

**LILY BOND:** Welcome, everyone, and thank you for joining the webinar entitled "CVAA Legal Requirements for Video Programming." I'm Lily Bond from 3Play Media. And I'll be moderating today.

I'm lucky to be joined today by Maria Browne, who's an attorney at Davis Wright Tremaine, LLP, specializing in communications laws, as well as Tim Springer, the co-founder and CEO of SSB BART Group, which provides accessibility solutions. And with that, I'm going to hand it off to Maria.

**MARIA BROWNE:** OK, thank you. So today we're going to talk about the accessibility of video programming and emergency information, particularly-- oops, let me show my screen. Here we go. So you should be able to see the deck now. The FCC's requirements governing captioning of audio information and video description of visual information. We'll also touch on what we'll cover today-- closed captioning requirements for traditional television programming, including recently effective quality rules governing captioning.

We'll talk also about closed captioning requirements for internet protocol, which is delivered programming, required recently by the 2010 21st Century Communications and Video Accessibility Act, which I will refer to during the presentation as the CVAA. We'll then speak about the video description requirements, which were reinstated by the CVAA. They had previously been implemented by the FCC, but struck down when courts found that the FCC didn't previously have authority to adopt such requirements.

Those extend to traditional television programming currently. So we'll talk about that. And then finally, we'll talk about separate additional FCC rules governing accessibility of emergency information, both on television as well as online distribution.

Just a little bit of a warning-- some of the information that I'm going to talk about in terms of closed captioning requirements for television have been around for quite some time. I'm going to presume that you all have some familiarity with those requirements. And it's a bit of material to cover in 45 minutes, and I know we need Tim to talk to us, too, about some of the practical issues surrounding captioning and description.

And so I don't want to take up all of our time. So I might go through those slides a little more quickly. But rest assured, the information is in the slides, and it's fairly self-explanatory. So you should have that information, and certainly you can follow up with me if you have specific

questions.

So we'll start with closed captioning of traditional television. So the closed captioning rules today, which have been in effect now since the early '90s, currently require the vast majority of English and Spanish video programming content to be captioned. And that includes video on demand programming.

These rules apply to multichannel video programming distributors-- or MVPDs-- which include cable television operators, broadcasters, and satellite distributors. While the rules actually apply directly to distributors, it was contemplated at the time the rules were adopted, and the FCC expects today that the actual captioning will be done by the programming entities and that the responsibility will be assigned to them contractually by distributors so that affiliation agreements between the distributors and the programmers typically require the programmers to furnish the captions in a compatible format.

The issue of whether programmers themselves should be directly legally responsible, and whether that would be a more efficient mechanism for enforcement, is currently pending before the FCC in a rule-making proceeding. You can imagine that the arguments lined up, with distributors taking the position that, in fact, programmers themselves should be directly responsible since they're the entities that have control over the captioning process, while the programming entities had argued that the Commission actually doesn't have specific jurisdiction over them, and that, in fact, the current enforcement responsibility legal compliance mechanisms are working just fine.

The deaf and hearing impaired advocates who filed in that proceeding actually have argued for the status quo, which they think is working OK. And we'll get into a little bit more about how that responsibility is currently divvied up in a couple more slides. Well, actually, so distributors, part of the way that they are asked to enforce just the general captioning obligations is through something called a certification process.

What that means is that programmers will certify to the distributors that they are, in fact, captioning the required amount of programming. And to the extent that they do that, and distributors rely upon those certifications, the distributors have a defence in the event that, in fact, a sufficient amount of programming was not actually captioned. And for the captioning requirements governing traditional television, enforcement is complaint driven. The advocates and/or persons with disabilities themselves will file complaints at the FCC. And the FCC's

Disability Rights Office and/or Enforcement Bureau will then contact the distributor, again, who will then contact the programming networks if the programming networks are the entities that are not actually captioning the programming as required by the rules.

So this just goes back over. Today it's 100% of English and Spanish language new programming is required to be captioned, or analog programming. New programming is any programming that was exhibited since 1998. For digital programming, it's 2002 is the cut-off.

And 75% of what's called pre-rule programming today must be captioned. So there may be some instances of what we call archival programming that a particular distributor has been running for many, many, many years that is not required to be captioned. It's a very small amount, though, that would be eligible for that exemption.

There are other exemptions that are automatic, for now. And I say for now, because in the most recent rule-making proceeding, where the Commission did look at the responsibility and quality issues, the Commission indicated-- by the commission, I mean the Federal Communications Commission-- indicated that it would revisit some of these exemptions in the near future to determine whether, in fact, they were warranted any longer, given the advances in technology that the Commission believes have occurred since the exemptions were first adopted, again, back in the '90s.

So some of the channel-specific exemptions are if a particular channel generates revenue of less than \$3 million per year-- that's the channel itself-- that channel is actually exempt from the captioning requirement. If captioning costs exceed 2% of the channel's gross revenue, the channel does not have to caption any material above that 2% cut-off. New networks are exempt for the first four years of channel operation. That is one of the more commonly relied-upon exemptions.

