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Subpart A—Video Programming Owners, Providers, and Distributors

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§ 79.1 Closed captioning of televised video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Captioning vendor.* Any entity that is responsible for providing captioning services to a video programmer.

(2) *Closed captioning, or captioning.* The visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part.

(3) *Live programming.* Video programming that is shown on television substantially simultaneously with its performance.

(4) *Near-live programming.* Video programming that is performed and recorded less than 24 hours prior to the time it is first aired on television.

(5) *New programming.* Video programming that is first published or exhibited on or after January 1, 1998.

(i) Analog video programming that is first published or exhibited on or after January 1, 1998.

(ii) Digital video programming that is first published or exhibited on or after July 1, 2002.

(6) *Non-exempt programming.* Video programming that is not exempt under paragraph (d) of this section and, accordingly, is subject to closed captioning requirements set forth in this section.

(7) *Prerecorded programming.* Video programming that is not “live” or “near-live”.

(8) *Pre-rule programming.* (i) Analog video programming that was first published or exhibited before January 1, 1998.

(ii) Digital video programming that was first published or exhibited before July 1, 2002.

(9) *Video programmer.* Any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast 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. Video programming includes advertisements of more than five minutes in duration but does not include advertisements of five minutes’ duration or less.

(11) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, 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 paragraph (e)(9) of this section shall 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.

(12) *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 nonbroadcast television network and the owners of such programming.

(b) *Requirements for closed captioning of video programming—(1) Requirements for new English language programming.* Video programming distributors must provide closed captioning for nonexempt video programming that is being distributed and exhibited on each channel during each calendar quarter in accordance with the following requirements:

(i) Between January 1, 2000, and December 31, 2001, a video programming distributor shall provide at least 450 hours of captioned video programming or all of its new nonexempt video programming must be provided with captions, whichever is less;

(ii) Between January 1, 2002, and December 31, 2003, a video programming distributor shall provide at least 900 hours of captioned video programming or all of its new nonexempt video programming must be provided with captions, whichever is less;

(iii) Between January 1, 2004, and December 31, 2005, a video programming distributor shall provide at least an average of 1350 hours of captioned video programming or all of its new nonexempt video programming must be provided with captions, whichever is less; and

(iv) As of January 1, 2006, and thereafter, 100% of the programming distributor's new nonexempt video programming must be provided with captions.

(2) *Requirements for pre-rule English language programming.* (i) After January 1, 2003, 30% of the programming distributor's pre-rule nonexempt video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(ii) As of January 1, 2008, and thereafter, 75% of the programming distributor's pre-rule nonexempt video

programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(3) *Requirements for new Spanish language programming.* Video programming distributors must provide closed captioning for nonexempt Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter in accordance with the following requirements:

(i) Between January 1, 2001, and December 31, 2003, a video programming distributor shall provide at least 450 hours of captioned Spanish language video programming or all of its new nonexempt Spanish language video programming must be provided with captions, whichever is less;

(ii) Between January 1, 2004, and December 31, 2006, a video programming distributor shall provide at least 900 hours of captioned Spanish language video programming or all of its new nonexempt Spanish language video programming must be provided with captions, whichever is less;

(iii) Between January 1, 2007, and December 31, 2009, a video programming distributor shall provide at least an average of 1350 hours of captioned Spanish language video programming or all of its new nonexempt Spanish language video programming must be provided with captions, whichever is less; and

(iv) As of January 1, 2010, and thereafter, 100% of the programming distributor's new nonexempt Spanish language video programming must be provided with captions.

(4) *Requirements for Spanish language pre-rule programming.* (i) After January 1, 2005, 30% of the programming distributor's pre-rule nonexempt Spanish language video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(ii) As of January 1, 2012, and thereafter, 75% of the programming distributor's pre-rule nonexempt Spanish language video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(5) Video programming distributors shall continue to provide captioned

video programming at substantially the same level as the average level of captioning that they provided during the first six (6) months of 1997 even if that amount of captioning exceeds the requirements otherwise set forth in this section.

