

LILY BOND: Welcome, everyone. And thank you for joining this webinar entitled "The FCC's 2016 Order on Closed Captioning Responsibility Explained by the FCC." I'm Lily Bond from 3Play Media, and I'll be moderating today. I'm proud to be joined by Eliot Greenwald, who is the deputy chief of the Disability Rights Office at the FCC.

We have about an hour slotted for this webinar, and we'll leave ample time for Q&A at the end. And with that, I am going to hand it off to Eliot, who has a great presentation prepared for you today.

ELIOT GREENWALD: OK, thank you, Lily. And I want to thank 3Play Media for hosting this webinar. So while Lily puts my slide deck up, just want to let everybody know that for about the first half-hour, I will be going through the slide deck explaining the slides. Then there'll be a half-hour for Q&A afterwards, which Lily will be moderating.

To those of you who might have attended the Federal Communications Bar Association CLE back in December, the first 10, 15 minutes of the slide deck will be familiar to you. And then after that, I'll be getting into new material.

So by way of background, in 1997 and 1998, when the FCC adopted its orders on closed captioning, the original adoption of the closed captioning rules, the FCC noted its expectation that video programming providers will establish caption quality controls through their arrangements, contracts, and licensing agreements with the captioning companies.

The FCC expected captioning quality mandates will not be necessary, because providers will have their own strong incentives to maintain the overall quality of captions as an integral part of programming, commensurate with the quality of other video and audio program components.

The FCC expected consumers can demonstrate disapproval of a program's captions through their purchase of advertised products, subscriptions to programming services, or contracts with video programming providers or programmers.

The FCC also promised to revisit the need to adopt quality standards if its assumptions about marketplace incentives for quality captioning were incorrect, and problems relating to closed captioning quality should surface.

Then, as it turned out, the marketplace was not effective in ensuring caption quality. So in July of 2004, a coalition of consumer groups led by the Telecommunications for the Deaf and Hard of Hearing, Inc., and other deaf and hard of hearing advocacy groups petitioned the FCC for rules on captioning quality.

They sought several things-- requirements on accuracy, timing, completeness, and placement to make video programming fully accessible; mechanisms to ensure video programming providers-- those VPDs-- to pass through captions intact; extension of prohibitions on using Electronic Newsroom Technique, known as ENT, to all TV markets-- I will get into what ENT is in a later slide-- and revision of the complaint processes for closed captioning.

So this slide presents a timeline of what happened between 2004 and 2014. In 2005, the FCC sought comment on the consumer captioning quality petition. In 2007, the FCC's Consumer Advisory Committee submitted report to the FCC detailing captioning problems resulting from the digital TV transition. And these problems included things like overlapping, obscured, and garbled captions, and a number of other problems.

In 2008, the FCC issued an order and declaratory ruling that first amended the captioning complaint process to allow complaints to be filed either directly with the FCC and specify the deadline for their resolution. Prior to that, consumers had to file complaints with their video programming distributor-- in other words, the broadcaster or the cable or satellite company. And then only if they were then dissatisfied could they then go to the FCC.

The rules since 2008 have allowed the consumers to choose to go to either directly to their distributor or to the FCC. And if they went to the distributor first, then they could then go to the FCC if they still were not satisfied.

It required video programming distributors to provide contact information for the receipt and handling of immediate closed captioning concerns and written captioning complaints. And the FCC has created a database for the receipt of this contact data. It's called the Video Distributor Registry, or the VPD registry. And at the end of the program, I'll give you the FCC web address. And then you can use that to get to that registry, if you'd like to.

It also clarified that there is no digital exemption to the obligation to caption TV programming. So the original captioning rules were adopted in, as I mentioned before, 1997 and 1998. The digital TV transition occurred in the intervening years. And in this 2008 order, they basically

clarified that the same rules apply to digital programming, which is what everybody watches today. And then in February 2014, the FCC adopted the Closed Captioning Quality Order.

