
FCC Seeks Additional Comments on Pending Proceedings to Augment Closed Captioning Requirements

by Scott R. Flick and Paul A. Cicelski

*In a Public Notice released yesterday, the Consumer & Governmental Affairs Bureau of the FCC established new comment dates to refresh the record on several closed captioning issues first raised in proceedings initiated in 2005 and 2008. Comments are due **November 24, 2010**, with reply comments due **December 9, 2010**.*

According to the Public Notice, the FCC's closed captioning record needs to be refreshed in light of significant changes that have occurred in the five years that have passed since the FCC first sought comment on these captioning issues. The changes that have occurred include completion of the FCC's phase-in of its original captioning requirements for "pre-rule" and "new" English-language programming and "new" Spanish-language programming, as well as completion of the transition from analog to digital television.

2005 Closed Captioning Notice of Proposed Rulemaking ("2005 NPRM")

First, the FCC is seeking to refresh the record on several items that were raised in its 2005 NPRM that remain outstanding. Specifically, it is asking for additional comments on whether the FCC should establish "quality" standards for non-technical portions of the captioning rules. Such standards would be aimed at ensuring the accuracy of the captions themselves. In this regard, the FCC would like comments on what the adoption of such standards would cost to programmers and distributors, whether there are enough competent captioners to meet the demand, and whether different captioning quality standards should apply to live and pre-recorded programming.

Second, the FCC seeks to refresh the record regarding the need for new rules that go beyond the current "pass through" rule. The "pass through" rule requires video programming distributors to deliver all programming containing closed captioning with the original closed captioning data intact in a format that can be displayed by decoders meeting the standards of Part 15 of the FCC's Rules. According to the

Public Notice, the FCC is looking for ways to prevent technical problems in the delivery of captions and to remedy technical problems quickly when they do occur.

With respect to violations of the captioning requirements, the FCC seeks comments on whether to establish specific “per violation” forfeiture amounts, and if so, what those amounts should be. The FCC is also seeking comments on whether video programming distributors should be required to file periodic captioning compliance reports.

The *2005 NPRM* also discussed the continued use of electronic newsroom technique (ENT), in which the closed captioning text is fed directly from a station’s teleprompter. Because this captioning technique does not provide captions for unscripted segments, the current rule limits its use to stations that are not affiliated with ABC, CBS, NBC, or Fox, or which are located outside the top 25 markets. Nonbroadcast networks serving at least 50% of cable/satellite households are also prohibited from relying on ENT. The FCC is asking whether the use of ENT for captioning should be further restricted by, for example, expanding the prohibition to stations outside the top 25 markets.

The FCC is also seeking comments on whether it should mandate that petitions for exemption from the closed captioning requirements be filed electronically.

2008 Closed Captioning Notice of Proposed Rulemaking (“*2008 NPRM*”)

With respect to the *2008 NPRM*, the FCC is asking for comments to refresh the record on how the captioning exemption for “channels” producing revenues of less than \$3 million should apply to digital multicasting. In 2008, the FCC asked whether each programming stream in a multicast signal should constitute a separate “channel,” or whether the broadcaster’s primary and multicast streams should be considered a single channel for purposes of determining whether they exceed the \$3 million exemption limit. The FCC wishes to update the record, and is asking for comments on the ramifications of ruling that each multicast stream is a separate channel.

As noted above, comments on these proposals are due **November 24, 2010**, and reply comments are due **December 9, 2010**. Please contact any of the lawyers in the Communications Practice Section for assistance in the preparation and filing of comments or reply comments.

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