

The Commission may authorize Commission staff either to shorten or lengthen the time required for responding to complaints in particular cases. The answer to a complaint must include a certification that the video programming distributor attempted in good faith to resolve the dispute with the complainant.

(3) The Commission will review all relevant information provided by the complainant and the video programming distributor and will request additional information from either or both parties when needed for a full resolution of the complaint.

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our video description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the video description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

(f) *Private rights of action are 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.

[76 FR 55604, Sept. 8, 2011, as amended at 76 FR 68118, Nov. 3, 2011]

§ 79.4 Closed captioning of video programming delivered using Internet protocol.

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

(1) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.

(2) *Full-length video programming.* Video programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol, excluding video clips or outtakes.

(3) *Video programming distributor or video programming provider.* Any person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.

(4) *Video programming owner.* Any person or entity that either:

(i) Licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol; or

(ii) Acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol.

(5) *Internet protocol.* Includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

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

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

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

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

(10) *Edited for Internet distribution.* Video programming for which the television version is substantially edited prior to its Internet distribution.

(11) *Consumer-generated media.* Content created and made available by

consumers to online Web sites and services on the Internet, including video, audio, and multimedia content.

(12) *Video clips*. Excerpts of full-length video programming.

(13) *Outtakes*. Content that is not used in an edited version of video programming shown on television.

(14) *Nonexempt programming*. Video programming that is not exempted under paragraph (d) of this section and, accordingly, is subject to closed captioning requirements set forth in this section.

(b) *Requirements for closed captioning of Internet protocol-delivered video programming*. (1) All nonexempt full-length video programming delivered using Internet protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions on or after the following dates:

(i) September 30, 2012, for all prerecorded programming that is not edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(ii) March 30, 2013, for all live and near-live programming, unless it is subject to paragraph (b)(1)(iv) of this section.

(iii) September 30, 2013, for all prerecorded programming that is edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(iv) All programming that is already in the video programming distributor's or provider's library before it is shown on television with captions must be captioned within 45 days after the date it is shown on television with captions on or after March 30, 2014 and before March 30, 2015. Such programming must be captioned within 30 days after the date it is shown on television with captions on or after March 30, 2015 and before March 30, 2016. Such programming must be captioned within 15 days after the date it is shown on television with captions on or after March 30, 2016.

(2) All nonexempt video clips delivered using Internet protocol must be provided with closed captions if the video programming distributor or provider posts on its Web site or application a video clip of video programming

that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline. The requirements contained in this paragraph shall not apply to video clips added to the video programming distributor's or provider's library before the video programming distributor or provider published or exhibited the associated video programming on television in the United States with captions on or after the applicable compliance deadline.

(i) The requirements contained in paragraph (b)(2) of this section shall apply with the following compliance deadlines:

(A) January 1, 2016, where the video clip contains a single excerpt of a captioned television program with the same video and audio that was presented on television.

(B) January 1, 2017, where a single file contains multiple video clips that each contain a single excerpt of a captioned television program with the same video and audio that was presented on television.

(C) July 1, 2017, for video clips of live and near-live programming.

(ii) Closed captions must be provided for video clips of live programming within 12 hours after the conclusion of the associated video programming's publication or exhibition on television in the United States with captions. Closed captions must be provided for video clips of near-live programming within eight hours after the conclusion of the associated video programming's publication or exhibition on television in the United States with captions.

(c) *Obligations of video programming owners, distributors and providers—(1) Obligations of video programming owners*. Each video programming owner must:

(i) Send program files to video programming distributors and providers with captions as required by this section, with at least the same quality as the television captions provided for the same programming. If a video programming owner provides captions to a video programming distributor or provider using the Society of Motion Picture and Television Engineers Timed Text format (SMPTE ST 2052-1:2010, incorporated by reference, *see* § 79.100),

then the VPO has fulfilled its obligation to deliver captions to the video programming distributor or provider in an acceptable format. A video programming owner and a video programming distributor or provider may agree upon an alternative technical format for the delivery of captions to the video programming distributor or provider.

(ii) With each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol, agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.

(2) *Obligations of video programming distributors and providers.* Each video programming distributor and provider must:

(i) Enable the rendering or pass through of all required captions to the end user, maintaining the quality of the captions provided by the video programming owner and transmitting captions in a format reasonably designed to reach the end user in that quality. A video programming distributor or provider that provides applications, plugins, or devices in order to deliver video programming must comply with the requirements of § 79.103(c) and (d).

(ii) With each video programming owner from which such distributor or provider licenses video programming for distribution directly to the end user through a distribution method that uses Internet protocol, agree upon a mechanism to inform such distributor or provider on an ongoing basis whether video programming is subject to the requirements of this section, and make a good faith effort to identify video programming subject to the requirements of this section using the agreed upon mechanism. A video programming distributor or provider may rely in good faith on a certification by a video programming owner that the video programming need not be captioned if:

(A) The certification includes a clear and concise explanation of why captioning is not required; and

(B) The video programming distributor or provider is able to produce

the certification to the Commission in the event of a complaint.

