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## Closed Captioning Hits the Federal Register But effectiveness still in limbo

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Back in November the Commission released a Declaratory Ruling, Order and Notice of Proposed Rulemaking (DRONPRM) in which it (a) imposed a number of new obligations on TV licensees and other video programming distributors and (b) sought comment on how the revenue-based per channel exemption from closed captioning requirements should be applied to stations with multicast programming streams. But as we reported in the November, 2008, *Memo to Clients*, neither the effective date of the changes nor the deadlines for comments and reply comments would be set until the DRONPRM popped up in the Federal Register.

Lo and behold, more than two months later, the DRONPRM was published in the Federal Register, in two separate items, on January 13, 2009. (The rule changes which were adopted appear in one document, while the proposed rule changes, on which comment is sought, appear in another.) As a result, a couple of clocks are now running.

First, if you want to comment on the proposed rules, you have until **February 12**; reply comments will be due on **February 27**. In case the precise subject matter of the Commission's proposals may have slipped your mind over the holidays, here's a quick refresher. The Commission's rules (Section 79.1(d)(12), to be exact) provide that no video programming provider will have to lay out any coin to caption "any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year." But it's not clear how that exemption would or should be applied to multi-channel DTV broadcasters: should each digital stream be deemed a separate and independent "channel" for these purposes, or should the term "channel" be deemed to mean the entire 6 MHz chunk of spectrum used by the licensee?

Also, the Commission has questioned whether \$3,000,000 is an appropriate threshold – and even whether a single threshold, as opposed to some sliding scale, might be better suited. (Note that, notwithstanding the exemption, all video providers are required to pass through any captioning that has already been included by program producers supplying the video providers.)

Second, the “declaratory order” portion of the DRONPRM will be effective as of **February 12**. That portion was devoted to emphasizing that the shift from analog to digital would **NOT** alter the pre-existing captioning obligations. That is, there is no exemption for DTV programming just because it is digital.

Likewise, the transition to all-digital broadcasting, whether on February 18 or some later date, does *not* relieve stations of the obligation to continue to caption programming in a manner that can be decoded by analog TV sets. Finally, the transition does not open up the opportunity for stations to claim the self-implementing exemption for channels with less than \$3,000,000 in revenue or the new network exemption just because of a change from primarily analog to all-digital operation. In other words, captioning obligations are still in place, and don’t try to be too cute.

Third, the new contact information requirements and complaint process are still **not** yet in effect. Those items require review and approval by the Office of Management and Budget (OMB). The good news there is that, if you feel like filing comments with the FCC concerning the paperwork reduction aspects of the order – and particularly with regard to the contact information posting and notification requirements – you’ve got have until March 16, 2009, to do so. (The FCC will then presumably consider those comments in the preparation of the showing which it will have to make to OMB.)

In the meantime, the new FCC complaint process will **NOT** be in effect. That process calls for complaints to be filed with either the video programming distributor or the Commission, provides for a shorter turnaround time in responding to complaints, and requires stations and cable operators to provide assistance in forwarding misdirected complaints to the correct entity. Similarly, the new requirement that stations both provide and keep updated contact information for both complaints and inquiries of an urgent, primarily technical nature and those of a more general nature are also **NOT** yet in effect.

If and when the OMB approves the new requirements, stations and cable operators will have 30 days in which to submit their contact information to the Commission. They will also have to post the information on their website (if they have one), obtain entries in local telephone directories, and, for cable operators, include the information in their bills.