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

RECEIVED
FEB 28 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

COMMENTS

THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

Paul J. Sinderbrand
Robert D. Primosch
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 783-4141

February 28, 1997

No. of Copies rec'd 0+10
List ABCDE

TABLE OF CONTENTS

TABLE OF CONTENTS i

EXECUTIVE SUMMARY ii

I. INTRODUCTION. 1

II. ANY CLOSED CAPTIONING REQUIREMENTS ADOPTED IN THIS PROCEEDING SHOULD BE IMPOSED ON PROGRAM OWNERS. 3

III. THE COMMISSION SHOULD ADOPT A BLANKET EXEMPTION FROM ITS CLOSED CAPTIONING RULES FOR ITFS PROGRAMMING. 11

IV. IT IS NOT NECESSARY TO IMPOSE ANY RECORD KEEPING REQUIREMENTS ON MVPDS TO ENSURE COMPLIANCE WITH THE COMMISSION'S CLOSED CAPTIONING RULES. 15

V. THE COMMISSION'S EXISTING TECHNICAL STANDARDS FOR CLOSED CAPTIONING ARE SUFFICIENT TO ENSURE COMPLIANCE WITH THE PROPOSED CLOSED CAPTIONING RULES. 15

VI. THE COMMISSION SHOULD DECLARE THAT PROGRAMMERS ARE REQUIRED TO MAKE CAPTIONED PROGRAMMING AVAILABLE TO ALL MVPDS ON A NONDISCRIMINATORY BASIS. 16

VII. CONCLUSION. 17

EXECUTIVE SUMMARY

WCA reiterates its strong support for the Commission's effort to craft rules that will expand the availability of captioned programming to the hearing impaired community. WCA believes, however, that the laudable objectives of this proceeding will be best served only by assigning responsibility for captioning to those parties best positioned to ensure that the maximum amount of programming is captioned for a wide audience at the lowest possible cost. As already observed by Congress and acknowledged by the Commission, it is most economical and efficient to caption programming at the time of production and distribute it with captions. Conversely, WCA believes it is most uneconomical and inefficient to establish a regulatory approach that would require each multichannel video programming distributor ("MVPD") to caption the uncaptioned programming just before it is delivered to the subscriber.

Accordingly, subject to one important exception discussed below, WCA submits that the Commission should impose responsibility for captioning on program producers. Such entities are properly within the Commission's jurisdiction under the Telecommunications Act of 1996 (the "1996 Act"), and are most likely to ensure that captioning is provided in an accurate and economical manner to the maximum number of viewers. The alternative, *i.e.*, requiring every MVPD in the United States to incur duplicative equipment, labor and administrative costs to ensure that closed captioning is provided for potentially thousands of programs over multiple channels, is unworkable from a regulatory standpoint and would cause exactly the type of financial burden on the wireless cable industry which Congress sought to avoid in enacting the closed captioning provisions of the 1996 Act.

The Commission must also recognize that in most cases a wireless cable system's channel capacity includes up to 20 ITFS channels which the system leases on part-time basis from local educators. As a public service, wireless cable operators often offer to their subscribers some or all of the ITFS programming transmitted by ITFS licensees during the time reserved for their programming. Given the cost of closed captioning and the relatively small budgets of local educators, it should come as no surprise that this educational programming (which often consists of on-campus classroom lectures) usually is not captioned at the source. Were the Commission to require closed captioning of ITFS programming that is distributed to wireless cable subscribers, there is a significant risk that such programming could no longer be offered to subscribers due to the additional equipment and administrative costs associated with implementing closed captioning technology. Accordingly, WCA requests that any closed captioning requirements adopted in this proceeding specifically include a blanket exemption for ITFS programming transmitted by an ITFS licensee pursuant to Section 74.931 of the Commission's Rules.