(iii) Make contact information available to end users for the receipt and handling of written closed captioning complaints alleging violations of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for Internet protocol captioning issues and who can ensure compliance with these rules. In addition, this contact information shall include the person's title or office, telephone number, fax number, postal mailing address, and email address. Video programming distributors and providers shall keep this information current and update it within 10 business days of any change.

(3) A video programming provider's or owner's *de minimis* failure to comply with this section shall not be treated as a violation of the requirements.

(d) *Procedures for exemptions based on economic burden.* (1) A video programming provider or owner may petition the Commission for a full or partial exemption from the closed captioning requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements for closed captioning of video programming delivered via Internet protocol would be economically burdensome. The term "economically burdensome" means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for closed captioning of Internet protocol-delivered video programming would be economically burdensome:

(i) The nature and cost of the closed captions for the programming;

(ii) The impact on the operation of the video programming provider or owner;

(iii) The financial resources of the video programming provider or owner; and

(iv) The type of operations of the video programming provider or owner.

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements of this section including, but not limited to, text or graphic display of the content of the audio portion of the programming. The Commission will evaluate economic burden with regard to the individual outlet.

(4) The petitioner must electronically file its petition for exemption, and all subsequent pleadings related to the petition, 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 electronically file comments or oppositions to the petition within 30 days after release of the public notice of the petition. Within 20 days after the close of the period for filing comments or oppositions, the petitioner may reply to any comments or oppositions filed.

(7) Persons who file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must include a certification that the petitioner was served with a copy. Any petitioner filing a reply to comments or oppositions must serve the commenting or opposing party with a copy of the reply and shall include a certification that the party was served with a copy. Comments or oppositions and replies shall be served upon a party, its attorney, or its other duly constituted agent by delivering or mailing a copy to the party's 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 finding of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include 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 economic burden exemption from the closed captioning requirements of this section.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the requirements of this section.

(e) *Complaint procedures.* (1) Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed in writing with the Commission or with the video programming distributor or provider responsible for enabling the rendering or pass through of the closed captions for the video programming within sixty (60) days after the date the complainant experienced a problem with captioning. A complaint filed with the Commission must be directed to the Consumer and Governmental Affairs Bureau and submitted through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile.

(2) A complaint should include the following information:

(i) The name, postal address, and other contact information of the complainant, such as telephone number or email address;

(ii) The name and postal address, Web site, or email address of the video programming distributor, provider, and/or owner against which the complaint is alleged, and information sufficient to identify the video programming involved;

(iii) Information sufficient to identify the software or device used to view the program;

(iv) A statement of facts sufficient to show that the video programming distributor, provider, and/or owner has violated or is violating the Commission's rules, and the date and time of the alleged violation;

(v) The specific relief or satisfaction sought by the complainant; and

(vi) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant).

(3) If a complaint is filed first with the Commission, the Commission will forward complaints satisfying the above requirements to the named video programming distributor, provider, and/or owner, as well as to any other video programming distributor, provider, and/or owner that Commission staff determines may be involved. The video programming distributor, provider, and/or owner must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

(4) If a complaint is filed first with the video programming distributor or provider, the video programming distributor or provider must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor or provider 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 or provider to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor or provider) and the complaint satisfies the above requirements, the Commission will forward the complaint to the named video programming distributor or provider, as well as to any other video programming distributor, provider, and/or owner that Commission staff determines may be involved. The video programming distributor, provider, and/or owner must then respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

(5) In response to a complaint, video programming distributors, providers, and/or owners shall file with the Commission sufficient records and documentation to prove that the responding entity was (and remains) in compliance with the Commission's rules. Conclusive or insufficiently supported assertions of compliance will not carry a video programming distributor's, provider's, or owner's burden of proof. If the responding entity admits that it was not or is not in compliance with

the Commission's rules, it shall file with the Commission sufficient records and documentation to explain the reasons for its noncompliance, show what remedial steps it has taken or will take, and show why such steps have been or will be sufficient to remediate the problem.

(6) The Commission will review all relevant information provided by the complainant and the subject video programming distributors, providers, and/or owners, as well as any additional information the Commission deems relevant from its files or public sources. The Commission may request additional information from any relevant entities when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violation(s) of Commission rules. When the Commission requests additional information, parties to which such requests are addressed must provide the requested information in the manner and within the time period the Commission specifies.

(7) If the Commission finds that a video programming distributor, provider, or owner has violated the closed captioning requirements of this section, it may employ the full range of sanctions and remedies available under the Communications Act of 1934, as amended, against any or all of the violators.

(f) *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.

[77 FR 19515, Mar. 30, 2012, as amended at 79 FR 45371, Aug. 5, 2014]

Subpart B—Apparatus

SOURCE: 78 FR 77251, Dec. 20, 2013, unless otherwise noted.

§ 79.100 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director