(c) *Obligation to pass through captions of already captioned programs; obligation to maintain equipment and monitor for captions.* (1) All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning 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 this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.

(2) Video programming distributors shall take any steps needed to monitor and maintain their equipment and signal transmissions associated with the transmission and distribution of closed captioning to ensure that the captioning included with video programming reaches the consumer intact. In any enforcement proceeding involving equipment failure, the Commission will require video programming distributors to demonstrate that they have monitored their equipment and signal transmissions, have performed technical equipment checks, and have promptly undertaken repairs as needed to ensure that equipment is operational and in good working order.

(3) Each video programming distributor shall maintain records of the video programming distributor's monitoring and maintenance activities, which shall include, without limitation, information about the video programming distributor's monitoring and maintenance of equipment and signal transmissions to ensure the pass through and delivery of closed captioning to viewers, and technical equipment checks and other activities to ensure that captioning equipment and other related equipment are maintained in good working order. Each video programming distributor shall maintain such records for a minimum of two years and shall submit such

records to the Commission upon request.

(d) *Exempt programs and providers.* For purposes of determining compliance with this section, any video programming or video programming provider that meets one or more of the following criteria shall be exempt to the extent specified in this paragraph.

(1) *Programming subject to contractual captioning restrictions.* Video programming that is subject to a contract in effect on or before February 8, 1996, but not any extension or renewal of such contract, for which an obligation to provide closed captioning would constitute a breach of contract.

(2) *Video programming or video programming provider for which the captioning requirement has been waived.* Any video programming or video programming provider for which the Commission has determined that a requirement for closed captioning is economically burdensome on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

(3) *Programming other than English or Spanish language.* All programming for which the audio is in a language other than English or Spanish, except that scripted programming that can be captioned using the "electronic news room" technique is not exempt.

(4) *Primarily textual programming.* Video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics (e.g., program schedule channels or community bulletin boards).

(5) *Programming distributed in the late night hours.* Programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Video programming distributors providing a channel that consists of a service that is distributed and exhibited for viewing in more than a single time zone shall be exempt from closed captioning that service for any continuous 4 hour time period they may select, commencing not earlier than 12 a.m. local time and ending not later than 7 a.m. local time in any location where that service is intended for viewing. This exemption is to be determined based on the primary reception

locations and remains applicable even if the transmission is accessible and distributed or exhibited in other time zones on a secondary basis. Video programming distributors providing service outside of the 48 contiguous states may treat as exempt programming that is exempt under this paragraph when distributed in the contiguous states.

(6) *Interstitials, promotional announcements and public service announcements.* Interstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.

(7) *EBS programming.* Video programming transmitted by an Educational Broadband Service licensee pursuant to part 27 of this chapter.

(8) *Locally produced and distributed non-news programming with no repeat value.* Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the “electronic news room” technique of captioning is unavailable.

(9) *Programming on new networks.* Programming on a video programming network for the first four years after it begins operation, except that programming on a video programming network that was in operation less than four (4) years on January 1, 1998 is exempt until January 1, 2002.

(10) *Primarily non-vocal musical programming.* Programming that consists primarily of non-vocal music.

(11) *Captioning expense in excess of 2 percent of gross revenues.* No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year.

(12) *Channels/Streams producing revenues of under \$3,000,000.* No video programming provider shall be required to expend any money to caption any channel or stream 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 closed captioned when received pursuant to paragraph (c) of this

section. For the purposes of this paragraph, each programming stream on a multicast digital television channel shall be considered separately for purposes of the \$3,000,000 revenue limit.

(13) *Locally produced educational programming.* Instructional programming that is locally produced by public television stations for use in grades K–12 and post secondary schools.