There are also exemptions that apply specifically to program content, and are not limited to an entire channel, but rather apply to specific programming within a channel. Some of these, for example, are late-night programming, so programming that is aired between the hours of 2:00 AM to 6:00 AM. That's measured on local time. Now that doesn't do you much good if, in fact, that programming is simply recycled programming that occurs in an earlier part of the day, because it's likely already been captioned.

Interstitials, promotions, and Public Service Announcements that are 10 minutes or less in duration are also exempt from the captioning requirements, as are primarily textual and non-

vocal musical, and foreign language other than Spanish. But there's an exception to that. If that foreign language is scripted and the electronic newsroom technique of captioning, which essentially just converts the script into a caption, is available, then that exemption does not actually exist.

Finally, to the extent that a distributor does not have control over particular programming-- and the Commission has defined that control to mean that it's statutorily prohibited from exercising control-- and that occurs in the context of broadcast stations that are carried pursuant to must carry, commercial leased access programming networks that are carried pursuant to Section 612 of the Communications Act, and public and governmental access channels that are carried pursuant to Section 611 of the Communications Act.

Those are all deemed to be programming that is not subject to the control of the distributor and therefore, is exempt from the captioning requirement for that distributor. Broadcasters have their own obligation as distributors. They are considered to be both program content suppliers, as well as distributors, and have their own obligation to caption.

Typically leased access and public access channels fall within that \$3 million revenue exemption. So the \$3 million revenue exemption-- this is just some of the particulars of how that works and how that applies. It's calculated, as I said earlier, for each channel, separately calculated for network and non-network programming.

Multicast streams of broadcasters are considered to be individual channels. When a multi-channel package or tier-- if a particular channel is on that, you do not include the pro rata share of subscriber revenues for that MVPD, but you do include all the other revenue from the channel. So for example, advertising, ancillary revenue, or production-based revenues from third parties. And network and barter transactions must also be included. So if you think that you might fall within that \$3 million revenue exemption as a programming network channel, you can look at these particular requirements to determine if that is, in fact, the case.

New network exemption, as I indicated earlier, they are exempt for the first four years of operation. That's measured from launch. Again, this is something that's currently being considered to be possibly revisited by the FCC.

Rebranding of an existing network is not likely a new network. So for example, if you had fitness television and that became the Men's Network, that simple rebranding, if the program content stays the same, if the management stays the same, ownership stays the same, the

packaging, then that is not likely-- even though you've changed the name of that particular channel, and even if you've rebranded it somewhat-- the Commission has indicated that they will not view that as a new network.

There are other indicia that the Commission will look at. For example, is there continuous operation and revenue stream? That would weigh against it being a new network.

Is there new ownership and management? That would weigh in favor of it being a new network. Is there a substantial change in content or name-- again, in favor.

And has the channel position or assigned number changed? Again, that would weigh in favor of a new network being exempt. There's also an exemption for primarily textual information. That's fairly obvious, so that if a person with a hearing disability is able to glean the majority of the content by simply watching the primarily textual content of the channel, then that particular channel is also exempt.

Live traditional television programming. There is, as I indicated earlier, a technique called the electronic newsrooms technique which relies upon the script of the programming, and converts that script into the captions. It's a simpler process than actually doing the live captioning. This is available, but only for a limited number of networks. The broadcast networks are not to use it any longer-- well, there's actually specific criteria that were recently adopted for certain broadcast networks to use it in a limited basis. And then also non-broadcast networks, only if they serve less than 50% of households, can use this.

And again, it relies on the teleprompter and allows the teleprompter to be leveraged to create captions. And the broadcasters have promised, and they promised in the most recent rulemaking, to improve the use of the ENT. That was one of the areas where the hearing impaired and deaf population had identified a significant amount of quality issues and errors.

And so this particular use of ENT by broadcasters is currently in a pilot. And there's a special complaint process for those types of issues that must be followed, and that's, again, something that the commission is monitoring to determine whether it will continue to allow the use of the ENT or will require an expanded use of actual live captioning for all live television.

So recently effective, March 16 of 2015 of this year, there were new captioning quality standards adopted. This was from a rule-making that started in 2008. There was a petition for declaratory ruling that was filed by the National Association of the Deaf, asking the FCC to

impose quality requirements and impose specific benchmarks for meeting those quality obligations.

The petition lingered obviously for many, many years. But this particular administration decided to reinvigorate those issues and has adopted four standards that are designed to ensure quality captioning and to replicate the auditory experience of television programming. Those are accuracy, and that means that the captions must reflect the dialogue, including musical lyrics and other sounds and identify all speakers, all with proper grammar and punctuation.

Synchronicity is the second standard, meaning that video and audio content must match up. That was actually one of the primary complaints of the hearing impaired community, that often captions do not actually match up with the video.

Completeness, meaning that the captions must run from the very beginning of the program to the end of the program, and finally, placement, such that the captions may not block other visual content on the screen, such as faces, text, and graphics. The FCC declined to adopt quantitative metrics. Instead, application of all four standards is more flexible.

