

To: All Television Clients

November 26, 2008

FCC Clarifies Closed Caption Obligations; Amends Rules To Streamline Filing of Closed Caption Complaints; Requests Comments On Closed Caption Revenue Exemption

The FCC has clarified certain of its rules regarding the closed captioning of digital programming, and has amended its rules to allow closed captioning complaints to be filed either with broadcasters or directly with the Commission. (Currently, the FCC directs that viewers send closed captioning complaints directly to the video program provider).

In addition, the FCC has requested comments on whether digital multicast streams should be subject to the exemption from closed captioning for channels producing annual gross revenue of less than \$3,000,000. Comments will be due 30 days after publication of the FCC Notice of Proposed Rulemaking in the Federal Register, and Reply Comments will be due 45 days after publication. We will notify you when Federal Register publication occurs.

Provision of Closed Captioning In Analog Format

The FCC clarified that, because some viewers will continue to use analog televisions connected to digital-to-analog converter boxes for over-the-air reception after the digital transition, broadcasters

must continue to transmit captions in the CEA-608 (analog) standard after February 17, 2009.

New Rules Regarding Complaints

The FCC has amended its rules so that closed caption complaints may be filed either directly with the FCC or with broadcasters. Broadcasters must respond in writing to closed caption complaints within 30 days. The new rules will become effective 30 days after publication in the Federal Register. We will notify you when Federal Register publication occurs.

Under the new rules, broadcasters must designate a telephone number, fax number and email address for the receipt of immediate closed captioning concerns (e.g., when captions suddenly disappear or become garbled) from viewers. Broadcasters also must designate a person to respond to written complaints that do not raise immediate issues. The contact person's name, title, telephone number, fax number, postal mailing address, and email address must be made publicly available.

Both sets of contact information must be included on a broadcaster's website, if it has one, and in telephone directories. Also, the FCC will list the contact information on its website, and will require that broadcasters submit their contact information to the FCC within 30 days after publication in the Federal Register of OMB approval of this information collection requirement. This information can be submitted by email to: CLOSEDCAPTIONING_POC@fcc.gov. We will notify you when OMB approval has been obtained.

FCC Seeks Comment on Revenue Exemption

The FCC's Rules exempt video programming channels that produced annual gross revenues of less than \$3 million during the previous calendar year from the closed captioning obligations. With regard to this exemption, the FCC seeks comment on:

- whether each programming stream, including multicast signals, constitutes a separate channel;

- what percentage of programming that airs on multicast streams is network-provided programming, and how much of that programming is already captioned;
- whether it should revise the exemption as it applies to multicast streams, for example, by changing the \$3 million threshold for multicast programming streams other than the "main" stream", or whether it is appropriate to adopt something other than a fixed revenue threshold for determining whether secondary multicast streams must be captioned.

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If you have any questions about the FCC's closed captioning rules, or if you would like to file comments in this proceeding, please contact an attorney in this office.

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