(e) *Responsibility for and determination of compliance.* (1) Compliance shall be calculated on a per channel, calendar quarter basis;

(2) Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning;

(3) The major national broadcast television networks (*i.e.*, ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen’s Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules. The live portions of non-commercial broadcasters’ fundraising activities that use automated software to create a continuous captioned message will be considered captioned;

(4) Compliance will be required with respect to the type of video programming generally distributed to residential households. Programming produced solely for closed circuit or private distribution is not covered by these rules;

(5) Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards the compliance with the requirements for new programming prior to January 1, 2006. Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except that video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards compliance with the requirements for pre-rule programming.

(6) For purposes of paragraph (d)(11) of this section, captioning expenses include direct expenditures for captioning as well as allowable costs specifically allocated by a programming supplier through the price of the video programming to that video programming provider. To be an allowable allocated cost, a programming supplier may not allocate more than 100 percent of the costs of captioning to individual video programming providers. A programming supplier may allocate the captioning costs only once and may use any commercially reasonable allocation method;

(7) For purposes of paragraphs (d)(11) and (d)(12) of this section, annual gross revenues shall be calculated for each channel individually based on revenues received in the preceding calendar year from all sources related to the programming on that channel. Revenue for channels shared between network and local programming shall be separately calculated for network and for non-network programming, with neither the network nor the local video programming provider being required to spend more than 2 percent of its revenues for captioning. Thus, for example, compliance with respect to a network service distributed by a multichannel video service distributor, such as a cable operator, would be calculated based on the revenues received by the network itself (as would the related captioning expenditure). For local service providers such as broadcasters, advertising revenues from station-controlled inventory would be included. For cable operators providing local origination programming, the annual gross revenues received for each channel will be used to determine compliance. Evidence of compliance could include certification from the network supplier that the requirements of the test had been met. Multichannel video programming distributors, in calculating non-network revenues for a channel offered to subscribers as part of a multichannel package or tier, will not include a pro rata share of subscriber revenues, but will include all other revenues from the channel, including advertising and ancillary revenues. Revenues for channels supported by direct sales of products will include

only the revenues from the product sales activity (e.g., sales commissions) and not the revenues from the actual products offered to subscribers. Evidence of compliance could include certification from the network supplier that the requirements of this test have been met.

(8) If two or more networks (or sources of programming) share a single channel, that channel shall be considered to be in compliance if each of the sources of video programming are in compliance where they are carried on a full time basis;

(9) Video programming distributors shall not be required to provide closed captioning for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed pursuant to sections 614 and 615 of the Communications Act or pursuant to the compulsory copyright licensing provisions of sections 111 and 119 of the Copyright Act (Title 17 U.S.C. 111 and 119); programming involving candidates for public office covered by sections 315 and 312 of the Communications Act and associated policies; commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the Communications Act; video programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement pursuant to section 335(b)(3) of the Communications Act to the extent such video programming is exempt from the editorial control of the video programming provider; and video programming distributed by a common carrier or that is distributed on an open video system pursuant to section 653 of the Communications Act by an entity other than the open video system operator. 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.

(10) In evaluating whether a video programming provider has complied

with the requirement that all new non-exempt video programming must include closed captioning, the Commission will consider showings that any lack of captioning was de minimis and reasonable under the circumstances.

(11) *Use of “Electronic Newsroom Technique” (ENT)*. (i) A broadcast station that uses ENT to provide closed captioning for live programming or programming originally transmitted live and that is not subject to the current prohibition on the use of ENT in paragraph (e)(3) of this section 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 procedures in the ordinary course of business:

(A) In-studio produced news, sports, weather, and entertainment programming will be scripted.

(B) 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.

(C) Pre-produced programming will be scripted (to the extent technically feasible).

(D) If live interviews or 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).

(E) The station will provide training to all news staff on scripting for improving ENT.

(F) The station will appoint an “ENT Coordinator” accountable for compliance.

(ii) Nothing in this paragraph (e)(11) shall relieve a broadcast station of its obligations under § 79.2 of this chapter regarding the accessibility of programming providing emergency information.

