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

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In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	
	)	
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Martin; Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we grant a petition for rulemaking and initiate a proceeding to examine the Commission's closed captioning rules.[1] Specifically, we seek comment on: 1) the current status of the Commission's closed captioning rules in ensuring that video programming is accessible to deaf and hard of hearing Americans and whether any revisions should be made to enhance the effectiveness of those rules; and 2) several compliance and quality issues relating to closed captioning that were raised in a Petition for Rulemaking filed by Telecommunications for the Deaf, Inc. (TDI), the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network.[2]

2. In 1996, Congress added section 713 to the Communications Act of 1934, as amended, (the Act) to generally require that video programming be closed captioned to ensure access to people with hearing disabilities, and required the Commission to adopt rules and implementation schedules for the closed captioning of video programming.[3] The Commission has noted that closed captioning can be an important learning tool for both children with hearing disabilities and children without hearing disabilities learning to read, and for millions of persons learning English as a second language in improving their reading comprehension and spelling skills.[4]

3. The Commission has now had more than seven years experience with the closed captioning rules since they became effective on January 1, 1998. At the time the Commission adopted the closed captioning rules, it indicated that it would review the rules after closed captioning was implemented to determine whether its expectations regarding closed captioning were being met.[5] We

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[1] *See* 47 C.F.R. Part 79. Closed captioning is an assistive technology designed to provide access to television for persons with hearing disabilities. Closed captioning is similar to subtitles in that it displays the audio portion of a television signal as printed words on the television screen. To assist viewers with hearing disabilities, captions may also identify speakers, sound effects, music and laughter. Unlike subtitles, however, closed captioning is hidden as encoded data transmitted within the television signal. For a more complete description of closed captioning, *see Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility,* MM Docket No. 95-176, Notice of Proposed Rulemaking, 12 FCC Rcd 1044 (Jan. 17, 1997) (*1997 Closed Captioning NPRM*).

[2] *See* Telecommunications for the Deaf Inc. *et al.* Petition for Rulemaking, RM-11065 (July 23, 2004) (*TDI Petition*). The joint petitioners are collectively referred to herein as TDI. The Petition appeared on Public Notice on September 2, 2004. *See* Public Notice, Report No. 2670, dated September 2, 2004. More than 90 comments were filed in response to the *TDI Petition*, most of which support the Petition. The National Cable & Telecommunications Association filed an Opposition to the *TDI Petition* on October 4, 2004 (*NCTA Opposition*).

[3] 47 U.S.C. § 613. Section 713, Video Programming Accessibility, was added to the Act by Section 305 of the Telecommunications Act of 1996. Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (the 1996 Act).

[4] *See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996,* MM Docket No. 95-176, Report, 11 FCC Rcd 19214 at 19227, para. 34 (July 29, 1996) (*1996 Closed Captioning Report to Congress*). The Commission noted that "[s]tudies have demonstrated that captioning can improve a student's reading comprehension and spelling, augment vocabulary and word recognition and increase overall motivation to read." *Id*.

[5] *See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3387, paras. 254-257 (August 22, 1997) (*Closed Captioning Report and Order)*.

initiate this review as a follow-up to the Commission's prior assurances and in response to the *TDI Petition*. We share a common goal with TDI in ensuring that closed captioning works as Congress intended, and in making sure the rules adopted in 1997 are consistent with Congress' goal that "all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school, and workplace."[6] We also note that, effective January 1, 2006, all non-exempt new English language programming must be captioned.[7] We believe this rulemaking provides an excellent opportunity to ensure that video programming distributors are prepared to fulfill this requirement.

II. BACKGROUND

A. History of Closed Captioning

4. Closed captioning of television programs began in the 1970's.[8] Closed captioning is hidden as encoded data transmitted within the vertical blanking interval (VBI) of the television signal which, "when decoded, provides a visual depiction of information simultaneously being presented on the aural channel (captions)."[9] To implement the Television Decoder Circuitry Act of 1990 (TDCA),[10] the Commission adopted rules that require all television receivers with screen sizes 13 inches or larger to be capable of receiving and displaying closed captions.[11] Although there was a significant increase in captioning following the enactment of the TDCA, Congress remained concerned that as the number of channels of video programming continues to increase and the variety of programming offerings expands "video programming through all delivery systems should be accessible."[12]

5. Prior to 1996, closed captioning of video programming was provided through the voluntary efforts of the video programming industry and private entities.[13] Section 305 of the 1996 Act added a new Section 713, Video Programming Accessibility, to the Act.[14] Section 713 required the Commission to prescribe rules and implementation schedules for captioning of video programming.[15] In enacting Section 713, Congress generally required that video programming be closed captioned, regardless of distribution technology,[16] to ensure access to persons with hearing disabilities. Section 713 is intended to further Congress' goal "to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the

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[6] H.R. Report 104-458 104th Cong., 2d Sess. at 183-84 (*Conference Report*) (Aug. 22, 1996).

[7] 47 C.F.R. § 79.1(b)(1)(iv).

[8] *1997 Closed Captioning NPRM*, 12 FCC Rcd 1044 at 1050, para. 7.

[9] 47 C.F.R. § 73.682(a)(22). In 1976, the Commission adopted rules which provide that line 21 of the VBI is to be primarily used for the transmission of closed captioning. The Commission's rules specify technical standards for the reception and display of such captioning. *Id*.

[10] Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

[11] *See Implementation of Television Decoder Circuitry Act*, GEN Docket No. 91-1, Report and Order, 6 FCC Rcd 2419 (Apr. 15, 1991).

[12] H.R. Report 104-204, 104th Cong., 1st Sess. at 113-14 (1995).

[13] *See Closed Captioning Report and Order*, 13 FCC Rcd at 3276, para. 7.

[14] 47 U.S.C. § 613.

[15] 47 U.S.C § 613(b)-(c).

[16] Video programming may be delivered to consumers through a variety of technologies. These distribution technologies include broadcast television, cable television, wireless cable, direct-to-home satellite services, and local telephone exchange carrier video.

home, school, and workplace."[17]

B. Closed Captioning Orders

6. In accordance with Section 713, the Commission adopted rules in 1997 for closed captioning of video programming.[18] These rules require that all video programming distributors, including over-the-air broadcast television services and all multichannel video programming distributors ("MVPDs") (including cable television, direct-to-home satellite services, wireless cable systems, satellite master antenna television, and open video systems)[19] increase gradually the amount of captioned programming offered and, generally require that 100% of new programming be closed captioned as of January 1, 2006, subject to certain exceptions.[20] New programming is defined as programs first published or exhibited on or after January 1, 1998.[21] Additionally, these rules established a transition period for captioning of pre-rule programming, and require that 75% of all pre-rule nonexempt programming delivered to consumers during the first quarter of 2008 and thereafter must be captioned.[22] Pre-rule programming is defined as programs first published or exhibited before January 1, 1998.[23] The rules also require that, pursuant to an established phase-in schedule, as of January 1, 2010, 100% of non-exempt new Spanish language programming be closed captioned,[24] and, as of January 1, 2012, and thereafter, 75% of non-exempt Spanish language pre-rule programming be closed captioned.[25]

7. In July 2000, the Commission amended the closed captioning rules to require an increasing amount of digital programming to be captioned in a format that can be recovered and displayed by decoders meeting the EIA-708 standard.[26] The *DTV Closed Captioning Order* adopted the same benchmark transition period for new and pre-rule digital programming as exists for analog programming. The *DTV Closed Captioning Order* also established July 1, 2002, as the date for determining whether digital programming is new programming or pre-rule programming.[27] The rules for digital captioning

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[17] H.R. Report 104-458, 104th Cong., 2d Sess. at 183-84 (1996).

[18] *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (Oct. 2, 1998) (*Reconsideration Order)*.

[19] "Video programming distributor" is defined in 47 C.F.R. § 79.1(a)(2) as any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in section 76.100 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.

[20] *See* 47 C.F.R. §§ 79.1(b)(1), (b)(3), (d), (e), (f); *see also Closed Captioning Report and Order*, 13 FCC Rcd at 3292-3295, paras. 41-47; *Reconsideration Order*, 13 FCC Rcd at 19978-79, paras. 9-10.

[21] 47 C.F.R. § 79.1(a)(5).

[22] 47 C.F.R. § 79.1(b)(2); *Closed Captioning Report and Order*, 13 FCC Rcd at 3301-02, paras 61-63.

[23] 47 C.F.R. § 79.1(a)(6).

[24] 47 C.F.R. § 79.1(b)(3)(iv).

[25] 47 C.F.R. § 79.1(b)(4)(ii).

[26] *Closed Captioning Requirements for Digital Television Receivers*, *Closed Captioning and Video Description of Video Programming , Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, 15 FCC Rcd. 16788 (July 31, 2000) (*DTV Closed Captioning Order*); 47 C.F.R. § 15.122(b) (incorporating by reference, EIA-708-B, "Digital Television Closed Captioning," Electronics Industries Alliance (Dec. 1999) ("EIA-708-B")). *See* Summary of Requirements at 15 FCC Rcd at 16790-16791 (listing requirements of the decoder operation, covered devices, and compliance dates); *see also* 47 C.F.R. § 79.1.