So in the Closed Caption Quality Order, the FCC noted they had received over 1,600 comments in which consumers reported widespread problems with quality of closed captions, including inaccurate, gibberish, garbled, butchered, incomplete, misspelled, incomprehensible, obscure the speaker, and significant lags behind spoken words.

In addition to the comments received in the proceeding itself, the FCC had been receiving since 2008 approximately 465 captioning complaints per year. The FCC concluded that its original assumptions regarding the marketplace incentives for quality captioning had not been borne out.

The FCC found that some providers provide high-quality captioning, but this is not consistent throughout the industry and that the inaccuracies that occur are often severe enough to affect the comprehensibility of a program. The FCC therefore concluded that quality standards are necessary to achieve the section 713 of the Communications Act requirement for video programming to be fully accessible to consumers.

As in the 1990s, the FCC recognized that captions must provide information substantially equivalent to the audio portion of the video program in order to be useful, ensure accessibility, and not interfere with the viewability of the video portion of the program.

The FCC noted that the need for captioning quality standards is even greater given the 21st Century Communications and Video Accessibility Act of 2010, which mandates captioning for programs that are delivered over the internet-- television programs that are later delivered over the internet-- and requires that the quality on the internet be at least as good as the quality as shown on TV.

So in the order, the FCC adopted four components to quality-- accuracy, synchronicity, program completeness, and placement. Accuracy means that captions must reflect the dialogue and other sounds and music in the audio track to the fullest extent possible. Based on the type of programming, it must identify the speakers.

Synchronicity means the captions must be synchronous with their corresponding dialogue and other sounds to the fullest extent possible based on the type of the programming, and must appear at a speed that can be read by viewers.

Program completeness means that captions must run from the beginning to the end of the program to the fullest extent possible, based on the type of the programming. And placement means that captions may not cover up other important on-screen information, such as character faces, featured text, graphics, or other information essential to the understanding or accessing of a program's content, and other information may not cover up captions.

So for the types of programming, there are really three types that the FCC considered in the order. Prerecorded programming is programming that's already prepared in advance, recorded, and then shown on TV, which is probably the majority of programming that you see on TV-- the sitcoms, documentaries, melodramas, and other programs.

And for prerecorded programming, the FCC expects compliance with the four components. And as an alternative-- the four components I've just addressed-- as an alternative, the FCC allows the following industry best practices, which were adopted by the FCC. And that will be discussed in the next slide.

Live programming is programming that is shown on TV as camera and sound are recording it. It's being shown simultaneously. This would be things like sports events, news programs, *Saturday Night Live* by definition, and other events-- candidate debates and other specialty events that are shown on TV.

Now, in considering the quality of live programming, the FCC will consider the challenges associated with captioning live programming because, in particular, the lack of an opportunity to review the captions before the program is shown. Because what you'll have is you'll have somebody preparing the live captions as the program is happening.

But the FCC expects captioning to be sufficiently accurate, synchronous, complete, and appropriately placed to allow a viewer who depends on captioning to understand the program and have a viewing experience as comparable to someone listening to the soundtrack.

Now, near-live programming is programming that is performed and recorded within 24 hours prior to when it is first aired on television. A typical near-live program would be a late-night talk show, which is usually recorded several hours in advance, or other talk shows you see on TV that are recorded a little bit in advance.

And so these types of programs will be evaluated under the same standards applied to live programming, although the Commission encourage measures that can be taken prior to the

programs airing to improve its caption quality. So for example, the delivery of material in advance to the captioner is a very key practice that could improve the quality.

Now, the FCC adopted, based on a number of industry recommendations, a series of best practices. And these would be included in agreements with captioning vendors that include performance requirements for high-quality captions. And those were all found in Section 79.1(k) of the FCC's rules. There's a whole lengthy list of them. I'm going to give just a few examples here.

These include requirements for error-free captions that are punctuate correctly, placed properly, and synchronized with the audio; performance evaluations of captioners; screening, training, and supervision of captioners; ensuring technical system functionalities-- for example, properly working phone lines and IP connections to the captioners-- and video programmers providing preparatory materials to the captioners, such as names of people and places to the real-time captioners.

