Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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	)	
Closed Captioning and Video Description of Video Programming	)	MM Docket No. 95-176
	)	
Implementation of Section 305 of the Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

COMMENTS OF
INTERNATIONAL CABLE CHANNELS PARTNERSHIP, LTD.

International Cable Channels Partnership, Ltd. ("ICCP") submits these Comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding to implement 47 U.S.C. §613. ICCP owns and operates the International Channel, a foreign-language programming service, and believes that it can provide unique insights into the issues and problems posed by the closed captioning of foreign-language programming.

The International Channel is a multilingual video programming service providing educational and entertainment programming appealing to a variety of minority and ethnic

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groups.[1] Launched on July 3, 1990, the International Channel presently is distributed by multichannel video programming distributors, particularly cable operators, throughout the United States and in Latin America to approximately 7.4 million subscribers. ICCP provides programming twenty-four hours per day to disparate ethnic groups in their native languages and features programming in twenty-eight different Asian, European and Middle Eastern languages, including Arabic, Armenian, Cambodian, Cantonese, Czech, Dutch, Farsi, French, German, Greek, Hindi, Hmong, Hungarian, Italian, Japanese, Korean, Malayalam, Mandarin, Norwegian, Polish, Portuguese, Romanian, Russian, Slovenian, Swedish, Tagalog (Filipino), Thai and Vietnamese. A copy of its current programming schedule is annexed as Exhibit A. It is the kind of niche service which greatly expands the diversity of programming available to viewers by providing unique programming which would otherwise be unavailable. However, because the International Channel is a niche service directed at minority and ethnic viewers, it will be unable to develop the high subscriber levels achieved by general entertainment/information programming services with mass appeal, which limits its revenues from not only subscribers but also advertisers.

I. Foreign-Language Programming Services Should Be Categorically Exempted From Mandatory Closed Captioning.

Both Congress and the Commission have recognized that certain "classes of programs or services" should be exempted from mandatory closed captioning because captioning would be "economically burdensome" or the "the complexity of adding the captions" would outweigh their benefit. See Notice at ¶70; 47 U.S.C. §613(d)(1). The Commission suggests that,

[1] ICCP also is developing a series of five new premium channels dedicated to the following languages: Cantonese/Mandarin Chinese, French, Arabic, Korean, and Indian Pakistanis (Hindi).

in determining whether captioning would be economically burdensome, "factors such as relative market size, degree of distribution, audience ratings or share, relative programming budgets or base, lack of repeat value, or a combination of factors" should be considered. Notice at ¶71. Further, programming subject to contrary legal requirements will be exempt from captioning requirements. Id. at ¶86. Recognizing the unique problems posed by the captioning of foreign-language programming, the Commission has requested comment on a categorical exemption for such programming services. Id. at ¶72.

Based upon its analysis of the record in the Notice of Inquiry proceeding, the Commission found that the captioning of foreign-language programming services presents serious technological and cost problems which satisfy each of the criteria for determining that a program service should be exempt from mandatory captioning:

> Closed captioning of programming for non-English speakers on both broadcast and cable channels is quite limited because captioning, particularly in multiple languages, can pose various logistical problems. Because such programming is targeted to a narrow niche market -- minority and ethnic viewers -- and is programmed in non-English languages, it has much more limited distribution, as well as more limited advertising and subscriber revenues than most English language programming. These factors can make the cost of captioning programming for non-English speakers significantly higher than English language captioning. Furthermore, expertise in non-English language captioning may be scarce and, for some languages, virtually unavailable. In addition, the alphabets and characters used in certain non-English languages cannot be processed with standard computerized word processing and closed captioning equipment. Even if such languages can be captioned with special equipment, the captioning decoders currently available in television sets used in the U.S. can only decode Latin based alphabets and symbols. Accordingly, captioning that uses non-Latin characters, such as Chinese, Russian and Hebrew, cannot be decoded on the television sets used by U.S. viewers. Another logistical factor is that closed captioning in English would require a staff with multiple translators of numerous languages. Whether captioned in English or a particular non-English language, it can be extremely difficult to assure the accuracy and quality of such multi-lingual captioning.

Video Programming Accessibility, Report, MM Docket No. 95-176, FCC 96-318 (rel. July 29, 1996) ("Notice of Inquiry"), at ¶80 (notes omitted). Consequently, the Commission found that non-English language programming is "unlikely to be captioned." Id. at ¶18.

ICCP's experience with the International Channel validates the Commission's general findings in the Notice of Inquiry proceeding. Mandatory captioning of the International Channel would pose insurmountable technical issues and an excessive economic burden upon ICCP. Consequently, ICCP respectfully requests that the Commission exempt foreign-language programming services from closed captioning requirements, i.e. programming services for which at least 75 percent of all programming aired is in a foreign language.[2]

II. Technical Problems Associated With Captioning Foreign-Language Programming Support An Exemption From Mandatory Captioning.

