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Communications Advisory

Increased Closed Captioning Requirements Beginning January 1, 2008

Beginning January 1, 2008, the percentage of “Pre-Rule Programming” per channel each quarter that must be captioned increases from 30% to 75%.

In 1998, the FCC adopted rules requiring the closed captioning of English language and Spanish language programming in order to make such programming accessible to individuals with hearing disabilities. Accordingly, the FCC established a phase-in schedule requiring all television broadcasters, cable operators, and satellite television distributors to provide an increasing amount of their programming in a closed captioned format over time.

English Language Programming

Currently, only 30 percent of English language “Pre-Rule Programming” per channel each quarter must be captioned. However, under the FCC’s schedule, starting January 1, 2008, 75 percent of English language “Pre-Rule Programming” which airs on a channel each quarter must be captioned. Pre-Rule Programming is defined as analog programming first shown before January 1, 1998, and digital programming first shown before July 1, 2002. The date on which a program is first exhibited publicly in any forum determines when it is deemed to have been produced for purposes of the captioning rules.

Since January 1, 2006, 100 percent of English language “New Programming” aired on a channel must have been captioned, with some exceptions. “New Programming” is defined as analog programming first published or exhibited on or after January 1, 1998 and digital programming first aired on or after July 1, 2002.

Different Rules Apply to Spanish Language Programming

The FCC provides Spanish language broadcasters with more time in which to comply with the closed captioning rules. “New Programming” in the Spanish language is defined as programming first shown on or after January 1, 1998. From now until December 31, 2009, Spanish language television stations must caption either 1350 hours of “New Programming” per channel each quarter, or all of the new, non-exempt Spanish

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language programming on that channel, whichever is less. Starting January 1, 2010, 100 percent of “New Programming” in the Spanish language must be captioned, with some exceptions.

For Spanish language “Pre-Rule Programming,” or programs first shown before January 1, 1998, 30 percent of such programming per channel each quarter must be captioned. Starting January 1, 2012, 75 percent of Pre-Rule Programming aired on a station will have to be captioned.

Exempt Programming

There are two types of exemptions from the closed captioning rules—(1) undue burden exemptions and (2) self-implementing exemptions. Exemptions based on undue burden require a petition which demonstrates that implementing closed captioning would impose a significant difficulty or expense. While a petition is pending, the programming is exempt from the closed captioning requirements.

Self-implementing exemptions are exemptions which operate automatically and require no petition to the FCC. The following types of programs are self-implementing exemptions: (1) programs airing between the hours of 2 a.m. and 6 a.m. local time; (2) commercials that are no more than five minutes long; (3) locally-produced and distributed non-news programming with no repeat value (such as parades and school sports); (4) public service announcements (unless federally funded and produced), interstitials, and promotional announcements of 10 minutes or less; (5) instructional programming that is locally-produced by public television stations for use in grades K-12 and secondary schools; (6) programs in languages other than English and Spanish; (7) programs shown on new networks for the first four years of the network’s operations; (8) primarily textual programming (e.g., program schedule channels and community bulletin boards); (9) primarily non-vocal musical programming (e.g., televised symphony or ballet performances); and (10) programs on channels producing annual gross revenues of under \$3,000,000 in the previous calendar year.

Subtitles and Open Captioning

Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning.

Compliance with Closed Captioning Rules

While the FCC’s rules do not currently mandate specific recordkeeping requirements, stations must maintain and, if necessary, provide to the FCC, sufficient records and documentation to demonstrate that they are in compliance with the rules. The FCC may commence such inquiry either in response to a complaint against the station or as part of an industry audit. Such documentation may include certifications from networks and program suppliers, which stations may rely on in demonstrating their compliance with the rule.

New Television Program Reporting

On November 27, the FCC adopted a Report and Order requiring that television broadcasters file a new programming report with the FCC. The programming form will be available online and must be filed on a quarterly basis. In addition to local programming information, the form will require broadcasters to provide information regarding closed captioning, video described content, and the provision of emergency information for the disabled. We will provide an update once the FCC releases more specific information regarding filing deadlines and requirements.

For your protection, we recommend that you direct any questions you may have regarding FCC compliance to your communications counsel.

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For further information, please contact:

Richard R. Zaragoza (bio)

Washington, DC
+1.202.663. 8266
richard.zaragoza@pillsburylaw.com

Christine A. Reilly (bio)

Washington, DC
+1.202.663.8245
christine.reilly@pillsburylaw.com

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