



Pillsbury  
Winthrop  
Shaw  
Pittman<sup>LLP</sup>

## Special Bulletin to TV Broadcasters

SB No. 05-19  
November 2, 2005

### *Reminder to Television Stations:*

## Starting January 1, 2006, 100% of New, Non-exempt English-Language Video Programming Must be Captioned

In 1998, the FCC established a requirement that all video programming providers, including broadcasters, cable operators, and satellite television distributors, increase the amount of programming provided in closed captioning in order to make the programming accessible to people with hearing disabilities. This requirement has been phased in over the last six years. Under the FCC's schedule, **starting January 1, 2006, English-language television stations – including low power stations – must provide captioning for 100% of the new, non-exempt programming aired on the station.** This is a critical benchmark in the closed captioning process, and will require that virtually all programming aired on the station that was produced since the Commission's adoption of the rules in 1998 be closed captioned.

Below are a few *Frequently Asked Questions* regarding the closed captioning rules to assist you in meeting this requirement.

#### **Q- Which Stations are Subject to this Rule?**

A- The January 1, 2006, 100% new programming benchmark applies to all broadcast television stations providing English-language programming, unless they have received a waiver of the rules from the Commission, or otherwise fall under one of the exemptions listed below. Programming produced solely for closed circuit TV or private distribution is not covered by these rules.

#### **Q- What About Stations Broadcasting in Spanish?**

A- The FCC's rules provide a different captioning schedule for Spanish-language stations. Currently, the rules require that Spanish-language stations caption at least 900 hours of new programming per quarter. Spanish-language stations will reach 100% captioning starting January 1, 2010.

**Special Bulletin to TV Broadcasters**  
**November 2, 2005**

**Q- What Constitutes “New” Programming?**

A- For *analog television*, “new” programming is video programming that was first published or exhibited **after January 1, 1998**, the effective date of the FCC’s captioning rules.

For *digital television*, “new” programming is video programming prepared or formatted for display on digital televisions **after July 1, 2002**, one year after the effective date of the DTV closed captioning standard.

**Q- What About “Pre-Rule” or “Old” Programming?**

A- Analog programming first shown before January 1, 1998, and digital programming first shown before July 1, 2002, is considered “Pre-Rule Programming.” Currently, both English and Spanish-language stations must caption at least 30% of their pre-rule programming per quarter.

**Q- Does this Closed Captioning Rule Apply to Digital Television Stations?**

A- Yes, the January 1, 2006 commencement of 100% captioning of new programming applies to both DTV stations and analog stations. As described above, however, the date for determining whether programming is considered “new” or “old” for captioning purposes is different for DTV than it is for analog television. According to the FCC, however, programs created and captioned for analog television can often be easily converted for digital delivery, including the captions.

**Q- When is Programming Exempt From the Captioning Rules?**

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

In addition, no video programming provider is required to spend money to caption video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year. Although the exemptions based on annual gross revenue speak in terms of revenue produced “per channel,” the FCC has not yet clarified how this rule applies in the context of multiple programming streams multicast by a single DTV station.

**Special Bulletin to TV Broadcasters**  
**November 2, 2005**

**Q- How is Compliance Calculated?**

A- Compliance is calculated on a per station, calendar quarter basis. Open captions or sub-titles in the language of the target audience may be used in lieu of closed captioning.

**Q- What Documentation Does a Station Have to Keep in Order to Prove its Compliance with the Captioning Rules?**

A- While the FCC's rules do not contain specific recordkeeping requirements, stations must maintain and, if necessary, provide to the FCC, sufficient records and documentation to demonstrate that they are in compliance with the rules in response to any complaint the station may receive. Such documentation may include certifications from networks and program suppliers, which stations may rely on in demonstrating their compliance with the rule.

**Q- Does the FCC Really Enforce its Closed Captioning Rules?**

A- Yes. Recently, the FCC has been particularly focused on the captioning of emergency information and the accessibility of video programming to all audience members. The FCC has issued several fines to television stations for failing to properly caption emergency information and has issued letters of inquiry to other stations, asking them to demonstrate their compliance with the closed captioning rules.

In addition, the FCC is currently conducting a Rule Making proceeding that addresses a number of issues, including ways to monitor video programming providers' compliance with the captioning rules, setting base fines for failing to properly caption, requiring periodic audits of providers' compliance, and streamlining the procedures for viewers to file captioning complaints with the FCC. Accordingly, broadcasters are urged to carefully review their station's level of closed captioning to ensure compliance with the 100% rule.

For more information on the closed captioning rules, please contact the attorneys in the Communications group at Pillsbury Winthrop Shaw Pittman LLP.

Pillsbury Winthrop Shaw Pittman LLP

**Editors:** Clifford M. Harrington, Esq.  
Scott R. Flick, Esq.

**Assistant Editor:** Brendan Holland, Esq.

**Special Bulletin to Television Broadcasters** is published by the Communications Practice Section of the law firm of Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW, Washington, DC 20037-1128, telephone 202.663.8000, facsimile 202.663.8007, website [www.pillsburylaw.com](http://www.pillsburylaw.com). The **Special Bulletin** is a service to the Section's clients and friends, and is intended to provide general information only. The contents should not be construed as legal or business advice. Legal and business advice should always be obtained for specific facts and circumstances as the need arises. For more information on any of the subjects discussed in the **Special Bulletin**, please contact the Editors. Copyright © 2005, Pillsbury Winthrop Shaw Pittman LLP. All rights reserved.