(iii) *Informal complaints*. The Commission will forward an informal complaint regarding captioning to a broadcast station that utilizes ENT to provide captioning pursuant to the procedures set forth in paragraph (e)(11)(i) of this section only if the informal com-

plaint contains 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 problems, including the frequency and type of problem.

(iv) *Compliance—(A) 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 noncompliance by the station with this paragraph (e)(11), 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.

(B) *Corrective action plan*. If, after the date for a broadcast station to respond to a notification under paragraph (e)(11)(iv)(A) of this section, the Commission subsequently notifies the broadcast station that there is further evidence indicating a pattern or trend of noncompliance with this paragraph (e)(11), 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 with this paragraph (e)(11). 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.

(C) *Continued evidence of a pattern or trend of noncompliance*. If, after the date for submission of a report on the results of an action plan and spot checks pursuant to paragraph (e)(11)(iv)(B) of this section, 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.

(v) *Progress report.* No later than one year after the effective date of this paragraph (e)(11), broadcast stations that adhere to the procedures set forth in paragraph (e)(11)(i) 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.

(f) *Procedures for exemptions based on economically burdensome standard.* (1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will be economically burdensome.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term "economically burdensome" means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning are economically burdensome include:

- (i) The nature and cost of the closed captions for the programming;
- (ii) The impact on the operation of the provider or program owner;
- (iii) The financial resources of the provider or program owner; and
- (iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the pro-

gramming. The extent to which the provision of closed captions is economically burdensome shall be evaluated with regard to the individual outlet.

(4) A petition requesting an exemption based on the economically burdensome standard, and all subsequent pleadings, shall be filed electronically in accordance with § 0.401(a)(1)(iii) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Comments or oppositions to the petition shall be filed electronically and served on the petitioner and shall include a certification that the petitioner was served with a copy. Replies to comments or oppositions shall be filed electronically and served on the commenting or opposing party and shall include a certification that the commenting or opposing party was served with a copy. Comments or oppositions and replies may be served upon a party, its attorney, or other duly constituted agent by delivering or mailing a copy to the last known address in accordance with § 1.47 of this chapter or by sending a copy to the email address last provided by the party, its attorney, or other duly constituted agent.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) All petitions and responsive pleadings shall contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an economically burdensome exemption from the closed captioning requirements.

(11) During the pendency of an economically burdensome determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

(g) *Complaint procedures.* (1) Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days of the problem with captioning. A complaint must be in writing, must state with specificity the alleged Commission rule violated and must include some evidence of the alleged rule violation.

(2) Complaints filed first with the Commission will be forwarded to the appropriate video programming distributor. The video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission.

(3) Complaints sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, shall be forwarded by the video programming distributor within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. Entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint.

(4) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor 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 video programming distributor to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor,

and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

(5) In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

(6) Certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, may be relied on to demonstrate compliance. Distributors will not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets our captioning requirements if the distributor is unaware that the certification is false. Video programming providers may rely on the accuracy of certifications. Appropriate action may be taken with respect to deliberate falsifications.

(7) The Commission will review the complaint, including all supporting evidence, and determine whether a violation has occurred. The Commission shall, as needed, request additional information from the video programming provider.

(8) If the Commission finds that a violation has occurred, penalties may be imposed, including a requirement that the video programming distributor deliver video programming containing closed captioning in an amount exceeding that specified in paragraph (b) of this section in a future time period.

(h) *Private rights of action prohibited.* Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

(i) *Contact information.* (1) Video programming distributors shall make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Programming distributors must designate a telephone number,

fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it to reflect any changes within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

(2) Video programming distributors shall make contact information available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with our rules. In addition, this con-

tact information shall include the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) *Providing contact information to the Commission.* Video programming distributors shall file the contact information described in this section with the Commission in one of the following ways: Through a web form located on the FCC Web site; with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau; or by sending an email to *CLOSEDCAPTIONING_POC@fcc.gov*. Contact information shall be available to consumers on the FCC Web site or by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