It does vary depending upon whether the programming is pre-recorded, near live, or live. If pre-recorded, and then the programming can have only de minimus errors. This is based on the presumption that prerecorded programming is easier to caption, because you've got additional time to do that.

Real time captioning is discouraged for prerecorded programming and may only be used if deemed necessary. Live and near live programming gets a little more leeway, given the limited opportunity to review or edit. So for example, programmers who provide captioners advanced materials in this instance, so that the programmers are supposed to meet these particular measures to limit the instances in which errors occur-- so providing captioners advance materials, using fadeouts, advanced delivery or audio to captioners under lingering captions to ensure completeness.

For near live programming, programmers are instructed by the FCC to give captioners scripts or near complete programs or live feeds and then edit and synchronize between the taping and the air time. And finally, edits should be made prior to airing. And if, in fact, a complaint is filed that challenges the quality of the captions, the fact that a particular programmer has done these things will actually help in a defense and limit the [INAUDIBLE], the amount of damage--

I'm sorry, fines or penalties that may be imposed.

So that actually gets me to something that's fairly important. So all of these requirements are the FCC rules that we're talking about. But these rules stem from Section 716 of the Communications Act, which is actually codified at 47 USC Section 613. 713 is the section of the Communications Act, but it's 47 USC 613.

And in that particular statute, you'll find the authority for the FCC and the instructions to the FCC to adopt regulations for closed captioning as well as video description and emergency information, make it all accessible. The statute expressly states that there can be no private rights of action under this statute, but that the FCC has the authority to impose penalties or forfeitures in the event of noncompliance.

So that is the enforcement mechanism, as well as specific performance. And what we've seen historically is that the Commission tends to or has tended to require specific enforcement, including requiring additional captioning beyond that which may be required under the rules, although that was more common back in the early days, when the rules were being phased in, and only a certain percentage of programming was required to be captioned at that time.

More recently, we've seen fines, but not in the context of ordinary captioning. We've seen them in the context of emergency captioning information, so that in connection with tornadoes, for example, where emergency information is conveyed over video in an oral format but is not captioned, the Commission has imposed forfeitures in the range of \$8,000 to \$16,000 per incidence in order to, I think, encourage the programming networks to ensure that emergency information is made available to everybody, including those who are hearing impaired and deaf.

So the new caption quality standards. By June 4, 2015, multichannel video programming distributors must use best efforts to get certifications from each programmer, that it either complies with the FCC's quality standards, adheres to best practices, or falls within an exemption. This goes back again to the fact that the television captioning requirements are not currently imposed directly on the programmers, but rather are imposed, even the quality obligations, directly on the distributors.

So the distributors then must contractually obligate the programming networks to caption, but can also require the certification process. And in fact, the rules state that they must get a

certification from the programmers. And to the extent that they do not get certification, they're obligated to actually report to the Commission that these particular programming networks are not making certifications what they call widely available.

Widely available has been defined by the FCC to mean on their websites or something else, but we don't quite know yet what something else is. But if a particular distributor is unable to locate a certification on the programming network's website or from some other widely available source by this date, then it must write directly to the programming network, let them know that they must make their certification widely available.

If in 30 days they do not get a response from the programming network, then they must tell the Commission. And that allegation is 40 days from the June 4 deadline. So this is, again, something very interesting.

The rulemaking that was looking at whether to assign responsibility directly to programmers would have done way with this particular certification tattling format, but it did not do so timely enough, so here we are, and this now has to happen. Best practices. So as I indicated previously, programmers can do one of three things. They can either state they're in compliance with the rules, they can state they adhere to best practices, or they can state they fall within an exemption.

So for example, a network may say, look, we're a new network. We fall within the four-year exemption. That could be their certification. Best practices include monitoring the programming, troubleshooting the programming, spot-checking, testing, and measures to improve quality through advance provision of information to captioners as I indicated previously, such as scripts, song lines, proper names, training, and customer outreach.

And so this is really just the procedure for reporting on certifying programmers. And I'm going to skip over that, because we are running out of time here already. So new captioning quality standards-- let's see. MVPDs also have increased obligations aside from monitoring the programmers and the quality of the captions and getting these certifications from the programmers.

They must also monitor their own equipment and report or keep records of the fact that they have looked at the equipment, tested the equipment, and ensured that the equipment is actually capable of passing through the captions. I know of one distributor, for example, that did receive a complaint about a lack of captioning on programming.



That distributor looked at its equipment, confirmed that it had tested its equipment. The equipment was passing through the captions properly. It was determined that the captioning problem actually resided with the programming network. And the programming network got certified, and therefore the distributor was off the hook. So these are the steps that you should take in the event that you want to make sure that your company is not held responsible for a captioning error.

The Commission also, fairly recently-- I guess it's over a year ago-- became effective. This enhanced functionality for applications and plugins and devices and equipment. And that means that these pieces, that these devices, applications, equipment must comply with specific requirements for presentation, character color, opacity, size, font, edge attributes and background color, basically the aesthetics of the captions.