Finally, for the reasons set forth herein, WCA submits that (1) the Commission's existing technical standards for closed captioning are sufficient to ensure proper delivery of captioned programming to subscribers, and that the Commission should not adopt any non-technical standards with respect to accuracy, punctuation, etc.; (2) the Commission should not impose any record keeping requirements on MVPDs *vis-a-vis* closed captioning; and (3) to ensure that the captioning issue is not inappropriately used as leverage against competing MVPDs, the Commission must clarify that those entities which provide programming to MVPDs must make captioning available to wireless cable systems on a nondiscriminatory basis.

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

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

COMMENTS

The Wireless Cable Association International, Inc. ("WCA"),[1] by its attorneys, hereby submits its comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*") issued in the above-captioned proceeding.[2]

I. INTRODUCTION.

As a preliminary matter, WCA wishes to emphasize that it fully supports the efforts by Congress and the Commission to promote the distribution of closed captioning and video description services through single-channel broadcast television and through multichannel

---

[1] WCA is the principal trade association of the wireless cable industry. Its membership includes virtually every wireless cable operator in the United States, the licensees of many of the Multipoint Distribution Service ("MDS") stations and Instructional Television Fixed Service ("ITFS") stations that lease transmission capacity to wireless cable operators, producers of video programming and manufacturers of wireless cable transmission and reception equipment. Accordingly, WCA's membership has a vital interest in the Commission's implementation of the closed captioning provisions of the Telecommunications Act of 1996 (the "1996 Act").

[2] FCC 97-4 (rel. January 17, 1997).

technologies such as wired cable, wireless cable, and direct broadcast satellite ("DBS") systems. WCA firmly believes that expanding the availability of closed captioned programming is clearly in the best interests of the wireless cable industry and their subscribers. For this reason, the wireless cable industry has made a voluntary commitment to utilize the technology necessary to retransmit closed captioned programming intact, as the cable industry is currently required to do. That commitment will be preserved irrespective of the outcome of the *NPRM*. WCA thus offers its comments in a spirit of cooperation, with the intent of offering suggestions as to how any Commission regulation of this area might best achieve the laudable objectives of this proceeding, without imposing undue economic burdens on MVPDs.

As already observed by Congress and acknowledged by the Commission, it is more economical and efficient to caption programming at the time of production and to distribute it with captions than to have each multichannel video programming distributor ("MVPD") caption the programming just before it is delivered to the subscriber. Accordingly, subject to one important exception discussed below, WCA submits that the Commission should impose responsibility for captioning on the program owner that first licenses the program for distribution by broadcasters or MVPDs after the new rules become effective. WCA submits that such entities are properly within the Commission's jurisdiction under the 1996 Act, and are most likely to ensure that captioning is provided in an accurate and economical manner to the maximum number of viewers.

The Commission must also recognize that in most cases a wireless cable system's channel capacity includes up to 20 ITFS channels which the system leases on part-time basis from local

educators. As a public service, wireless cable operators often offer to their subscribers some or all of the ITFS programming transmitted by ITFS licensees during the time reserved for their programming. Were the Commission to require closed captioning of ITFS programming that is distributed to wireless cable subscribers, there is a significant risk that such programming could no longer be offered to subscribers due to the additional equipment and administrative costs associated with implementing closed captioning technology. Accordingly, WCA requests that any closed captioning requirements adopted in this proceeding specifically include a blanket exemption for ITFS programming transmitted by an ITFS licensee pursuant to Section 74.931 of the Commission's Rules.

Finally, for the reasons set forth herein, WCA submits that (1) the Commission's existing technical standards for closed captioning are sufficient, and that the Commission should not adopt any non-technical standards with respect to accuracy, punctuation, etc.; (2) the Commission should not impose any record keeping requirements on MVPDs *vis-a-vis* closed captioning; and (3) the Commission must clarify that those entities which provide programming to MVPDs must make captioning available to all wireless cable systems on a nondiscriminatory basis.