So for example, with a sports program, providing the team rosters to the captioners ahead of time will allow the captioners to put in their dictionaries the spellings of all of the players. Or for a TV news program, the station can provide to the captioners the anticipated names and places that will be mentioned during the news broadcast.

So Electronic Newsroom Technique is a process that converts the teleprompter script into captions, and that can be used for live programming under certain circumstances. And the FCC rules do not permit use of Electronic Newsroom Technique by the four major networks-- ABC, NBC, CBS, and Fox-- and their affiliates in the top 25 broadcast markets.

Also, non-broadcast networks, which are commonly referred to as cable channels-- but these are also satellite channels as well-- that serve at least 50% of all homes subscribing to multichannel video programming distribution services. Those are cable and satellite services.

So many of the cable channels are shown pretty universally on most cable systems. So those non-broadcast networks would not be able to use Electronic Newsroom Technique. But Electronic Newsroom Technique can be used by network affiliates in the smaller broadcast markets and can be used by either cable systems serving individual markets or regional markets that wouldn't cover 50% of all homes.

And prior to June 30, 2014, when the enhanced Electronic Newsroom Technique rules went

into effect, many portions of the newscast, including late breaking news, live interviews, field reports, weather, and sports were not captioned.

So the FCC came up with a series of new rules governing ENT. And in particular, in-studio produced news, sports, weather, and entertainment programming must be scripted. Weather information explaining the visual information on the screen will be scripted, but scripts may not precisely track the spoken words.

And the reason why it's written like this is that traditionally the meteorologists on TV news programs do not look at a teleprompter. They're looking at the weather map and other graphics, and they're basically giving their report from viewing that and from memory.

So now they must prepare a script for the purpose of captioning. And very often what they'll say when they're up there speaking will not be exactly what's on the captions, but the essential content should be the same.

Also, pre-produced segments must be scripted for ENT. For live interviews, on-the-scene reporting, and late-breaking news, stations will supplement with crawls, textual information, or other means. So at least somebody watching the program, instead of seeing no captions at all, will have a general idea as to what's going on. And then stations must appoint an ENT coordinator to ensure compliance.

So anyway, the FCC also required that there be a review after a year or a little bit more than a year of experience with these enhanced ENT techniques. So the National Association of Broadcasters filed an ENT progress report on October 28, 2015, as required by the FCC.

And then a coalition of consumer organizations-- the TDI, NAD, HLAA-- in conjunction with the Technology Access Program at Gallaudet University filed a reply to the NAB report on November 13, 2015.

Other regulations adopted in the 2014 order. The FCC codified an already existing requirement for video programming distributors to monitor and maintain their equipment and take any corrective measures necessary to ensure that such equipment is in proper working order, as part of their obligation to ensure that the captioning included with video programming reaches consumers.

A new requirement for VPDs to perform routine technical equipment checks in a manner that is sufficient to ensure that captions are passed through to viewers intact. And a new

requirement for VPDs to keep records for two years of their activities related to the maintenance, monitoring, and routine technical checks of their captioning equipment.

The order also included declaratory ruling to clarify certain of the rules. The captioning rules require that all new programming as well as 75% of pre-rule programming, which is really programming from before 1998, that are in English or Spanish be captioned. What this order clarified is, if they're a bilingual English-Spanish program, they must be captioned in accordance with the same rules.

The order also required that small discrete portions of English or Spanish segments that are in an otherwise non-English or non-Spanish program-- let's say something like French, Chinese, any language other than English or Spanish-- need not be captioned.

Also, all video programming distributors are required to make contact information available to the consumers and the Commission, even if that video programming distributor is exempt under one of the FCC's captioning exemptions. And that's because even exempt distributors must still pass through captions if they are airing a program that somebody else produces that is provided with captions.

