

## Closed Captioning and Web Accessibility Requirements for Local Governments Where it Currently Stands for PEG

by Dave Garb, Legislative Committee Chair

The Americans with Disability Act has compliance obligations for local government accessibility for websites, video streaming, and even cable broadcasting.

While the FCC has long excluded community television from captioning requirements, the Department of Justice, state governments, and private citizens have renewed a push to require captioning for all types of video content, and particularly those found on the internet.

Last month, JAG held a special webinar that explored where the requirements currently stand for access television, along with thoughts on where it might be heading, when the DOJ might make a decision, and what should be done now to prepare for the immediate future.

Our guest speaker for this informative event was Brandon M. Dittman, a founder and partner of Wilson Williams Fellman and Dittman\*, an expert on the ADA and Rehabilitation Act Captioning Requirements and FCC Regulations for Closed Captioning, as well as the DOJ and their rule-makings.

Brandon relayed the following facts to the participants:

- Since 1998 the FCC has stated under its regulations that local government content is categorically exempted from captioning on television. Other government agencies such as the DOJ who are responsible for enforcing the Americans with Disabilities Act, will say otherwise. And even the FCC takes the position that video programming may be subject to captioning requirements even if they don't require it.
- The American with Disabilities Act - Title 2 regulates public entities and regulates governments. If you're a government entity of any kind, you fall under Title 2
- DOJ Requires Web Content Accessibility Guidelines (WCAG) 2.1  
<https://www.w3.org/WAI/standards-guidelines/wcag/docs/> or  
<https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1> for all web content, and captioning for video content, whether live or prerecorded is required.
- Different parts of the Rehabilitation Act which needs to also be considered include:
  - Section 504 states that "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency".
  - Section 508 - "Electronic information and information technology must be accessible for people with disabilities".

*(You could potentially become subject to this if you receive federal funding. Such funding could come with a requirement that you comply with the Rehabilitation Act.)*

One of the most eye-opening moments of the webinar was when Brandon stated that "Any person can bring what's called a citizen suit where they can act as their own private attorney general. Especially on the website side. A private citizen can ask for an injunction and can demand that you change your practice or stop doing the discriminatory practice." They can recover all their attorney's fees, and in most cases, they

can get monetary damages of some kind.

So what should a PEG Channel do to prepare when the DOJ comes down with more changes about Closed Captioning?

Brandon offers the following suggestions:

- Basically you should just start budgeting for it now. And I would start with the things that are used most by the public, whatever those may be. So your websites, your public meetings, those sorts of things.
- Most of you have Video-On-Demand Channels, so whatever goes on there should have the ability to be captioned somehow. If for whatever reason you have an exception or whatever else you still may be under, you actually are still under the ADA's broader requirement for effective communication. And just so you know, that's always kind of lurking in the background. There still is the effective communication piece to this.
- Look towards the future to ensure that your servers have the ability to create automatic closed captioning. It's a lot harder to prove the case that captioning is not good enough versus you didn't have anything. It is going to deter all but the most determined from filing a lawsuit against you because again, it's a lot easier to prove that you have nothing.

JAG works exclusively with vendors that can help you prepare for the possible future of adding closed captioning into your programs.

There have been no final rulings at this time by the DOJ. But what is being considered when the effective date is decided, is to implement a delayed implementation based on population size. For example, if you're a government below 50,000 people, you may get three years to comply, with larger municipalities having perhaps two years.

Don't panic about it just yet but start to budget! We cannot ignore it forever! This seems like something we might have to face whether we want to or not.

If you would like to view this special webinar in its entirety with our guest Brandon M. Dittman. please go to: [JAG: ADA and Closed Captioning Webinar 12-21-23](#)

### **Still in Play: HR 3557 The American Broadband Deployment Act**

Reminder everyone: This bill imposes new restrictions on local authorities regarding their ability to regulate a variety of state and local land use and zoning issues that pertain to the deployment of telecommunications infrastructure, including wireless and wireline deployment, as well as new limits on requirements and renewals of cable franchise agreements.

Please watch our informative video on HR 3557 and hear what might happen if it is passed at: [https://www.youtube.com/watch?v=fzP\\_t\\_SPzGk](https://www.youtube.com/watch?v=fzP_t_SPzGk). And please pass this link around to all of those who can stop this harmful bill.

JAG constantly advocates, analyzes and addresses emerging issues in areas such as: Local Government Communications and Internet Policy, New Technology Initiatives and Advancements, Cable Franchising and, the Operation of Public, Education and Government Media Facilities.

**JAG (Jersey Access Group) is an organization that advocates, promotes, and preserves the right to media production, distribution, civic engagement, and education in support of diverse community voices, through Public, Educational and Government access facilities and other forms of media.**

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