II. ANY CLOSED CAPTIONING REQUIREMENTS ADOPTED IN THIS PROCEEDING SHOULD BE IMPOSED ON PROGRAM OWNERS.

Like other MVPDs, wireless cable operators rely heavily on television broadcast stations and cable networks (*e.g.*, HBO, ESPN, CNN) for their programming. As previously noted by the Commission, a wireless cable system simply retransmits that programming and any closed

captioning included therein to its subscribers intact.[3] A wireless cable subscriber in turn may view the programmer-supplied closed captioning so long as he or she uses a television set or special decoder with closed captioning capability. This is a simple and economical process which has worked effectively for programmers, wireless cable systems and their subscribers.

Congress thus has recognized that "[I]t is clearly more efficient and economical to caption programming *at the time of production and to distribute it with captions* than to have each delivery system or local broadcaster caption the program."[4] The Commission has agreed, stating that "[F]rom a practical standpoint, . . . captioning is most efficiently placed at the production stage."[5] Other parties representing virtually all links of the video distribution "chain" and at least one public interest group representing the deaf have taken a similar position.[6] The widespread agreement on this issue reflects the basic fact that captioning will be inserted in the most accurate

---

[3] *In the Matter of Closed Captioning and Video Description of Video Programming,* MM Docket No. 95-176, FCC 96-318 at ¶ 17 (rel. July 29, 1996) ["*Report to Congress*"].

[4] H.R. Rep. 104-204, 104th Cong., 1st Sess. at 114 (1995) ("House Report") [emphasis added].

[5] *NPRM* at ¶ 6.

[6] *See* Comments of Bell Atlantic, MM Docket No. 95-176, at 6-7 (filed March 15, 1996); Comments of Home Box Office, MM Docket No 95-176, at 12 (filed March 15, 1996); Comments of CBS Inc., MM Docket No. 95-176, at 21 (filed March 15, 1996); Comments of Capital Cities/ABC, Inc., MM Docket No 95-176, at 11-12 (filed March 15, 1996); Comments of National Broadcasting Company, Inc., MM Docket No 95-176, at 12 (filed March 15, 1996); Comments of the National Association of Broadcasters, MM Docket 95-176, at 8 (filed March 15, 1996); Joint Comments of Schwartz, Woods & Miller, MM Docket No. 95-176, at 14 (filed March 15, 1996); Comments of the Satellite Broadcasting and Communications Association, MM Docket No. 95-176, at 2 (filed March 15, 1996); Comments of EEG Enterprises, Inc., MM Docket No. 95-176, at 4-5 (filed March 15, 1996) and Comments of the Association of Late-Deafened Adults, MM Docket No. 95-176, at 4 (filed March 14, 1996).

and economical manner if it is done *once* at the very beginning of the distribution process by the entity that is most familiar with the program content, *i.e.*, the program owner.

Significantly, Congress did not direct the Commission to impose any captioning obligations on MVPDs, nor did it preclude the Commission from imposing captioning obligations on other entities in the distribution chain who are closer to the production stage of programming. Section 713(b)(1) of the 1996 Act merely directs the Commission to ensure that new programming is "fully accessible through the provision of closed captions," without excluding any particular entity from the scope of the Commission's closed captioning rules.[7] Moreover, Section 713(b)(2) requires the Commission to ensure that "video programming providers *or owners* maximize the availability of [library] programming."[8]

WCA therefore submits that the Commission's task in this proceeding is to identify that link in the distribution chain that is best equipped to comply with the Commission's captioning requirements and otherwise ensure that captioning will be available to as many subscribers as possible. Given Congress's recognition that it is most efficient to caption programming *one time* and distribute the programming with captions already in place, WCA submits that it would be most logical for the Commission to impose captioning obligations on the program owner who can add closed captioning before programming is distrubuted, not on the multitude of MVPDs who distribute the programming.[9]

---

[7] 47 U.S.C. § 613(b)(1).

[8] 47 U.S.C. § 613(b)(2) (emphasis added).