[27] *DTV Closed Captioning Order*, 15 FCC Rcd at 16790-91 (*See* Summary of Requirements); *see also* 47 C.F.R. § 79.1(a)(6)(ii).

became effective July 1, 2002.[28] Therefore, as of January 1, 2006, 100% of new nonexempt analog *and* digital English language video programming must be captioned. In the *DTV Closed Captioning Order*, the Commission observed that viewers will be able to watch digital programming on existing analog displays using a DTV converter, and alerted programming distributors that in order for them "to count captioned digital television programming toward their closed captioning requirements in 47 C.F.R. Section 79.1, they must also transmit captions that can be decoded by the decoder in that analog set."[29]

C. TDI Petition

8. On July 23, 2004, Telecommunications for the Deaf, Inc. filed a Petition for Rulemaking, requesting that the Commission initiate a rulemaking to "establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning."[30] The *TDI Petition* specifically requests that the Commission: 1) create a Commission-maintained database with updated contact information for video programming distributors and providers and a captioning complaint form; 2) establish compliance reporting requirements and undertake audits to ensure effective implementation of the captioning requirements; 3) revise the complaint rules to require responses to consumer complaints regarding captioning quality issues within 30 days; 4) establish fines or penalties for non-compliance with the captioning rules; 5) require continuous monitoring of captioning by the video programming distributor or provider to ensure that technical problems are remedied promptly and efficiently; 6) require video programming distributors to reformat edited or compressed captioning; 7) require that for a program to be considered "captioned" under the existing rules, it must meet minimum standards set by the Commision for completeness, accuracy, readability, and synchronicity with the audio portion of the program; and 8) adopt non-technical standards to ensure that video programming is "fully accessible" to deaf and hard of hearing individuals.[31] More than 90 comments were filed in response to the *TDI Petition*. The majority of these commenters supported the *TDI Petition*.[32] The National Cable & Telecommunications Association (NCTA) opposed the *TDI Petition*, stating that it provides no cause for revisiting the captioning rules, and noting that the rules "established a careful balance of interests which has resulted in an enormous increase in the amount of captioned programming over the last several years."[33]

III. DISCUSSION

A. General Considerations

9. The main objective of this NPRM is to seek comment on whether our closed captioning rules as currently constituted are the most effective and efficient way of ensuring that television viewing

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[28] *DTV Closed Captioning Order*, 15 FCC Rcd. at 16791, para. 5; *see also* 47 C.F.R. § 79.1(a)(6)(ii).

[29] *DTV Closed Captioning Order*, 15 FCC Rcd. at 16809, para. 63.

[30] *TDI Petition* at i.

[31] *See generally TDI Petition*. In addition to *TDI's Petition*, comments submitted in response to the *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 04-227, Notice of Inquiry, 19 FCC Rcd 10909 (June 17, 2004) (*2004 Video Programming NOI)* regarding the Commission's annual assessment of the status of competition in the market for the delivery of video programming similarly reflect consumers' continuing concerns with closed captioning. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 04-227, 11th Annual Report, 20 FCC Rcd 2755, 2850-51, para. 177 (Feb. 4, 2005) (*11th Annual Video Programming Report).*

[32] *See, e.g.,* Comments of Elizabeth Rocchino (Aug. 26, 2004); Accessible Media Industry Coalition (Sept. 29, 2004); Larry Goldberg, National Center for Accessible Media (Sept. 28, 2004); Jerald Jordan (Sept. 27, 2004); Nancy Linke-Ellis (Sept. 23, 2004); Liz Petersen (Sept. 27, 2004).

[33] *NCTA Opposition* at 1-2. No other Oppositions were filed.

is available to the millions of deaf and hard of hearing Americans. We also seek comment on rules that the Commission may adopt to enhance the effectiveness of closed captioning.

10. ***Non-technical Quality Standards for Closed Captioning***. Currently there are no standards for non-technical quality aspects of closed captioning. The Commission has considered non-technical aspects of captioning to include matters such as accuracy of transcription, spelling, grammar, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style,[34] verbatim or edited for reading speed, and type font.[35] In the *1997 Closed Captioning NPRM*, the Commission recognized "that captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities," and "that it is well within the Commission's discretion to consider whether to adopt rules, standards, or guidelines that address these matters."[36]

11. In adopting the closed captioning rules, the Commission declined to set standards, but instead encouraged video programming providers to establish standards through their arrangements and contracts with captioning companies.[37] The Commission expected quality standards to become more common in captioning contracts.[38] In the *Closed Captioning Report and Order*, the Commission rejected the idea that program producers would not strive for high quality captioning via their contracts simply because they are not the actual consumers of the captions, stating that "consumers can demonstrate their satisfaction or lack of satisfaction with what is shown through their purchase of advertised products, subscriptions to programming services, or contacts with the video programming providers or video programmers."[39] The Commission stated it would consider revisiting this issue if it becomes apparent that the Commission's assumptions regarding the marketplace incentives for quality captioning were incorrect.[40]

12. TDI contends that market incentives have been insufficient to address non-technical quality issues, resulting in little improvement in captioning quality over the past five years. TDI asserts there are "widespread problems" with non-technical captioning quality based upon complaints they have received, and urges the Commission to seek comment on establishing such standards.[41] NCTA, however, states that a rule regulating caption quality would be counterproductive and burdensome.[42] NCTA states that although the accuracy of captions can suffer, especially when the captioning must be done quickly and at the last minute, every effort is made to avoid these errors.[43] Further, NCTA contends that cable

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[34] With "pop-on captions," a phrase or sentence appears on the screen all at once – not line by line – stays there for a few seconds and then disappears or is replaced by another full caption. The captions are timed to synchronize with the program and placed on the screen to help identify the speaker. Pop-on captions are used for prerecorded captioning. **"**Roll-up captions" roll onto and off the screen in a continuous motion. Usually two to three lines of text appear at one time. As a new line comes along, it appears on the bottom, pushing the other lines on the screen up. Roll-up captions are used for all live captioning and can also be used for prerecorded captioning. *See* National Captioning Institute webpage: http://www.ncicap.org/preview/capterms.asp.

[35] *1997 Closed Captioning NPRM*, 12 FCC Rcd at 1090-1091, para. 111; *Closed Captioning Report and Order*, 13 FCC Rcd at 3370, para. 214.

[36] *1997 Closed Captioning NPRM*, 12 FCC Rcd at 1087, para.104, at 1090-1091, para. 111.

[37] *Closed Captioning Report and Order*, 13 FCC Rcd at 3374, para. 222.

[38] *Id.* at 3374, para. 222, n.716.

[39] *Id.* at 3374, para. 223.

[40] *Id.* at 3374, para. 222.

[41] *TDI Petition* at 35 and 37.

[42] *NCTA Opposition* at 16.

[43] *Id.* at 15-16.

networks have "significant" competitive and branding incentives to provide quality captions, that program networks often include accuracy requirements in their contracts with captioning agencies, and that cable networks monitor the quality of the captions, either in-house or through their contracts.[44] Based on the record before us, we seek comment on certain aspects of non-technical quality issues.[45]

13. *Non-technical Quality Issues.* Should the Commission establish standards for the non-technical quality of closed captioning? Are there non-technical quality issues other than those generally considered (accuracy of transcription, spelling, grammar, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style, verbatim or edited for reading speed, and type font) that the Commission should consider? What would constitute an "error"? Are there reasons not to set standards for non-technical quality aspects of closed captioning?

14. *Costs.* What would the costs be to programmers and distributors of mandating non-technical quality standards? Does the captioning pool consist of an adequate number of competent captioners to meet a non-technical quality standard mandate?

15. *Pre-produced Programs.* We also seek comment on whether any non-technical quality standards should be different for pre-produced programs versus live programming. For example, when this issue was raised in 1997, one commenter proposed that the Commission set a maximum error rate of no more than two tenths of a percent (0.2%) of the words in a prerecorded show, and require that no more than 3% of the words in a live show may be wrong, misspelled, or absent.[46] We seek comment on whether these error rates are appropriate and, if not, what error rates would be appropriate.

16. *Responsibility.* The *TDI Petition* notes that many distributors disclaim responsibility for the quality of captioning: "Even more disturbing is a recent trend among providers to include a disclaimer in its broadcast stating that the provider is not responsible for the correctness of captions."[47] Additionally, TDI asserts that the programming distributors should be held ultimately responsible for monitoring captioning.[48] TDI argues that if the text is full of errors, it should not be counted as captioned for purposes of meeting the captioning requirements.[49] We seek comment on these assertions.

17. ***Technical Quality Standards***. In the *Closed Captioning Report and Order,* the Commission adopted a "pass through" rule to ensure that programming with closed captions is delivered in a complete manner with the belief that the enforcement of this rule, the captioning requirements, and Sections 15.119 and 73.682 would ensure the technical quality of captioning.[50] The Commission stated: "We find it unacceptable that existing captions might fail to be transmitted in a complete and intact manner to consumers. The reported problems – such as captions not being delivered intact, captions not synchronized with the video portion of the program, captions ending before the end of the programming,

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[44] *Id.* at 15.

[45] In response to the *2004 Video Programming NOI*, approximately 220 informal comments were filed by consumers. Quality issues were among the topics discussed in these comments, including the accuracy of captions, which commenters claim ranges from excellent to undecipherable. *See 11th Annual Video Programming Report*, 20 FCC Rcd at 2850-51, para. 177.

[46] *Closed Captioning Report and Order*, 13 FCC Rcd at 3373, para. 219 (referring to the Comments of VITAC).