It also clarified-- some people had questioned whether video on demand needed to be captioned. And the FCC clarified that, yes, it must be captioned. 100% of all new English, Spanish, and bilingual English-Spanish language programming must be captioned on video on demand. And 75% of the older, which are the pre-1998 English and Spanish programs, must be captioned.

There was also some question about low power television stations. They must comply with the Commission's closed captioning rules. However, a note is in the side that a number of the low power television stations qualify under a self-implementing exemption that allows stations with revenues of less than \$3 million annually-- they're not required to caption. So there are a number of low power television stations that qualify for that exemption.

Then in February of 2016, less than a month ago, the FCC adopted the captioning responsibilities order. This order extends some of the responsibilities for the quality of provision of closed captioning to other entities involved in the production and delivery of video programming. It revises procedures for the handling of complaints. It revises video programmer certification requirements and makes other procedural modifications. Now, I'll into

each of these areas that the order addressed.

So the order assigns responsibility for the quality of closed captioning to video programming distributors and video programmers. Up until this order takes effect, the video programmer distributors would be the ones responsible for captioning. So each entity is responsible for closed caption issues that are primarily within its control.

Video programmers-- those are the people that produce the programming-- are responsible for closed captioning problems that stem from production of the captions and transmission of the captions up to the point where they are handed off to video programming distributors. VPDs are responsible for quality problems that are the result of the VPD's faulty equipment and failure to pass through the closed captioning data intact to the viewers.

The captioning responsibilities order also addresses responsibility for the provision of captioning. It maintains the current rule, as I mentioned a moment ago, that places primary responsibility for the provision of captioning on video programming distributors but also holds video programmers responsible for a lack of captions, where they have failed to provide captions on non-exempt programs.

Those rules addressing assignment of responsibilities become effective 30 days after a summary is published in the Federal Register. And we expect that to happen around the end of this month.

OK. The order also revised the consumer complaint procedures. So I'm going to backtrack a minute into what was required in 2014.

The 2014 order specified that complaints filed with the Commission include five main data elements-- the channel number, the channel name, the call sign, or the network; the name of the MVPD-- that's the satellite or cable provider-- 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 specifics about the frequency and type of problem-- for example, garbling, captions cut off at certain times or on certain days, or accuracy problems.

And if the consumer files a complaint where some of this data is missing, the Commission will work with the consumer to fill in the missing information. And it's at that point once the complaint is complete that the Commission will serve it on the video programming distributor.

And as I mentioned before, these are rules that have been in effect since 2014.

Now, what the 2016 order does is it revises the procedures for receiving, serving, and addressing television closed caption complaints in accordance with a burden-shifting compliance model. The video programming distributor is the one who is required to initially address the complaint. That's because it's the distributor that the consumer has direct contact with.

If the consumer is viewing a program over the air, then the consumer is familiar with the broadcast station that the consumer is watching. If the consumer is viewing it over cable or satellite, the consumer is a subscriber to the cable or satellite service.

However, the order allows the VPD to shift the responsibility for responding to a complaint to the video programmer if, after conducting an investigation, the video programming distributor determines that the problem was not within its control but appears to be within the control of the video programmer. And the burden will shift to the video programmer to investigate the problem.

Now, a third possibility exists, which is the investigation could reveal that the problem is not with either the distributor or the programmer but maybe the cause of concern of third-party consumer equipment, which would be not a cable box or a satellite box provided by the provider, but if the consumer were to independently purchase their own cable or satellite box or with the consumer's TV set.

And then the order also establishes a compliance ladder for the Commission's television closed captioning quality requirements. Basically, what a compliance ladder does is it provides video programming distributors and video programs with opportunities to take informal and prompt effective, corrective action, which would reduce the need for enforcement action by the Commission.

So the whole concept behind this is to provide a mechanism for informal corrective action rather than formal action by the FCC's enforcement bureau wherever that's possible. And that has been the practice when we receive consumer complaints, but this formalizes that practice.

