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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[CG Docket No. 05-231; FCC 16-17]

#### Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) allocates the responsibilities of video programming distributors (VPDs) and video programmers with respect to the provision and quality of closed captions on television programming, with each entity responsible for closed captioning issues that are primarily within its control; amends the Commission's captioning complaint procedures to include video programmers in the handling of complaints; and requires video programmers to register contact information and certify compliance with captioning obligations directly with the Commission.

**DATES:** Effective September 22, 2016, except for 47 CFR 79.1(g)(1) through (9), (i)(1) through (3), (j)(1) and (4), (k)(1)(iv), and (m) of the Commission's rules, which contain information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Disability Rights Office, Consumer and Governmental Affairs Bureau, at phone: (202) 418-2235 or email: [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking* Second Report and Order (*Second Report and Order*), document FCC 16-17, adopted on February 18, 2016, and released on February 19, 2016. The full text of document FCC 16-17 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center,

Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Document FCC 16-17 can also be downloaded in Word or Portable Document Format (PDF) at: <https://www.fcc.gov/general/disability-rights-office-headlines>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

#### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 16-17 contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 16-17 as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." See *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, published at 79 FR 17093, March 27, 2014 (Further Notice of Proposed Rulemaking) and 79 FR 17911, March 31, 2014 (Report and Order) (references are to the *Closed Captioning Quality Order* when discussing parts of the Report and Order, and to the *Closed Captioning Quality Further Notice* when discussing parts of the Further Notice of Proposed Rulemaking).

#### Synopsis

1. Closed captioning is a technology that provides visual access to the audio content of video programs by displaying this content as printed words on the television screen. In 1997, the Commission, acting pursuant to section 713 of the Communications Act (the Act), 47 U.S.C. 713, adopted rules regarding closed captioning on television. On February 24, 2014, the Commission adopted the *Closed Captioning Quality Order* in which, among other things, it placed responsibility for compliance with the

non-technical closed captioning quality standards on (VPDs) while simultaneously releasing the *Closed Captioning Quality Further Notice* to seek comment on, among other issues, extending some of the responsibilities for complying with the closed captioning quality standards to other entities involved in the production and delivery of video programming. On December 15, 2014, the Commission released a Second Further Notice seeking to supplement the record in this proceeding in response to comments received on the *Closed Captioning Quality Further Notice. Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking, Second Further Notice of Proposed Rulemaking*, published at 79 FR 78768, December 31, 2014 (*Closed Captioning Quality Second Further Notice*).

2. *Responsibilities of VPDs and Video Programmers.* In its 1997 *Closed Captioning Report and Order*, the Commission placed sole responsibility for compliance with its television closed captioning rules on VPDs. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order*, published at 62 FR 48487, September 16, 1997 (*1997 Closed Captioning Report and Order*). At that time, the Commission concluded that holding VPDs responsible would most expeditiously increase the availability of television programming with closed captions and promote efficiency in the Commission's monitoring and enforcement of its captioning rules. At the same time, the Commission recognized the Commission's jurisdiction, under section 713 of the Act, over both video programming providers and owners to ensure the provision of closed captioning of video programming, and noted its expectation that both "owners and producers will be involved in the captioning process."

3. In the *Closed Captioning Quality Order*, the Commission similarly placed the responsibility for compliance with the non-technical closed captioning quality standards on VPDs. However, recognizing that the creation and delivery of quality closed captioning is not solely within the control of VPDs and that video programmers play a "critical role" in providing closed captions to viewers, the Commission stated that it would allow a VPD to satisfy its obligations with respect to the caption quality rules by obtaining or making best efforts to obtain

certifications on captioning quality from its video programmers that such programmers are in compliance with the Commission's quality standards or related best practices. At the same time, as noted above, the *Closed Captioning Further Notice* sought comment on whether the Commission should revise its rules to allocate responsibilities for compliance with the television closed captioning obligations, including the obligation to provide quality captions, among various entities involved in the production and delivery of video programming. To this end, among other things, the Commission also sought comment on a specific proposal by Comcast/NBC Universal (Comcast) for a "burden-shifting enforcement model" that would place the initial burden of addressing captioning matters on VPDs, but then extend some captioning responsibilities to video programming owners (VPOs).

4. The Commission concludes that the obligations associated with compliance with the Commission's closed captioning quality rules shall be divided between VPDs and video programmers, making each entity responsible for closed captioning quality issues that are primarily within its control. It further concludes that the responsibilities associated with ensuring the provision of closed captions on television shall remain primarily with VPDs, but amends its rules to also hold video programmers responsible for ensuring the insertion of closed captions on all their nonexempt programming. The Commission also concludes that the video programmer certifications that video programmers must now make widely available to VPDs should instead be filed with the Commission.

5. *Definitions of Video Programmers and Video Programming Owners.* The *Closed Captioning Quality Order* defined a video programmer as "[a]ny entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming," noting that such programmers are a subset of VPPs. The *Closed Captioning Quality Further Notice* also noted that the Commission has defined VPOs for purposes of requiring captions on video programming delivered via Internet protocol, in part, as "any person or entity that '[l]icenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol.'" The *Captioning Quality Further Notice*

sought comment on whether the definition of video programmer adopted in the *Closed Captioning Quality Order* is sufficiently broad in scope or whether the Commission should expand the definition to cover other categories of entities, and if so, which entities. The Commission also sought comment on whether and how the Commission should define VPOs with respect to the television closed captioning rules.

6. Document FCC 16-17 applies the definition of video programmer adopted in the *Closed Captioning Quality Order* without change. That definition does not exclude entities that provide programming for distribution to locations other than the home; rather it merely makes the intent to distribute to residential households a criterion of the definition. In other words, if an entity intends for its programming to be distributed to residential households, the entity will meet the definition of a "video programmer" and will be covered by the Commission's captioning rules, even if the video programmer's programming also reaches devices, such as tablets and other mobile devices that can be used outside the home.

7. Document FCC 16-17 defines VPO, for purposes of television captioning, as any person or entity that either (i) licenses video programming to a VPD or provider that is intended for distribution to residential households; or (ii) acts as the VPD or VPP, and also possesses the right to license video programming to a VPD or VPP that is intended for distribution to residential households. As is the case with video programmers, an entity will be considered a VPO if it licenses or possesses the right to license programming that is intended for distribution to residential households, even if the programming is also distributed to devices that are not located in the home. Accordingly, the captioning rules will cover video programming that is provided by such VPOs to VPPs and VPDs and distributed over VPD systems, even if the VPO's programming reaches devices, such as tablets and other mobile devices that may or may not be located in the home.

8. *Commission Authority under Section 713 of the Act.* The Commission reaffirms determinations, made in the *1997 Closed Captioning Report and Order* and the *Closed Captioning Quality Order*, that the Commission has authority under section 713 of the Act to impose obligations for compliance with the Commission's closed captioning rules on both VPDs and video programmers. Section 713 of the Act authorizes the Commission to ensure the provision of closed

captioning of video programming by providers and owners of video programming. Section 713(b)(2) of the Act directs the Commission to prescribe regulations that "shall ensure" that "video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions." Additionally, various subsections of section 713(d) authorize exemptions for both VPPs and program owners. The legislative history of section 713 of the Act further reflects Congress's intent to extend the Commission's authority over captioning of video programming to various entities involved in the production and delivery of video programming, including the distributors and owners of such programs, recognizing that "[i]t is clearly more efficient and economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program." H.R. Rep. No. 104-204, 104th Cong., 1st Sess. (1995) at 114.

9. The Commission has long recognized its jurisdiction under section 713 of the Act to impose closed captioning obligations on both VPDs and video programmers. The Commission referenced its authority in the *1997 Closed Captioning Report and Order* and the *Closed Captioning Quality Order*, and extended certain captioning responsibilities to VPOs in the *IP Captioning Report and Order*, which created requirements for captioned television programs to be displayed with captions when delivered via Internet protocol. *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, published at 77 FR 19480, March 30, 2012 (*IP Captioning Report and Order*). There, the Commission concluded that placing obligations on VPOs would ensure that the Commission could hold a responsible party accountable for violations of the Twenty-First Century Communications and Video Accessibility Act (CVAA). Public Law 11-260, 124 Stat. 2751 (2010), *technical corrections*, Public Law 111-265, 124 Stat. 2795 (2010); *IP Captioning Report and Order*. Similarly, changes made to the Commission's requirements for the presentation of accessible emergency information on television added video programming providers, which includes program owners, as parties responsible (along with VPDs) for making such information accessible to individuals

who are blind or visually impaired. The Commission ruled that the entity that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, whether that entity is the VPD or VPP. *In the Matter of Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, published at 78 FR 31800, May 24, 2013 (2013 *Emergency Information Order*) (amending 47 CFR 79.2). Document FCC 16–17 reaffirms that section 713 of the Act gives the Commission jurisdiction to ensure the provision of closed captioning of video programming by both VPDs and video programmers.

10. *Responsibilities for Ensuring Captioning Quality*. The Commission concludes that it is appropriate to allocate responsibility for compliance with the closed captioning quality rules between VPDs and video programmers by placing responsibility on each entity for those aspects of closed captioning quality over which they primarily have control. The Commission reaches this conclusion because video programmers exert the most direct control over the creation of closed captions, and thus, as compared to VPDs, can exercise greater control over the non-technical quality components of closed captioning. At the same time, VPDs primarily have control over the technical aspects of captioning quality related to the pass-through and distribution of programming to end users.

11. There are a number of tasks associated with the provision of quality closed captions performed by video programmers. These entities “enter into contracts with captioning vendors, control when programming is delivered to captioning vendors to be captioned, and incorporate captioning with programming for delivery to VPDs.” See *Closed Captioning Quality Order*. The critical role that video programmers play in creating quality captioning justifies changing the allocation of responsibility for compliance with the caption quality requirements. The Commission thus affirms the finding made in the *Closed Captioning Quality Order* that “video programmers typically are the entities with the most direct control over the quality of closed

captioning of their program.” It is for this reason that the Commission believes that assigning some responsibility for the quality of closed captioning directly to video programmers will more efficiently and effectively achieve compliance with the Commission’s closed captioning quality requirements.