[47] *TDI Petition* at 27.

[48] *Id.*

[49] *Id*.

[50] *Closed Captioning Report and Order*, 13 FCC Rcd at 3368-3369, para. 211; 47 C.F.R. § 79.1(c); 47 C.F.R. § 73.682 (TV transmission standards). Section 15.119 sets forth the closed caption decoder requirements for analog television receivers. 47 C.F.R. § 15.119. Section 73.682 sets forth television transmission standards. 47 C.F.R. § 73.682.

programming without captions even though the program indicated captioning or captions transmitted during one offering of the program but not another – deny accessibility to persons with hearing disabilities even when captioning seems to be available."[51] The "pass through" rule requires video programming providers to "pass through any captioning they receive that is included with the video programming they distribute as long as the captions do not need to be reformatted."[52]

18. In the *TDI Petition*, TDI asserts that the "pass through" requirement[53], along with Sections 15.119 and 76.606, have not been sufficient to prevent and remedy technical problems that result in captions not being delivered intact, thus not providing "full accessibility" to video programming as required by Section 713 of the Act.[54] TDI asks the Commission to adopt additional mechanisms and procedures to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. TDI notes that the following types of technical problems occur frequently:[55]

- Captions turn off ten minutes before the end of national network programming.
- Captions disappear one hour into a two-hour movie.
- Captions are absent, although TV programming schedules label the show as captioned.
- Captions are illegible, including white boxes and overtypes.
- Captions appear on a national program in one locality but not another.
- Captions are missing from repeats of previously aired captioned programming or are scrambled and unreadable.

19. The *NCTA Opposition* states that the *Petition* contains no evidence that the "pass through" rule is being ignored or that the technical quality issues mentioned relate at all to this rule.[56] Further, NCTA asserts that "so far as we are aware, the availability of captions in any particular program from its creation to the transmission to cable operators and other multi-channel distributors is routinely checked, either through active monitoring or spot checks."[57] NCTA states that the "pass through" rule does not need modification, and that technical quality standards should not be imposed by the Commission.[58]

20. The Commission seeks comment on the need for additional mechanisms and procedures in addition to the "pass through" rule to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. Are such mechanisms and procedures warranted? If so, what form should they take? We seek comment on the kinds of technical problems experienced by consumers as well as distributors.

21. ***Monitoring of Captioning***. In the *Closed Captioning Report and Order*, the Commission stated that video programming distributors are responsible for monitoring and maintaining their equipment and signal transmissions to ensure that the captioning that is included with the programming actually reaches consumers.[59] However, the Commission did not establish specific rules or steps that

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[51] *Closed Captioning Report and Order*, 13 FCC Rcd at 3368-3369, para. 211.

[52] *Id.* at 3368-3369, para. 211.

[53] *See* 47 C.F.R. § 79.1(c).

[54] *TDI Petition* at 24-26. (47 C.F.R. § 76.606 is titled "Closed captioning").

[55] *TDI Petition* at 26-27.

[56] *NCTA Opposition* at 9.

[57] *Id.* at 10.

[58] *Id.* at 9.

[59] *Closed Captioning Report and Order*, 13 FCC Rcd at 3369, para. 212.

video programming distributors would be required to follow. The Commission placed the responsibility on the programming distributors to take any corrective measures necessary to ensure the delivery of captions and to make sure that the equipment used is working properly. The Commission also allowed distributors to rely on certifications from video programming suppliers stating that the programming actually contains captions.[60]

22. In its 1996 Report to Congress on Video Programming Accessibility, the Commission stated:

> Problems also occur because of inadvertent errors in the transmission of captions by the broadcaster, distributor, cable network, local station or cable system operator. In many cases, the captions have been stripped, moved to the wrong line of the VBI [vertical blanking interval] or flipped onto the wrong field of line 21 by maladjusted signal processing equipment. The critical technical steps of a quality captioning service are accurate encoding, transmission reception and decoding of the signal. To avoid such errors, it is important that the captioned signal be monitored as it is fed, monitored during the duplication process and checked to ensure that the equipment used is not inadvertently stripping the captions, moving them onto the wrong line or placing them in the wrong field.[61]

23. TDI asserts that consumers continue to face many technical problems that could be eliminated if "video programming distributors and providers had mechanisms in place to monitor captioning and routinely check their engineering equipment and procedures."[62] However, TDI states that based on feedback from their consumers, many providers and distributors do not know that problems exist until they receive a consumer complaint.[63] TDI raises further concern that without continuous monitoring and equipment maintenance, many video programming distributors may be counting certain programming as captioned when in fact the captions were not delivered with the programming.[64] TDI also raises the concern that programming guides may list rebroadcast or time compressed material as captioned even though no captions appear, compounding this problem, an issue that was also raised by commenters in response to the *2004 Video Programming NOI*.[65] TDI asks the Commission to not allow incomplete or garbled captioning caused by technical problems to be counted toward compliance.[66]

24. NCTA argues that it is unnecessary and impractical for the Commission to require constant monitoring of equipment.[67] NCTA states that cable operators routinely monitor their equipment to ensure high quality transmissions of each signal's video, audio, and line 21 closed captioning material.[68] NCTA also asserts that program networks monitor their network transmission to ensure the quality of each program's technical specifications, including video, audio, and closed captions.[69] NCTA states that the Commission's rules strike a careful balance of interests to ensure that the responsibility for captioning is not unduly burdensome, and that the video programming distributor's responsibility is to

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[60] *Id*.

[61] *1996 Closed Captioning Report to Congress*, 11 FCC Rcd at 19253, para. 93.

[62] *TDI Petition* at 28.

[63] *Id.* at 28.

[64] *Id.* at 29.

[65] *TDI Petition* at 32; *11th Annual Video Programming Report*, 20 FCC Rcd at 2850, para. 177, n.794.

[66] *TDI Petition* at 30.

[67] *NCTA Opposition* at 9-10.

[68] *Id.* at 9.

[69] *Id.* at 9-10.

ensure that the equipment used to transmit 500 plus channels to viewers is capable of passing the captioning through, along with the programming, and is in proper working order.[70]

25. We seek comment on video programming distributors' responsibility to monitor and maintain their equipment and signal transmissions. Should distributors have specific mechanisms in place for monitoring and maintenance? If so, what should these mechanisms consist of? What impact would such mechanisms have on distributors? We also seek comment on alternate ways to ensure that captioning is delivered intact to consumers. Lastly, we seek comment on whether distributors are monitoring their programming and advertising materials to ensure that a program advertised to be closed captioned is indeed closed captioned.[71]

26. ***Complaint Procedures***. In the *1997 Closed Captioning NPRM* , the Commission required that complaints regarding closed captioning first be directed to video programming distributors because it believed this approach would "lead to quicker action to resolve a complaint than if the complaint were filed directly with the Commission."[72] Pursuant to these rules, complaints must be filed with the video programming distributor prior to the end of the calendar quarter following the calendar quarter in which the alleged violation has occurred, and video program distributors must respond to the complaint no later than 45 days after the end of the quarter in which the violation is alleged to have occurred or 45 days after receipt of the written complaint, whichever is later.[73] If a consumer mistakenly sends a complaint to the wrong distributor (*e.g.*, to a cable company instead of the local TV station that the cable company carries), or if the programming about which the consumer complains is exempt from the closed captioning rules pursuant to Section 79.1(e)(9), the distributor is required to either forward the complaint to the programmer within seven days, or return the complaint within seven days to the consumer and to provide the name and address of the correct distributor to whom the complaint should be sent.[74] If a video programming distributor fails to respond to a complaint or a dispute remains after the initial attempt at resolution by the video programming distributor and the complainant, the complaint may be filed with the Commission within 30 days after the time allotted for the video programming provider to respond.[75] The rule specifies the information that the complainant and the distributor must provide to each other and to the Commission, and states that if the Commission determines that a violation has occurred, appropriate penalties may be imposed.[76] In adopting these procedures, the Commission stated its belief that these procedures would provide consumers with an effective and easily accessible complaint resolution mechanism, while freeing the programming industry of any unnecessary burdens.[77]

27. On reconsideration, the Commission denied petitioners' attempts to eliminate the requirement that consumers contact the provider first as well as petitioners' request to decrease the time in

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[70] *Id.* at 10.

[71] *See Reconsideration Order*, 13 FCC Rcd at 20009, para. 83, in which the Commission notes its expectation that "video programming providers in conjunction with those publicizing programming and publishing programming schedules will make every effort to correctly label programming as to whether it is captioned."

[72] *Closed Captioning Report and Order*, 13 FCC Rcd at 3381, para. 240. On reconsideration, the Commission rejected petitioners' requests to allow complaints to be filed directly with the Commission, as is the case with complaints alleging violations of the childrens' television rules. *Reconsideration Order*, 13 FCC Rcd at 20023-20025, paras. 114-116.

[73] *Closed Captioning Report and Order*, 13 FCC Rcd at 3382, para. 243; *see also* 47 C.F.R. § 79.1(g)(3).

[74] 47 C.F.R. § 79.1(g)(1).

[75] *Closed Captioning Report and Order*, 13 FCC Rcd at 3382-83, para. 243; *see also* 47 C.F.R. § 79.1(g)(4).