The captioning responsibilities order also revises the complaint procedures-- I'm sorry. OK, so the revisions to the complaint procedures and the new compliance ladder for caption quality complaints will become effective much later than the actual allocation of responsibilities order,

because we must wait for Paperwork Reduction Act approval from the Office of Management and Budget.

And the Commission will issue a notice of the effective date in the Federal Register once that happens, and this process can take approximately six months. And until the new rules take effect, the current rules for handling complaints remain in effect.

The captioning responsibilities order also requires each video programmer to file with the Commission a certification that the video programmer is in compliance with the rules requiring the inclusion of closed captioning and either is in compliance with the captioning quality standards or has adopted and is following the related Best Practices or is exempt from the captioning obligations.

And if exempt, the video programmer must include in its certification the specific exemptions it claimed. And some video programmers may be exempt on some programs and not others. And in that case, it would be filing either 1 or 2 plus 3 if it was a combination of 1 and 3, or 2 or 3.

The caption responsibility order also requires each video programmer to register with the Commission contact information for the receipt and handling of written closed captioning complaints and must use the Commission's web form.

Now, the new rules for video programmer registration certification become effective after Paperwork Reduction Act approval from the Office of Management and Budget, and the Commission develops the web form for filing the information, and the Commission issues a notice of the effective date in the Federal Register. And because it could take some time to develop this web form, the process can take approximately 6 to 12 months.

Until the new rules take effect, there are no registration requirements of video programs. But just as a side, video programming distributors who have already been subject to registration requirements must continue to register under the current rules. And that requirement will not change when the new rules take effect. And video programs must continue to provide widely available certifications on their websites and through other means, as is required under the rules adopted in 2014.

OK, so for further information, I've posted my phone number on this last slide-- 202-418-2235. My email address is also posted-- Eliot.Greenwald@fcc.gov. To keep yourself updated on

information, the Disability Rights Office puts out a blog two or three times a month to update you on information as to what we are up to as well as other accessibility information.

And if you're not already a subscriber to AccessInfo, you can subscribe by sending an email to AccessInfo@fcc.gov and typing the word "subscribe" in either the subject line or the main body of the email, and you will be added to that. And one of the things we will notify you of in AccessInfo is when these various rules take effect so that we don't have to be reading the Federal Register.

And also, you could also look at the Disability Rights Office website. And the web address is printed up there. www.fcc.gov/general/disability-rights-office. And if you go to our website, not only will you see postings of the various orders and public notices and other things we put out. You'll also see consumer guides posted on these websites as well.

And also, there'll be a link to the video programming distributor registry, the VPD registry. And of course, eventually, when the video programmer registry is combined with it, the link will include that as well. And now it's time for questions. Anybody have any questions?

LILY BOND:

Thank you so much, Eliot. That was a great presentation. A reminder to everyone to please type your questions into the window in your control panel and that a recording will be available tomorrow. While we're compiling the first questions, there are just a couple of resources on the screen-- a link to the FCC's responsibility order and a White Paper on FCC closed captioning requirements. And I also wanted to mention that 3Play Media will be at NAB in April, and you can schedule a meeting using the link on the screen. And we will be in the South Upper Hall.

And so now, Eliot, we have several questions coming in. The first question here is, when does the second report and order take effect when it comes to the responsibility?

ELIOT

GREENWALD:

The responsibilities themselves, as opposed to the other parts of the order, will take effect 30 days after Federal Register publication of a summary. And we expect that summary to be published around the end of this month, which would mean that the effective date would be somewhere around the end of April.

As I mentioned before, the effective date for the changes in the complaint procedures will be after we receive a Paperwork Reduction Act approval. And then the FCC will publish a notice of the effective date. And then the third effective date would be for the certification and registration requirements. And not only do we need Paperwork Reduction Act approval, but we

also need to complete the development of the web form. And so there'll be a separate notice announcing the effective date of those requirements.

LILY BOND: Thank you. The next question here is, do the requirements for accuracy, synchronicity, completeness, and placement apply to live programming? Or is live programming merely considered to be best effort? How accurate does live programming have to be?