12. VPDs receive programs with the embedded captions supplied by video programmers, and while VPDs have an obligation to ensure that their technical equipment is capable of passing through program signals with captions in a manner that does not adversely affect the non-technical quality components (accuracy, synchronicity, completeness and placement), the record shows that video programmers are responsible in the first instance for making sure that captions meet these quality components—*i.e.*, at the time when programmers initially arrange for the inclusion and insertion of such captions on their programs. Video programmers thus have primary control over ensuring that the non-technical quality standards are met. In addition, allocating captioning quality responsibilities between VPDs and video programmers will be more efficient and effective than attempting to reach video programmers indirectly through their contracts with VPDs. The Commission concludes that the responsibilities imposed by the contractual arrangements between these entities will not be as effective or efficient as direct responsibility on the part of video programmers to achieve compliance with the Commission’s new closed captioning quality obligations.

13. First, the record shows that contractual arrangements between VPDs and video programmers may not be fully effective to ensure that video programmers will provide quality closed captions. Financial constraints and lack of influence may impede a VPD’s ability to enforce agreements where violations of the captioning quality standards occur. Even in those instances in which a VPD is able to enforce its contractual agreement, the video programmer may decide to simply indemnify the VPD rather than correct the captioning quality problem.

14. The Commission concludes that having VPDs and video programmers share captioning quality responsibilities is likely to improve the efficacy of the complaint process because it will assign responsibility to the entity most able to effectively resolve the complaint. In addition, by allowing the Commission to take enforcement action against video programmers as well as VPDs, it will create incentives for both entities to take actions within their control to resolve

quality problems swiftly and to the satisfaction of consumers. The record in this proceeding reveals that captioning quality problems can stem from the actions or inactions of either VPDs or video programmers. The new procedures adopted in this order for resolving captioning quality complaints consider this fact, and utilize the established relationship between VPDs and programmers, as well as VPDs and consumers, to simplify the resolution of complaints for consumers. In this regard, to the extent that a VPD is responsible for captioning problems, under a regulatory scheme of divided responsibility, the VPD will remain responsible for rectifying those problems. Likewise, video programmers will remain responsible for addressing captioning problems primarily within their control.

15. The Commission amends its rules to require video programmers to ensure that closed captioning data provided to VPDs complies with the Commission’s closed captioning quality standards. The Commission will also continue to require VPDs to pass through programming with the original closed captioning data intact, in a format that can be recovered and displayed by consumers. Thus, under the new rules, video programmers will be responsible for closed captioning quality problems that stem from producing the captions, as well as transmission of the captions by the video programmers to the VPDs up to when the programming is handed off to the VPDs. VPDs will be responsible for closed captioning quality problems that are the result of faulty equipment or the failure to pass through closed captioning data intact. As a result, a VPD will be held responsible for a violation of the caption quality rules when the circumstances underlying the violation are primarily within the control of the VPD, and a video programmer will be held responsible for a violation of the caption quality rules when the circumstances underlying the violation are primarily within its control. Assigning liability in this manner will allow VPDs and video programmers to focus their resources on the captioning transmission processes over which they have the most control, thereby increasing their individual incentives to provide quality closed captions.

16. *Responsibilities for the Provision of Captioning*. Section 79.1(b) of the Commission’s rules currently places on VPDs the responsibility for ensuring the provision of closed captions on non-exempt television programs. The *Closed Captioning Quality Further Notice* sought comment on whether the

Commission should revise this rule to allocate some of this responsibility to other programming entities, such as video programmers.

17. The Commission concludes that the better approach for ensuring the provision of closed captions on television is to continue to hold VPDs primarily responsible for this obligation on the programming they carry, but to also hold video programmers responsible where they fail to provide captions on non-exempt programming. The Commission reaches this conclusion because it believes that its prior policy of placing sole responsibility on VPDs for the provision of closed captions on television programs failed to consider fully the significant role that video programmers play in the provision of captions on their video programming. Given that video programmers have control over the provision of closed captioning on programs they make available to VPDs for distribution to viewers, the Commission believes that it would be more effective and efficient to hold video programmers accountable for ensuring the insertion of closed captions on all of their programming that is not exempt, and the Commission amends § 79.1(b) of its rules to include the responsibilities of video programmers.

18. Yet, because the VPDs have an important role in the distribution of captioned programming, the Commission will maintain its current rules requiring VPDs to remain primarily responsible for ensuring the provision of closed captions on their programming, including the obligation to pass through programming with the original closed captioning data intact, in a format that can be recovered and displayed by consumers. The Commission believes that allocating responsibilities for the provision of closed captioning in this manner will incentivize entities with the greatest control over each aspect of the closed captioning carriage, transmission and delivery processes to provide closed captions. It also believes that the approach adopted herein will maintain the current incentives for VPDs to ensure that the programming they carry is in compliance with the Commission's rules, while allowing the Commission to reach video programmers in instances where such entities have been non-compliant. The Commission concludes that the ability to hold both video programmers and VPDs responsible for the carriage of closed captions will encourage both parties to work together and thereby ensure greater access to television programming for people who are deaf and hard of hearing.

19. The Commission further concludes that this approach will respond to requests by commenters to eliminate a potential "liability gap" in the Commission's captioning rules, that they claim has arisen by permitting VPDs to rely on certifications from programming suppliers to demonstrate compliance with the Commission's rules. Under the current rules, a VPD may rely on a certification from the programming supplier, even when "a programming source falsely certifies that the programming delivered to the distributor meets the Commission's captioning requirements if the distributor is unaware that the certification is false." 47 CFR 79.1(g)(6). Moreover, because the current rules do not assign responsibility to video programmers, they are not held accountable even where a video programmer either fails to provide a certification, provides a false certification, or simply fails to provide the required captioning. The Commission's decision to hold VPDs primarily responsible for the provision of closed captioning while allocating some responsibility to video programmers will ensure that the responsible entities are held accountable when closed captioning is not provided and will better enable the Commission to fulfill Congress's intent to ensure the accessibility of video programming.

20. *Video Programmer Certification.* Because of the decision to allocate responsibility between video programmers and VPDs for the quality and provision of closed captioning, the Commission concludes that its rules governing these certifications should be amended to (1) make such certifications mandatory and (2) require video programmers to file these certifications with the Commission. At present, the Commission's rules provide for two separate types of video programmer certifications in the closed captioning context.

21. The first type of certification is under § 79.1(g)(6) of the Commission's rules, which provides that VPDs may rely upon certifications from programming suppliers, including programming producers, programming owners, network syndicators and other distributors, to demonstrate a program's compliance with the captioning provision rules. This section goes on to state that VPDs will "not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets [the Commission's] captioning requirements if the distributor is unaware that the

certification is false." 47 CFR 79.1(g)(6). Under the Commission's current rules, there is no affirmative obligation on the part of VPDs to obtain such certifications or on programming suppliers to provide them. Additionally, the Commission's rules simply permit a VPD to rely on these certifications to prove that there was no underlying obligation to caption the programming received. This is the case even if the certification received is false (unless the VPD was aware of such falsehood).

22. The second type of programmer certification, which VPDs must make best efforts to obtain, was adopted by the Commission in the *Closed Captioning Quality Order*, and is contained in § 79.1(j)(1) of the Commission's rules. Under this rule, a VPD must exercise best efforts to obtain one of the following certifications from each video programmer with respect to the programming supplied to the VPD: (i) That the video programmer's programming satisfies the caption quality standards, *see* 47 CFR 79.1(j)(2) (stating the requirements with regard to captioning quality standards); (ii) that in the ordinary course of business, the video programmer has adopted and follows the Best Practices for video programmers with respect to captioning quality, *see* 47 CFR 79.1(k)(1) (stating the specific requirements with regard to Best Practices); or (iii) that the video programmer is exempt from the closed captioning rules, under one or more properly attained exemptions. If a video programmer claims an exemption from the captioning rules, it must also specify the exact exemption. 47 CFR 79.1(j)(1). In addition, § 79.1(k)(1)(iv) of the Commission's rules requires a video programmer that adopts Best Practices to certify to its VPDs that it has adopted and is following Best Practices for video programmers with respect to quality. Section 79.1(j)(1) and (k)(1)(iv) of the Commission's rules requires that the video programmer make this certification widely available, with § 79.1(j)(1) of the Commission's rules requiring that the video programmer do so within 30 days after receiving a written request to do so from a VPD.

23. In the *Closed Captioning Quality Second Further Notice* the Commission sought comment on the need to alter its video programmer certification requirements if it extends some responsibilities for compliance with its closed captioning rules to video programmers. Specifically, the Commission asked whether it should amend § 79.1(j)(1) of its rules to require video programmers to file their certifications on caption quality with the Commission (rather than making

such certifications widely available through other means) and whether it should amend § 79.1(k)(1)(iv) of its rules to make the filing of certifications with the Commission part of video programmers' Best Practices. The Commission also sought comment on whether it should amend § 79.1(g)(6) of its rules to require video programmers to file certifications with the Commission that they are in compliance with the Commission's rules for the provision of closed captioning.

24. The Commission concluded that changing the certification processes to require video programmers to provide certifications to the Commission of their compliance with the Commission's rules regarding the provision and quality of closed captions is necessary to effectively implement the new apportionment of the closed captioning obligations. To better ensure compliance with the rules and simplify the certification process, the Commission revises its certification processes to collapse the certification requirements contained in § 79.1(g)(6), (j)(1), and (k)(1)(iv) of its rules into a single rule that, with respect to non-exempt programming, makes mandatory the obligation for each video programmer to submit to the Commission a certification that its programming (1) is in compliance with the obligation to provide closed captioning and (2) either complies with the captioning quality standards or adheres to the Best Practices for video programmers with respect to captioning quality. In the event that some or all of the programming in question is exempt under one or more of the exemptions set forth in the Commission's rules, in lieu of the above certification, the video programmer must submit a certification attesting to such exemption and specifying each category of exemption that is claimed. The Commission now requires video programmers to file their certifications with the Commission when they first launch and on an annual basis, on or before July 1 of each year, and to use the Commission's web form filing system for such submissions.

