consisting of a stylized star-like symbol followed by the name "Bobeck".

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