ELIOT GREENWALD: Basically, the rules do apply to live programming. But they're interpreted a little differently for live programming in that there is an understanding that live programming can't be perfect, because it's being done on the spot by a human. And so there will be errors, and we recognize that. And we take that into account.

The basic guidance on those rules is the 79.1(j)-- I think it's three of the rules-- address that. And they say that the captions need to reflect the spoken words and somebody has to be able to follow the program. It has to be understandable. So there's a little bit of leeway provided, given the nature of live programming.

LILY BOND: Thank you. The next question here is, what are the repercussions if the captions aren't compliant with the FCC's quality requirements?

ELIOT GREENWALD: OK. As I mentioned, the first step is, if we receive a consumer complaint, we serve that complaint on the distributor. And whether it's the distributor or the programmer who's at fault, we expect in the response for the distributor and, if applicable, the programmer to investigate it, figure out what the cause of the problem was, and then take steps to fix that so it won't happen again.

If we start to receive a pattern of complaints regarding a particular distributor or programmer, we will expect them to provide a more formal answer. That's really going to the compliance ladder. We would expect a more formal answer as to what they are doing to fix the problem.

If it's not then fixed, we would then take the next step, which is a six-month compliance program to bring them into compliance. And if that still doesn't work, then we would refer them to the enforcement bureau, in which case there could be fines and forfeitures. And those could add up, particularly if it's an ongoing problem. Each incident is a separate violation, so forfeitures can get expensive. But the first effort is to try and bring the programmer or distributor into compliance.

LILY BOND: Thank you. Another question here-- do these regulations apply to video creators posting

videos on YouTube?

ELIOT GREENWALD: They would not apply to YouTube videos, because that's really consumer postings. However, when a program that has been shown on TV with captions-- and now I'm getting more into the IP rules-- if it's been shown on TV with captions after the effective dates of the IP rules, which were a few years ago, then when that same program is shown on the internet, it must be shown with captions. And the captions must be of at least the same quality as the captions were when they were shown on TV.

LILY BOND: Thank you. Another quality question here-- how can we test the closed captioning quality?

ELIOT GREENWALD: Well, what we expect to happen, for example, with a prerecorded program, we really expect the captions to be perfect with maybe only a few de minimis errors, because there's time to review them, get them perfect-- edit it, make them perfect.

With live programming, of course, there will be errors. And that's where the Best Practices come in as steps that can be taken to best ensure the quality of the captions. And then the Best Practices also include a lot of quality control reviews of the captioning agencies of their captioners. And so those types of things will help.

Also, the video programmers will then certify the distributors that they're complying with the quality. So that way, the distributors can rely on those certifications. And then, of course, the distributors have to check their equipment, make sure all the equipment is working right and check that and perform routine maintenance.

LILY BOND: Thank you. Another question here-- we are running into issues delivering captions to all of the OTT and mobile devices in the market. Some devices don't support captions at all, others have partial support, and others fail when going full-screen with the captions. Does the FCC requirement for these digital devices extend to all devices, all browsers, and all OTT platforms-- e.g., Apple TV, Xbox, Roku, et cetera?

ELIOT GREENWALD: Right, the rules do extend to that. It applies to devices that were manufactured after-- I think it was somewhere around the end of the year 2014. I can't remember the exact effective date of the rule. So it's devices manufactured after that date. So it's basically things manufactured this past year or this year.

So of course, there are a lot of devices that are still around that precede that. But also, plug-

ins and apps and other software need to be compliant as well and need to be compliant and compatible with the devices.

LILY BOND: Thank you, Eliot. There are a few questions coming in basically asking if you could clarify the difference between distributors and programmers.

ELIOT
GREENWALD: Sure, you're right. Rather than give it by definition, I'll do it by example. Distributor would be broadcast stations, TV broadcast stations, also cable networks, satellite networks. And also FiOS and U-verse, they're not technically cable. People think of them as cable. But technically, they don't fit in the cable definition. But they're also distributors.