A. Incompatible Foreign-Language Characters

As recognized by the Commission, the "alphabets and characters used in certain non-English languages" cannot be processed with standardized computerized equipment, and television sets used in the United States "can only decode Latin based alphabets and symbols." Notice of Inquiry at ¶80. Currently, the International Channel includes programming in character-based languages, including Arabic, Armenian, Cambodian, Chinese, Farsi, Greek, Hebrew, Hindi, Hmong, Japanese, Korean, Russian, Thai, and Vietnamese. Based upon a survey of its current programming, ICCP estimates that more than 60 percent of the International

[2] The requirement of 75 percent foreign language content demonstrates conclusively that a programming service is a niche service devoted to foreign language programming. However, it provides the flexibility to include a minimal amount of English language programming without requiring programmers to submit a series of petitions for special relief, which the Commission has suggested would be appropriate, thereby avoiding such burden to the programmer and the Commission. See Notice at ¶99.

Channel's programming is in non-Latin based languages. Consequently, because the International Channel's mission is to provide programming in the native languages of minority and ethnic viewers, attempts to close caption programming in these languages largely would be futile.

B. Unavailability of Captioning Expertise

The Commission has recognized that there are limited captioning resources, particularly steno-captioners for "real-time" captioning.[3] However, consistent with the Commission's findings in the Notice of Inquiry proceeding, "expertise in non-English language captioning may be scarce and, for some languages, virtually unavailable." Notice of Inquiry at ¶80. In limited efforts to open caption special programming, ICCP has found captioning resources to be scarce or unavailable. For example, when it captioned several hours of Taiwanese election coverage, ICCP had to employ the services of both a translator and stenographer in a process which proved to be cumbersome and inefficient.[4] Based on its experience, ICCP believes that there are very few skilled captioners available for the multiple languages on the International Channel. Clearly, ICCP does not have sufficient resources to employ a sizable in-house staff to provide foreign-language captioning services. Finally, much

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[3] As explained by the Commission, steno-captioners "are trained as court reporters." However, they also "require additional training to obtain the skills needed to report the verbatim speech, use correct spelling, syntax and grammar, and understand what is said." Notice at ¶20 n.64. The Commission reported estimates of qualified steno-captioners for real-time captioning nationwide ranging from 83 to approximately 500. Id. at ¶24.

[4] ICCP recognizes that this open-captioning experience is not dispositive of the issues raised by closed captioning consistent with its foreign-language mandate, i.e. captioning in the foreign language rather than in English. However, as noted above at 4, the Chinese alphabet is incompatible with captioning decoders available on domestic television sets.

of the programming which ICCP acquires for the International Channel is aired on the same day or within a few days after its acquisition, which makes this problem virtually insurmountable.

III. The Economic Burden Of Captioning A Foreign-Language Programming Service Would Be Prohibitive.

A. Limited Distribution And Higher Cost Of Captioning

Because there are few qualified foreign-language captioners, particularly steno-captioners, captioning of foreign language programming would be substantially more expensive. Again, the Commission recognized that the cost of captioning foreign-language programming can be "significantly higher than English language captioning." Notice of Inquiry at ¶80.

Although ICCP has worked hard over the six and a half years since launch of the International Channel and has obtained significant distribution throughout the United States, the fact remains that services appealing to niche markets, such as minority and ethnic viewers, will have "much more limited distribution, as well as more limited advertising and subscriber revenues than most English language programming." Notice of Inquiry at ¶80. Consequently, ICCP would have substantially fewer subscribers over which to spread its higher captioning cost. Further, the lower advertising revenues available to foreign-language niche services would only exacerbate the economic burden of captioning. Advertising spots on the International Channel typically range from $50 to $400 per thirty-second spot -- far less than the rates for advertising on English-language services with mass appeal.[5]

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[5] Moreover, if advertising were not excluded from mandatory captioning, the advertising revenue available to ICCP would be substantially reduced. Nearly half of the commercials aired on the International Channel are in a foreign language. Consequently, the captioning of commercials on the International Channel would pose the same kinds of logistical problems and higher costs noted above. In any event, the commercials typically provide much of the substantive information visually.

B. Relationship To Programming Budget

ICCP has a very modest programming budget for the International Channel. Much of the International Channel's programming is obtained without charge or on a barter basis, and some programmers pay ICCP to air programming on the International Channel. Consequently, although it would be difficult to estimate precisely the cost of closed captioning the programming on the International Channel because such captioning is simply not feasible or available, ICCP believes that the cost of captioning would substantially exceed its programming budget. The economic burden of closed captioning also could not be shifted to the programming producers who are providing programming without charge or on a barter basis. Again, the production budgets for individual programs are very limited, and closed captioning would increase programming costs by a significant percentage. Instead, ICCP would be forced to incur the captioning costs or abandon these valuable sources of foreign programming.