25. By amending the Commission's rules to make certification as to the provision and quality of closed captions by video programmers mandatory, the Commission will hold video programmers accountable for their certifications, *e.g.*, where a submitted certification is false or a programmer fails to provide the requisite certifications. A video programmer's failure to submit a certification or submission of a false certification will be deemed a violation of the Commission's rules that is separate from

any violations related to the failure to provide quality captions.

26. The Commission concludes that requiring video programmers to file their certifications with the Commission, rather than with VPDs (as currently required), also will create greater efficiencies because it will create a single repository for all video programmer certifications, providing greater transparency and ease of reference for video programmers, consumers and VPDs. Moreover, this approach eliminates the need to rely on VPDs to obtain certifications from video programmers, and for VPDs to undertake the task of locating and collecting such certifications.

27. Because VPDs will remain primarily responsible for the provision of closed captioning on the non-exempt programming that they carry, certifications from video programmers will be necessary to inform VPDs of the extent to which the programming that they carry contained closed captions upon receipt. VPDs can then rely on these certifications to prove compliance, so long as they do not know or do not have reason to know a certification is false and so long as the VPDs pass through such captions intact to viewers. Requiring video programmers to provide certifications regarding their compliance with the closed captioning quality standards or Best Practices will help bring to their attention their new responsibilities, and thereby help to ensure quality closed captions. The process of having to prepare and provide the certification will help alert video programmers of the need to comply with the captioning quality standards or Best Practices.

28. Compared to the prior certification procedures, the new certification regime (which imposes direct responsibilities on video programmers as well as VPDs) will enhance the Commission's ability to enforce the captioning rules against video programmers and VPDs, and thus ensure the needs of consumers are better served. First, because video programmers were not obligated to provide certifications under the Commission's prior rules (*i.e.*, 47 CFR 79.1(g)(6), (j)(1), and (k)(1)(iv)), the Commission had limited enforcement ability against noncompliant video programmers. Second, some VPDs may be unable to negotiate contractual arrangements obligating video programmers to provide such certifications, due to disparities in negotiating power. Finally, because many video programmers already provide certifications to VPDs under § 79.1(g)(6) and (j)(1) of the Commission's rules, combining these

certifications into a single certification to be filed with the Commission should not result in any significant additional burden. Moreover, even if this requirement were to create an added burden on video programmers who are not already providing certifications under the Commission's current rules, the rules the Commission now adopts minimize such burden by only requiring these certifications to be filed annually, on or before July 1 of each year, rather than every time there is a change in programming. In addition, any such burden will be outweighed by the benefits of requiring video programmers to provide certifications, as described in the preceding paragraphs.

29. *VPD Obligations with Respect to Video Programmer Certifications.* The *Closed Captioning Quality Second Further Notice* sought comment on VPDs' obligations pertaining to such certifications, and, specifically, whether to require each VPD to alert its video programmers of the requirement to provide certifications to the Commission, to verify video programmers' compliance with the certification requirement, and to thereafter report to the Commission any failure by a video programmer to comply.

30. Because the rules now adopted by the Commission will hold video programmers directly liable for their failure to provide the required certifications, it is not necessary to make VPDs responsible for informing video programmers about the need to provide certifications, or to require that VPDs check on and report noncompliant video programmers to the Commission. At the same time, VPDs should be allowed to rely upon the certifications from video programmers to fulfill their obligation to ensure the provision of closed captions on the programming they carry. Accordingly, the Commission will allow a VPD to demonstrate compliance with its captioning obligations where it relies on a programmer's certification as to the presence of captions on such programming or that such programming is exempt from the captioning requirements, so long as (1) the VPD passes through the closed captions intact to viewers; and (2) the VPD did not know or did not have reason to know that such certification was false. However, if a VPD carries non-exempt programming without captions from a video programmer that has not provided certification to the Commission, or from a video programmer that has provided a certification that the VPD knew or had reason to know was false, the VPD will be liable for failing to have provided

closed captions on such programming, even if the lack of captions was not due to the VPD's failure to pass through closed captions intact. This will discourage the VPD from ignoring information that should warrant checking into the veracity of the certification, such as the VPD finding the absence of captioning on programming, and hold the VPD accountable for the failure to provide closed captioning on programming that it knows or has reason to know is not exempt from the Commission's rules.

31. These new rules will reduce burdens resulting from compliance with the Commission's captioning quality rules on VPDs. At present, VPDs must search video programmer Web sites and other locations to find the video programmers' "widely available" certifications. The Consumer and Governmental Affairs Bureau's (CGB's) recent experience in verifying the availability of some of these certifications suggest that in some cases these searches have been difficult and have not yielded certifications that video programmers had placed on their Web sites. The new rules will enable VPDs to be able to easily find these certifications on the Commission's Web site.

32. *Complaint Handling.* The Commission's decision in this order to allocate captioning responsibilities between VPDs and video programmers necessitates the establishment of an orderly process for the handling of complaints by each covered entity in order to prevent duplication of efforts, avoid potential confusion about responsibilities, and achieve overall efficiency to ensure the timely resolution of captioning complaints. The Commission concludes that a burden-shifting approach is appropriate for the handling of these complaints.

33. Under the burden-shifting approach, upon receiving a complaint about the quality of captions, a VPD would have the initial burden of conducting an investigation into the source of the problem. The VPD would address the complaint if able to do so, but the burden of addressing the complaint would shift to the video programmer if the VPD learned, after its initial investigation, that the problems raised were not within its control. The Commission believes that this approach appropriately builds on existing video programmer and VPD practices, by which VPDs investigate complaints, determine whether their equipment is causing the problem, and confer with video programmers to identify and resolve closed captioning problems under the video programmers' control.

This model can also ensure that the entity most able to remedy the captioning issue will have the responsibility to fix the problem, and the Commission therefore expects that this approach will expedite complaint resolution and result in more effective results for viewers who rely on captions to follow a program's content.

34. The Commission further concludes that it is best to apply the same burden-shifting approach to all types of captioning complaints—rather than apply this approach only to complaints on captioning quality. Employing different processes in the handling of different types of complaints would require the Commission and covered entities to try to predict the source of each complaint's underlying issues before directing the complaint through the appropriate process. This would be difficult given that some complaints may raise both non-technical and technical problems, and ascertaining the underlying causes for such problems often becomes possible only after an investigation into those causes. As a result, attempts to predict the underlying problem at the outset might result in the complaint being referred to the wrong entity and thereby delay its resolution. Accordingly, a uniform complaint and enforcement model for all closed captioning issues on television programming will streamline the rules and clarify all parties' obligations. Under this approach, the video programmer and the VPD will each be responsible for resolving complaints that are the result of problems primarily within each entity's respective control.

35. At present, the Commission's television closed captioning rules allow consumers to file captioning complaints with either the Commission or with the VPD responsible for the delivery and exhibition of video programming at issue, within sixty days after the consumer experiences a captioning problem. 47 CFR 79.1(g)(1). Because of the existing relationship that VPDs have with their subscribers, the approach provides a single point of contact for consumers and allows utilization of the existing VPD infrastructure for receiving, processing, and resolving closed captioning complaints. Allowing consumers to file complaints with either the VPD or the Commission eliminates the need for consumers to identify the video programmer with whom consumers generally have no direct relationship. It also eliminates the need for consumers to figure out the party responsible for the problem they are experiencing—for example, whether it was a pass through problem caused by

the VPD or a non-technical quality problem caused by the video programmer. Accordingly, the captioning complaint process that the Commission adopts will continue to allow consumers to file closed captioning complaints either with the Commission or with the VPD. If the complainant chooses to file with the VPD, but fails to receive a timely response or is not satisfied with that response, the consumer may subsequently file his or her complaint with the Commission.

36. *Complaints Filed with the Commission—Complaint Content.* In the *Closed Captioning Quality Order*, the Commission adopted a rule requiring the following information to be provided in an informal complaint regarding captioning quality as a prerequisite to the Commission forwarding such complaint to a VPD: (1) The channel number; (2) the channel name, network, or call sign; (3) the name of the multichannel video programming distributor (MVPD), if applicable; (4) the date and time that the captioning problem occurred; (5) the name of the program involved; and (6) a detailed description of the problem. 47 CFR 79.1(j)(4). The Commission explained that this information is necessary to enable a programming entity to investigate and resolve the complaint. Because the same rationale applies to all closed captioning complaints, whether or not related to closed captioning quality, the Commission extends the requirement to provide this information to all television closed captioning complaints. The Commission directs CGB to provide assistance to consumers who may experience difficulties gathering any of this required information. It further clarifies that all complaints should contain the consumer's identifying information, including the consumer's name, postal address, and other contact information, if available, such as telephone number or email address, along with the consumer's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the consumer).

37. *Complaints Filed with the Commission—Complaint Procedures.* Under the burden-shifting approach that the Commission adopts, when the Commission receives a closed captioning complaint, it will serve the complaint on the named VPD and the appropriate video programmer simultaneously. If the Commission cannot determine the appropriate video

programmer to serve, it will forward the complaint to the VPD and will inform the VPD that the Commission has been unable to determine the appropriate video programmer. Within ten days after the date of such notification, the VPD must respond to the Commission with the name and contact information for the appropriate video programmer, after which the Commission will forward the complaint to the video programmer as well.

38. After being served with a consumer complaint, the VPD must conduct an initial investigation to determine whether the matters raised in the complaint are primarily within its control. Concurrently, the video programmer may voluntarily begin its own inquiry into the source of the captioning problem, but the video programmer is not required to take any action at that time. Forwarding the complaint to both the VPD and video programmer at the outset will help facilitate the swift resolution of complaints because it will allow the video programmer, if it so chooses, to take its own steps toward a resolution while the VPD investigates matters primarily under its control.