And so today, anything that's been upgraded or manufactured since that January 1, 2014 date has to ensure that it is capable of displaying captions in this manner. And basically, if you build to the Society of Motion Pictures and Television Engineers timed text format standard, that will satisfy these obligations and that is considered to be a safe harbor.

So that was all regular television programming. Now, the Commission also, fairly recently, as a part of the CVAA, adopted rules governing IP delivered video captioning. So it basically requires the all full-length IP delivered programs that were previously delivered on television with captions in the United States to be transmitted online with captions.

This actually includes not only programming that was required to be captioned, but also programming that was voluntarily captioned. It does not extend to user-generated, so YouTube and/or pirated programming. IP delivered clips also now must be captioned.

When the original rules were adopted, the rules only extended to full-length programming. However, subsequently the Commission did extend the requirements to clips. And those are newly posted. Straight lift IP video clips must be captioned by January 1, 2016. Clips that are incorporated into montages or compilations have to be captioned by 2017. And to the extent that they're a time sensitive nature, live or near live programming clips, again, that's a July 1, 2017 deadline.

The clips captioning requirement does not extend to material that existed in the video programming distributors' online libraries prior to those dates. It also does not apply to clips

that are posted on third party websites or apps.

But note that the general requirement for full length programming does extend to all IP delivered programming, and if it was delivered on television, regardless if that particular distributor distributed on television, they basically need to know if it was ever distributed on television with captions previously. And then wherever it's redistributed using IP, it had to be captioned.

The commission did distinguish between over the top and traditional managed video services of cable companies to the extent that cable companies are relying on internet protocol as a delivery mechanism for their traditional managed cable service. That traditional managed cable service is still subject primarily to the television captioning rules as opposed to if they delivered it over the top to a third party app or device, then it's subject to the IP captioning rules.

So this is who is covered. The video programming distributor is covered. That's the entity that makes the programming available to the end user. In this instance, unlike in the context of television programming captioning, online programming, Congress actually expressly extended the rules to programmers also and program content owners.

And so Congress extended the obligations and the FCC implemented rules extending those obligations so that now, any entity producing or licensing programming to a video programming distributor is also responsible for ensuring that the material is captioned. And both, actually, have to agree upon a mechanism to certify that, in fact, the material is captioned so that the programmer has to deliver Program Files with captions to the program distributors. Distributors have to use good faith to ensure that the programs are captioned.

They also must render our pass-through captions to the end user. They must ensure required apps, plug-ins and software pass-through or render, and meet presentation spec. And by required, that means if you instruct your customer to use a particular application plug-in or software in order to receive the programming, that's deemed to be required then for viewing, and therefore that also must be capable of passing through the captions.

If a particular consumer downloads a third party application in order to do programming, video programming distributor, a provider doesn't have responsibility for that third party application. Both the video programming owner and the distributor must agree [INAUDIBLE] in the certification mechanism. It doesn't have to be a certification. But because the certification

process exists in the context of regular televised programming, it's likely going to be adopted in the context of IP programming as well as the mechanism for ensuring that there's communication about what programming has been transmitted previously with captions and is currently being provided with captions, or what programming is not being provided with captions and why it's not being provided with captioning. Online captioning is held to the same quality standards in terms of complete [INAUDIBLE] placement, accuracy, and timing that the television programming is.

So currently, all IP full-length programming other than archival programming, if it was aired on television previous with captions, must be captioned. There's a time lag for archival programming, and the basically 45-day window after a particular date that it's shown on television with captions, and those dates are listed here for you to look at.

So video description. So video description is the oral description or depiction of things that are going on visually on the screen. And as I've indicated earlier, after the '96 Act amendments to the Communications Act, the FCC had adopted rules requiring video description. Those rules were struck down as not within the FCC's authority under that particular legislation. That was changed by the CVAA, which amended, indicated Section 713 or 47 USC Section 613 to require the FCC to implement rules requiring video description.

These rules, unlike the captioning rules, extend to a far smaller group of regulated entities. They include the top market broadcast affiliates and five non-broadcast networks, the largest ones. And those are USA Network, TNT, TBS, Disney.

Today, it's Nickelodeon. But as of July 1, it will be History Channel. The FCC will look at the top five non-broadcast networks every three years. And so from July 1, 2013 to June 30, 2018, these are the five networks that have to comply with the video description requirements.

This is regular video description. It's not about emergency information. So it's regular content. In fact, it's actually the children's programming and primetime programming that is required to be included within the material that is actually captioned, and it's 50 hours per calendar quarter.

So broadcast network affiliates and MVPDs must also pass through video descriptions if they have a technical capability to do so. They do so using the secondary audio stream or channel. But they don't have to do if, in fact, they are using that channel for other purposes.

The primary other purpose that that channel is used for is Spanish language, so that if you have a program that's ordinarily transmitted in another language, probably English, that secondary audio channel is typically, or has historically been used to provide a second audio stream in the Spanish language. That is still the case, and it can't be used for video description. That is an exception to the requirement of passing through using the secondary audio channel

There's also a technical capability exception that is available. However, at this point, I think most stations or distributors wouldn't be wise to rely exclusively on that without getting some sort of advance waiver from the commission. In addition, there's currently not yet a requirement that IP delivered video include descriptions.