(j) *Captioning quality obligation; standards.* (1) A video programming distributor shall exercise best efforts to obtain a certification from each video programmer from which the distributor obtains programming stating:

(i) That the video programmer's programming satisfies the caption quality standards of paragraph (j)(2) of this section;

(ii) That in the ordinary course of business, the video programmer has adopted and follows the Best Practices set forth in paragraph (k)(1) of this section; or

(iii) That the video programmer is exempt from the closed captioning rules under one or more properly attained exemptions. For programmers certifying exemption from the closed captioning rules, the video programming distributor must obtain a certification from the programmer that specifies the exact exemption that the programmer is claiming. Video programming distributors may satisfy

their best efforts obligation by locating a programmer's certification on the programmer's Web site or other widely available locations used for the purpose of posting widely available certifications. If a video programming distributor is unable to locate such certification on the programmer's Web site or other widely available location used for the purpose of posting such certification, the video programming distributor must inform the video programmer in writing that it must make widely available such certification within 30 days after receiving the written request. If a video programmer does not make such certification widely available within 30 days after receiving a written request, the video programming distributor shall promptly submit a report to the Commission identifying such non-certifying video programmer for the purpose of being placed in a publicly available database. A video programming distributor that meets each of the requirements of this paragraph shall not be liable for violations of paragraphs (j)(2) and (3) of this section to the extent that any such violations are outside the control of the video programming distributor.

(2) *Captioning quality standards.* Closed captioning shall convey the aural content of video programming in the original language (*i.e.* English or Spanish) to individuals who are deaf and hard of hearing to the same extent that the audio track conveys such content to individuals who are able to hear. Captioning shall be accurate, synchronous, complete, and appropriately placed as those terms are defined herein.

(i) *Accuracy.* Captioning shall match the spoken words (or song lyrics when provided on the audio track) in their original language (English or Spanish), in the order spoken, without substituting words for proper names and places, and without paraphrasing, except to the extent that paraphrasing is necessary to resolve any time constraints. Captions shall contain proper spelling (including appropriate homophones), appropriate punctuation and capitalization, correct tense and use of singular or plural forms, and accurate representation of numbers with appropriate symbols or words. If slang

or grammatical errors are intentionally used in a program's dialogue, they shall be mirrored in the captions. Captioning shall provide nonverbal information that is not observable, such as the identity of speakers, the existence of music (whether or not there are also lyrics to be captioned), sound effects, and audience reaction, to the greatest extent possible, given the nature of the program. Captions shall be legible, with appropriate spacing between words for readability.

(ii) *Synchronicity.* Captioning shall coincide with the corresponding spoken words and sounds to the greatest extent possible, given the type of the programming. Captions shall begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end. Captions shall be displayed on the screen at a speed that permits them to be read by viewers.

(iii) *Completeness.* Captioning shall run from the beginning to the end of the program, to the fullest extent possible.

(iv) *Placement.* Captioning shall be viewable and shall not block other important visual content on the screen, including, but not limited to, character faces, featured text (e.g., weather or other news updates, graphics and credits), and other information that is essential to understanding a program's content when the closed captioning feature is activated. Caption font shall be sized appropriately for legibility. Lines of caption shall not overlap one another and captions shall be adequately positioned so that they do not run off the edge of the video screen.

(3) *Application of captioning quality standards.* Captioning shall meet the standards of paragraph (j)(2) of this section for accuracy, synchronicity, completeness and placement, except for *de minimis* captioning errors. In determining whether 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 errors, and the time frame within which corrective

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action was taken to prevent such failures from recurring. When applying such standards to live and near-live programming, the Commission will also take into account, on a case-by-case basis, the following factors:

(i) *Accuracy.* The overall accuracy or understandability of the programming, the ability of the captions to convey the aural content of the program in a manner equivalent to the aural track, and the extent to which the captioning errors prevented viewers from having access to the programming.

(ii) *Synchronicity.* The extent to which measures have been taken, to the extent technically feasible, to keep any delay in the presentation of captions to a minimum, consistent with an accurate presentation of what is being said, so that the time between when words are spoken or sounds occur and captions appear does not interfere with the ability of viewers to follow the program.

