

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of :
Kelby Nathan Brick
v.
Comcast Cablevision of Maryland and Courtroom
Television Network
Request For Compliance with the
Closed Captioning Requirements

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2002

Released: January 11, 2002

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. In the above-captioned proceeding, Kelby Nathan Brick, a cable subscriber in Prince George's County, Maryland, filed a complaint against the Courtroom Television Network ("Court TV") and Comcast Cablevision of Maryland, Inc. ("Comcast") alleging that Comcast and Court TV failed to comply with the Commission's closed captioning requirements during the first and second quarters during the year 2000. Comcast filed a reply to the complaint and Court TV submitted information regarding its captioning efforts.

II. BACKGROUND

2. Section 713 of the Communications Act of 1934, as amended (the "Act"), Video Programming Accessibility, was added by Section 305 of the Telecommunications Act of 1996. To implement Section 713, the Commission added a new Part 79, Closed Captioning of Video Programming, to the rules, which became effective on January 1, 1998. Section 713 generally requires that video

1 We note that Mr. Brick first sought to address his concerns by filing a complaint with Comcast and Court TV, as required by the Commission rules. See 47 C.F.R. § 79.1(g). As the complaint was not resolved to his satisfaction during that initial stage, Mr. Brick filed this complaint with the Commission.

2 Comcast distributes programming provided by Court TV on its cable system.

3 47 U.S.C. § 613.

4 See Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility, 13 FCC Rcd 3272 (1998) (Report and Order); see also 47 C.F.R. Part 79.

programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules, implementation schedules, as well as compliance and enforcement mechanisms for the closed captioning of video programming. The Commission’s rules hold video programming distributors responsible for compliance with the closed captioning rules.<sup>5</sup> The Commission stated that placing compliance obligations on distributors will allow the Commission to monitor and enforce the rules more efficiently, and would identify a single entity to which complaints could be addressed.<sup>6</sup> Although we placed the ultimate responsibility on program distributors, we further stated that distributors would likely incorporate closed captioning requirements into their contracts with producers and owners to negotiate for an efficient allocation of captioning responsibilities.<sup>7</sup>

3. For programming first broadcast or exhibited after the effective date of the Commission’s closed captioning rules,<sup>8</sup> the Commission adopted an eight year transition period during which distributors are required to increase over time the amount of closed captioned video programming they distribute until full accessibility of new programming is achieved.<sup>9</sup> Captioning is measured on a per channel, calendar quarter basis.<sup>10</sup> The eight year transition schedule phases in closed captioning for new, nonexempt video programming with benchmarks set at two year intervals.<sup>11</sup> The initial benchmark began in the first quarter of 2000. Video programming distributors are required to provide at least 450 hours of captioned video programming on each channel, during each calendar quarter, between January 1, 2000, and December 31, 2001.<sup>12</sup> After this initial benchmark period, the captioning requirements incrementally increase until full accessibility is achieved.<sup>13</sup> The Commission also established one benchmark provision to require at least 30% of a channel’s pre-rule programming be provided with captions beginning on

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<sup>5</sup> *Report and Order*, 13 FCC Rcd at 3286; *see also* 47 C.F.R. § 79.1(a)(2). Video programming distributors are entities who provide video programming directly to a customer’s home, regardless of the distribution technology employed. Distributors include broadcasters, cable operators, wireless cable operators, SMATV operators, DBS providers, DTH providers, HSD providers and OVS operators.

<sup>6</sup> *Report and Order*, 13 FCC Rcd at 3286.

<sup>7</sup> *Id.*

<sup>8</sup> New nonexempt programming refers to programming first published on or after January 1, 1998, the effective date of the rules. Section 713(d) authorizes the Commission to exempt certain programming from the captioning requirements by regulation. *See* 47 U.S.C. § 613(d).

<sup>9</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 19973, 19976 (1998) (“*Order on Reconsideration*”).

<sup>10</sup> 47 C.F.R. § 79.1(e)(1).

<sup>11</sup> *Order on Reconsideration*, 13 FCC Rcd at 19976.