39. VPDs will be given flexibility in conducting their initial investigations, in order to allow for differences in equipment and processes among VPDs; however, VPDs will be required to exercise due diligence in their efforts to identify the source of the issue and resolve all matters primarily within their control before shifting responsibility for addressing these matters to their video programmers. To meet this standard and to ensure a thorough investigation into closed captioning problems raised in complaints, the Commission will require VPDs, at a minimum, to take the following actions as part of their investigations: (1) *Program Stream Check*: Capture program streams of the programming network identified in the complaint and check the streams for any caption-related impairments that may have caused the reported problem and to prevent ongoing problems; (2) *Processing Equipment Check*: If there is an issue with the program stream, and there is not prior knowledge as to where the problem originated, check post-processing equipment at the relevant headend or other video distribution facility to determine whether the issue was introduced at the VPD level or was present in the stream when received by the VPD from the video programmer; (3) *Consumer Premises Check*: If the VPD's investigation indicates that the problem may lie with the consumer's customer premises equipment, including the set-

top box, check the end user equipment, either remotely, or, if necessary, at the consumer's premises, to ensure there are no issues that might interfere with the pass through, rendering or display of closed captioning. The Commission will defer to the VPD's good faith judgment about whether there is an indication that the problem might lie with the consumer's customer premises equipment and whether it is necessary to go to the consumer's premises to check the equipment. However, in the event of a dispute or an enforcement proceeding, the VPD will have the burden of proving that it conducted a thorough investigation into the closed captioning problems raised in the complaint. Requiring VPDs to take these steps will ensure that a full and effective investigation occurs prior to shifting the complaint handling responsibilities to video programmers. This also is more likely to result in a speedier and efficient resolution of the problems raised in complaints, thereby helping to fulfill Congress's goal to make television programming fully accessible to people who are deaf and hard of hearing.

40. If the VPD's investigation reveals that the closed captioning problem is within the control of the VPD, the VPD must correct the problem and provide a written response to the Commission, the video programmer and the consumer acknowledging such responsibility and describing the steps taken to correct the problem. A complaint must be resolved, and a written response sent, within 30 days after the date the Commission forwards the complaint to the VPD. As required by the Commission's current rules, the VPD's response must provide the Commission with sufficient evidence, including records and documentation, to demonstrate that the VPD is in compliance with the Commission's closed captioning rules. 47 CFR 79.1(g)(5). In this case, no burden-shifting to the video programmer will occur, and the VPD will retain liability for the problem.

41. If the VPD's investigation reveals that the closed captioning problems raised in the complaint are not primarily within the VPD's control and appear to have been present in the program stream when received by the VPD, the burden for addressing the complaint will shift to the video programmer. To shift the burden, the VPD must certify to the Commission, the video programmer, and the consumer that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's

rules, and that the problems raised in the complaint are not within its control. In addition, if at any time during the complaint resolution process, the VPD's investigation reveals that the closed captioning problems raised in the complaint were the result of causes not within the VPD's control and also do not appear to be within the video programmer's control, such as a faulty third-party DVR, television, or other third-party device, the VPD must certify to the Commission, the video programmer, and the consumer that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's rules, and that the problems raised in the complaint were caused by a third party device or other causes that appear not to be within the control of either the VPD or the video programmer. The applicable certification may be provided at any time during the VPD's investigation, but no later than 30 days after the date the Commission forwarded the complaint. The requirement for such certification is intended to alleviate concerns that VPDs might perform cursory investigations or inappropriately shift the burden of resolving complaints to video programmers in order to avoid fulfilling their captioning obligations. A VPD that fails to provide a certification or provides an untruthful certification may be subject to immediate enforcement action without first being subject to the compliance ladder. In addition, any video programmer may report to the Commission when, after receiving a certification from a VPD, the video programmer determines that the VPD did not follow all of the steps required by the Commission's rules for investigating a complaint or that the problem described in a complaint is in fact within the VPD's control.

42. After the responsibility for resolving the complaint shifts to the video programmer, the video programmer must investigate and attempt to resolve the closed captioning problem to the extent that doing so is within the video programmer's control. After the responsibility for resolving the complaint shifts to the video programmer, the video programmer will have the burden of proving that the video programmer conducted a thorough investigation into the closed captioning problems raised in the complaint. In addition, while, at this point in the complaint resolution process, the video programmer will take on the primary responsibility for

resolving the closed captioning problem, the Commission will require the VPD to continue to assist the video programmer with resolving the complaint, as needed. Requiring the VPD to remain involved throughout the complaint process will foster collaboration between VPDs and video programmers, and increase the likelihood that the complaint will be swiftly resolved to the satisfaction of the consumer and the Commission.

43. Within 30 days after the date of certification from the VPD, the video programmer must provide a written response to the complaint that either describes the steps taken to rectify the problem or certifies that its investigation revealed that it has exercised due diligence to identify and resolve the source of the captioning problem by conducting an investigation on the closed captioning complaint in accordance with the Commission's rules, and that the problems raised in the complaint are not within its control. Such response must be submitted to the Commission, the VPD, and the consumer, and must provide the Commission with sufficient records and documentation to demonstrate that the video programmer is in compliance with the Commission's rules. *See* 47 CFR 79.1(g)(5). Requiring video programmers to respond within 30 days will ensure that video programmers promptly investigate complaints. If the video programmer reports that it has rectified the problem, this will enable the VPD to conduct additional checks of the program stream if needed to confirm the complaint's resolution, and keep the VPD, the Commission, and the consumer informed so the VPD can know when to close the complaint file.

44. If the video programmer certifies that the program stream contained fully functioning captioning at the time the program stream was handed off to the VPD, and the VPD has not determined that the problem resulted from a third party source, the VPD and the video programmer must then work together to determine the source of the captioning problem. Once the source of the problem is determined, the VPD and video programmer shall each be required to correct those aspects of the problem within its control. The VPD is then required, after consultation with the video programmer, to report to the Commission and the complainant the steps taken to fix the captioning problem. The VPD must submit such information in writing within 30 days after the date that the video programmer certified that the cause of the problem was not within the video programmer's control. Further, the Commission may,

during its review of a complaint or the pendency of an enforcement proceeding, request the VPD and the video programmer to provide sufficient documentation to demonstrate compliance with the Commission's rules. Accordingly, VPDs will remain responsible for resolving problems that are within their control, which will help prevent the wasteful duplication of efforts to resolve complaints.

45. *Complaints Filed with the VPD.* Document FCC 16–17 preserves the consumers' long-standing option of filing their captioning complaints directly with their VPDs. *See* 47 CFR 79.1(g)(1) and (4). When a VPD receives a complaint from a consumer, the VPD should investigate the complaint with the same due diligence and in the same manner as required for complaints initially filed with the Commission and later served on VPDs, with a goal of initially determining whether the matter raised in the complaint is within the control of the VPD. If, after conducting its initial investigation, the VPD determines that the issue of the complaint is within its control, it shall take the necessary measures to resolve it, and notify the consumer of such resolution within 30 days after the date of the complaint. If (1) the consumer does not receive a response to the complaint within the 30-day period, or (2) the consumer is not satisfied with the VPD's response, the consumer may file the complaint with the Commission within sixty days after the time allotted for the VPD to respond to the consumer. The Commission believes that VPDs will have sufficient incentives to thoroughly investigate and promptly resolve the complaints that they receive directly from consumers, to reduce the need for such consumers to re-file their complaints with the Commission.

46. In the event that the VPD determines that the issues raised in the complaint are not within its responsibilities, § 79.1(g)(3) of the Commission's rules as currently written requires the VPD to forward the complaint to the responsible programming entity. 47 CFR 79.1(g)(3). The Commission resolves a conflict between § 79.1(g)(3) of its rules and statutory provisions prohibiting the VPD from disclosing a consumer's personally identifiable information (PII) without the consumer's consent. *See* 47 CFR 79.1 (g)(3), 47 U.S.C. 551(c)(1), and 47 U.S.C. 338(i)(4)(A). The Commission will require that if a VPD determines that an issue raised in the complaint is not primarily within the VPD's control, the VPD, within 30 days after the date of the complaint, must either forward the complaint to the video programmer

or other responsible entity, such as another VPD, with the consumer's PII—including the consumer's name, contact information, and other identifying information—redacted, or provide the video programmer or other responsible entity with information contained in the complaint sufficient to achieve its investigation and resolution. Such information should include the same type of information necessary for a complaint to be forwarded to a VPD when it is submitted to the Commission—*i.e.*, (1) the channel number; (2) the channel name, network, or call sign; (3) the name of the multichannel video programming distributor (MVPD), if applicable; (4) the date and time that the captioning problem occurred; (5) the name of the program involved; and (6) a detailed description of the problem—to the extent the VPD is in possession of such information. In addition, the VPD must provide the video programmer or other responsible entity with an explanation of why the cause of the captioning problem is not primarily within the control of the VPD. The Commission expects that requiring a VPD to forward the complaint with the consumer's PII redacted or to forward a description of the complaint's material details will resolve the outstanding regulatory conflict without the need for back-and-forth communications between the VPD and the consumer that otherwise might have been needed for resolution of the complaint.

47. When forwarding the complaint or a description of the complaint, the VPD must also assign a unique identifying number (“complaint ID number”) to the complaint, and transmit that number to the video programmer or other responsible entity along with the complaint or a description of the complaint. The Commission further requires the VPD to inform the consumer that the complaint has been forwarded, along with the complaint ID number and the name and contact information of the video programmer or other responsible entity to whom the complaint was forwarded, at the same time that the complaint is forwarded to the video programmer or other responsible entity. Providing information to consumers about the status of their complaints will enhance the transparency of the complaint resolution process, and avoid the situation in which a VPD responds to a complaint by shifting blame for a captioning problem to another entity while refusing to identify such entity publicly. Additionally, providing consumers with both the complaint ID



number and the video programmer's or other responsible entity's contact information will enable the consumer to contact a video programmer or other responsible entity directly and inquire about the status of his or her complaint if so desired. The VPD must also explain to the consumer that if the consumer wishes to follow up with the video programmer, the consumer will need to provide the video programmer with the name of the VPD as well as the complaint identification number.