[76] *Id.*

[77] *Closed Captioning Report and Order*, 13 FCC Rcd at 3383, para. 244.

which video programming distributors must respond to complaints.[78] Petitioners had argued on reconsideration that at least complaints alleging failure to pass through captioning should be handled on a more expedited basis than the time frame adopted by the Commission in the *Closed Captioning Report and Order*.[79] The Commission reasoned that the adopted process was appropriate for complaints regarding the measurement of compliance with the required amounts of captioning (*i.e.*, benchmarks) since they are calculated on a quarterly basis.[80] In order to avoid confusion, the Commission determined that all complaints of whatever nature (including complaints alleging failure to pass through) would be handled in the same fashion.[81]

28. *TDI's Petition* states that under the current rules, four months could pass before a video programming provider is legally required to respond to a complaint, and in the interim, the consumer may suffer from lack of access to the television video programming.[82] TDI notes that this problem is compounded when the consumer is paying the high costs of cable, satellite or other distribution services, but is not receiving captioned programming, "so that in effect they have no access to the services for which they are paying premium prices."[83] TDI suggests the Commission revise the complaint process to establish two categories of complaints: complaints regarding the number of hours captioned; and complaints regarding other captioning issues not related to the number of hours captioned (*e.g.*, technical problems resulting in missing or garbled captions).[84] TDI also encourages the Commission to develop and make available on its website a standard captioning complaint form that may be used by consumers to file written complaints with the relevant video programming distributor/producer.[85]

29. NCTA opposes any change to the closed captioning complaint process. It states that *TDI's Petition* provides no evidence that adopting a new rule is either a necessary or appropriate response.[86] NCTA states that, with respect to cable television, in the normal course, captioning questions can be quickly resolved, but when necessary, it may require time to determine why a particular show is not captioned. NCTA questions whether cable operators or programmers have waited until the end of the calendar quarter to respond to complaints. Lastly, NCTA notes that cable customer service rules contain aggressive guidelines for resolving service interruptions and responding to consumer inquiries.[87]

30. As the Commission noted in the *Reconsideration Order*, part of the rationale for giving video programming distributors additional time to respond to consumer complaints was that distributors might have to seek additional information from various video programming providers before responding to consumer complaints.[88] Given that, effective January 1, 2006, all nonexempt new programming must be captioned, it may be inconsistent to allow video programming distributors more than 45 days in which to contact a programmer to determine whether a given program is exempt before responding to a

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[78] *Reconsideration Order*, 13 FCC Rcd at 20025, para. 116.

[79] *Id.* at 20025, para. 115.

[80] *Id.* at 20025, para. 116.

[81] *Id.*

[82] *TDI Petition* at 21.

[83] *Id.*

[84] *Id.* at 22.

[85] *Id.* at 15-16. TDI notes that the complaint form may be optional, and that consumers may use email or other means of communication to provide the substance of the complaint. A copy of the proposed complaint form included in the *TDI Petition* as Exhibit A is attached hereto as Appendix A.

[86] *NCTA Opposition* at 7.

[87] *Id.,* n.17, citing 47 C.F.R. § 76.309.

[88] *Reconsideration Order,* 13 FCC Rcd at 20025, para. 116.

captioning complaint. In addition, it may be appropriate that a consumer who is faced with a sudden loss of captioning should have a quicker means of recourse than writing a complaint and waiting for a response that could take two months or longer.

31. As such, we seek comment on whether the Commission should revise the current rule to allow for shorter complaint and response times. We seek comment on what those time frames should be. We also seek comment on whether complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. If we decide to retain the current complaint process, should the filing and response deadlines be revised, and if so, how?

32. ***Accessibility of Contact Information.*** We seek comment on whether the rules should be amended to allow consumers to complain about closed captioning directly and immediately to video programming distributors either via email, phone or fax; and, whether distributors should be required to provide the name or phone numbers for customer services on their websites, and in bills and telephone directories. We also seek comment on whether placement of customer service information in telephone directories and on websites may be appropriate in the case of broadcast services, since these are not subscription services with corresponding bills.

33. The *TDI Petition* requests that the Commission require video programming distributors to post complete contact information on their websites, update this information on a routine basis, and provide the information to the FCC for posting on its website. NCTA argues, however, that the Commission should not adopt a rule requiring that video programming distributors that send bills to consumers be required to include in those bills specific contact information for submitting captioning complaints. NCTA notes that cable operators already have customer service representatives (CSRs) that can assist customers in resolving complaints, making a separate point of contact for captioning complaints unnecessary.[89] We seek comment on this issue.

34. Given that the method by which deaf and hard of hearing people communicate by telephone with hearing people differs from the method used when two hearing people communicate, we seek comment on the experiences that deaf and hard of hearing people have had when contacting video programming distributors to complain or ask questions, and seek comment from distributors regarding their experiences in this area.[90]

35. ***Standardized Captioning Complaint Form***. The *TDI Petition* asked the Commission to develop and make available on its website a captioning form that consumers can opt to use when filing written complaints with a video programming distributor/producer similar to the Commission's Form 475 used for general telephone complaints and Form 501 for slamming complaints.[91] TDI stresses that this complaint form should be optional so that the consumer has other options when filing complaints and submitted a sample complaint form as Exhibit A in their Petition.[92] The Commission seeks comment on whether such a captioning complaint form would be useful.

36. ***Fines and Penalties for Failure to Caption.*** Neither the Commission's closed captioning rules nor the Commission's Guidelines for Assessing Forfeitures set specific forfeiture

[89] *NCTA Opposition* at 3-4.

[90] On reconsideration, the Commission stated its expectation that programming distributors would be responsive to consumers' complaints and noted that, while all complaints must be filed in writing, it is important that video programming distributors make their organizations accessible to persons with hearing disabilities seeking information about the entity's closed captioning or other matters. *Reconsideration Order,* 13 FCC Rcd at 20025, para. 116 and n.394.

[91] *TDI Petition* at 15-16.

[92] *TDI Petition* at Exhibit A, attached hereto as Appendix A.

amounts for violations of the closed captioning rules.[93] The *TDI Petition* argues that as new, more technically-advanced methods of transmitting programming, such as digital television, become more prevalent, the marketplace has failed to ensure compliance with the captioning requirements.[94] The *TDI Petition* contains the results of a recent nationwide sampling of locally broadcast digital television programming, conducted by WGBH's National Center for Accessible Media (NCAM), which showed that 35% of local digital television stations failed to provide any closed captioning and only 20% provided captions in compliance with the Commission's caption decoder rules (47 CFR § 15.122).[95]

37. TDI proposes the establishment of punitive measures, such as specific fines, for noncompliance with the Commission's captioning rules.[96] TDI states that "[s]uch a forfeiture would create a financial incentive for video programming distributors or providers to comply with the Commission's benchmarks," and proposes an $8,000 per violation base forfeiture amount for violations of the captioning benchmark requirements, with each hour of programming below the applicable benchmark being counted as a separate violation.[97] TDI suggests that, in January 2006, when 100% captioning is required for new non-exempt programming, the $8,000 per violation fine should apply for every hour of new programming that is not captioned.[98] TDI believes that increased enforcement measures are required to provide incentives for the regulated industry to comply with the rules and to ensure captioning quality, reliability, and availability.[99]

38. NCTA argues that these suggested punitive measures are unwarranted, and that the authority already exists for the Commission to impose penalties for violations of the rules. NCTA argues that occasional glitches provide no basis for assuming each program that fails to provide the required captions merits a fine.[100] NCTA states that fines may be appropriate in the case of willful or repeated failure to comply with the rules, but that inadvertent mistakes or occasional technical problems provide no basis for assuming each program that fails to provide required captions merits a fine.[101]

39. Section 79.1(g)(8) states: "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."[102] The Commission's *Forfeiture Guidelines* do not contain any specific guidelines regarding forfeitures for violations of the closed captioning rules. We seek comment on whether the Commission should establish specific per violation forfeiture amounts for non-compliance with the captioning rules, and if so, what those amounts should be. We direct commenters to Section 1.80(b) of the Commission's rules for guidance on existing forfeitures for violations of other Commission rules.

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[93] 47 C.F.R. § 1.80(b): Guidelines for Assessing Forfeitures (*Forfeiture Guidelines).*

[94] *TDI Petition* at 23.

[95] *TDI Petition* at 23-24.

[96] *TDI Petition* at 22-23. TDI cites a 2002 action wherein the Cable Services Bureau suggested it could impose increased captioning requirements for failure to comply with the closed captioning rules. *TDI Petition* at 23 n.37 citing *Comcast Order*, at 5 n.32 (47 CFR § 79.1(b)(8)).

[97] *TDI Petition* at 23. TDI notes that $8,000 is akin to the Commission's current forfeiture amount for violation of the Commission's childrens' television programming requirements. *TDI Petition* at 23 n.38.

[98] *TDI Petition* at 23.

[99] *TDI Petition* at 24.

[100] *NCTA Opposition* at 8.

[101] *NCTA Opposition* at 8.

[102] 47 C.F.R. § 79.1(g)(8).