(iii) *Completeness.* The delays inherent in sending captioning transmissions on live programs, and whether steps have been taken, to the extent technically feasible, to minimize the lag between the time a program's audio is heard and the time that captions appear, so that captions are not cut off when the program transitions to a commercial or a subsequent program.

(iv) *Placement.* The type and nature of the programming and its susceptibility to unintentional blocking by captions.

(4) *Complaints.* The Commission will forward an informal complaint regarding captioning quality to a video programming distributor only if the informal complaint contains the channel number, channel name, network, or call sign; the name of the multichannel video program distributor, if applicable; the date and time when the captioning problem occurred; the name of the program with the captioning problem; and a detailed description of the captioning problem, including specifics about the frequency and type of problem (e.g., garbling, captions cut off at certain times or on certain days, and accuracy problems).

(k) *Captioning Best Practices—(1) Video Programmer Best Practices.* Video programmers adopting Best Practices will adhere to the following practices.

(i) *Agreements with captioning services.* Video programmers adopting Best Practices will take the following actions to promote the provision of high quality television closed captions through new or renewed agreements with captioning vendors.

(A) *Performance requirements.* Include performance requirements designed to promote the creation of high quality closed captions for video programming, comparable to those described in paragraphs (k)(2), (k)(3) and (k)(4) of this section.

(B) *Verification.* Include a means of verifying compliance with such performance requirements, such as through periodic spot checks of captioned programming.

(C) *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.

(ii) *Operational Best Practices.* Video programmers adopting Best Practices will take the following actions to promote delivery of high quality television captions through improved operations.

(A) *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 rundown that is available and relevant.

(B) *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.

(C) *Captioning for prerecorded programming.* (1) The presumption is that prerecorded 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 instances when:

(i) A programmer's production is completed too close to initial air time be captioned offline or may require editorial changes up to air time (e.g., news content, reality shows),

(ii) A program is delivered late,

(iii) There are technical problems with the caption file,

(iv) Last minute changes must be made to later network feeds (e.g., when shown in a later time zone) due to unforeseen circumstances,

(v) There are proprietary or confidentiality considerations, or

(vi) 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.

(2) The video programmer will make reasonable efforts to employ live display captioning instead of real-time captioning for prerecorded programs if the complete program can be delivered to the caption service provider in sufficient time prior to airing.

(iii) *Monitoring and Remedial Best Practices.* Video programmers adopting Best Practices will take the following actions aimed at improving prompt identification and remediation of captioning errors when they occur.

(A) *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 prerecorded programs to determine the presence of captions.

(B) *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.

(C) *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.

(D) *Recording of captioning issues.* Maintain a log of reported captioning issues, including date, time of day, program title, and description of the issue. Beginning one year after the effective date of the captioning quality standards, such log should reflect reported captioning issues from the prior year.

(E) *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.

(F) *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.

(iv) *Certification procedures for video programmers.* Video programmers adopting Best Practices will certify to video programming distributors that they adhere to Best Practices for video programmers and will make such certifications widely available to video programming distributors, for example, by posting on affiliate Web sites.

(2) *Real-Time (Live) Captioning Vendors Best Practices.* (i) Create and use metrics to assess accuracy, synchronicity, completeness, and placement of real-time captions.

(ii) Establish minimum acceptable standards based upon those metrics while striving to regularly exceed those minimum standards.

(iii) Perform frequent and regular evaluations and sample audits to ensure those standards are maintained.

(iv) 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.

(v) Consider, at a minimum, mistranslated words, incorrect words,

misspelled words, missing words, and incorrect punctuation that impedes comprehension and misinformation as errors.

(A) Captions are written in a near-verbatim style as possible, minimizing paraphrasing.

(B) The intended message of the spoken dialogue is conveyed in the associated captions in a clear and comprehensive manner.

(C) Music lyrics should accompany artist performances.

