

Bradley



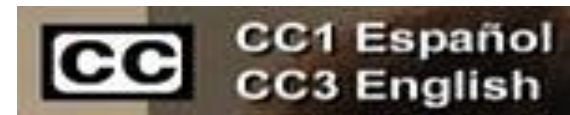
Closed Captioning and PEG

The 2017 SEATOA Annual Conference

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March 27, 2017

Access Channels are Exempt Right?

- Not Necessarily – Every PEG Operation Has Some Work To Do
- Compliance with the Communications Act and FCC Regulations
- Compliance with ADA Regulations
 - Possibly the Rehabilitation Act if receiving federal funding (very similar to ADA)



Communications Act and FCC Closed Captioning Rules

- The Communications Act and FCC Rules Apply
- Video Programming Distributors
 - must provide closed captioning
 - 47 U.S.C. § 613;
 - 47 C.F.R. § 79.1
- PEG Programmers arguably subject to these rules



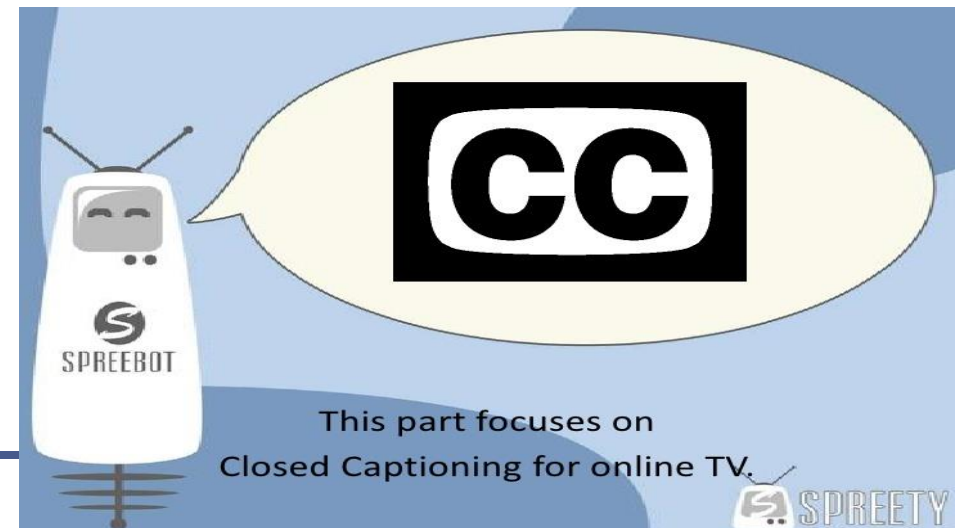
FCC PEG Channel Exemption

- Closed captioning **not required** if the captioning expense would **exceed 2%** of gross revenues.
- **Any channel** producing **revenues below \$3M** annually is exempt from the closed captioning requirements of the Communications Act.
 - 47 CFR § 79.1(d)(11).
- **No PEG Channel Produces Revenues of \$3M** – All PEG Channels are Exempt from FCC Closed Captioning Laws



Closed Captioning of Web Streams

- Relevant to all PEG Operators
 - Cable Operators now Streaming PEG
 - Many Cities Stream PEG – Live and/or Recorded
- Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)
 - Extended CC to Internet-distributed TV Shows
- We're Exempt Right?



PEG Web Streaming and Closed Captioning

- CVAA Required FCC to Create CC Rules for Web Streaming
 - FCC Issued Rules in 2012, 2013, 2014 and 2016
- FCC Rules Must CC if CC for TV Programming
- CC Not Required if PEG Op is Not CC for TV
 - If PEG Op does CC for TV – Must CC for Stream

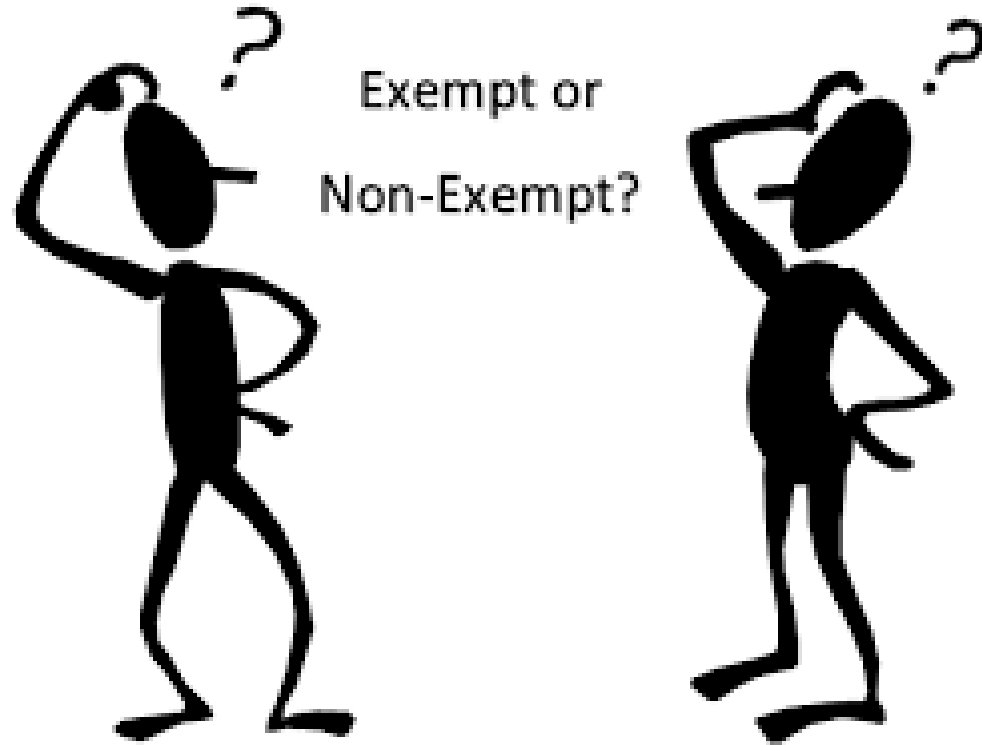


FCC New Self-Reporting Requirement

- FCC Second Report and Order
 - February 19, 2016.
- FCC implemented a new rule
 - requiring all video programmers to **self-report compliance or exemptions** to the FCC's closed captioning rules on a **yearly** basis – Starting in July 2017!



So We Are Exempt! Right?



Closed Captioning and the Americans with Disabilities Act

➤ ADA Title II

- Prohibits discrimination against persons with disabilities
- In all programs, services, and activities of state and local government.

➤ Effective Communications Requirement

- When governments seek to communicate with the public, they must do so by means that are as effective to those with disabilities as to others.

ADA Covers Local Governments

- Title II coverage includes activities of the legislative and judicial branches of State and local governments.
- All governmental activities of public entities are covered, even if they are carried out by contractors.
 - Would include public non-profit corporations

Does the ADA Cover PEG?

➤ Does the ADA Title II apply to PEG? DOJ Says Yes.

- <https://www.fcc.gov/news-events/events/2015/11/roundtable-discussion-of-closed-captioning-for-public-access-and-governmental-programming>
- Minutes 31-36

➤ FCC Roundtable on CC (Nov. 2015)

ADA Application to Access TV

- DOJ Nondiscrimination Rules implementing Title II
- **“Television and videotape programming produced by public entities” are covered by Title II of the ADA.**
 - Explicitly inclusive of state and local governments and their subdivisions and instrumentalities
 - Include the City’s government access channel, since it is television programming produced by a City department.
 - Therefore, the City’s government access channel must provide “effective communication” to disabled persons under the ADA.
- Authority: Nondiscrimination Rules, 56 Fed. Reg. 35694 (July 26, 1991), available at <http://www.ada.gov/reg2.html>



How to Provide Effective Communications

- Effective communication is accomplished through “auxiliary aids and services.”
- In determining what type of auxiliary aid and service is necessary, a public entity shall **give primary consideration to the requests of the individual with disabilities.**
- Authority: 28 C.F.R. § 35.160 (2009)



CC Not Necessarily Required under ADA

- The DOJ recognized that “**Access to audio portions of such programming *may be provided by closed captioning*”**
 - as one auxiliary aid or service to provide effective communication.
- **CC was not ruled as the only way or even the best way** to provide effective communications of PEG programming.



Auxiliary Aids - Exemption Reasonableness Standard

- The broad mandate of Title II accommodations is limited by a **reasonableness standard**.
 - Exempts public entities from compliance
 - If providing auxiliary aids or services *“would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.”*
- Many (but not all) PEG Operations/Local Governments have limited financial and administrative resources
 - May therefore be exempt from compliance with Title II



So, Are We Exempt or What?

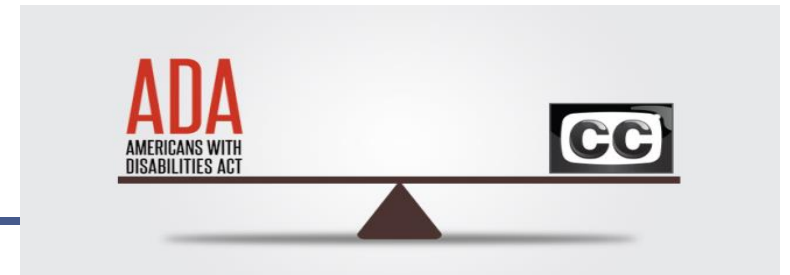


- No Simple Answer with ADA
- Local Government Has Burden to Show It is Exempt under the ADA
- There is Work to be Done



What Do I Have to Do?

- Determine what options it has to provide effective communications to disabled persons.
 - This would include, but would not be limited to, the auxiliary aid or service of closed captioning.
 - Study different methods to provide closed captioning
 - Study other auxiliary aids and services to provide effective communications to disabled persons in this context, such as using a transcription service or using voice recognition software.



What Do I Have to Do?

- Consider how you can meet the needs of the disabled to the maximum extent possible
- Determine the financial and administrative burden each option would have, considering all resources available to the Local Government/PEG Operator.
- Prepare a **Written Statement**
 - If you conclude that closed captioning and/or other auxiliary aids or services would create an undue burden.
 - Signed by Head of Public Agency (or designee)



Twin Cities Closed Captioning Study

- Cost Effective Study
- Large Group of Franchising Authorities
- Identifying Closed Captioning Services and Equipment
- Identifying Costs
- Determine Reasonable Accommodations
 - Considering Closed Captioning Costs
 - Considering other local issues
- Not a one size fits all – Each Jurisdiction may have different outcome
 - Different Programming
 - Different Sizes and Budgets
 - Different Budgeting Priorities
 - Different Equipment and Staff (skills and size)



Conclusions

- PEG Channel not required *per se* to provide closed captioning programming under either the ADA or Communications Act.
- Get to Work – **ADA Requires Action by Local Government** – Must Prepare a Written Statement to claim Exemption
 - In order to insure ADA compliance, Cities must provide disabled persons appropriate auxiliary aids and services for its PEG programming, unless it claims an exemption from the DOJ rules.
- Remember to Self-Report in July!