40. ***Compliance Reports***. In the *Closed Captioning Report and Order*, the Commission placed the responsibility for compliance with the closed captioning requirements on video programming distributors, both for efficient monitoring and enforcement of the rules, as well as to allow for a convenient, single entity to address complaints.[103] The Commission did not adopt reporting requirements for distributors or require the filing of periodic reports showing compliance with the closed captioning rules, stating that such requirements would be unduly burdensome and administratively cumbersome.[104] In order to address potential complaints, the Commission stated that video programming distributors are required to "maintain records sufficient to demonstrate compliance."[105] On reconsideration, the Commission did not disturb its decision regarding compliance reporting.[106]

41. TDI asserts that the lack of reporting requirements "has seriously hampered the effectiveness of the captioning rules and the ability of captioning consumers, their advocates, and the Commission itself to monitor compliance with the captioning rules."[107] TDI states that with very few exceptions, "the Commission and captioning consumers have no means of determining whether video programming distributors have complied with the captioning benchmarks for each channel, for each calendar quarter, since the rules went into effect[.]"[108] Further, TDI states that, "[p]etitioners fear that the lack of a benchmark reporting requirement has created a situation where many providers are unaware that they are out of compliance with the benchmarks[.]"[109] TDI asserts that even after the January 1, 2006, deadline, "the creation of a benchmark reporting requirement would assist in the determination of whether providers are in compliance with the Commission's benchmarks for pre-rule non-exempt programming and for Spanish-language programming."[110] TDI proposes that the Commission require MVPDs and broadcasters to certify compliance with the captioning rules to the Commission, on a quarterly basis, within 30 days following the end of the previous quarter.[111]

42. NCTA argues that the Commission should not impose burdensome recordkeeping requirements and notes that the Commission previously rejected a proposal to enforce its captioning rules through a reporting obligation.[112] NCTA also notes that the Commission allows cable operators to rely on certifications of compliance from various networks they carry, and that many cable operators request these certifications in writing.[113] NCTA states that, with several hundred channels on a given cable

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[103] *Closed Captioning Report and Order*, 13 FCC Rcd at 3286, para. 27.

[104] *Id.* at 3383, para. 244.

[105] *Id.*

[106] *Reconsideration Order,* 13 FCC Rcd at 20026-27, para. 118.

[107] *TDI Petition* at 16.

[108] *Id.* at 16-17.

[109] *Id.* at 18.

[110] *Id*.

[111] *Id.* at 19. TDI notes that when the Commission elected not to adopt benchmark compliance reporting requirements, it stated that it would conduct compliance audits, but TDI is unaware that any such audits have been conducted. The lack of compliance audits, TDI asserts, "seriously undermines enforcement of the captioning rules and [their] effectiveness[.]" *TDI Petition* at 20.

[112] *NCTA Opposition* at 4-5.

[113] *Id.* In the *Closed Captioning Report and Order* the Commission stated that distributors may rely on certifications from program suppliers that the programming is either captioned or exempt from the rules and will not be held responsible if the program supplier submits false certifications. *Closed Captioning Report and Order*, 13 FCC Rcd at 3286-3287, para. 28; 3369, para. 212; 3383, para. 244. In addition, the Commission's rules allow distributors to rely on the certifications of program providers that programming is captioned; and limits a distributor's responsibility for captioning in situations where a program source falsely certifies that programming meets the

system, this is the only practical way for a cable operator to confirm it is in compliance with the rules.[114] NCTA argues that maintaining and posting captioning reports on a quarterly basis would impose a significant paperwork and recordkeeping burden on the part of cable operators.[115]

43. The Commission seeks comment on requiring video programming distributors to file compliance reports as to the amount of closed captioning they provide. Should the Commission require such reports to be filed? If so, how often should they be filed? How should they be filed? Should the reports include information relating to new non-exempt programming or only information pertaining to pre-rule non-exempt and Spanish-language programming? How would a reporting requirement be implemented? In the event we were to impose a reporting requirement for closed captioning, we seek comment on whether distributors would be able to rely on certifications from programmers that the programming contains closed captioning. Are there alternative methods to verify compliance? If we do or do not impose a reporting requirement, we seek comment on whether the Commission's rules should be amended to place a greater burden on video programming distributors to ensure that the programming they carry is captioned, regardless of the assurances they receive from programmers. We seek comment on any other issues regarding compliance reporting requirements.

44. ***Use of Electronic Newsroom Technique***. In the *Closed Captioning Report and Order*, the Commission declined to adopt any limits on the methodology that can be used to create closed captioning and permitted the use of electronic newsroom technique (ENT), in which the captions come from the text in the station's news script computers.[116] Only text transmitted from the scripting computers to the teleprompters is captioned.[117] Unscripted material, such as breaking news, live reports from the field, and some weather and sports reports, that do not appear on the teleprompter are not typically captioned by this method.[118]

45. In the *Closed Captioning Report and Order*, the Commission allowed the use of ENT so as not to place any limits on the methodology used to create closed captioning and because of the record's conflicting accounts as to the number of real-time captioners available for live newscasts where ENT could be used as an alternative.[119] At the same time, the Commission raised concerns that since certain portions of live newscasts remain uncaptioned when using ENT, this method is not the "functional equivalent" of the audio portion of the programming.[120] On reconsideration, the Commission noted the limitations of ENT, especially with regard to field reports and late breaking weather and sports reports, and narrowed the circumstances in which captions created with ENT could be counted toward the closed captioning requirement.[121] As a result of that decision, as of January 1, 2000, most video programming providers in the largest 25 television markets were no longer allowed to count ENT captioning toward

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Commission's captioning requirements if the distributor is unaware that the certification is false. 47 C.F.R. § 79.1(g)(6).

[114] *NCTA Opposition* at 5-6.

[115] *Id.* at 6.

[116] *Closed Captioning Report and Order*, 13 FCC Rcd at 3311, para. 84; *see also 1997 Closed Captioning NPRM*, 12 FCC Rcd at 1058, para. 21.

[117] *1997 Closed Captioning NPRM*, 12 FCC Rcd at 1058, para. 21.

[118] *Id.*

[119] *Closed Captioning Report and Order*, 13 FCC Rcd at 3311-12, para. 84.

[120] *Id.* As noted by the Commission, "[ENT] can only be used to convert the dialogue included on a teleprompter script into captions. As many live newscasts use interviews, field reports and late-breaking weather and sports that cannot be scripted or presented in textual or graphical form, persons with hearing disabilities do not have full access to this programming when [ENT] is used." *Reconsideration Order*, 13 FCC Rcd at 19991, para. 35.

[121] *Reconsideration Order*, 13 FCC Rcd at 19991, para. 35-36.

compliance with the Commission's closed captioning requirements.[122] On reconsideration, the Commission prohibited the major national broadcast 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 multi-channel video programming services from counting electronic newsroom-captioned programming towards compliance with the closed captioning rules.[123] The Commission also stated that, whenever a broadcast television station, a broadcast television network or a nonbroadcast network satisfies one of these criteria, it becomes subject to the limitations placed on the use of ENT for compliance with the rules.[124]

46. At the same time the Commission limited the circumstances in which ENT captions could be used as a substitute for real time captioning, the Commission suggested it would eventually phase out its recognition of ENT captioning.[125] The Commission noted that it expected the ability to use ENT would "by far be the exception rather than the general rule, and that only those entities that are so small or who present unusual circumstances will be permitted to continue to use EN[T] because live closed captioning would be an economic burden."[126]

47. The current rule provides that "[l]ive programming, or repeats of programming originally transmitted live that are captioned using [] 'electronic newsroom technique' will be considered captioned, except that effective January 1, 2000, and thereafter, the major national broadcast 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 multi-channel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules."[127]

48. TDI asks the Commission to extend the prohibition of counting ENT to markets beyond the top 25 DMAs.[128] TDI states that the use of ENT should be disfavored because it "does not provide a quality captioned end product to consumers."[129] NCTA opposes TDI's suggestion, noting that the costs of live captioning "still remain significant, particularly for local cable news operations that often operate 24 hours a day, and that between the high costs and the significant shortage of captioners, additional live captioning obligations should not be imposed at this time."[130] NCTA notes that, although ENT captioning can only provide captions for pre-recorded material, it does allow many more live newscasts to be captioned than might otherwise be affordable.[131] We seek comment on TDI's proposal regarding ENT. We also seek comment on whether the rationale that led to the Commission permitting the use of ENT by some distributors, due to ENT's lower cost, is still relevant.[132] It appears that the cost of captioning has

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[122] *Id.* at 19992, para. 38. We note that Section 79.1(d)(3) does not exempt from the closed captioning requirements programming other than English or Spanish language if the scripted program can be captioned using ENT. 47 C.F.R. § 79.1(d)(3).

[123] *Reconsideration Order*, 13 FCC Rcd at 19992, para. 38.

[124] *Id.*

[125] *Id.* at 19991, para. 36.

[126] *Id.* at 19993, para. 40.

[127] 47 C.F.R. § 79.1(d)(3).

[128] *TDI Petition* at 35.

[129] *TDI Petition* at 34-35.

[130] *NCTA Opposition* at 13-14.

[131] *Id.* at 13.

[132] *See Reconsideration Order*, 13 FCC Rcd at 19993, para. 39.

decreased substantially since the *1996 Report to Congress*.[133] Have captioning costs decreased such that little hardship would result if the Commission were to further limit the circumstances under which captions created using electronic newsroom technique would be allowed to count as captioned programming?

