

Q: The FCC recently fined several San Diego television stations for failing to meet the closed captioning requirements. What was that all about?

The FCC requires all television stations that provide emergency information to do so in a format that is accessible to people who are deaf or hard of hearing. Information that is provided in the audio portion of emergency programming must also be provided visually. At a minimum, the visual presentation must include critical information about the ongoing emergency, such as “specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.”

In late February, the FCC imposed fines on three San Diego broadcasters that failed to adequately caption their emergency programming. In its decisions, the FCC focused on the stations’ failure to provide hearing and hearing disabled residents with equal access to this programming. The Commission specifically noted that the stations had not presented critical emergency information in both audio and video formats. The FCC further criticized the stations for transmitting visual information, if at all, only after a substantial delay of more than 30 minutes. Due to these violations, the FCC fined two of the stations \$20,000 each, and the third station \$25,000. Chairman Powell suggested that the Commission would continue to strictly enforce the underlying rules.

Accordingly, stations should be especially diligent in ensuring that they provide any emergency information in both audio and video format. In addition to closed captioning, the Commission confirmed that the use of open captioning, crawls, scrolls, maps, signs, and/or charts, may be appropriate. However, the Commission emphasized that regardless of the method of visual presentation used, stations must provide hearing and hearing disabled individuals with functionally equivalent access to the underlying emergency information. The Commission also directed stations to ensure that any closed captioning does not interfere with other visual devices, and vice versa.

Q: Apart from the emergency captioning requirements discussed above, what other obligations does my station have to caption its programming?

The FCC is continuing to phase in its closed captioning requirements for general, non-emergency, English-language programming. The Commission imposes separate requirements for “new programming” and “pre-rule programming.”

“New programming” includes analog programming first shown on or after January 1, 1998 and digital programming first shown after July 1, 2002. For the remainder of 2005, broadcasters must caption 1350 hours of new programming per quarter. Thereafter, broadcasters must caption 100% of their new programming.

“Pre-rule programming” includes analog programming first shown before January 1, 1998 and digital programming first shown before July 1, 2002. Broadcasters must caption 30% of their pre-rule programming per quarter until the end of 2007, at which point they must caption 75% of such programming per quarter.

Stations are also required to “pass through” programming that has already been captioned by the program’s supplier. Stations may not remove this captioning, unless they fully recaption the programming.

Q: Does my station have to caption Spanish-language programming?

Yes. However, the Commission is phasing in its Spanish-language closed captioning requirements over a longer period of time than its requirements for English-language programming. Spanish-language broadcasters must caption 900 hours of new programming per quarter until the end of 2006. At that point, this requirement increases to 1350 hours per quarter. As of January 1, 2010, all new Spanish-language programming must be captioned. In addition, Spanish-language broadcasters must caption 30% of all pre-rule programming per quarter until 2012, at which point this requirement increases to 75%.

Q: Are there any exceptions to these requirements?

Yes. The Commission has created several exceptions to the closed captioning requirements applicable to broadcasters, which include, but are not limited to, the following:

- Most programming aired between 2:00 A.M. and 6:00 A.M. local time;
- Programming that consists primarily of text (e.g. program schedule channels or community bulletin boards);
- Programming that consists primarily of non-vocal music (e.g. symphony performances);
- Locally-produced and distributed non-news programming with no repeat value (e.g. parades and high school sports games), unless an “Electronic News Room” script (i.e. TelePrompTer script) is available for such programming;
- Commercials shorter than five minutes in duration;
- Public service announcements and promotional announcements shorter than 10 minutes in duration;
- Programming in languages other than English or Spanish, unless an “Electronic News Room” script (i.e. TelePrompTer script) is available for such programming;
- Programming aired by broadcasters with annual gross revenues of under \$3 million (although such broadcasters must still “pass through” programs that have already been captioned);
- Programming which, if captioned, would cause the station’s total captioning expenses to exceed 2% of the station’s gross annual revenue.

In addition, broadcasters may petition the FCC for a waiver of the rules with respect to specific programming if captioning that programming would be unduly burdensome. Stations must demonstrate, with detailed documentation, that compliance would cause significant difficulty or expense. Although such waiver requests have been submitted by broadcasters and other video programmers, they have only rarely been granted by the Commission.