C. Minimal Repeat Value

The economic burden of closed captioning the International Channel's programming would be particularly onerous for ICCP because much of the programming has no library value. ICCP estimates that roughly half of the programming aired on the International Channel is topical programming, including news, which has value only when aired contemporaneously with or shortly after its production. Thus, captioning costs cannot be spread over multiple showings or recouped through subsequent airings on other media.

IV. The Captioning Of Foreign-Language Programming Presents Unique And Complicated Issues Under International Law Protecting Moral Rights.

The Commission recognizes that 47 U.S.C. §613(d)(2) exempts programmers from closed-captioning requirements "to the extent that such requirements are inconsistent with existing contracts." Notice at ¶86. Clearly, programming subject to preexisting contracts which "affirmatively prohibit closed captioning" would be exempt from mandatory captioning. Id. at ¶87. ICCP respectfully submits that programming subject to any of the following types of licensing agreements with foreign producers also should be exempt from closed captioning requirements: (1) licensor has broad reservation of rights without expressly granting captioning rights; (2) licensor has expressly reserved moral rights; and (3) foreign law controls and moral rights cannot be waived.[6]

Under international copyright law, "moral rights" are generally defined as the personal right protecting the bond between the author and his work and are independent of the author's economic rights in his work. See, e.g., International Copyright Law and Practice §7, at POL-31-32.2 (Paul E. Geller ed., 4th ed. 1991). Moral rights protect the integrity of the work as a whole, requiring that both the content and form of the work be maintained. Where the "moral rights" to a work are reserved, impermissible changes would include alterations such as "omissions, supplements, or additions to a work." Id. Although there are exceptions, generally countries recognizing moral rights construe such exceptions narrowly. Further, if foreign language programming were translated to English, many of the terms and characters would be subject to multiple interpretations, substantially increasing the risk of moral rights violations.

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[6] Programming subject to this third category should be exempt from mandatory captioning even if the license agreement post-dates enactment of the Telecommunications Act of 1996 because the moral rights of the producer may not be limited by contract.

Thus, the captioning of foreign-language programming may violate the moral rights of foreign producers and creators where such rights have been reserved contractually, or where such rights are granted automatically by a particular country's copyright laws. Although ICCP has not researched these foreign law issues exhaustively, it is aware that the laws governing sources of its foreign-language programming, including those of France, Germany, Greece, Hungary, Italy and Poland, recognize and enforce moral rights. These complicated issues of foreign law provide a separate and independent ground for categorically exempting foreign-language programming services from mandatory captioning.

Conclusion

ICCP respectfully requests that the Commission categorically exempt foreign-language programming services from mandatory closed captioning. Foreign-language programming services should be defined as services for which at least 75 percent of all programming is aired in a foreign language. The closed captioning of foreign-language programming, particularly in multiple languages from foreign sources, is technologically impractical and economically burdensome and raises unique moral rights issues under foreign law.

Respectfully submitted,

February 28, 1997

INTERNATIONAL CABLE
CHANNELS PARTNERSHIP, LTD.

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JANUARY - MARCH '97 PROGRAMMING SCHEDULE

International Channel℠ features news, variety, sports and entertainment in **29 languages** and is available to more than **7 million cable households** throughout the United States, Latin America, the Caribbean, and the South Pacific.

ET	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	ET
7:00 am	German Variety					[illegible]	[illegible]	7:00 am
7:30	Hungarian News/Variety	Scandinavian Variety (Norwegian, Swedish, Danish)			Romanian News/Variety	Italian Variety	Jewish News / Variety (English)	8:00
8:30	[illegible]					[illegible]		9:00
9:30	Arabic News / Drama							
10:30	Asian Business News - *Market Close* (English) (r)					Islam		10:30
11:00	[illegible]					[illegible]		11:00
11:30								
12:00 pm						Portuguese Drama	Armenian Variety	12:00 pm
12:30						Caribbean Music	[illegible]	1:00
1:30								2:00
3:00	German News / Variety							
4:00	Russian News / Variety							
5:00	Polish News / Variety					Farsi News / Variety	Italian Championship Soccer	5:00
6:00	French Culture / Variety							
7:00	French News (Subtitled in English)						Championship Rugby (English)	7:00
7:30								
8:30								
9:00								9:00
9:30	Greek News							9:30
10:00	Italian News							
10:30								11:00
11:30						French Movie Classics News and Entertainment (Subtitled in English)		12:00 am
12:30 am							English	12:30
1:00							Farsi Variety	1:00
1:30	Asian Business News - *Market Open* (English)							
2:00	Farsi News / Variety						English Program	2:00
3:00								
3:30	English							
4:00								
4:30	Arabic News (r)							
5:00	Russian News (r)						Arabic Variety	5:00
5:30	French News (Subtitled in English) (r)							
6:00	Asian Business News - *Market Close* (English)							6:00
6:30						English Program		6:30

For programming information call (310) 442.2319

International Channel Website: http://www.i-channel.com

European | Middle Eastern

Programming schedule subject to change. Designed [illegible]

Exhibit A