49. ***Availability of Captioners.*** In arriving at the transition schedule for implementing closed captioning, the Commission acknowledged the limited number of available captioners and captioning services in existence, as well as the anticipated increase in demand for captioning services as a result of Section 713.[134] In arriving at an eight-year phase in period for captioning 100% of new programming, the Commission weighed the needs of deaf and hard of hearing individuals with the ability of the programming industry to meet the demand for increased captioning.[135]

50. In this NPRM, we seek comment on the supply of captioners available for real-time and pre-recorded captioning. We also seek comment on the number of companies providing closed captioning services. We seek comment on the impact that imposing a quality standard, if adopted, will have on the supply of captioners.

51. We note that legislation is pending before Congress that, if passed, would authorize the Department of Commerce's National Telecommunications and Information Administration (NTIA) to provide competitive grants for training court reporters and closed captioners.[136] The proposed legislation states: "Over the past decade, student enrollment in programs that train realtime writers and closed captioners has decreased by 50 percent, even though job placement upon graduation is 100 percent."[137] We seek comment on what other steps could be taken to encourage individuals to train and become captioners.

52. ***Electronic Filing of Exemption Requests***. In the *Closed Captioning Report and Order,* the Commission stated that entities requesting an exemption based on an undue burden from the closed captioning rules would be required to petition the Commission for that exemption.[138] The Commission recognized that the Internet and e-mail provides persons with hearing disabilities increased accessibility to Commission activities and noted that the possible use of electronic filing was being explored in a separate proceeding.[139] This electronic filing proceeding did not ultimately make a decision as to electronic filings for situations beyond rulemaking-related proceedings, such as petitions.[140] The Commission encouraged parties filing petitions for exemptions under the undue burden standard to include a disk containing an electronic version of their filing so the petition could be posted on the

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[133] In response to the *2004 Video Programming NOI*, Fox provided information on captioning costs paid to the several vendors they use for originally-produced broadcast and nonbroadcast programming, both live and recorded. "Fox's regional sports networks spend between $105 and $365 to caption a single hour of programming, with the higher fee associated with live sports events. For its National Geographic channel, Fox indicates that it typically costs $165 to caption an hour of original programming …when it purchases programming from a third party, the cost of captioning is included in the overall costs of the programming." *11th Annual Video Programming Report*, 20 FCC Rcd at 2852, para. 180.

[134] *Closed Captioning Report and Order*, 13 FCC Rcd at 3292-93, para. 41-42.

[135] *Id.* at 3292-94, paras. 41-44; *Reconsideration Order*, 13 FCC Rcd at 19981, para. 15.

[136] Training for Realtime Writers Act of 2005, S. 268, 109th Cong., 1st Sess. (2005).

[137] *Id.* at § 2(7).

[138] *Closed Captioning Report and Order*, 13 FCC Rcd at 3363-64, para. 199.

[139] *Id.* at 3365, para. 203.

[140] *See generally, Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Notice of Proposed Rulemaking, 12 FCC Rcd 5150 (April 7, 1997) (*Electronic Filing NPRM*).

Commission's website, making it more accessible.[141]

53. Currently, Section 79.1 of the Commission's rules requires that a petition for a full or partial exemption from the closed captioning requirements based on an undue burden must be filed with the Commission in writing, placed on public notice, and permit interested persons to file comments or oppositions to the petition.[142] Due to the nature of this process, the petition itself is generally not available electronically, unless a disk containing an electronic version of the petition is submitted. Rather, interested parties must come to the Commission's Reference Information Center or contact the Commission's copy contractor to retrieve a hardcopy version of the petition, in order to file comments or oppositions.[143] In comments filed in the *11th Annual Video Competition Report* proceeding, the National Association for the Deaf (NAD) recommended that the Commission reduce the administrative delay in processing petitions for exemption.[144] We seek comment on requiring electronic filing for petitions for exemption from the Commission's closed captioning rules under the undue burden standard of Section 79.1(f). What impact would such a requirement have on entities filing such petitions, as well as on parties, including consumers, wishing to file comments or oppositions to the petition? We seek comment on whether electronic filing should be mandated or merely allowed. We seek comment on whether an electronic filing requirement would reduce the perceived delay in processing such petitions, as noted by NAD.

B. Other Issues Raised in the TDI Petition

54. The *TDI Petition* seeks review of several other aspects of the closed captioning rules. These remaining *issues* are already addressed in the Commission's rules, and we take this opportunity to remind video programming distributors and programmers of their obligations.

55. ***Pass Through of Original Captioning.*** First, TDI notes the failure of many distributors to pass through captioning that they receive and to ensure that captioning is not garbled and is complete, even during the transitions between programs and into/out of commercials (which are not currently required to be captioned).[145] Section 79.1(c) requires distributors to deliver all programming they receive that contains closed captioning to consumers with the captions intact (*i.e.*, pass through the original captions). This requires distributors to ensure that their equipment is working properly in order to meet this rule.[146]

56. ***Reformatting of Closed Captions.*** TDI also notes that many programs are not reformatted, and asks the Commission to require distributors to reformat previously captioned programming that has been edited or compressed in order for the distributors to have proper procedures in place for reformatting in anticipation of the January 1, 2006, 100% benchmark date. In order for distributors to comply with the January 1, 2006, 100% benchmark, they will be required to pass through any original captions intact, and re-caption the programming, or reformat edited or compressed

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[141] *Closed Captioning Report and Order*, 13 FCC Rcd at 3365, para. 203; at 3383-84 para. 245; *see also Electronic Filing NPRM*, 12 FCC Rcd 5150.

[142] 47 C.F.R. § 79.1(f).

[143] We note that these Petitions are occasionally placed on the DRO website.

[144] National Association of the Deaf, Comments at 7, *11th Annual Video Programming Report*, 20 FCC Rcd at 2851-52, paras. 179-180.

[145] *TDI Petition* at 31-34.

[146] *Closed Captioning Report and Order*, 13 FCC Rcd at 3312, para. 85.

programming that contains captioning.[147]

57. ***Benchmark Compliance Audits.*** Lastly, TDI requests a rulemaking to authorize the use of benchmark compliance audits. NCTA notes that the Commission already stated that it would conduct random audits of captioning similar to the audits used to monitor compliance with other rules.[148] Given that the Commission already has the authority to conduct audits regarding video programming distributors' compliance with the closed captioning rules, we do not think it is necessary to seek comment on this issue.[149]

IV. CONCLUSION

58. We initiate this proceeding to assess how the Commission's closed captioning rules are succeeding in ensuring that video programming is accessible to the millions of deaf and hard of hearing Americans and whether any revisions should be made to enhance the effectiveness of those rules. After review of the record we will determine what rules or other next steps are appropriate. Finally, we welcome comment on any other issues relevant to the topics addressed in this NPRM.

V. PROCEDURAL MATTERS

59. Comments and Reply Comments. Pursuant to sections 1.415, 1.419, and 1.430 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, 1.430, interested parties may file comments on or before 60 days after publication of this NPRM in the Federal Register, and reply comments on or before 90 days after publication of this NPRM in the Federal Register. All filings should refer to CG Docket No. 05-231. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[150] For additional information on this proceeding, please contact Amelia Brown in the Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418-2799.

60. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is CG Docket No. 05-231. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and instructions will be sent in reply. You also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/e-file/email.html>. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

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[147] Section 79.1(c) obligates all video programming distributors to deliver "all programming received from the video programming owner or other original 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 part 15 of [the Commission's rules] unless such programming is recaptioned or the captions are reformatted by the programming distributor." 47 C.F.R. § 79.1(c). However, on reconsideration, the Commission clarified that, "as the benchmarks increase, distributors will have to reformat the captions to comply with the rules." *Reconsideration Order*, 13 FCC Rcd at 20009, para. 82.

[148] *Reconsideration Order*, 13 FCC Rcd at 20026-27, para. 118.

[149] *Id.* Commission states its intention to conduct random audits of captioning similar to the audits used to monitor compliance with other Commission rules.

[150] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, at para. 8 (April 6, 1998).

61. For hand deliveries, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

62. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the NPRM. We further direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. We strongly encourage that parties track the organization set forth in this NPRM in order to facilitate our internal review process. Comments and reply comments must otherwise comply with section 1.48 and all other applicable sections of the Commission's rules.[151]

63. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format at <http://www.fcc.gov/cgb.dro>.

64. Ex Parte Rules. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[152] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[153] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

65. Initial Regulatory Flexibility Analysis. With respect to this NPRM, an Initial Regulatory Flexibility Analysis (IRFA), *see generally*, 5 U.S.C. § 603, is contained in Appendix B. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM specified *supra*. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[154]

66. Initial Paperwork Reduction Act of 1995 Analysis. This document contains proposed or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

[151] *See* 47 C.F.R. § 1.48.

[152] 47 C.F.R. §§ 1.1200, *et seq*.

[153] *See* 47 C.F.R. § 1.1206(b)(2).

[154] *See* 5 U.S.C. § 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

VI. ORDERING CLAUSES

67. IT IS ORDERED, that pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 713, this Notice of Proposed Rulemaking is hereby ADOPTED.

68. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

TV Captioning Complaint Form
(As submitted by TDI)

Name: _____

Mailing Address: _____

_____

Email Address: _____

Phone Number: _____ check one – ()TTY () Voice

Fax Number: _____

Preferred Method of Contact: _____

When did you have this captioning problem? Month _____ Day _____ Year _____

Which TV Program did you notice had the problem? _____

Program was on: TV Station _____ Cable Company and channel: _____
Satellite provider _____
Program lasted from ____p.m/a.m. to ____ p.m./a.m.