[9] *See* House Report at 114; *NPRM* at ¶ 6.

In the *NPRM*, however, the Commission proposes that "video programming providers" be solely responsible for compliance with the Commission's closed captioning rules. The Commission defines "video programming provider" to include any all entities "who provide video programming directly to a customer's home, regardless of the distribution technologies employed by such entities."[10/] Despite its recognition that "captioning is most efficiently placed at the production stage," the Commission proposes to impose captioning obligations on MVPDs on the theory that they "are in the best position to ensure that the programming they distribute is closed captioned because of their role in the purchasing of programming from producers."[11/] The Commission also states that the "direct link" between "video programming provider" and consumers and their subscribers is "an important consideration," but does not explain exactly why this is the case with respect to MVPDs.[12/] For the reasons set forth below, WCA respectfully submits that the Commission's analysis is misguided, and that imposing the captioning obligation on the program owner remains the most sensible and effective way to ensure wide distribution of captioned programming via multichannel technologies.

MVPDs do not "purchase" programming directly from producers. Rather, MVPDs generally retransmit broadcast stations and cable networks who either produce programming themselves or, more often, themselves purchase programming from outside producers. MVPDs

---

[10/] *NPRM* at ¶ 28.

[11/] *NPRM* at ¶ 28.

[12/] *Id.* In any event, wireless cable operators are not the "direct link" to the subscriber. Rather, the "direct link" to the subscriber are the MDS and ITFS licensees from whom wireless cable operators lease channel capacity.

thus are far removed from the production stage of television and cable network programming, and thus have no input into whether that programming is captioned.[13/]

An MVPD also cannot force a broadcast station or a cable network to supply captions where it has an existing retransmission consent agreement or a cable network affiliation contract that does not require the broadcaster or the cable network to supply captioned programming. In other words, MVPDs are currently bound by distribution agreements that often require them to relay a particular signal, regardless of whether that signal includes closed captioning.

Moreover, even when those agreements expire, an MVPD cannot force a broadcaster or a cable network to provide captioned programming where it has already been determined that it is uneconomical or technically infeasible to do so. Since subscribers usually demand certain types of programming whether it is captioned or not, it is unrealistic to assume that a multichannel provider will have sufficient leverage over most programming services to insist that programming be captioned as a precondition to carriage. That assumption is especially unrealistic in the case of wireless cable, which cannot compete effectively with incumbent cable operators without unimpeded access to the most popular broadcast and cable network programming available.

Furthermore, imposing the captioning obligation on every MVPD in the United States is an extremely expensive and ultimately unworkable solution when compared to the current

---

[13/] A wireless cable system acquires the right to retransmit broadcast and cable network programming through retransmission consent agreements (in the case of the former) and affiliation contracts (in the case of the latter). These agreements, however, only give a wireless cable system the right to retransmit the underlying broadcast or cable network feed; they do not give the wireless cable system any rights with respect to the television broadcast station's or cable network's programming.

practice of having the programming captioned *once* by the program producer at the source and distributed to MVPDs with the captions already in place. As noted by the Commission in its recent Report to Congress on closed captioning , the cost of "off-line" captioning for prerecorded programming ranges from $800 to $2500 per hour;[14] for live programming, the cost ranges from $150 to $1200 per hour.[15] Even on an analog wireless cable system with the maximum number of 33 channels, it will be extraordinarily difficult and expensive for a wireless cable operator to (1) monitor every program on every channel every hour of every single day to determine whether the Commission's captioning benchmarks have been satisfied, (2) identify whether any non-captioned programming is exempt from the Commission's captioning rules; and (3) where the programming is not eligible for an exemption, supply any required closed captioning that meets all current standards vis-a-vis accuracy, punctuation, etc. These tasks will become exponentially more difficult and expensive upon the wireless cable industry's transition from analog to digital compression technology.[16] There is little question that requiring every wireless cable operator