However, that is currently pending before the FCC in a rule-making proceeding. It was discussed in an FCC report to Congress recently as well. And the FCC did just release rules requiring that certain emergency information that is provided visually online also be described over on the online distribution.

And as I indicated earlier, there is a current rule making pending, and that is these issues are currently before the commission. Does an MVPD need its pass-through obligation when a permit subscribers is to access linear video programming via tablets, laptops, PCs, smartphones, or other similar devices? If it does, does the technical pass-through exception apply?

And should the FCC mandate a particular tag for video description stream? And finally, should the FCC mandate customer support for the secondary audio stream and for posting and filing of contact information to address those concerns? So these are issues that are actually currently pending at the FCC.

So finally, we'll get to emergency information. And again, this is an area where everyone should, I think, really pay attention. Understandably, the FCC treats emergency related issues with more heightened regulatory enforcement than other types of programming. And some of the biggest fines the FCC has ever imposed are in the context of emergency programming.

Then in the context of something other than this type of emergency, it's called the emergency alert system, which is the national and state warning system that broadcasters and cable systems have to build into their networks. That's, again, something that's issued. Those are emergency announcements that are issued by the government and passed through by the

distributors. Nevertheless, we've also issued some of their only forfeitures in the context of captioning and/or description, and then in the context of emergency related information. So more likely to get a complaint in enforcement by the FCC when emergency information is involved.

So video programmers must make television emergency information accessible to the deaf or hard of hearing in a visual format, and to the blind or vision impaired in an audible format. There are no exceptions or exemptions. So for example, in the context of captioning where those exemptions apply, those do not apply in the context of emergency information. And as I indicated, it's different than the Emergency Alert System.

So what is emergency information? Emergency information is defined to include the critical details about an emergency and how to respond to that emergency. It includes areas impacted by the emergency. Typically, it's your local area, but it can extend to areas where evacuation is to occur. It's evacuation orders and routes. It's approved shelters. It's how to secure property, road closures, and relief. It currently includes immediate weather, school closings, bus schedulings, power outages, and explosions.

However, broadcasters asked the FCC to reconsider the school closings and bus schedulings and to prioritize emergency information in order to reduce some of the backlog and obligation. And the commission yesterday, in an order granted that waiver, they granted a waiver while it considers whether to eliminate the requirement that school closing and bus closing be included in emergency information that must be made accessible. And so, again, that's currently pending before the commission.

So that requirement while that's being considered has been stayed by the commission. That was an order released yesterday. And primarily, again, it has to do with emergency information primarily in the area where the emergency is occurring, but it's not always limited to the local area, but it generally will be.

So for a visual depiction of oral information, what is required? So audio emergency information must be provided using closed captioning or other methods of visual presentation. That includes open captioning or on-screen calls, scrolls, graphics, or maps.

So not entirely the same as your general closed captioning obligation. There's a little more flexibility in this context, and that's primarily to address the fact that occasionally this emergency information will be provided on the fly, and with less lead time, and less opportunity

for scripts or teleprompters. And so to the extent that that's the case, there's a little more flexibility in how those particular details are made accessible.

However, the information still cannot block or be blocked by closed captioning to the extent that it's separate from the closed captioning. And the pass-through obligations apply. And again, if it can't get it through with closed captioning or even using electronic newsroom technique, then screen graphics, whiteboards will do, maps. Make it visually available.

And then visual information has to be aurally described. If it's a scheduled newscast, then it must be orally described in the main audio. If it is non-regularly-scheduled programming where there is a crawl or a scroll that comes across the programming, it must be accompanied currently by an aural tone.

And it was supposed to be yesterday, but in this order that was released yesterday, now companies have until November 30, 2015. And that was that was supposed to be May 26, 2015. But per an FCC waiver that was issued yesterday, providers now must aurally describe visual non-scheduled textual information-- basically, crawls-- using the secondary audio screen at least twice and preceded by an aural tone.

So when November 30 hits, any crawls or scrolls that have the emergency details will have to have a tone. And then the secondary audio programming channel will need to aurally state what's on that crawl or scroll and do so twice. And then as of November 2016, providers must ensure that non-textual visual information on non-scheduled programming. So not a scheduled newscast, but if you have a break-in to an ordinary programming, you've got charts or maps as part of that break-in, that information, in a year and a half, will also be described in the secondary audio channel.

The distributors also got a couple of waivers yesterday. While distributors typically must pass through to consumers any emergency information that is contained in the secondary audio stream, a waiver was issued yesterday for hybrid analog, digital systems that do not have the equipment to enable pass through of the analog material. And in lieu of passing through that information to subscribers through the analog process, the distributors may instead provide a notice to and offer free digital set-top boxes to their blind or sight-impaired customers. And they may verify that those customers are in fact blind or sight-impaired or otherwise disabled. But the particular customer has a lot of flexibility in terms of the documentation that it can be required to provide.