Captioning problem occurred around on _____ p.m./a.m. and ended around on _____ p.m./a.m.
_____

What was the problem with captioning?

_____
_____

Did you attempt to contact someone to discuss the problem? Yes___ No____
Were you successful? Yes ____ No ____
If No, why not? _____
If Yes, Date of Contact: _____

Person contacted: _____

Were you given a Reference Number or a Tracking Number? Yes ____ No ____

Reference or Tracking Number (if applicable): _____

Name of TV Station/Cable Provider/Network: _____

What was the response?

_____

_____

Other comments (if needed)

_____

_____

_____

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended,[155] the Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided in the item. The Commission will send a copy of this entire Notice of Proposed Rulemaking ("NPRM"), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[156] In addition, the Notice of Proposed Rulemaking and the IRFA (or summaries thereof) will be published in the Federal Register.[157]

A. Need For, and Objectives of, the Proposed Rules.

2. We initiate this review relating to closed captioning in response to several compliance and quality issues raised in a Petition for Rulemaking filed by Telecommunications for the Deaf, Inc., the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network. This rulemaking proceeding will examine the current status of the Commission's closed captioning rules with the goal of ensuring that video programming is accessible to deaf and hard of hearing Americans. This Notice also serves as a follow-up to the Commission's prior assurances at the time the closed captioning rules were adopted that certain captioning provisions would be reviewed and evaluated at a future date. As described more fully below, this Notice seeks to determine whether any revisions should be made to enhance the effectiveness of those rules. In addition, given that, effective January 1, 2006, all nonexempt new programming must be captioned, we believe this is an excellent opportunity to renew the discussion related to closed captioning and remind programmers and distributors of their obligations in order to ensure that video programmers and distributors are prepared to fulfill this requirement. In particular, the Notice seeks comment on establishing standards for the non-technical quality of closed captioning, the potential costs for programmers and distributors, the availability of competent captioners to meet a non-technical quality standard mandate, and establishing different non-technical quality standards for pre-produced versus live programming. In addition, the Notice seeks comment on whether additional mechanisms and procedures, beyond those already in the Commission's rules, are necessary to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. The Notice also seeks comment on video programming distributors' responsibility to monitor and maintain their equipment and signal transmissions, and whether specific mechanisms should be established for monitoring and maintenance. Additionally, the Notice seeks comment on whether to revise the current rule to allow for shorter complaint and response times, what those time frames should be, and whether complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. Further, the Notice seeks comment on requiring video programming distributors to file compliance reports as to the amount of closed captioning they provide, and any alternative methods available to verify compliance.

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[155] *See* 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[156] *See* 5 U.S.C. § 603(a).

[157] *Id*.

B. Legal Basis.

3. The authority for this proposed rulemaking is contained in Sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 713.

C. Description and Estimate of the Number of Small Entities Impacted

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[158] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[159] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[160] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[161]

5. Cable and Other Program Distribution. This category includes among others, cable systems operators, closed circuit television services, direct broadcast satellite services, home satellite dish services, multipoint distribution systems, multichannel multipoint distribution service, satellite master antenna television systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[162] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, that had operated for the entire year.[163] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

6. Cable and Other Subscription Programming. Entities in this category "primarily engag[e] in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources."[164] The SBA has developed a small business size standard for this category; that size standard is $12.5 million or less in average annual receipts.[165] According to Census Bureau data for 1997, there were 234 firms in this category that operated for the entire year.[166] Of

[158] 5 U.S.C. § 603(b)(3).

[159] 5 U.S.C. § 601(6).

[160] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[161] 15 U.S.C. § 632.

[162] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[163] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

[164] U.S. Census Bureau, "2002 NAICS Definitions: 515210 Cable and Other Subscription Programming" (online, July 2005, at www.census.gov).

[165] 13 C.F.R. § 121.201, NAICS code 515210 (changed from 513210 in Oct. 2002).

[166] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513210 (issued Oct. 2000).

these, 188 had annual receipts of under $10 million, and an additional 16 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Cable and Other Subscription Programming entities increased approximately 44.5 percent from 1997 to 2002.[167]

7. Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[168] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[169] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies involved herein.

8. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [170] The Commission has determined that there are 67,700,000 subscribers in the United States.[171] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[172] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[173] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[174] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

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[167] *See* U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513210 (issued Dec. 2004). The preliminary data indicate that the total number of "establishments" increased from 494 to 714. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

[168] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 60 FR 10534 (February 27, 1995).

[169] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[170] 47 U.S.C. § 543(m)(2).

[171] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA 01-158 (released January 24, 2001).

[172] 47 C.F.R. § 76.901(f).

[173] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA 01-158 (released January 24, 2001).

[174] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's rules. *See* 47 C.F.R. 909(b).

9. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[175] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[176] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[177] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

10. Direct Broadcast Satellite ("DBS") Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution.[178] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[179] Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV[180] and EchoStar Communications Corporation ("EchoStar"),[181] report annual revenues that are in excess of the threshold for a small business. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $12.5 million, and thus does not qualify as a small business.[182] The fourth DBS operator, Dominion Video Satellite, Inc. ("Dominion"), offers religious (Christian) programming and does not report its annual receipts.[183] The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

11. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video

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[175] 13 C.F.R. § 121.201, NAICS code 517510.

[176] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

[177] *Id*.

[178] 13 C.F.R. § 121.201, NAICS code 517510.

[179] *Id*.

[180] DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide; see Annual Assessment of Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, FCC 05-13, ¶ 55 (rel. Feb. 4, 2005)("2005 Cable Competition Report").

[181] EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. *Id*.

[182] Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers. *Id*.

[183] Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis. *Id*.

telecommunications.[184] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[185] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[186] The SBA has approved these small business size standards in the context of LMDS auctions.[187] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

12. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[188] In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[189] The SBA has approved of this standard.[190] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[191] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[192]

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[184] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, ¶ 348 (1997).

[185] *Id*.

[186] *Id*.

[187] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[188] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593 ¶ 7 (1995)(MDS Auction R&O).

[189] 47 C.F.R. § 21.961(b)(1).

[190] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[191] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See MDS Auction R&O, 10 FCC Rcd at 9608. ¶ 34.

[192] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $12.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

Concerning ITFS, we note that educational institutions are included in this analysis as small entities.[193] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

13. Open Video Services. Open Video Service (OVS) systems provide subscription services.[194] The SBA has created a small business size standard for Cable and Other Program Distribution.[195] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service.[196] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies proposed herein.

14. Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than $12 million in annual receipts.[197] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[198] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of June 26, 2004, about 860 of the 1,270 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [199] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[200] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

15. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the

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[193] The term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[194] *See* 47 U.S.C. § 573.

[195] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[196] *See* http://www.fcc.gov/csb/ovs/csovscer.html (current as of June 2004).

[197] *See* 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

[198] NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[199] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[200] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.

16. The proposed rules may impose additional reporting or recordkeeping requirements on a number of different entities. For example, the Notice discusses whether video programming distributors should be required to submit reports to the Commission certifying that they are complying with monitoring and maintenance of equipment and signal transmissions. In addition the NPRM asks whether video programming distributors should be required to file compliance reports as to the amount of closed captioning they provide. These proposals may impose additional reporting or recordkeeping requirements on entities. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[201] The Commission seeks comment on whether it should indeed be the responsibility of the video programming distributor to monitor and maintain equipment and signal transmissions and asks if specific mechanisms should be in place and what would be the impact of such mechanisms on distributors. The Notice notes that, alternatively, NCTA points out that a distributor's responsibilities should not be unduly burdensome and invites comment on this matter. The Notice also proposes providing a standardized captioning complaint form for consumers, which may be a useful tool to those filing complaints. In addition, the Notice discusses allowing consumers to complain to video programming distributors via e-mail, phone or fax, which is aimed at providing easier options for consumers who have concerns regarding captioning problems and seek more immediate redress. The NPRM also points out that effective January 1, 2006, all nonexempt new programming must be captioned. Video programming distributors and providers will have to caption their programming. Generally, 100% compliance is required; however, particular entities, and under certain circumstances small entities, may be exempt from the captioning requirements if they qualify for an exemption pursuant to Section 79.1(d) which provides for exempt programs and providers meeting the particular qualifications cited in the rule or/and if captioning presents an undue burden, pursuant to Section 79.1(f) which allows parties to file a petition with the Commission requesting an exemption from captioning upon a sufficient showing that captioning would pose significant difficulty or expense.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.

None.

[201] 5 U.S.C. § 603(b).

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-141

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

The items that we adopt today should improve the quality of life for individuals with hearing or speech disabilities. One of the critical functions of the Commission is to ensure that these individuals have access to communications technologies in the same manner as people without hearing or speech disabilities. Those consumers that rely on Telecommunications Relay Services and Closed Captioning Services must not be left out of the telecommunications revolution. In each of the orders adopted today, we take measures to fulfill our statutory goal of ensuring that every person has equal access to this nation's communications services.

The four items adopted today coincide with the upcoming 15th anniversary of President George H. W. Bush's signing of the Americans with Disabilities Act (ADA) on July 26th and the recent 25th anniversary of closed captioning which occurred last March. With the passage of the ADA in 1990, the Commission was directed to ensure that hearing or speech disabilities not pose an impediment to communication. I take this charge very seriously. Accessing communication services is vital to the ability of the individuals with disabilities to participate fully in society. The ADA specifically requires the Commission to ensure that Telecommunications Relay Services (TRS) "are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." In honor of the 15th anniversary of this very important statute, we adopt several items that make TRS more accessible to this community.