48. Once a video programmer or other responsible entity receives a complaint and notification from a VPD that the issue described in the complaint is outside the VPD's control, the burden will shift to the video programmer or other responsible entity to investigate and resolve the complaint. However, as for complaints initially filed with the Commission, the Commission will require the VPD to continue to assist the video programmer or other responsible entity in resolving the complaint as needed and to conduct additional checks of the program stream to confirm resolution of the problem, upon notification from the video programmer or other responsible entity that the problem has been resolved.

49. The video programmer or other responsible entity must respond in writing to the VPD within 30 days after the forwarding date of the complaint from the VPD, in a form that can be forwarded to the consumer. The VPD must then forward this response to the consumer within ten days after the date of the video programmer's or other responsible entity's response. If the video programmer or other responsible entity fails to respond to the VPD within 30 days after the forwarding date of the complaint from the VPD, the VPD must inform the consumer of the video programmer's or other responsible entity's failure to respond within 40 days after that forwarding date.

50. If the video programmer or other responsible entity fails to respond to the VPD within the time allotted, or if the VPD fails to forward the video programmer's or other responsible entity's response to the consumer, or if the consumer is not satisfied with that response, the consumer may file the complaint with the Commission within sixty days after the time allotted for the VPD to either forward the video programmer's or other responsible entity's response to the consumer or inform the consumer of the video programmer's or other responsible entity's failure to respond. Upon receipt of the complaint from the consumer, the Commission will forward such complaints to the appropriate VPD and

video programmer, and the VPD and video programmer shall handle such complaints, as governed by the rules applicable to complaints filed with the Commission.

51. The Commission requires the VPD to remain involved in the resolution of complaints that are not within the VPDs' control because the VPD is the entity with which a complainant has a direct commercial relationship, and thus the VPD should remain the primary point of contact for the complainant even when the complaint is forwarded to the video programmer. Unlike video programmers, VPDs are the last link in the distribution chain and either receive direct payment from consumers for services rendered or provide programming over the public airwaves. Having VPDs forward responses from video programmers or other responsible entities to consumers will create a seamless process for consumers, allowing them to receive a response from the business entity with which they are familiar, and with which they initially filed their complaint. Also, as a practical matter, because the Commission requires the VPD to redact the consumer's PII, including the consumer's name and address, when forwarding a complaint to a video programmer or other responsible entity, the video programmer or other responsible entity will not have the necessary contact information to respond directly to the consumer. Finally, the Commission is imposing timelines on (1) the forwarding of complaints by VPDs, (2) the response by the video programmer or other responsible entity to the VPD, and (3) the forwarding of the response by the VPD to the consumer. The Commission therefore concludes that assigning to the VPD the responsibility of reporting the resolution to the consumer should not delay the provision of such notification.

52. In the event that the video programmer, other responsible entity, or VPD fails to meet any deadlines for responses to the consumer's complaint or if such responses do not satisfy the consumer, the consumer may file the complaint with the Commission within 60 days after the time allotted either for the VPD to respond to the consumer or for the VPD to forward the video programmer's or other responsible entity's response to the consumer, whichever is applicable. If a consumer re-files the complaint with the Commission after initially filing the complaint with the VPD, the Commission will forward the complaint to the appropriate VPD and the video programmer, and each such entity must follow the complaint handling processes

for complaints filed with the Commission as outlined above.

53. *Compliance Ladder*. In the *Closed Captioning Quality Order*, the Commission adopted a "compliance ladder" that allows broadcast stations to take corrective actions to demonstrate compliance with new enhanced electronic newsroom technique (ENT) procedures prior to being subject to enforcement action. The Commission reasoned that this approach would provide these entities with "ample opportunities to improve their captioning, especially if their current practices are deficient." *Closed Captioning Quality Order*. In the *Closed Captioning Quality Further Notice*, the Commission sought comment on whether to similarly allow VPDs and video programmers to assert a safe harbor to demonstrate compliance through corrective actions prior to being subject to enforcement action, in the event certain obligations for compliance with the captioning quality standards are placed on each of these entities.

54. In document FCC 16-17, the Commission adopts a compliance ladder for the captioning quality rules, including rules addressing quality issues related to the pass-through of captions, which is similar to the ladder adopted for the enhanced ENT rules. It will not apply this compliance ladder to other captioning requirements, including the provision of captioning, equipment monitoring and maintenance, registration and certification. Rather, the Commission concludes that its current practice of addressing the latter types of concerns through the informal complaint process, while retaining the option to refer such matters for enforcement action as appropriate, has been effective in achieving resolution of these concerns.

55. The Commission will continue to entertain individual informal complaints of noncompliance with the Commission's closed captioning quality rules in accordance with the complaint procedures outlined in document FCC 16-17. However, for captioning quality complaints received by the Commission that indicate a pattern or trend of noncompliance with its captioning quality rules, the Commission adopts a compliance ladder that is similar to that used for addressing noncompliance with its rules governing the enhanced ENT procedures. By focusing on patterns or trends rather than individual reports of closed captioning quality problems, use of this compliance mechanism will afford VPDs and video programmers opportunities to correct such problems without Commission enforcement action. In this manner, a

compliance ladder will enable parties to more quickly address and remedy problems without worrying that in so doing they may be subject to fines or forfeitures.

56. Accordingly, the Commission adopts the following compliance ladder to be applied when consumer complaints received by the Commission indicate a pattern or trend of noncompliance with the Commission's rules governing the quality of television closed captioning on the part of either the VPD or the video programmer. The Commission will apply a broad definition of "pattern or trend" when determining whether the compliance ladder is triggered. For example, a "pattern or trend" may be found when a particular entity is subject to a series of complaints over time about caption quality problems or failures or where a particular entity is subject to a large volume of complaints that suggests widespread quality problems or failures, even if they occur over a relatively short span of time. A pattern or trend of consumer complaints, even if about different programs or different types of captioning failures by the same entity, may reflect a system breakdown in that entity's processes sufficient to trigger this approach. In other words, the Commission may discern a pattern or trend in a series of complaints about the same or similar problems or in a multiplicity of complaints about unrelated problems.

- If the Commission notifies a VPD or video programmer that the Commission has identified a pattern or trend of possible noncompliance with the Commission's rules governing the quality of closed captioning by the VPD or video programmer, the VPD or video programmer shall respond to the Commission within 30 days after the date of such notice regarding such possible noncompliance, describing corrective measures taken, including those measures the VPD or video programmer may have undertaken in response to informal complaints and inquiries from viewers. Multiple complaints about a single incident are not considered a pattern or trend.

- If, after the date for a VPD or video programmer to respond to the above notification, the Commission subsequently notifies the VPD or video programmer that there is further evidence indicating a pattern or trend of noncompliance with the Commission's rules governing the quality of closed captioning, the VPD or video programmer shall submit to the Commission, within 30 days after the date of such subsequent notification, a written action plan describing

additional measures it will take to bring the VPD's or video programmer's closed captioning performance into compliance with the Commission's regulations. For example, action plans involve the identification and implementation of longer term measures and may include, but are not limited to, a commitment to train the VPD's or video programmer's personnel, the use of improved equipment, more frequent equipment checks, improved monitoring efforts, and changes in closed captioning vendors or closed captioning procedures. In addition, the VPD or video programmer shall be required to conduct spot checks of its closed captioning performance and report to CGB on the results of such action plan and spot checks 180 days after submission of such action plan.

- If, after the date for submission of the report on the results of an action plan, the Commission finds continued evidence of a pattern or trend of noncompliance with the Commission's rules governing the quality of closed captioning, the Commission will then consider, through its Enforcement Bureau, appropriate enforcement action, including admonishments, forfeitures, and other corrective actions as necessary.

57. The Commission believes that this three-step ladder will provide VPDs and video programmers with the necessary incentives to take corrective action on their own. In particular, the Commission believes that the first step of the compliance ladder, once a pattern or trend of noncompliance is identified, should afford an opportunity for VPDs and video programmers to rectify captioning quality violations on their own and quickly, without the regulatory involvement that would be associated with the second step's required action plan or the third step's enforcement action. However, if the Commission finds that this approach is not effective in ensuring widespread compliance with its television closed captioning quality rules or fulfilling its goal of ensuring full access to television programming as required by section 713(b) of the Act, it may revisit this issue to the extent necessary.

58. The Commission emphasizes that the compliance ladder will not relieve VPDs or video programmers of any of their obligations under the television closed captioning rules. However, to address this concern, the Commission adopts an additional rule allowing CGB to refer a captioning quality rule violation directly to the Enforcement Bureau for enforcement action, or for the Enforcement Bureau to pursue an enforcement action on its own, without

first going through the compliance ladder, for a systemic closed captioning quality problem or an intentional and deliberate violation of the Commission's closed captioning quality standards. In making such a determination, CGB or the Enforcement Bureau shall take into consideration all relevant information regarding the nature of the violation or violations and the VPD or video programmer's efforts to correct them.

59. *VPD Registration.* In the 2008 *Closed Captioning Decision*, the Commission amended its rules to add § 79.1(i)(3), which requires VPDs to submit contact information for the receipt and handling of both immediate requests to resolve captioning concerns by consumers while they are watching television and closed captioning complaints that consumers file after experiencing closed captioning issues. The 2008 Order explained that VPDs could satisfy this requirement by either filing a hard copy or sending an email. 2008 *Closed Captioning Decision*. In 2009, the Commission added an option to allow VPDs to file their contact information directly online via a web form located on the Commission's Web site, in a database called the "VPD Registry." *Closed Captioning of Video Programming*, Order, published at 75 FR 7368, February 19, 2010. Recognizing in the *Closed Captioning Quality Further Notice* that such electronic filings into the VPD Registry would offer the most efficient and accurate means of collecting the requisite information, the Commission sought comment on a proposal to require all contact information required by § 79.1(i)(1) and (2) of its rules be submitted directly to the VPD Registry through the web form method. *Closed Captioning Quality Further Notice*.