And there was also a waiver issued for analog-only systems that don't have the equipment. And that waiver is good through June 12, 2018, provided, again, that there is notice provided to the customers and the FCC has actually specifically prescribed the content of that notice in the waiver. So fewer and fewer analog-only systems, that to the extent that the systems are out there, they must comply in that manner.

So recently the commission adopted rules but has not released the text of these rules for the description of emergency information online. These rules will require visually displayed emergency information to be available aurally on second screens such as tablets, laptops, or smartphones when that linear programming from an MVPD is viewed via that MVPD's network via an app. So Cablevision provides programming over its system to consumers who are viewing that programming on a tablet. That programming will need to include visually displayed emergency information in two years' time.

The actual news release which was published and then the commissioner statements which were published did not state what the date would be. They didn't state it in the meeting adopting the rule making. We haven't seen the text yet. But Commissioner Clyburn, one of the five FCC commissioners, indicated that it would be a two-year time frame. And manufacturers of covered devices such as set-top boxes must also provide a mechanism comparable to a button for accessing the secondary audio stream.

And then, finally, in addition to that, there was this FNPRM-- a Further Notice of Proposed Rulemaking-- which I indicated earlier, discussing whether school closing and bus schedules in crawls must be described, as well as whether there should be a priority for emergency information that is described. And that is the end of my presentation. I'll turn it over to Tim.

**TIM SPRINGER:** Thanks, Maria. So what we'll do is we'll just go ahead and quickly go through just a bit of an overview on the actual technical side of this. Hopefully, you will be able to actually see my slides right now. Then what we'll do is just walk you through some quick technical information on captioning and audio. So I regulatory activities, and now ideally take a step back and talk a little bit about what actually is happening technically.

I'm trying to advance my slides. There we go.

So just to take a step back, really, what are we talking about when we talk about closed caption? Ultimately, we're just showing a way to display text on screen with video. Closed

captions from a regulatory definition perspective, it's a visual display of an audio portion of video programming, pursuant to the technical specifications set forth in this part, but basically the visual display of the audio portion of video programming.

You'll hear the term closed captions. That's different from open captions. Maria touched on open captions when she was talking about emergency information.

The reason they're called closed captions is because they're closed when you first look at it. Then the user can control them and open them up. Open captions are actually a part of the video itself. So they're burned directly into the video, and you can't actually control them.

And most of the time we see closed captions used to just provide a transcription of the video that's there and provide that either in the form of television bundled into it or in the form of internet video generally in a separate sort of discrete synchronized data format. And the idea is that the user can really control the way the captions appear. So we have a default appearance for the caption. But if the user wants to change the font size or the presentation or the opacity or the appearance, they have, then, the ability to do that. Because captions are formatted in such a fashion that the user has control over it.

You may occasionally hear the term subtitles used interchangeably with captions. Subtitles are really different. Subtitles assume an auditory context. Captions don't. And really more and more we've seen an evolution towards a separation of those two terms and having those two terms be independent.

And as we mentioned, there's this idea of quality associated with captions. And that's really a rapidly evolving space. The FCC just put out the regulations on that addressing accuracy, timing, completeness, placement. There's this idea of synchronicity that Maria was touching on earlier as well. That's big. And that's sort of the formalization of what we would call style guidance associated with captions. So there's this idea not just that we're providing content on the captions but that we're certainly not providing a direct literal translation of audio, but also providing some information about the captions like the speaker, context for the speaker.

It's worth noting that in the context of the CVAA, we're really just concerned about video access for individuals that are deaf or hard of hearing. But in general, when we look at captions, we really view the business impact much more broadly. And we view the accessibility impact that captions have on content much more broadly as well. And that can include support for individuals that are learning to read, individuals that are learning a second language.



So as an example, in English, if you're in ESL, a non-native language speaker, a non-native English speaker, it can be very helpful to provide captions. There's actually a lot of data to say that that's actually the largest use of captions that are out there. You see it in access in public environments, in loud environments, at the gym and I want to be able to see something. We also see it positively impacting search engine support, search engine indexing. So lots of reasons to use captions outside of just having to conform to the law.

With that said, there are a couple very specific main technical specifications to be aware of. And the concept that's associated with these is really this concept of a safe harbor in the context of internet video. Maria touched on this before.

But basically, the initial closed caption specification is CEA-608. And this goes way, way back. And it basically was how do we provide closed captions in analog over-the-air broadcast television.

That specification was then superseded by a more recent specification called CEA-708, which defined how do we do this in the context of digital television. So when we have digital television streams, how do we embed captioning content into those digital television streams so that we can then decode the captions. And [INAUDIBLE] a much more comprehensive captioning standard. That's kind of the current standard referenced in most of the rule-making you see as well, CEA-708. And that includes some enhancements in terms of how you can present captions and control you can have about where they go on the screen.

You will also see very specifically in the context of internet video distribution reference to SMPTE-TT. And as I mentioned before, that's the Society of Motion Picture and Television Engineers Timed Text Format. And the standard for that is Standard 2052, which was published back in 2010.

And the idea of this is just an XML caption format. It builds off a standardization protocol from the W3C called Timed Text Markup Language-- TTML. And it basically extends that specification to be specific to the ability to distribute captions.