(vi) 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.

(vii) Ensure placement of captions on screen to avoid obscuring on-screen information and graphics (e.g., sports coverage).

(viii) Ensure proper screening, training, supervision, and evaluation of captioners by experienced and qualified real-time captioning experts.

(ix) Ensure there is an infrastructure that provides technical and other support to video programmers and captioners at all times.

(x) Ensure that captioners are qualified for the type and difficulty level of the programs to which they are assigned.

(xi) Utilize a system that verifies captioners are prepared and in position prior to a scheduled assignment.

(xii) 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.

(xiii) Regularly review discrepancy reports in order to correct issues and avoid future issues.

(xiv) Respond in a timely manner to concerns raised by video programmers or viewers.

(xv) Alert video programmers immediately if a technical issue needs to be addressed on their end.

(xvi) Inform video programmers of appropriate use of real-time captioning (i.e., for live and near-live programming, and not for prerecorded programming) and what is necessary to produce quality captions, including technical

requirements and the need for preparatory materials.

(xvii) 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 broadcasters, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

(xviii) Ensure that all contracted captioners adhere to the Real-Time Captioners Best Practices contained in paragraph (k)(4) of this section.

(3) *Real-Time Captioners Best Practices.*
(i) Caption as accurately, synchronously, completely, and appropriately placed as possible, given the nature of the programming.

(ii) Ensure they are equipped with a failover plan to minimize caption interruption due to captioner or equipment malfunction.

(iii) Be equipped with reliable, high speed Internet.

(iv) Be equipped with multiple telephone lines.

(v) Prepare as thoroughly as possible for each program.

(vi) File thorough discrepancy reports with the captioning vendor in a timely manner.

(vii) To the extent possible given the circumstances of the program, ensure that real-time captions are complete when the program ends.

(viii) Engage the command that allows captions to pass at commercials and conclusion of broadcasts.

(ix) Monitor captions to allow for immediate correction of errors and prevention of similar errors appearing or repeating in captions.

(x) Perform frequent and regular self-evaluations.

(xi) Perform regular dictionary maintenance.

(xii) Keep captioning equipment in good working order and update software and equipment as needed.

(xiii) Possess the technical skills to troubleshoot technical issues.

(xiv) Keep abreast of current events and topics that they caption.

(4) *Offline (Prerecorded) Captioning Vendors Best Practices.* (i) Ensure offline captions are verbatim.

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(ii) Ensure offline captions are error-free.

(iii) Ensure offline captions are punctuated correctly and in a manner that facilitates comprehension.

(iv) Ensure offline captions are synchronized with the audio of the program.

(v) Ensure offline captions are displayed with enough time to be read completely and that they do not obscure the visual content.

(vi) [Reserved]

(vii) Ensure offline captioning is a complete textual representation of the audio, including speaker identification and non-speech information.

(viii) Create or designate a manual of style to be applied in an effort to achieve uniformity in presentation.

(ix) Employ frequent and regular evaluations to ensure standards are maintained.

(x) Inform video programmers of appropriate uses of real-time and offline captioning and strive to provide offline captioning for prerecorded programming.

(A) Encourage use of offline captioning for live and near-live programming that originally aired on television and re-feeds at a later time.

(B) Encourage use of offline captioning for all original and library prerecorded programming completed well in advance of its distribution on television.

(xi) 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 video program distributors, video programmers, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

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EFFECTIVE DATE NOTE: At 75 FR 7369, Feb. 19, 2010, paragraph (g)(3) was stayed.

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§ 79.2 Accessibility of programming providing emergency information.

(a) *Definitions.* (1) For purposes of this section, the definitions in §§ 79.1 and 79.3 apply.

(2) *Emergency information.* Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

NOTE TO PARAGRAPH (a)(2): Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) Requirements for accessibility of programming providing emergency information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1.

(2) Video programming distributors and video programming providers must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired; and

(ii) Emergency information that is provided visually during programming that is neither a regularly scheduled