<sup>12</sup> *Id.*

<sup>13</sup> *See* 47 C.F.R. § 79.1(b). The Commission defines full accessibility to be the captioning of 100% of all new, nonexempt video programming. Effective January 1, 2006, 100% of the programming distributor’s new, nonexempt programming must be provided with captions. To the extent that the number of hours of new, nonexempt programming on a channel during a calendar quarter is less than the benchmarks specified during the transition period, then 100% of all new, nonexempt programming on that channel must be captioned.

January 1, 2003.<sup>14</sup> In addition, the Commission adopted a ten year transition period for captioning of pre-rule programming and required that 75% of all pre-rule programming delivered to consumers during the first quarter of 2008 and thereafter be captioned.<sup>15</sup> With regard to the enforcement of rule provisions, the Commission affords parties the opportunity to file complaints to address violations of the closed captioning requirements, pursuant to Section 79.1(g).<sup>16</sup>

### III. DISCUSSION

4. In his complaint to the Commission, Mr. Brick states that he contacted Comcast and Court TV alleging that Court TV had failed to caption new programming for the requisite 450 hours per quarter, during the first and second quarters of 2000.<sup>17</sup> Mr. Brick asserts that in response to his complaint, Court TV maintained that it captioned three hours of programming each weekday and that it was in compliance with the captioning rules.<sup>18</sup> Mr. Brick asserts, however, that three hours of captioning each weekday yields only 15 hours of captioning per week and 195 hours of captioning per quarter, as there are approximately 13 weeks in each quarter.<sup>19</sup> Mr. Brick contends that because Court TV captioned less than 450 hours of new programming, and failed to comply with Section 79.1 of the Commission's rules, it is appropriate that the Commission impose sanctions. Mr. Brick suggests several alternatives to the Commission to address Court TV's failure to comply with the captioning requirements, including imposing a fine, requiring the completion of a plan to assure future compliance, and increasing the captioning level to 75% for Court TV programming for the remainder of the calendar year.<sup>20</sup> In addition, Mr. Brick requests that the Commission issue regulations requiring all networks, cable operators and programmers to file compliance reports as to previous quarters, as well as plans for captioning programs in upcoming quarters.<sup>21</sup>

5. Comcast states that after receiving Mr. Brick's complaint it contacted Court TV. It states that by letter, Court TV explained that it was in compliance with Part 79.<sup>22</sup> Comcast asserts that it relied on Court TV's representation that captioning had been completed to the extent required and it thereafter assured Mr. Brick by letter that Court TV was in compliance with the captioning requirements.<sup>23</sup> However, Comcast notes that Court TV thereafter discovered that it miscalculated the number of hours of

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<sup>14</sup> *Order on Reconsideration*, 13 FCC Rcd at 19988.

<sup>15</sup> *Id.* at 19984, 19988. Programming published or exhibited prior to January 1, 1998, is defined as pre-rule programming under the Commission's closed captioning rules.

<sup>16</sup> *Id.* at 20022-25; *see also* 47 C.F.R. § 79.1(g).

<sup>17</sup> Complaint at 1.

<sup>18</sup> *Id.* *See* Letter from Glenn Moss, Vice President for Business Affairs and Affiliate Relations Court TV, to Kelby Nathan Brick (June 16, 2000).

<sup>19</sup> Complaint at 1.

<sup>20</sup> *Id.* Mr. Brick does not request a similar sanction for Comcast.

<sup>21</sup> *Id.*

<sup>22</sup> Comcast Reply at 2.

<sup>23</sup> *Id.* *See* Letter from Thomas R. Nathan, General Counsel, Comcast, to Kelby Nathan Brick (June 19, 2000).

programming it actually captioned and advised Comcast that it failed to meet its captioning obligations during the first two calendar quarters of 2000.<sup>24</sup> Comcast states that Court TV subsequently certified that it intended to transmit sufficient hours of captioned programming in the remaining quarters of 2000 to achieve an annualized total of 1800 hours.<sup>25</sup> Comcast indicates that Court TV also certified that it would provide at least 450 hours of captioned new programming in the remaining calendar quarters.<sup>26</sup>