Broadcast programmers would be more the people who produce the programming. So for example, a TV broadcast network-- ABC, CBS, NBC, Fox, for example-- they are programmers. Now, those programmers have some group-owned stations, and they also have a lot of affiliates. But the programming that they produce makes them programmers.

Similarly, a lot of the non-broadcast networks, what are commonly referred to as cable and satellite channels, those are the programmers. There are also independent programmers. They're people who pay to put their programs on broadcast stations, for example, or cable systems. You often see those late at night. And that would be, for example, some of the religious programs that are put on broadcast stations. Those are usually religious organizations paying the broadcast station to broadcast those for them. They would be programmers.

LILY BOND: Thank you. Another question here-- do these rules apply to video content on DVDs?

ELIOT
GREENWALD: The rules-- and again, what I've gone over are the TV rules rather than the IP rules. But in terms of the IP rules, DVD players, as well as Blu-ray players, actually have a temporary exemption from the equipment requirements right now due to some technical problems that arose after the rules were adopted.

And the FCC is still going through the rulemaking process to figure out how to address those technical problems. Now, the content itself-- the DVD itself-- is not regulated by the FCC. But the transmission of what's on the DVD is regulated, if you understand that distinction.

LILY BOND: Yeah, that makes sense. Thank you. Another question here is, can live captioning be done by automatic speech recognition?

ELIOT The problem is that speech recognition as we know it today would not meet the accuracy requirements. There are just too many errors in it. There's no prohibition of speech recognition, because I think everybody is hoping that speech recognition will improve to the point that it can be used.

But it can only be used if it meets the accuracy requirements. And so hopefully people are developing it and will produce it. We have seen demos of people from companies that are working on it. And we're hoping that-- we're wishing success, because that does hold promise. But right now, the technology isn't there yet.

LILY BOND: Thank you. Another question here-- does content distributed over the internet VOD and OTT all fall under the same FCC regulations for closed captioning?

ELIOT There's really two different sets of rules for television. It's what I've gone over today. For IP transmission, it covers programs that have been shown on TV with captions after the effective date when they are then shown on the internet through IP. And that's whether they're shown afterwards or simultaneous-- because a number of programs are shown simultaneously now. They must contain captions, and those captions must be of at least the same quality as the TV captions.

LILY BOND: Thank you. Another question here-- what are the latest rules on the internet video requirements? We do sports video clips and live programming that is exclusive to the web.

ELIOT OK. Well, I've addressed the full-length programming. The FCC recently adopted rules on video clips. And for video clips, the rules only apply at this time to video clips posted by the programmers themselves.

So for example, if a network produces a program and then puts clips on its website, the clips rules apply. And basically, the clips rules for prerecorded programming just became effective January 1 of this year. And so any clip that's been posted since January 1 of this year of a prerecorded programming that was shown on TV with captions must include captions.

The rules will later become effective for other types of programming. And this only applies right now to straight-lift clips. For montages, which are really combinations of clips, that becomes effective January 1, 2017. And then for clips of live programming, that becomes effective July 1, 2017.

And again, in all instances, it's only on the website of the programmer. So third-party websites

are not covered by the clips rules at this time, although the FCC is looking into that and has an open proceeding on that.

LILY BOND: Thank you. Another question here-- how do these policies apply to content like corporate training videos or other videos that are for internal use?

ELIOT These rules do not apply to internal enterprise-type videos or the transmission of them.

GREENWALD: However, if a program that was shown on TV with captions is distributed through a private network over IP, then it would be covered, as long as it's distributed over IP and the program were shown on TV with captions. But if it's, let's say, a training program developed by a corporation, that would not have been shown on TV with captions, so it would not be covered.

LILY BOND: Thank you. Another question here-- how do these new closed captioning rules apply to public access television programs?