The reason that this is interesting is that this particular standard is a safe harbor format that's explicitly named in the FCC regulations that relate to video programming, owner obligations, and then video program distributor obligations, as well. And it also will be machine translatable from CEA-608 and CEA-708 captions. So the idea is if you have your captions in these earlier

formats inside a video stream, CEA-608 or 708, you can automatically translate them into this SMPTE format as well.

And there's a way to very explicitly do that. As we mentioned before, there's this idea of sort of safe harbor associated with those standards. And then the manner in which you translate from earlier captioning standards into the SMPTE is governed by this recommended practice, which is also published by the Society of Motion Picture and Television Engineers, which basically says how do we build SMPTE-TT files from pre-existing caption files, CEA-608 or 708.

Do be aware that this concept of safe harbor does apply. So from a regulatory perspective, at least, the regulations say, hey, if you're a video programming owner and you deliver captions in this SMPTE format, you're good. If you're a video program distributor and you provide an application or a plugin or a device, if you're actually rendering the video and that application or plugin or device renders the video in accordance with that specification, then you're protected.

We do, however, see a lot of alternative formats between video program owners, video program distributors. That is very much allowed under the regulations. The regulations established SMPTE as a safe harbor but do not explicitly require it. You can use different formats. The only thing we'd want you to note there is when you use a different standard, if your captions are ultimately noncompliant, then the FCC is going to look at both parties in terms of looking at some responsibility there.

So the SMPTE ST format-- kind of a full-weight format. Excuse me, the SMPTE-TT format, full-weight format. We also see a lot of lighter weight formats, essentially, online. And you may also see these based on the content delivery network you're working with or the actual player that you're working with. A real common one is SCC files. These are Scenarist Closed Caption files.

And essentially what they do is they just directly translate CEA-608 captions into a very, very basic file format. They're actually defined as the preferred format for YouTube. And they have a mix of numeric caption timestamps and then binary data associated with that. You may also hear of some formats called "SubRip" or "SubViewer" formats, and these are basic, plain-text, formatted captions for videos. Also, there's a WEBVTT format as well.

There are really tons and tons of formats out there. So lots of formats. And ultimately, the more advanced formats will give you more control over caption appearance.

But by and large, to overly simplify the situation, machine translation between the formats tends to be pretty practical. It tends to be pretty doable. So if you have captions in one format, you need to get them to another format. Most of the time, you can translate between those formats using a computer program.

One final note I'd give you on captions is be aware a little bit of automatic captioning. A lot of people like the idea of, I can do this automatically. I take my video. I upload it to an online service. It automatically runs captions on it and gives me those captions back.

We really see the best practice as using automatic captioning as a base but then doing human review on top of it, doing human quality checking, making sure that the captions are accurate. We see best of the breed organizations doing that.

In our consulting experience, we've also seen some negative implications of that. You can get inaccurate content. You can get content that can be offensive. And so there's pretty significant brand risks associated with not doing some degree of human review on that.

So just a note as you're making these, you can use some automatic tools, but use them sparingly. We'll give you in the reference slide that Lily will stick at the end some examples as well which are kind of fun. So if you want to go check them out more, please do that.

The other thing I'll touch on real quick is audio description and then turn it over to Lily for some questions. We did talk about audio descriptions. Particularly it's required in the context of emergency information. There is some more flexibility associated with how you do that.

But audio descriptions are basically just a secondary audio track that describes visual information. And essentially what happens is, between natural pauses in the dialogue or audio of a video, you'll hear sort of an overlay audio description that will talk about what's actually happening.

And so in the video example we provide here, you see a man walking out the door. The audio description says, a man walking out his front door wearing a brown sweater. And Maria once described this to me as the golf announcer voice. I thought that was a really great example because it kind of tied it together. It's this quiet voice that interstitially says things.

There is not currently a good standardized way to do audio description online. We want to provide audio-described videos current best practices providing alternative videos, so providing a primary video that doesn't have audio description, providing a secondary video

that has audio description burned into it. And so we also provide some examples of that if you want to go check it out.

So with that, I'll go ahead and turn things back over to Lily.

**LILY BOND:** Great. Thank you, Tim.

So we are ready for Q&A. I apologize that we are probably going to go over, but we will include the Q&A section in the recording, which we will send out tomorrow. So if you have to leave, don't worry. You can still access it later.

While we're going through Q&A, please feel free to continue to type your questions into the control panel. And there are several resources on the screen for closed captioning of broadcast content and CVAA compliance as well as the links to the examples that Tim mentioned. I also chatted those links to you since you can't actually click the links on the screen.

So to begin with Q&A, Maria, there's a question for you. "What is the real-world enforcement risk?"

**MARIA BROWNE:** So you know, again, I think I mentioned earlier that there are no private rights of action under the FCC rules or video captioning or description. The FCC is more likely to be concerned and issue penalties or forfeitures in the context of emergency information. It has done so against local broadcasters that failed to transmit information during some of the tornadoes and hurricanes.

