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

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FEDERAL COMMUNICATIONS COMMISSION
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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	)	

PETITION FOR CLARIFICATION OR RECONSIDERATION

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petitions the Commission to clarify and, to the extent necessary, reconsider the rules and policies adopted in the August 22, 1997 *Report and Order* (the "*Order*") in the above-captioned proceeding.[1/]

As the trade association of the wireless cable industry, with a membership that includes wireless cable operators and the Instructional Television Fixed Service ("ITFS") and Multipoint Distribution Service licensees that lease channel capacity for the transmission of programming to subscribers, WCA has been an active participant in this proceeding. While WCA is generally supportive of the *Order*, WCA submits that the public interest will be served by clarifying that all programming transmitted by an ITFS licensee is entitled to an exemption under newly-

[1/] FCC 97-279 (rel. Aug. 22, 1997).

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adopted Section 79.1(d) of the Rules, regardless of whether the programming has been produced specifically for transmission over an ITFS station.

In its initial comments and its reply comments, WCA urged the Commission to exempt from the closed captioning requirement all ITFS programming which qualifies as "permissible use" programming under Sections 74.931 (a), (b) and (c) of the Commission's Rules [2/] in order to minimize undue financial burdens upon the educational community and avoid the unintended consequence of limiting the distribution of educational and instructional programming.[3/] WCA's views were shared by numerous ITFS licensees that filed separately.[4/]

The Commission is to be applauded for addressing those concerns. The *Order* specifically holds that:

> *We will exempt ITFS programming from our closed captioning requirements.* This programming is intended for specific receive sites and not for general distribution to residential television viewers. To the extent that persons with hearing disabilities are the intended recipients of this programming, we conclude that other laws require that accommodations be made to make this instructional programming accessible. We also will not require wireless cable operators that

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[2/] This programming constitutes the programming that is selected by the ITFS licensee for transmission over the airtime capacity it has reserved for its own use. It does not include the "excess capacity" that an ITFS licensee may lease to a wireless cable operator or other party pursuant to Section 74.931(e).

[3/] *See* Comments of WCA, MM Docket No. 95-176 (filed Feb. 28, 1996); Reply Comments of WCA, MM Docket No. 95-176 (filed Apr. 1, 1996).

[4/] *See, e.g.,* Comments of the Archdiocese of Los Angeles Education and Welfare Corporation *et al.*, MM Docket No. 95-176, at 2-7 (filed Feb. 28, 1997); Joint Comments of Higher Education Parties, MM Docket No. 95-176, at 4-5 (filed Feb. 28, 1997); Comments of The Catholic Television Network, MM Docket No. 95-176, at 4-8 (filed Feb. 28, 1997); Comments of Indiana Higher Education Telecommunications System, MM Docket No. 95-176, 5-7 (filed Feb. 28, 1997); Comments of the ITFS Parties, MM Docket No. 95-176, at 2-8 (filed Feb. 28, 1997).

> retransmit ITFS programming to consumers to provide closed captioning for such programming. We note that wireless cable operators that lease ITFS channels for use during those parts of the day when instructional programming is not offered simply pass through the programming rather than allowing the channel to go dark. We believe that a captioning requirement for wireless cable operators under these circumstances would likely result in an economic burden since they probably would not be able to recoup these costs through advertising or subscriber revenues.

Order, at 77 (emphasis added).

Unfortunately, while the *Order* evidences the Commission's intention of exempting all ITFS programming, the precise language employed by the Commission in its Rules to reflect this exemption is unduly restrictive. Newly-adopted Section 79.1(d)(7) of the Rules provides that the exemption for ITFS programming is only available with respect to "video programming produced for the instructional television fixed service . . .."[5/] However, very often the programming transmitted by an ITFS licensee has not been produced specifically for transmission over an ITFS facility. For example, there are a myriad of educational and instructional films that were not necessarily produced with the intent they be distributed via ITFS, but which are in fact transmitted by ITFS licensees into educational receive sites. It would be as unduly burdensome to require ITFS licensees to caption such programming as it is for them to caption programming solely intended for ITFS retransmission.[6/] While it does not appear from the *Order* that the Commission intended to narrowly limit the exemption solely to

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[5/] *Order*, at 138.

[6/] Of course, if the programming is closed captioned, the ITFS licensee will be obligated to transmit the closed captioning information.

programming produced for the express purpose of transmission over ITFS stations, clarification is needed to avoid the risk that the text of the new rule will be interpreted literally in the future.

In order to avoid this risk WCA suggests that the Commission clarify its intentions by revising Section 79.1(d)(7) of the Rules to read as follows:

> "ITFS Programming. Video programming transmitted by an Instructional Television Fixed Service licensee pursuant to Sections 74.931(a), (b) or (c) of the Rules."

Such a revision will assure that the closed captioning requirement not impose undue economic burdens on the educational community or have the unintended consequence of reducing the amount of educational and instructional programming that ITFS licensees can distribute.

In short, while the wireless cable industry and its ITFS partners are fully committed to maximizing the availability of closed captioned programming for hearing-impaired viewers, the

proposed clarification is necessary to assure that the objectives underlying the *Order* are achieved.

Respectfully submitted,

THE WIRELESS CABLE ASSOCIATION
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October 15, 1997