ELIOT The general rules applies to public access. However, the caveat is that a lot of public access programming is exempt. I mentioned earlier that there's one exemption for channels and the channels that have less than \$3 million in annual revenues, and a lot of these paid channels have less than \$3 million in annual revenue. So they would be exempt under that rule.

There are other exemptions that might apply to pay channels as well. So you don't see a lot of captioning in pay channels for that reason. Some of the larger city pay channels might have big budgets that are over \$3 million, and therefore that would count as revenues over \$3 million. And they would be required to caption.

LILY BOND: Thanks. Another question here-- if a video programmer observes captions on their own programs being garbled by a VPD, what process would be best to follow in order to correct this?

ELIOT OK, well, they should, of course, check to make sure that they transmitted it to the VPD with the captions intact and good working order. Assuming that that check pans out, that the problem then is with the distributor, they should just immediately contact the distributor and have them fix it right away.

That's the best process, because with distributors, you have technical people who are working at the broadcast stations or cable network control or the cable stations, the satellite stations. And they should therefore troubleshoot it and fix it right away.

LILY BOND: Thank you. Another question here-- does content that is created directly for an OTT provider that never appears on television covered by this rule?

ELIOT If the program has never appeared on TV with captions, then it would not be covered.

GREENWALD:

LILY BOND: Another question here-- certain mobile devices cannot read captions. What is the programmer's responsibility when providing programs for viewing on these devices that cannot read captions?

ELIOT Well, mobile devices that have been produced since either in 2015 or this past year, those that
GREENWALD: have been manufactured. So it's basically recent manufactures, last year and a quarter. Those devices are required to be capable of reading captions, unless it's not technically possible.

And obviously, for mobile devices with real tiny screens, they might say that it just can't be done with those devices. But particularly as smartphones are having larger and larger screens, the screens are certainly large enough for a lot of your typical Android and Apple and other smartphones to be able to have captions that are legible, particularly with the number of pixels that are on the screens of smartphones.

LILY BOND: Thanks. I think we have time for just a couple more questions. Sorry to everyone who has typed in great questions. I just don't think we have time for all of them. So Eliot, the next question is, how would the FCC rules apply to Netflix originals?

ELIOT Netflix originals are not covered by the rules, because they're not shown on TV with captions.
GREENWALD: However, the National Association of the Deaf had filed a lawsuit against Netflix a number of years ago regarding captioning on Netflix.

And Netflix and NAD did come to a settlement, where Netflix has agreed to caption just about all of its programming. And Netflix has reported to us that, therefore, just about everything it does is captioned these days. And that's true of several other competitors of Netflix as well, have also decided to do that as well.

LILY BOND: Thank you. So I think we have time for one more question here. Someone is asking, what is your position on the pending rulemaking that would extend your work into on-board entertainment systems?

ELIOT On-board entertainment systems is an interesting question, which we're currently looking at. At

GREENWALD: some point, some of these on-board-- I assume the question is about airplanes. Some of these entertainment systems are now taking feeds, I believe, from satellites, like from DirecTV or Dish. And if they're taking feeds, then that's part of the distribution process of the satellite system.

Other issues involved is that if the on-board entertainment system is doing it versus IP, doing distribution via IP technology, then that would actually be covered by our rules if the programming were shown on TV with captions.

Beyond that, the FAA is looking more generally into the issue. It's started a negotiated rulemaking proceeding, where it's looking into the idea of requiring captioning on all on-board entertainment systems, which I think would be a great idea if the FAA moves through with that, because that will make the programming on airplanes a lot more accessible to a lot more people.

LILY BOND: Thank you, Eliot. It's just about 3 o'clock now, so I think that's all we have time for. Eliot, thank you so much for joining us. We really appreciated your valuable presentation, and there were just a ton of questions coming in. So I can tell that the audience appreciated you being here as well.

ELIOT OK, it's my pleasure. Thank you for inviting me.

GREENWALD:

LILY BOND: And thank you to everyone who attended. We will send out an email shortly with a link to view the recording and the slide deck. I hope everyone has a great rest of the day.