So to the extent that you have unlimited resources that would focus resources on conveying emergency information, the commission is getting complaints. It is actually contacting distributors about those complaints. They do encourage the parties to resolve the issues. And they do consider circumstances and also the fact that, again, a particular distributor may have relied upon representations made by a particular programming supplier.

So I think we will see more and more as we move forward. But right now, we haven't seen as much in the way of forfeitures outside of the emergency context. But that's not to say that's not coming down the pike.

**LILY BOND:** Great. Thank you. So another question. "What is the regulation regarding programming for IP

only that did not appear on television?"

**MARIA BROWNE:** Well, there is no regulation at the FCC if it does not appear on television. However, the Department of Justice has taken the position that programming offered online by, for example, Netflix, is a public accommodation under the Americans with Disabilities Act. Title III of the Americans with Disabilities Act extends to places of public accommodation. There are actually 12 examples listed. Those don't actually specifically mention online at all, but they do mention things like grocery stores, entertainment, accounting, and services.

The Department of Justice has interpreted that to mean that it can enforce the accessibility requirements on those types of businesses, not only their physical structures but also their online presence. So it actually filed an amicus brief in the First Circuit at the district court level in Massachusetts where Netflix was sued by the National Association of the Deaf and took the position that Netflix was obligated to make its programming accessible under the ADA as a place of accommodation. That position has not been upheld by all of the courts. There's actually courts in different jurisdictions that have interpreted the place of public accommodation to be-- to require a physical structure or a nexus to a physical structure.

It's possible that that issue will ultimately be certified to the Supreme Court if we get another circuit court that addresses the issue. But in the meantime, the Department of Justice has also got a rule-making underway that would extend its obligations, its rules expressly to cover websites and services and offered over those websites.

So anyway, that's really it in a nutshell. There's some overlap between what the Department of Justice thinks it has jurisdiction over under the ADA and the CVAA where the FCC clearly has jurisdiction but has defined the body of work that has to be captioned online more narrowly than what the Department of Justice has defined it as.

**LILY BOND:** Great. Thank you.

So someone else is asking, in terms of why the near-live captioning, they've come up with kind of the competing challenges of ensuring the FCC's quality rules of the accuracy, synchronicity, program complete, and placement, and is just wondering, in your experience, which is the most important to be most compliant with, or if you have any direction on that.

**MARIA BROWNE:** Completely my opinion, we don't have direct experience yet from the FCC. But based on the

comments that were filed in the rule-making proceedings, I think that you should consider the more uniform obligation, things that are not as easily explained by human error of a captioner. Right?

So if you have a spelling error here and there because a particular captioner can't keep up with the dialogue quickly enough, I think that's more explainable than if you have an institutional problem of keeping your captions lined up with the actual visual depiction, or if you were consistently placing your captions in a way that they can't be viewed.

I mean, those are more institutional problems that I think that you would be less able to defend as a one-off or as human error. So if I was to prioritize, I would try to address the issues, and also that get more bang for your buck, too. Because you'll be fixing a problem that's systemic and that will, hopefully, if it's fixed, be resolved for the future as opposed to something that's less within your control, which would be the specific accuracy of a particular captioning server.

Again, though, I think, to the extent that we use the best effort, or meet the best efforts requirement, I think that's really another way to go, to ensure that you're complying with the FCC's requirements for best efforts, that that's also a defense.

**LILY BOND:** Great. Thank you. Another question about the quality standards. Since the FCC order was made, obviously, it was only implemented recently. But have you noticed any improvements and/or how do you think the FCC will measure those improvements and the compliance?

**MARIA BROWNE:** I personally have not viewed the captions, so I can't say personally whether I've seen improvements. I can say that I've viewed comments that I've seen on chats and online. The FCC has a place where you can blog about your experience with captions, for example. And from what I've seen, folks have said there's been some improvement but that it's still a work in progress.

**LILY BOND:** Makes sense. So I think we have time for one more question. It's a fitting one. Maria, what should we be looking out for in terms of new legal development?

**MARIA BROWNE:** Right. So there are several things that are still being considered by the Commission. I mentioned several of them during the presentation. One of those is whether the Commission will reduce the use of electronic newsroom technique depending on this pilot program that it has currently open for broadcasters and best practices.

The other is whether the Commission will actually shift legal responsibility away from the MVPDs exclusively for captioning, of television programming, and place certain liability directly on programmers, as it has in the IP context. It's considering whether to eliminate certain exemptions. It's also considering whether to extend the IP captioning of clips requirements beyond the particular website of that particular distributor to third-party apps.

And I think also, most importantly, I would say keeping track of what the Department of Justice is doing and what the courts are doing in the context of the Americans with Disabilities Act because that could moot a lot of the nuances that we find in the FCC rules if that more blunt tool is used to require accessibility in every electronic transmission generally, basically.

**LILY BOND:**

Thank you, Maria. Well, I think that's all that we have time for. Maria and Tim, thank you so much for an incredibly informative presentation. It was very appreciated by everyone. And thank you, everyone, so much for joining us. And I hope you have a great day.