60. The Commission finds that requiring VPDs to submit their contact information into the VPD Registry through the web form would also be consistent with the 2011 *Electronic Filing Report and Order*, which adopted a policy to require the use of electronic filing whenever technically feasible. See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, published at 76 FR 24383, May 2, 2011. In light of such technical feasibility, as well as the accuracy and efficiency of this electronic filing method, the Commission amends § 79.1(i)(3) of its rules to require VPDs to submit their contact information required under § 79.1(i)(1) and (2) of its rules directly into the Commission's database through the web form method and to remove as options the alternate

methods of submitting this information to the Commission.

61. *Video Programmer Registration.* In document FCC 16–17, the Commission requires that video programmers file their contact information through a web form located on the Commission’s Web site for the handling of written closed captioning complaints by the Commission and by VPDs, and as required for VPDs, to update such information within ten business days of any changes. The video programmer contact information shall include the name of the person with primary responsibility for captioning issues and who can ensure compliance with the captioning rules, and the person’s title or office, telephone number, fax number (if there is one), postal mailing address, and email address. The Commission also directs video programmers to submit their required compliance certifications through a web form located on the Commission’s Web site, so that such certifications will be readily available to consumers, VPDs, and the Commission. The Commission directs CGB to implement the development of one or more web forms (or to expand the existing VPD Registry) for the filing of video programmer contact information and certifications and to provide guidance to programming entities and the general public on the appropriate use of video programmer contact information found on the Commission’s Web site. The Commission also directs CGB to issue a Public Notice to provide such guidance as well as procedures and deadlines for video programmers to file contact information and certifications once the rules go into effect and the Commission’s Web site is ready to receive such contact information and certifications.

62. The Commission concludes that it is important for video programmers to register their contact information with the Commission so that it is readily available to the Commission and to VPDs for the expedient and effective handling and resolution of complaints. In particular, for complaints filed directly with a VPD, under the new complaint handling rules, the VPD must have ready access to video programmer contact information so that the VPD can forward the complaint information to the correct video programmer when the VPD ascertains that the source of problem raised in a complaint originated with that programmer. If this information is not available to VPDs, and especially smaller VPDs, such entities may encounter challenges and delays in their efforts to resolve complaints. The filing of video

programmer contact information will eliminate such challenges by enabling VPDs to obtain current contact information from a centralized location.

63. Additionally, requiring video programmers to file their contact information with the Commission will help to expedite the resolution of complaints filed directly with the Commission. Because the complaint handling rules that the Commission adopts in this Order require the Commission to forward written complaints to both VPDs and their video programmers, the Commission needs access to video programmer contact information. The Commission also finds that the public availability of video programmers’ contact information will increase transparency, aid the complaint process, and thereby facilitate high-quality captioning. For example, the complaint handling rules adopted in document FCC 16–17 require each VPD to inform a consumer when it has forwarded his or her complaint to a video programmer for resolution. If the consumer wishes to contact the video programmer directly regarding his or her complaint after it has been forwarded by the VPD, the Commission’s Web site will provide the consumer with the necessary video programmer’s contact information to do so.

64. The Commission emphasizes that its actions taken herein are not intended to remove VPDs from the process of resolving consumer complaints. VPDs may be in the best position to take primary responsibility for complaint resolution given the more direct relationship they have with viewers and subscribers, the opportunity for consumers to utilize existing VPD processes for receiving, processing, and resolving closed captioning complaints, and the ability of VPDs to provide a single point of contact for consumers. The Commission’s new requirement for video programmers to file contact information with the Commission is intended primarily for use by VPDs and Commission staff for complaint resolution and enforcement purposes, and to facilitate transparency for the public when VPDs forward complaints to programmers for resolution. The Commission encourages consumers to continue filing complaints about captioning with the Commission or VPDs in the interest of achieving faster resolution of their captioning concerns.

65. Finally, the Commission does not think it is necessary, at this time, to require video programmers to make their contact information available on their Web sites or through other means in addition to filing this information in

the Commission’s database. The Commission finds that its requirement for video programmers to file contact information with the Commission is sufficient to serve its regulatory purposes of making such information available for use primarily by VPDs and Commission staff for complaint resolution and enforcement purposes, and to facilitate transparency for the public when VPDs forward complaints to programmers for resolution. If the Commission finds that its objectives are not effectively achieved by the publication of this information in the Commission’s database, it may revisit this decision.

66. *Nonsubstantive Rule Amendments.* More than 18 years have passed since the Commission adopted its regulations governing the closed captioning obligations. For purposes of clarity, the Commission makes two nonsubstantive editorial changes to the rules, which include eliminating certain outdated rule sections and updating the rule nomenclature. First, given that all benchmarks for the phase-in of the closed captioning requirements have passed, the Commission amends 47 CFR 79.1(b)(1) through (4) to eliminate these outdated benchmarks, so that only the fully phased-in captioning requirements remain in the rule. Second, the Commission amends 47 CFR 79.1(e)(9) to reflect the terminology used in this proceeding by making the nonsubstantive nomenclature change that VPDs “ensure the provision of closed captioning” rather than “provide closed captioning.”

#### **Final Regulatory Flexibility Analysis**

67. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Closed Captioning Quality Order and Further Notice* and the *Closed Captioning Quality Second Further Notice (Further Notices)*. The Commission sought written public comment on the proposals in the two *Further Notices*, including comment on the two IRFAs. No comments were received on the IRFAs incorporated in the two *Further Notices*. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

68. *Need for, and Objectives of, the Report and Order.* The purpose of the proceeding is to apportion the responsibilities of VPDs and video programmers with respect to the provision and quality of closed captions on television programming to ensure that people who are deaf and hard of hearing have full access to such

programming. The *Second Report and Order* follows the Commission's adoption in 2014 of captioning quality standards for programming shown on television and makes certain modifications to the closed captioning rules after consideration of the comments and reply comments received in response to the *Further Notices*.

69. In document FCC 16–17, the Commission amends its rules to assign responsibility for the *quality* of closed captioning to VPDs and video programmers, with each entity responsible for closed captioning issues that are primarily within its control. Additionally, the Commission maintains current rules that place primary responsibility for the *provision* of closed captioning on television programming on VPDs, but amends them to hold video programmers responsible for a lack of captions where they have failed to provide captions on non-exempt programs. Also, the Commission adopts rules to: (1) Require each video programmer to file with the Commission a certification that (a) the video programmer (i) is in compliance with the rules requiring the inclusion of closed captions, and (ii) either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (b) is exempt from the captioning obligations; if the latter certification is submitted, the video programmer must specify the specific exemptions claimed; (2) allow each VPD to satisfy its obligations regarding the provision of closed captioning by ensuring that each video programmer whose programming it carries has certified its compliance with the Commission's closed captioning rules; (3) revise the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model; (4) establish a compliance ladder for the Commission's television closed captioning requirements that provides VPDs and video programmers with opportunities to take corrective action prior to enforcement action by the Commission; (5) require that each VPD use the Commission's web form when providing contact information to the VPD registry; and (6) require each video programmer to register with the Commission its contact information for the receipt and handling of written closed captioning complaints, and to use the Commission's web form for this purpose.

70. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to the two IRFAs.

71. *Types of Small Entities Impacted:*

- Cable Television Distribution Services
- Direct Broadcast Satellite (DBS) Service
- Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service
- Open Video Services
- Television Broadcasting
- Incumbent Local Exchange Carriers (ILECs)
- Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers
- Electric Power Distribution Companies
- Cable and Other Subscription Programming
- Motion Picture and Video Production
- Closed Captioning Services—Teleproduction and Other Postproduction Services; and Court Reporting and Stenotype Services

72. *Description of Projected Reporting, Record Keeping and other Compliance Requirements.*

- Requires each video programmer to file with the Commission a certification that: (a) The video programmer is in compliance with the rules requiring the inclusion of closed captions, and either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (b) is exempt from the captioning obligations; if the latter certification is submitted, the video programmer must specify the specific exemptions claimed;

- Revises the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model;

- Establishes a compliance ladder for certain of the Commission's television closed captioning requirements that provides VPDs and video programmers with opportunities to take corrective action prior to enforcement action by the Commission;

- Requires that each VPD use the Commission's web form when providing contact information to the VPD registry; and

- Requires each video programmer to register with the Commission its contact information for the receipt and handling of written closed captioning complaints, and to use the Commission's web form for this purpose.

73. Although document FCC 16–17 modifies reporting and recordkeeping requirements with respect to video programmer certifications, it will impose no new or additional requirements in this regard because the new rules will require video

programmers to file certifications with the Commission rather than making them widely available as required under the current rules.

74. Document FCC 16–17 modifies the complaint process by adopting a burden-shifting compliance model, which is consistent with the newly adopted assignment of responsibilities to VPDs and video programmers. This model ensures that the party most able to remedy the captioning issue will have the responsibility to fix the problem. This will expedite complaint resolution and result in more effective results.

75. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The Commission believes that it has minimized the effect on small entities while making television programming more accessible to persons who are deaf and hard of hearing. The Commission does not establish different compliance or reporting requirements or timetables with respect to small entities because the importance of ensuring that video programming is accessible to people who are deaf and hard of hearing outweighs the small burdens associated with the new or different regulatory requirements adopted in document FCC 16–17. The Commission already has in place twelve categorical exemptions from its closed captioning requirements, including exemptions intended to benefit small entities, and any entity, including a small entity, may file a request for exemption based upon economic burden. In addition, the Commission's captioning rules generally use performance rather than design standards, and the Commission will publish a compliance guide to explain the new rules to small businesses.

76. The new rules assign responsibilities between VPDs and video programmers in a fair and equitable manner. Although assigning some direct responsibility for the provision and quality of closed captioning to video programmers imposes some new regulatory requirements on small entities that are video programmers, it will relieve burdens on small entities that are VPDs, because the Commission will be able to take direct compliance and enforcement action against video programmers rather than indirect action through VPDs.

77. The requirement for video programmers to file certifications with the Commission regarding compliance with the Commission's rules on the provisioning and quality of closed captioning imposes different reporting and recordkeeping obligations than currently required of video programmers, including small entities.