---

[14] NBC has estimated that it costs between $900 and $1800 per episode to caption a single episode of a prime time series, $1800 for a "made for television" movie or episode of a miniseries, and $1200 for a Saturday morning live action children's show. *Report to Congress* at ¶ 17. ABC indicates that it pays approximately $790 to $1200 per hour for off-line captioning. *Id.* Furthermore, it is estimated that the cost of captioning a commercial is approximately $250 per minute, and that off-line captioning of music videos costs $275 to $400 for a short form video and $25000 for a long form 60-minute video. *Id.*

[15] The National Captioning Institute has stated that live captioning for a national program would cost between $300 and $1200 per program hour, and $125 to $300 for a local program hour. *Report to Congress* at ¶ 48.

[16] Last year the Commission released its long-awaited *Declaratory Ruling and Order* in which it established interim rules and policies that will allow wireless cable systems to deploy digital compression technology. *Request for Declaratory Ruling on the Use of Digital Modulation by*

in the United States to incur duplicative equipment, labor and administrative costs to ensure the provision of closed captioning for potentially thousands of programs over 100 or more digitally compressed channels would cause exactly the type of unreasonable financial burden that Congress sought to avoid in enacting the closed captioning provisions of the 1996 Act.[17]

The Commission also fails to recognize that imposing the captioning obligation on MVPDs will not increase the availability or enhance the accuracy of closed captioning generally. Once closed captions are inserted at the production stage of a program, they can be used repeatedly by multiple distributors at any time in the future.[18] By contrast, MVPDs can only

---

Multipoint Distribution Service and Instructional Television Fixed Service Stations, Declaratory Ruling and Order, FCC 96-304, DA 95-1854 (rel. July 10, 1996). Major wireless cable operators such as People's Choice TV Corp., CS Wireless, Inc., BellSouth Corp. and Pacific Telesis have announced plans to launch digital wireless cable systems in 1997. *See, e.g.*, Gibbons, "PCTV's Story: Waiting for Digital," *Multichannel News*, at 54 (Dec. 9, 1996); Barthold, "A Foggy Road Ahead," Cable World, at 21 (Jan.27, 1997); Barthold, "Going Digital," *Cable World*, at 22 (Jan.27, 1997); Breznick, "BellSouth Eyes Atlanta, New Orleans, Miami for '98 MMDS launches," *Cable World*, at 12 (Dec. 2, 1996).

[17] The Commission appears to assume that the financial burden on MVPDs will nonetheless be minimized, on the theory that "[P]roducers generally will have the responsibility for captioning programming regardless of who has the obligation to comply with our rules." *NPRM* at ¶ 6. To the contrary, it is at least equally plausible to assume that vertically integrated cable programmers, knowing that they have no obligation to caption their self-produced programming, will force alternative multichannel providers such as wireless cable to choose between either captioning the programming themselves, carrying the programming without captions in violation of the Commission's Rules or not carrying the programming at all. As discussed *supra*, this is not a realistic option for wireless cable operators who must offer channel lineups competitive with those of incumbent wired cable systems.

[18] The importance of the "reuse" factor should not be overlooked. For instance, the Commission has noted that certain high budget programming, such as theatrical films, is distributed nationally and reused many times. *Report to Congress* at ¶ 16. By focusing on distributors rather than producers, the Commission is forced into the impossible task of determining which distributor in a potentially infinite chain of distribution and redistribution should be the single entity

caption broadcast and cable network programming as it is being received from the broadcast or cable network feed, *i.e.*, in "real time." This means that the captions are not encoded into the programming itself and thus cannot be reused by future distributors. Furthermore, the Commission already acknowledges that "real time" captioning is more prone to human error and thus is potentially less accurate that providing captions at the production stage of a program.[19]

Hence, for the reasons set forth above, WCA urges the Commission to impose closed captioning obligations on the program owner that first licenses a program for distribution to broadcasters and MVPDs after the new rules become effective. WCA submits that Congress's expansive application of the statute to include "owners," combined with its explicit acknowledgment that it is more efficient and economical to caption programming at the time of production and distribute that programming with the captioning in place, is more than sufficient to give the Commission the authority to assert jurisdiction over these parties under the 1996 Act. WCA further submits that this approach is consistent with how captioned programming has always been made available through multichannel technologies for a number of years, and remains the most effective and cost efficient way to achieve maximum availability of captioned programming in the marketplace. Finally, program owners will be more familiar with the technical, creative and economic factors that might justify an exemption in any given case, and

---

responsible for captioning programming for the benefit of all future distributors. WCA submits that this provides additional justification for the Commission to adopt the more practical solution of requiring captioning to be inserted at the source by the program producer before it enters the distribution chain.

[19] *See Report to Congress* at ¶ 14.

thus are better positioned than MVPDs to assist the Commission effectively during the exemption process.

III. THE COMMISSION SHOULD ADOPT A BLANKET EXEMPTION FROM ITS CLOSED CAPTIONING RULES FOR ITFS PROGRAMMING.

As noted above, the Commission proposes to impose "video programming providers," which the Commission has defined to include any provider who delivers programming directly to the home. For the reasons set forth below, WCA submits that this definition would necessarily exclude ITFS licensees with respect to the programming that they transmit exclusively to local schools over their ITFS channels.

ITFS is a point-to-multipoint microwave service which operates on 20 channels in the 2.5-2.6 GHz band; subject to very limited exceptions, a license for an ITFS station will be issued only to (1) an accredited institution or to a governmental organization engaged in the formal education of enrolled students, or (2) a nonprofit organization whose purposes are educational and which provides educational television material to such accredited institutions and governmental organizations.[20] Thus, unlike the other multichannel technologies discussed in the *NPRM*, *ITFS is not a commercial service held out to the general public*. Rather, ITFS channels are delivered to selected receive sites "to provide formal educational and cultural material in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities."[21]

---

[20] *See* 47 C.F.R. §§ 74.902, 74.931 and 74.932(a).

[21] 47 C.F.R. § 74.931(a)(1). ITFS channels may also be used to transmit other visual and aural educational, instructional and cultural material, including in-service training and instruction in special skills and safety programs; extension of professional training; informing persons and groups engaged in professional and technical activities of current developments in their particular

Hence, excluding subscribers who receive ITFS programming as part of wireless cable service, one cannot receive ITFS programming simply by turning on his or her television set. Instead, the viewer must be an "authorized user" (*i.e.*, a student at an accredited educational institution) and must be located at a designated ITFS receive site equipped with the necessary facilities for reception of ITFS transmissions. ITFS licensees thus do not deliver programming directly "to a customer's home" as contemplated by the Commission, and the Commission should therefore clarify that ITFS licensees are not subject to the Commission's closed captioning rules with respect to the programming they provide directly to local schools.

WCA further submits the Commission must preserve the growth and vitality of the ITFS service by adopting a blanket exemption from its closed captioning rules for ITFS programming that is delivered to the public via wireless cable systems. On this point, it is important to note that ITFS is primarily a *local* service; indeed, the Commission's ITFS rules are designed specifically to encourage licensing of ITFS channels to local rather than national providers of educational programming:

> Locally based educational entities have been convincingly demonstrated . . . to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities, for designing courses to suit those needs, and for scheduling courses to suit those needs, and for scheduling courses during the school year. They best understand the educational needs and academic standards of their communities and are the most appropriate bodies to produce

---

fields, and other similar endeavors. 47 C.F.R. § 74.931(b).

> such educational programming or select such programming from the sources available. Thus, they can act most responsibly in designing and development of ITFS systems.[22]

The local nature of the ITFS service in effect means that an ITFS licensee usually must operate with a very limited budget and has few resources to tap for financial support. Moreover, the limited distribution of ITFS programming generally precludes substantial underwriting commitments from the private sector that might otherwise be devoted to captioning or other specialized services.[23]

The *NPRM* fails to recognize that in most cases a wireless cable system's channel capacity includes up to 20 Instructional Television Fixed Service ("ITFS") channels which the system leases on a part-time basis from local educators.[24] Under the Commission's Rules, a substantial number of programming hours on leased ITFS channels *must* be reserved for educational

---

[22] *Amendment of Part 74*, 101 F.C.C.2d 50, 56 (1985); *see also* 47 C.F.R. § 74.913(b)(1) (awarding the maximum number of points in the ITFS licensee selection process to local applicants).

[23] On this point, it is important to remember that a substantial number of ITFS licensees are local school boards or local church-affiliated entities that do not have anywhere near the fundraising capability of, for example, many noncommercial educational television broadcast stations throughout the United States.

[24] The critical relationship between wireless cable operators and ITFS licensees has been well documented in other Commission proceedings. *See, e.g., Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service*, 9 FCC Rcd 3360, 3364 (1994) ["We believe that our endorsement of [ITFS] channel loading will . . . [allow ITFS licensees] flexibility to cultivate their partnerships with wireless cable operators, an arrangement we have sought to nurture over the last decade, to the welfare of the ITFS service and the public . . .. In today's market environment, MMDS channels and ITFS channels are interrelated components of an integrated set of channels used to provide non-broadcast instructional and entertainment programming in a given market."]

programming, captioned or not.[25] As a public service, wireless cable operators often transmit this programming not only to ITFS receive sites but into subscriber residences as well. ITFS programming often is not captioned at the source, meaning that under the Commission's proposal many wireless cable systems will be required to block ITFS programming in order to avoid a violation of the Commission's Rules. Accordingly, absent an exemption pursuant to Section 713(d)(1) of the 1996 Act, ITFS programming will be *less* widely available through wireless cable systems by virtue of the Commission's closed captioning rules, thereby disrupting the historical working relationship between ITFS licensees and wireless cable operators that is absolutely essential to the development of the ITFS service and the wireless cable industry. There is no sound policy rationale for such a result. WCA therefore requests that the Commission adopt a blanket exemption for all qualified ITFS programming delivered to subscriber homes by wireless cable operators, *i.e.*, that programming which qualifies as "permissible service" under Section 74.931 of the Commission's Rules.[26]

---

[25] *See* 47 C.F.R. § 74.931 (a)(1) (subject to limited exceptions, ITFS channels must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools) and § 74.931(e)(2) (where an ITFS licensee leases capacity to a wireless cable operator, it must provide at least 20 hours of ITFS programming per channel each week, and must reserve an additional 20 hours per channel per week for recapture on one year's advance notice).

[26] In recognition of the fact ITFS programming may be presented for simultaneous reception and display or recorded by authorized viewers for use at another time, WCA requests that the Commission apply its blanket exemption to all qualified ITFS programming regardless of whether it is presented on a "live" or "tape delayed" basis.

IV. IT IS NOT NECESSARY TO IMPOSE ANY RECORD KEEPING REQUIREMENTS ON MVPDS TO ENSURE COMPLIANCE WITH THE COMMISSION'S CLOSED CAPTIONING RULES.

WCA believes that effective enforcement of the Commission's closed captioning rules does not require MVPDs to maintain a public or other immediately available file that includes information has to how much of the programming on the distributor's system is captioned. Wireless cable operators are already subject to substantial public file and reporting obligations under the Commission's Rules; requiring the wireless cable industry to incur the additional cost or retaining captioning records for potentially thousands of programs over hundreds of channels is excessively burdensome and duplicative, given that program owners will already have this information readily available.[27]

V. THE COMMISSION'S EXISTING TECHNICAL STANDARDS FOR CLOSED CAPTIONING ARE SUFFICIENT TO ENSURE COMPLIANCE WITH THE PROPOSED CLOSED CAPTIONING RULES.

WCA fully agrees with the Commission's conclusion that "[c]urrent technology is sufficient to ensure that every video programming provider is capable of transmitting the

---

[27] Wireless cable operators are already required to file and maintain for public inspection annual reports that provide the name and address of the MDS licensee; the call sign and primary geographic areas served by each MDS station; and a table setting forth a variety of information including the number of separate subscribers served during the calendar year, the total hours of transmission service rendered on each station during the prior year to all subscribers, and the total hours of transmission service rendered during the calendar year in each of the entertainment, education and training, public service, data transmission, and other service categories. *See* 47 C.F.R. § 21.911. In addition, wireless cable operators are already required to file and maintain for public inspection annual reports to verify compliance with the Commission's EEO requirements.

captioning included with the programming to consumers."[28] Thus, as to technical standards for closed captioning, it is unnecessary for the Commission to do anything more than simply require all MVPDs to deliver captioned programming intact to their subscribers.[29] WCA also agrees with the Commission's tentative conclusion that it should not at this time adopt any standards pertaining to the non-technical aspects of quality and accuracy of closed captions.[30] This is a matter best resolved between program producers and representatives of the hearing-impaired community, and not by regulation of MVPDs who have no role in the captioning process itself.

VI. THE COMMISSION SHOULD DECLARE THAT PROGRAMMERS ARE REQUIRED TO MAKE CAPTIONED PROGRAMMING AVAILABLE TO ALL MVPDS ON A NONDISCRIMINATORY BASIS.

WCA submits that the Commission must prevent vertically integrated cable programmers from using the "captioning card" as a means of impeding the wireless cable industry's access to cable programming. It is conceivable, for example, that a programmer might attempt to obtain both a regulatory and a marketplace advantage by refusing to sell its programming with captions to a wireless cable operator who competes directly with incumbent cable operators. The Commission should therefore clarify that if programmers make closed captioned programming available to cable operators, they must do the same for wireless cable operators and other MVPDs on a nondiscriminatory basis.

Finally, the Commission should also clarify that television stations carried by MVPDs

---

[28] *NPRM* at ¶ 110.

[29] *See, e.g.*, 47 C.F.R. § 76.606.

[30] *NPRM* at ¶ 110.

pursuant to retransmission consent must also make their captioned programming available to all such distributors on a nondiscriminatory basis. The legislative history of the 1996 Act indicates that a MVPD may not refuse to carry a "consent" signal solely because the programming on that signal is not captioned as required by the Commission's Rules.[31] While WCA has no objection to this requirement, it highlights the need for the Commission to confirm that a television broadcast station carried on a "consent" basis must make its captioned programming available to all MVPDs on the same terms and conditions.

VII. CONCLUSION.

WCA reiterates its support for the Commission's efforts in this proceeding to achieve a workable solution that will satisfy the interests of the hearing-impaired community without imposing excessive economic and administrative burdens on MVPDs. On the most important issue before the Commission, Congress has provided clear guidance: it is much more practical and efficient to caption programming during the production stage than at the MVPD's facilities just prior to delivery of the programming to subscribers. WCA therefore submits that it would be most sensible for the Commission to construct its closed captioning rules around this basic concept and adopt closed captioning rules that (1) impose responsibility for compliance on program owners; (2) exclude ITFS licensees from the definition of "video programming provider" and establish a blanket closed captioning exemption for ITFS programming delivered into subscriber homes; (3) impose no additional record keeping requirements on MVPDs; (4) include no technical or non-technical standards for closed captioning other than the requirement

---

[31] House Report at 115.

that all closed captioned programming be retransmitted intact; and (5) clarify that captioned programming must be made available to all MVPDs on a nondiscriminatory basis.

Respectfully submitted,

THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

By: _____
Paul J. Sinderbrand
Robert D. Primosch

WILKINSON, BARKER, KNAUER & QUINN
1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 783-4141

Its Attorneys

February 28, 1997