During the past 15 years, we have seen the evolution of TRS. Traditional TTY service over regular phone lines has evolved into IP Relay and Video Relay Services (VRS) used over Internet connections. VRS permits users to participate in near real-time conversations in the users' primary language, American Sign Language (ASL). Because of these features, its popularity in the deaf and hard of hearing community has soared. For example, the minutes of use of VRS have increased ten-fold in the past two years and are continuing to grow at a phenomenal rate.

With the steps we take today, we expand the reach of the TRS fund to compensate VRS translations between spoken Spanish and ASL as well as two-line captioned phone service. In addition, we take an important step to achieving adequate service quality of VRS by, for the first time, imposing speed of answer and hours of service requirements. Just as a hearing person can pick up the phone and immediately place a call, a person with a disability should be able to reach his or her VRS provider to

place a call without experiencing unreasonable delays. We also begin a rulemaking on whether our closed captioning rules are achieving our goal of making video programming accessible to the millions of deaf and hard of hearing Americans, and we ask whether any revisions should be made to make these rules more effective.

The Commission is more committed than ever to ensuring that the goals of the ADA are achieved. The actions we take today join the many others that the Commission has taken over the years to eradicate the barriers that stand in the way of functional equivalency. Functional equivalency means individuals with disabilities having access to the same services as everyone else. This equal access is vital to accessing jobs, education, public safety, and simple communications with family, friends, and neighbors.

Although there is still more to do in order to achieve functional equivalence, I am proud of the items adopted today. I want to assure those of you with hearing or speech disabilities that we will not stop actively working to fulfill your need for functional equivalence. We could not have taken today's actions without your valuable input. We thank you for your participation in our proceedings and look forward to working with you and the service providers to come up with solutions to the next set of challenges that we intend to tackle. It is by working together that we can best ensure that the tremendous advances in communications are enjoyed by *all* Americans.

STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-141

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03-123 and CC Docket No. 98-67), FCC 05-140

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-139

Re: Closed Captioning of Video Programming and Telecommunications for the Deaf, Inc. Petition for Rulemaking (CG Docket No. 05-231), FCC 05-142

Lou Ann Walker, a noted advocate for the hearing-impaired, once said that the inability to *hear* is a nuisance, but the inability to *communicate* is a tragedy. These four items will allow consumers with hearing or speech impediments to communicate better by enabling them to receive improved service from their telephones and televisions.

Many of the decisions this Commission is called upon to make involve arcane matters with sometimes ambiguous results. That is not the case here. The issues in these items could not be clearer, and the effects of our rulings could not be more concrete. Today's decisions promise to have a profound and positive impact on the lives of millions of Americans living with hearing and speech disabilities. In short, I am hopeful that by expanding access to TRS and VRS offerings, and by opening a new proceeding to consider our closed captioning rules for video programming, we are helping to turn tragedies into nuisances.

Of course, whenever we enhance offerings such as TRS, VRS, and closed captioning, we must bear in mind the costs imposed by those offerings, which are borne by all consumers. I am pleased that the TRS and VRS items will dramatically expand access to these services *without* significantly increasing the costs involved. I am also satisfied that the *Notice of Proposed Rulemaking* on closed captioning seeks comment on issues relating to cost and practicality, and will produce a full record on those matters for the Commission's consideration.

Finally, I am particularly pleased that we have been able to resolve the cost-containment questions raised by compensating Spanish-language VRS from the Interstate TRS Fund. The record shows that Spanish is, by far, the most widely used non-English language spoken in the United States. It also demonstrates that the costs of providing ASL-to-Spanish VRS service are not significantly greater than the costs associated with ASL-to-English VRS service, a factor that was not clearly evident from the prior record. In my judgment these factors warranted reevaluation, and ultimately reversal, of our earlier decision denying compensation for such services.

One of our most important responsibilities is to make sure that there are no telecom "have-nots," and that the wealth of services provided by today's new technologies are available to *all* consumers. These four items, taken together, help to do just that.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-141

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

We all join in celebrating the fifteenth anniversary of the Americans with Disabilities Act. It's hard to believe it's already been fifteen years since Congress directed the Commission to ensure that people with disabilities have access to functionally equivalent communications services. "Functional equivalency" may sound like Washington jargon, but for 54 million Americans it translates into equal opportunity, equal rights and fuller participation in society.

We have come a long way in these fifteen years. And I am pleased that the Commission has been a part of some of that progress—expanding TRS, bringing new services like IP relay and VRS into the TRS fold, ensuring hearing aid compatibility with wireless phones. But this would be a hollow celebration if we did not also use this anniversary as a time of rededication, a time of commitment to new goals and new challenges. Because while the old obstacles of access and education and outreach have not been resolved completely, new challenges, born of technology and economic change, rise up to confront us.

The Commission takes on some of these challenges today. By finding that two-line captioned telephone service is eligible for support from the TRS fund, we expand functional equivalency for millions of Americans who are hard of hearing. By developing speed of answer requirements for VRS, we recognize that the ability to make a telephone call without delay is fundamental to our concept of a "rapid, efficient, Nation-wide" communications system. To date, VRS customers have endured unacceptably long waiting times—sometimes, I am told, up to 30 minutes—before being able to place a call. This kind of delay undermines functional equivalency. So I am pleased that today we introduce speed of answer standards that will pare down waiting time, without sacrificing the quality of the interpreting service.

We also reverse last year's misguided decision to exclude some forms of non-shared language TRS from reimbursement. As I pointed out at the time, Spanish speakers are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, American Sign Language-Spanish VRS should be eligible for compensation from the TRS fund. I am pleased that we finally reach this conclusion here.

In addition to these actions on the TRS front, the Commission initiates a Notice of Proposed Rulemaking to update our closed captioning policies. For individuals who are deaf and hard of hearing,

closed captions provide a critical link to news, entertainment and emergency information. By granting the petition for rulemaking filed by Telecommunications for the Deaf, the National Association of the Deaf, Self Help for Hard of Hearing People, the Association for Late Deafened Adults and the Deaf and Hard of Hearing Consumer Advocacy Network, we make an effort to keep our rules current and ensure that video programming is accessible to everyone.

Though we make progress today, there are many issues that still need our attention. There are open questions about equipment interoperability and certification for national VRS providers. There is the need always for more outreach and education. And, on another front, the disability community is justly concerned about fallout from the U.S. Supreme Court decision in *Brand X*. They do not want to see semantic exercises in classification and reclassification deny them the victories they have already won and the opportunities that new technologies hold for the future.

So we have our work cut out for us. Even as we celebrate this fifteenth anniversary, there is still a long and winding road to travel—rules to be adopted, jobs to be secured, people to be appreciated for their talents and humanity, hearts and minds to be really won over. Our actions today represent some good strides down that road. I am pleased to support them in full.

Finally, a note of appreciation for the Consumer and Governmental Affairs Bureau. The Disability Rights Office is not the largest office in this agency. But millions of Americans with disabilities—and their friends, and their families, and their co-workers—are better off because of the work of this office. Their efforts keep us all better connected. Thank you.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: In the Matter of Closed Captioning of Video Programming, Accessibility of Programming Providing Emergency Information, Telecommunications for the Deaf, Inc., Petition for Rulemaking, CG Docket No. 05-231, Notice of Proposed Rulemaking.

In light of the fifteenth anniversary of the Americans with Disabilities Act, now is the time to review whether our closed captioning rules have been successful at achieving the important goal of increasing access to high quality video programming for the hearing-impaired community. I fully support this Notice to seek comment on the adequacy of our current closed captioning rules and on how the rules can be made more effective and efficient.

Both Congress and the Commission have recognized how important it is that *all* people have access to video programming, which is increasingly affecting how we operate in the home, at the office, and at school. When closed captioning is inaccurate, unavailable, or unintelligible, millions of hearing-impaired individuals are excluded from the opportunity to participate in political and cultural experiences that shape our identity as Americans. For example, when closed-captioning errors prevented many hearing-impaired viewers from casting their vote for Fox television's program, "American Idol," these viewers were prevented from being a part of this cultural event.

Television is increasingly the medium relied upon as the primary source of local and national news, and a healthy democracy demands a well-informed citizenry to make reasoned decisions about where our country is and should be headed. Closed-captioning errors, however, leave millions of Americans without access to this vital information and uninformed. The consequences are even greater when the closed captioning is providing emergency information.

As we prepare to review the current closed captioning rules, we must remain committed to ensuring that video programming is not only accessible, but also high quality. I am therefore pleased that this Notice of Proposed Rulemaking addresses the issues of both technical and non-technical standards for closed captioning. I am also pleased that this Notice seeks comment on how the Commission can best ensure compliance. We provide nothing but empty promises if our rules overlook the critical means for monitoring and enforcement.

The Commission has already taken the important step of mandating that non-exempt new programming be captioned as of January 1, 2006. Today's rulemaking takes another step forward toward ensuring that the hearing-impaired community receives functionally equivalent video programming services. I commend my colleagues for their dedication to confronting these issues that are so important for the deaf and hard of hearing community, and I would like to thank the Consumer & Governmental Affairs Bureau for all their hard work on this matter.