6. Court TV, which filed a separate response with the Commission, maintains that it captioned approximately 325 to 350 hours of programming, not 195 hours, during first and second quarters of 2000.<sup>27</sup> Upon discovering that the actual amount of captioning fell short of the 450 hours per quarter required by the Commission's rules, Court TV states that it immediately sought to increase its captioning efforts.<sup>28</sup> Court TV asserts that by July 10, 2000, it increased its level of captioning to 530 hours of new original captioned programming during the third quarter of 2000, and that it planned to transmit 549 hours during the fourth quarter.<sup>29</sup> Court TV further asserts that it will have transmitted approximately 2100 hours of captioned programming during the year 2000 and intends to continue to provide at least the same level of captioned new programming per calendar quarter in 2001.<sup>30</sup>

7. At issue in Mr. Brick's complaint is the captioning of new programming and his allegation that the requisite hours of captioned programming was not being provided during the first and second quarters of 2000. While the total number of hours of new programming captioned during this period is not clear, it is undisputed that the required number of hours were not captioned. In addition, although Mr. Brick's relief request is directed to both Court TV and Comcast, the closed captioning regulations provide that distributors are responsible for ensuring compliance with the captioning requirements. Given this responsibility, Comcast should have more closely scrutinized the information provided by Court TV for its accuracy. In its letter to Comcast, Court TV indicated that three hours of programming was captioned daily. Upon receiving such information, Comcast should have known that Court TV was not in compliance with the captioning rules. As a distributor of programming, Comcast is responsible for ensuring that the programming it distributes on its systems complies with the Commission's captioning requirements. It failed to do so here.

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<sup>24</sup> Comcast Reply at 3.

<sup>25</sup> Certification of Compliance with Closed Captioning Requirements for January 1, 2000 through December 31, 2001, Glenn Moss, Vice President Court TV (July 10, 2000).

<sup>26</sup> *Id.*

<sup>27</sup> Court TV Response at 3.

<sup>28</sup> *Id.* Court TV states that during the first half of the year, among the programs captioned were episodes of the show "Cops," which it acknowledges was originally produced before January 1, 1998. Court TV asserts that the program was "new" to its network and, as such, was considered by Court TV to be new programming. As we have stated, programs produced prior to 1998 are considered pre-rule programming and would not satisfy the requirements for new programming.

<sup>29</sup> *Id.* at 4. *See also* Declaration of Glenn Moss, Vice President for Business Affairs and Affiliate Relations, Court TV (July 24, 2000). He states that by July 10, 2000, Court TV had begun airing new captioned programming from 11:30 am to 6:30 pm, and as of July 17, 2000, its entire daytime schedule of original programming, from 9 am to 6:30 pm, was aired in closed captions. Moreover, Moss states that Court TV determined that it needed to increase its use of closed captioning for original programming, independent of showing episodes of the program "Cops."

<sup>30</sup> *Id.* at 4.

8. Because there was an obvious lack of captioning for the required number of hours during the first half of the year 2000, we instruct Comcast to be more vigilant in ensuring compliance with the captioning regulations. We are, however, encouraged that the level of closed captioning of Court TV's daily schedule of original programming during the third and fourth quarters of 2000 increased, and that Court TV exceeded during those periods the required hours for captioning. Court TV also indicated that it would continue to provide at least the same level of captioned new programming per calendar quarter in the year 2001.<sup>31</sup> As there has been a successful, albeit delayed, effort to comply with the captioning requirements, penalties, sanctions or other remedial measures are not warranted at this time.<sup>32</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the complaint filed by Kelby Nathan Brick against Comcast Corporation and Courtroom Television Network **IS GRANTED** to the extent indicated herein.

10. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.<sup>33</sup>

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree  
Chief, Cable Services Bureau

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<sup>31</sup> Court TV Response at 4.

<sup>32</sup> Comcast should be aware that violations of the captioning obligations in the future may result in more severe penalties. Section 79.1(g)(8) provides that various penalties may be imposed, including requiring a video programming distributor to deliver programming containing closed captioning in an amount exceeding the benchmarks specified for a particular captioning time period. *See* 47 C.F.R. § 79.1(g)(8).

<sup>33</sup> 47 C.F.R. § 0.321.