However, the new rules do not impose additional burdens, because video programmers are required under the existing rules to provide certifications to VPDs and to make such certifications widely available under the Commission's rules. The new rules may ease the burden on video programmers, because video programmers will know to go directly to the Commission's Web site to provide certification and will not need to determine how to make such certification widely available. In addition, the new rules will ease the burden on VPDs, including small entities, and consumers by having all certifications in one easy to find place.

78. The revised procedures for receiving, serving, and addressing closed captioning complaints in accordance with a burden-shifting compliance model imposes different procedural requirements on VPDs, including small entities, and new procedural requirements on video programmers, including small entities. Because the burden-shifting model calls for VPDs and video programmers to each be responsible for closed captioning issues that are within their respective control instead of placing all responsibility on VPDs, the model will ease the burden on VPDs, including small entities, who will be able to shift the burden to video programmers when, after investigation, the VPD determines that the cause of the captioning problem was within the control of the video programmer. This approach will also allow the Commission to more directly and more easily address consumer complaints, thereby benefitting consumers.

79. The establishment of a compliance ladder for the Commission's closed captioning quality requirements, a process that provides VPDs and video programmers, including small entities, with opportunities to take corrective action prior to enforcement action by the Commission for certain captioning violations, will ease the burden on VPDs and video programmers, including small entities, because use of the compliance ladder will be more informal and less time-consuming than a formal enforcement proceeding.

80. The requirement that all contact information submitted by VPDs to the Commission for the VPD registry must be submitted using the Commission's web form system does not subject VPDs, including small entities, to additional reporting and recordkeeping requirements, because VPDs are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their

reporting and recordkeeping associated with such submissions in order to comply with the rule. The Commission considers the cost for VPDs to transition to a mandatory web form method of filing to be minimal as compared with the ease and accuracy of filing and the benefits to the public derived from a mandatory web form system.

81. The requirement for video programmers to register and file contact information with the Commission imposes new reporting and recordkeeping obligations on video programmers, including small entities. However, the new requirement takes into consideration the impact on small entities. The filing of contact information is a simple task that should take no more than a few minutes. In addition, such requirements may benefit other entities, such as VPDs, including small entities, and consumers, who will be able to search the registration information for contact information.

82. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

#### Congressional Review Act

83. The Commission sent a copy of document FCC 16–17 in a report to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

Pursuant to the authority contained in sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301(r) and 613, document FCC 16–17 is ADOPTED and the Commission's rules are AMENDED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 16–17, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 79

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

## PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 554a, 613, 617.

■ 2. Amend § 79.1 as follows:

- a. Redesignate paragraph (a)(12) as paragraph (a)(13);
- b. Add a new paragraph (a)(12);
- c. Revise paragraphs (b), (c)(1), (e)(5), (e)(6), (e)(9), (g), and (i);
- d. Remove and reserve paragraph (j)(1);
- e. Revise paragraph (j)(3) introductory text;
- f. Remove paragraph (j)(4);
- g. Revise paragraph (k)(1)(iv);
- h. Add and reserve paragraph (l); and
- i. Add paragraph (m).

The additions and revisions read as follows:

#### § 79.1 Closed captioning of televised video programming.

(a) \* \* \*

(12) *Video programming owner.* Any person or entity that either:

(i) Licenses video programming to a video programming distributor or provider that is intended for distribution to residential households; or

(ii) Acts as the video programming distributor or provider and also possesses the right to license linear video programming to a video programming distributor or provider that is intended for distribution to residential households.

\* \* \* \* \*

(b) *Requirements for closed captioning of video programming—(1) Requirements for new programming.* (i) Video programming distributors must ensure that 100% of new, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned.

(ii) Video programmers must provide closed captioning for 100% of new, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter.

(2) *Requirements for pre-rule programming.* (i) Video programming distributors must ensure that 75% of pre-rule, nonexempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned.

(ii) Video programmers must provide closed captioning for 75% of pre-rule, nonexempt English language and Spanish video programming that is being distributed and exhibited on each channel during each calendar quarter.

(3) Video programming distributors shall continue to provide captioned video programming at substantially the same level as the average level of captioning that they provided during the first six (6) months of 1997 even if that amount of captioning exceeds the requirements otherwise set forth in this section.

(c) \* \* \*

(1) All video programming distributors shall deliver all programming received from the video programmer 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 this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.

\* \* \* \* \*

(e) \* \* \*

(5) Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except that video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards compliance with the requirements for pre-rule programming.

(6) For purposes of paragraph (d)(11) of this section, captioning expenses include direct expenditures for captioning as well as allowable costs specifically allocated by a video programmer through the price of the video programming to that video programming provider. To be an allowable allocated cost, a video programmer may not allocate more than 100 percent of the costs of captioning to individual video programming providers. A video programmer may allocate the captioning costs only once and may use any commercially reasonable allocation method.

\* \* \* \* \*

(9) Video programming distributors shall not be required to ensure the provision of closed captioning for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed pursuant to sections 614 and 615 of the Communications Act or pursuant to the compulsory copyright licensing provisions of sections 111 and 119 of the Copyright Act (Title 17 U.S.C. 111

and 119); programming involving candidates for public office covered by sections 315 and 312 of the Communications Act and associated policies; commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the Communications Act; video programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement pursuant to section 335(b)(3) of the Communications Act to the extent such video programming is exempt from the editorial control of the video programming provider; and video programming distributed by a common carrier or that is distributed on an open video system pursuant to section 653 of the Communications Act by an entity other than the open video system operator. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

\* \* \* \* \*

(g) *Complaint procedures*—(1) *Filing closed captioning complaints.*

Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days after the problem with captioning.

(2) *Complaints filed with the Commission.* A complaint filed with the Commission must be in writing, must state with specificity the alleged Commission rule violated, and must include:

(i) The consumer's name, postal address, and other contact information, if available, such as telephone number or email address, along with the consumer's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the consumer.

(ii) The channel number; channel name, network, or call sign; the name of the multichannel video program distributor, if applicable; the date and time when the captioning problem occurred; the name of the program with the captioning problem; and a detailed description of the captioning problem, including specific information about the frequency and type of problem.

(3) *Process for forwarding complaints.* The Commission will forward

complaints filed first with the Commission to the appropriate video programming distributor and video programmer. If the Commission cannot determine the appropriate video programmer, the Commission will forward the complaint to the video programming distributor and notify the video programming distributor of the Commission's inability to determine the appropriate video programmer. The video programming distributor must respond in writing to the Commission with the name and contact information for the appropriate video programmer within ten (10) days after the date of such notification. The Commission will then forward the complaint to the appropriate video programmer.

(4) *Video programming distributor and video programmer responsibilities with respect to complaints forwarded by the Commission.* (i) In response to a complaint, the video programming distributor must conduct an investigation to identify the source of the captioning problem and resolve all aspects of the captioning problem that are within its control. At a minimum, a video programming distributor must perform the following actions as part of its investigation:

(A) *Program stream check.* The video programming distributor must capture program streams, defined as digitally encoded elementary streams such as video, audio, closed captioning, timing, and other data necessary for a viewer to receive a complete television viewing experience, of the programming network identified in the complaint and check the program streams for any caption-related impairments;

(B) *Processing equipment check.* If the video programming distributor's investigation indicates a problem with the program stream, and there is not prior knowledge as to where the problem originated, the video programming distributor must check post-processing equipment at the relevant headend or other video distribution facility to see if the issue was introduced by the video programming distributor or was present in the program stream when received by the video programming distributor from the video programmer; and

(C) *Consumer premises check.* If the video programming distributor's investigation indicates that the problem may lie with the consumer's customer premises equipment, including the set-top box, the video programming distributor must check the end user equipment, either remotely or, if necessary, at the consumer's premises, to ensure there are no issues that might interfere with the pass through,

rendering, or display of closed captioning.

(ii) After conducting its investigation, the video programming distributor shall provide a response to the complaint in writing to the Commission, the appropriate video programmer, and the complainant within thirty (30) days after the date the Commission forwarded the complaint. The video programming distributor's response must:

(A) Acknowledge responsibility for the closed captioning problem and describe the steps taken to resolve the problem; or

(B) Certify that the video programming distributor has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(i) of this section and that the closed captioning problem is not within the video programming distributor's control and appears to have been present in the program stream when received by the video programming distributor; or

(C) Certify that the video programming distributor has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(i) of this section and that the closed captioning problem appears to have been caused by a third party DVR, television, or other third party device not within the video programming distributor's control.

(iii) If the video programming distributor provides a certification in accordance with paragraph (g)(4)(ii)(B) of this section, the video programmer to whom the complaint was referred must conduct an investigation to identify the source of the captioning problem and resolve all aspects of the captioning problem that are within its control.

(A) The video programmer may call upon the video programming distributor for assistance as needed, and the video programming distributor must provide assistance to the video programmer in resolving the complaint, as needed.

(B) After conducting its investigation, the video programmer must provide a response to the complaint in writing to the Commission, the appropriate video programming distributor, and the complainant within thirty (30) days after the date of the video programming distributor's certification. Such response either must describe the steps taken by the video programmer to correct the captioning problem or certify that the video programmer has conducted an investigation into the closed captioning problems in accordance with paragraph (g)(4)(iii) of this section and that the captioning problem was not within its control, for example, because the

program stream was not subject to the closed captioning problem at the time the program stream was handed off to the video programming distributor.

(C) If the video programmer certifies pursuant paragraph (g)(4)(iii)(B) of this section that the captioning problem was not within its control, and it has not been determined by either the video programmer or the video programming distributor that the problem was caused by a third party device or other causes that appear not to be within the control of either the video programming distributor or the video programmer, the video programming distributor and video programmer shall work together to determine the source of the captioning problem. Once the source of the captioning problem is determined, the video programming distributor and video programmer shall each correct those aspects of the captioning problem that are within its respective control. Within thirty (30) days after the date of the video programmer's certification provided pursuant to paragraph (g)(4)(iii)(B) of this section, the video programming distributor, after consulting with the video programmer, shall report in writing to the Commission and the complainant on the steps taken to correct the captioning problem.

