

**To: All TV Clients**

**December 26, 2007**

## **CLOSED CAPTIONING REQUIREMENTS INCREASE JANUARY 1, 2008 FOR “PRE-RULE” PROGRAMMING**

### Increased Requirements for “Pre-Rule” Programming

The FCC's closed caption rules distinguish between “pre-rule” and “new” programming. Pre-rule programming is any analog programming first shown prior to January 1, 1998 and digital programming first shown prior to July 1, 2002. New programming is any programming first shown on or after those dates.

Currently, 30% of a channel's pre-rule English language programming must contain captions. Beginning on January 1, 2008, 75% of a channel's pre-rule English language programming must be captioned.

### Other Closed Captioning Requirements Unchanged For Now

The FCC's rules already provide that 100% of new English language analog programming must contain closed captions.

Until January 1, 2010, a station must include captions for an average of at least 1350 hours of each channel's captioned Spanish language programming each calendar quarter or all of its new Spanish language programming, whichever is less. As of January 1, 2010, 100% of a channel's new Spanish language programming must contain closed captions.

Currently, 30% of a channel's “pre-rule” nonexempt Spanish language program-

ming must be captioned. As of January 1, 2012, 75% of each channel's pre-rule non-exempt Spanish language programming must be captioned.

### Exempt Programming

The Commission has categorically exempted some programming from the closed caption requirements, including:

- Programming broadcast between 2 a.m. and 6 a.m. local time,
- Advertisements of five minutes or less in duration,
- Interstitials, promotional announcements and PSAs that are 10 minutes or less,
- Programming that is locally produced, that is of local public interest, that has no repeat value that is not news programming, and for which the “electronic news room” technique of captioning is not available,
- Programming that is primarily textual, such as program schedule channels and community bulletin boards,
- Programming on channels that produced gross revenues of less than \$3,00,000 during the prior calendar year,
- Programming in languages other than English or Spanish,



- Programming on new networks during the first four years of the network's operation,
- Programming that is primarily non-vocal music, and
- Instructional programming locally produced by public television stations for use in grades K-12 and post secondary schools.

Certifications and Indemnification

As television stations are held directly responsible for complying with the Commission's closed caption requirements, even for programming produced by third parties, it is recommended that stations obtain cer-

tifications from each of their programming suppliers that the relevant programming contains captioning and is in compliance with the Commission's rules. Moreover, program supplier agreements should include a strong indemnification provision whereby the supplier will indemnify the station for any closed caption violations that result from the relevant programming. We stress, however, that if there is a violation of the captioning rules, the FCC will look to the licensee and not the third party producer in any enforcement proceeding.

Please do not hesitate to call our offices with any questions regarding the closed caption requirements.

*Leventhal Senter & Lerman PLLC*

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.