(5) *Complaints filed with video programming distributors.* (i) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after the date of the complaint. The video programming distributor's response must either:

(A) Acknowledge responsibility for the closed captioning problem and describe to the complainant the steps taken to resolve the problem; or

(B) Inform the complainant that it has referred the complaint to the appropriate video programmer or other responsible entity and provide the name and contact information of the video programmer or other responsible entity and the unique complaint identification number assigned to the complaint pursuant to paragraph (g)(5)(ii)(B) of this section; or

(C) Inform the complainant that the closed captioning problem appears to have been caused by a third party DVR, television, or other third party device not within the video programming distributor's control.

(ii) If the video programming distributor determines that the issue raised in the complaint was not within the video programming distributor's control and was not caused by a third party device, the video programming

distributor must forward the complaint and the results of its investigation of the complaint to the appropriate video programmer or other responsible entity within thirty (30) days after the date of the complaint.

(A) The video programming distributor must either forward the complaint with the complainant's name, contact information and other identifying information redacted or provide the video programmer or other responsible entity with sufficient information contained in the complaint to achieve the complaint's investigation and resolution.

(B) The video programming distributor must assign a unique complaint identification number to the complaint and transmit that number to the video programmer with the complaint.

(iii) If a video programming distributor forwards a complaint to a video programmer or other responsible entity pursuant to paragraph (g)(5)(ii) of this section, the video programmer or other responsible entity must respond to the video programming distributor in writing in a form that can be forwarded to the complainant within thirty (30) days after the forwarding date of the complaint.

(A) The video programming distributor must forward the video programmer's or other responsible entity's response to the complainant within ten (10) days after the date of the response.

(B) If the video programmer or other responsible entity does not respond to the video programming distributor within thirty (30) days after the forwarding date of the complaint, the video programming distributor must inform the complainant of the video programmer's or other responsible entity's failure to respond within forty (40) days after the forwarding date of the complaint.

(iv) If a video programming distributor fails to respond to the complainant as required by paragraphs (g)(5)(i) of this section, or if the response received by the complainant does not satisfy the complainant, the complainant may file the complaint with the Commission within sixty (60) days after the time allotted for the video programming distributor to respond to the complainant. The Commission will forward such complaint to the video programming distributor and video programmer, and the video programming distributor and video programmer shall address such complaint as specified in paragraph (g)(4) of this section.

(v) If a video programmer or other responsible entity fails to respond to the video programming distributor as required by paragraph (g)(5)(iii) of this section, or if a video programming distributor fails to respond to the complainant as required by paragraph (g)(5)(iii)(A) or (B) of this section, or if the response from the video programmer or other responsible entity forwarded by the video programming distributor to the complainant does not satisfy the complainant, the complainant may file the complaint with the Commission within sixty (60) days after the time allotted for the video programming distributor to respond to the complainant pursuant to paragraph (g)(5)(iii)(A) or (B) of this section. The Commission will forward such complaints to the appropriate video programming distributor and video programmer, and the video programming distributor and video programmer shall handle such complaints as specified in paragraph (g)(4) of this section.

(6) *Provision of documents and records.* In response to a complaint, a video programming distributor or video programmer is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

(7) *Reliance on certifications.* Video programming distributors may rely on certifications from video programmers made in accordance with paragraph (m) of this section to demonstrate compliance with paragraphs (b)(1)(i) and (b)(2)(i) of this section. Video programming distributors shall not be held responsible for situations where a video programmer falsely certifies under paragraph (m) of this section unless the video programming distributor knows or should have known that the certification is false.

(8) *Commission review of complaints.* The Commission will review complaints filed with the Commission, including all supporting evidence, and determine whether a violation has occurred. The Commission will, as needed, request additional information from the video programming distributor or video programmer.

(9) *Compliance—(i) Initial response to a pattern or trend of noncompliance.* If the Commission notifies a video programming distributor or video programmer of a pattern or trend of possible noncompliance with the Commission's rules for the quality of closed captioning by the video programming distributor or video programmer, the video programming distributor or video programmer shall

respond to the Commission within thirty (30) days after the Commission's notice of such possible noncompliance, describing corrective measures taken, including those measures the video programming distributor or video programmer may have undertaken in response to informal complaints and inquiries from viewers.

(ii) *Corrective action plan.* If, after the date for a video programming distributor or video programmer to respond to a notification under paragraph (g)(8)(i) of this section, the Commission subsequently notifies the video programming distributor or video programmer that there is further evidence indicating a pattern or trend of noncompliance with the Commission's rules for quality of closed captioning, the video programming distributor or video programmer shall submit to the Commission, within thirty (30) days after the date of such subsequent notification, a written action plan describing specific measures it will take to bring the video programming distributor's or video programmer's closed captioning performance into compliance with the Commission's closed captioning quality rules. In addition, the video programming distributor or video programmer shall conduct spot checks of its closed captioning quality performance and report to the Commission on the results of such action plan and spot checks 180 days after the submission of such action plan.

(iii) *Continued evidence of a pattern or trend of noncompliance.* If, after the date for submission of a report on the results of an action plan and spot checks pursuant to paragraph (g)(8)(ii) of this section, the Commission finds continued evidence of a pattern or trend of noncompliance, additional enforcement actions may be taken, which may include admonishments, forfeitures, and other corrective actions.

(iv) *Enforcement action.* The Commission may take enforcement action, which may include admonishments, forfeitures, and other corrective actions, without providing a video programming distributor or video programmer the opportunity for an initial response to a pattern or trend of noncompliance or a corrective action plan, or both, under paragraphs (g)(8)(i) and (ii) of this section, for a systemic closed captioning quality problem or an intentional and deliberate violation of the Commission's rules for the quality of closed captioning.

\* \* \* \* \*

(i) *Contact information.* (1) *Receipt and handling of immediate concerns.*

Video programming distributors shall make publicly available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Video programming distributors must designate a telephone number, fax number (if the video programming distributor has a fax number), and email address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Video programming distributors shall keep this information current and update it to reflect any changes within ten (10) business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories. Video programming distributors shall ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a video programming distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the video programming distributor, the staff person receiving the inquiry shall refer the matter appropriately for resolution.

(2) *Complaints.* Video programming distributors shall make contact information publicly available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with



primary responsibility for captioning issues and who can ensure compliance with the Commission's rules. In addition, this contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor has a fax number), postal mailing address, and email address. Video programming distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Video programming distributors shall keep this information current and update it within ten (10) business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) *Providing contact information to the Commission.* Video programming distributors and video programmers shall file contact information with the Commission through a web form located on the Commission's Web site. Such contact information shall include the name of a person with primary responsibility for captioning issues and ensuring compliance with the Commission's rules. In addition, such contact information shall include the person's title or office, telephone number, fax number (if the video programming distributor or video programmer has a fax number), postal mailing address, and email address. Contact information shall be available to consumers on the Commission's Web site or by telephone inquiry to the Commission's Consumer Center. Video programming distributors and video programmers shall notify the Commission each time there is a change in any of this required information within ten (10) business days.

(j) \* \* \*

(1) [Reserved]

\* \* \* \* \*

(3) *Application of captioning quality standards.* Video Programmers shall ensure that captioning meet the standards of paragraph (j)(2) of this section for accuracy, synchronicity, completeness and placement, except for *de minimis* captioning errors. In determining whether a captioning error is *de minimis*, the Commission will consider the particular circumstances presented, including the type of failure, the reason for the failure, whether the failure was one-time or continuing, the degree to which the program was understandable despite the errors, and the time frame within which corrective action was taken to prevent such failures from recurring. When applying such standards to live and near-live

programming, the Commission will also take into account, on a case-by-case basis, the following factors:

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iv) *Certification procedures for video programmers.* Video programmers adopting Best Practices will certify to the Commission that they adhere to Best Practices for video programmers, in accordance with paragraph (m) of this section.

\* \* \* \* \*

(l) [Reserved]

(m) *Video programmer certification.*

(1) On or before July 1, 2017, or prior to the first time a video programmer that has not previously provided video programming shown on television provides video programming for television for the first time, whichever is later, and on or before July 1 of each year thereafter, each video programmer shall submit a certification to the Commission through a web form located on the Commission's Web site stating that:

(i) The video programmer provides closed captioning for its programs in compliance with the Commission's rules; and

(ii) The video programmers' programs either satisfy the caption quality standards of paragraph (j)(2) of this section; or in the ordinary course of business, the video programmer has adopted and follows the Best Practices set forth in paragraph (k)(1) of this section.

(2) If all of video programmer's programs are exempt from the closed captioning rules under one or more of the exemptions set forth in this section, in lieu of the certification required by paragraph (m)(1) of this section, the video programmer shall submit a certification to the Commission through a web form located on the Commission's Web site stating that all of its programs are exempt from the closed captioning rules and specify each category of exemption claimed by the video programmer.

(3) If some of a video programmer's programs are exempt from the closed captioning rules under one or more of the exemptions set forth in this section, as part of the certification required by paragraph (m)(1) of this section, the video programmer shall include a certification stating that some of its programs are exempt from the closed captioning rules and specify each category of exemption claimed by the video programmer.

(4) A television broadcast station licensed pursuant to part 73 of this

chapter or a low power television broadcast station licensed pursuant to part 74, subpart G, of this chapter, or the owner of either such station, is not required to provide a certification for video programming that is broadcast by the television broadcast station.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 160617540-6702-02]

RIN 0648-XE695

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the West Coast for the fishing season of July 1, 2016, through June 30, 2017. This rule is implemented according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2016-2017 HG for Pacific mackerel is 21,161 metric tons (mt). This is the total commercial fishing target level. NMFS is also implementing an annual catch target (ACT), of 20,161 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,161 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Effective September 22, 2016 through June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, [Joshua.Lindsay@noaa.gov](mailto:Joshua.Lindsay@noaa.gov).

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS