AMERICAN ASSOCIATION
of ADVERTISING AGENCIES

Washington Office

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 10, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: MM Docket No. 95-176

OPPOSITION OF THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES (AAAA) TO PETITIONS FOR RECONSIDERATION OF THE CLOSED CAPTIONING FOR SHORT ADVERTISEMENTS RULES

Dear Secretary:

Introduction

The American Association of Advertising Agencies (AAAA) is submitting this response to the requests for reconsideration of the Federal Communications Commission's (FCC) closed captioning of short advertisements exemption, filed by the National Association for the Deaf and Consumer Action Network (NAD) and the Self Help for Hard of Hearing People, Inc.

The AAAA is the trade association of the advertising agency business. Our over 1,300 member advertising agency offices across the country produce 80% of the national advertising and substantial amounts of local and regional advertising.

AAAA believes that the FCC correctly exempted advertisements that are five minutes or less in duration from the closed captioning requirement. NAD argues for a reconsideration of the exemption, while ignoring the congressional intent of the Telecommunications Act to exempt short advertisements from closed captioning mandates. NAD also unconvincingly dismisses the economic burden argument, denying that there are economic hurdles to captioning ads.

1899 L Street, N.W.
Washington, D.C. 20036-3891
(202) 331-7345 • Fax (202) 857-3675

Headquarters:
The Chrysler Building • 405 Lexington Avenue • New York, NY 10174-1801
(212) 682-2500 • Fax (212) 682-8391

Most important, as we mentioned in our comments to the FCC on 2/28/97, AAAA's support of closed captioning of commercials since 1981 has resulted in an annual increase in the number of commercials captioned. NAD ignores this increase, and provides no evidence that the number of captioned ads won't continue its upward movement.

AAAA continues to support the successful voluntary captioning initiatives that currently exist within the advertising industry. We ask that the FCC disregard the petitions for reconsideration of the exemption for short advertising for the reasons outlined below.

FCC EXEMPTION CRITERIA IS CORRECT

By concluding that short advertisements are not considered video programming and so are not subject to the closed captioning rules, the FCC correctly interpreted the Congressional intent of the Telecommunications Act (Act).

As the National Association of Broadcasters (NAB) discusses so well in its "Opposition of the NAB to Petitions for Reconsideration," the captioning provision of the Act includes no reference to advertising, and Congress left it to the FCC to define "video programming." Similarly, the legislative history surrounding the closed captioning rules does not reference advertising as a concern the rules were meant to address -- an unlikely oversight if Congress did intend the rules to cover advertising.

In other legislation, notably the Cable Act of 1992 and the Children's Television Act, Congress discussed both "programming" and "advertising" as distinct entities. Again, this suggests that Congress' use of the term "programming" in the Act was meant to reflect a distinction between the two terms, and that captioning was not intended to be required for advertising.

NAD also incorrectly argues that recent Supreme Court commercial speech decisions reveal a government mandate that advertisements be made more available to consumers. AAAA would argue that the correct interpretation of the decisions in Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 44 Liquormart Inc. v. Rhode Island and others is that the court has established strict limits on what government can do to ban or restrict commercial information.

ECONOMIC BURDEN IS REAL

We disagree with NAD's contention that " ...an exemption [for all advertisements] could not be based on economic burden." NAD calls for a limited economic burden exemption for advertisers. The reality is that AAAA encourages all its members to make good faith efforts to caption all commercials, and most make every effort to comply. However, as we discussed in our comments on 2/28/97, the last minute, time-intensive nature of advertising prohibits some commercials from being captioned. When an advertisement is not captioned, most often it is for economic reasons. Indeed, adopting this "limited exemption" would not likely increase the number of captioned ads. Instead, mandated captioning of commercials would result in some ads never making it on the air, wasting valuable production dollars for advertisers, denying consumers the opportunity to receive information about products and services, and effectively decreasing the number of ads vying for program sponsorship.

The economic burden of mandated captioning would be particularly great for small and local advertisers, whose production costs for television commercials already are comparatively high. Again, while most local advertisers attempt to caption their ads, the cost of mandated captioning would make television prohibitively expensive for many marketers, to the detriment of both consumers and advertisers.

The Marketplace Incentive Yields Positive Results

AAAA members are savvy marketers who recognize and appreciate the importance of reaching all consumers, including the hearing-impaired. The marketplace already provides a strong incentive for advertisers to voluntarily caption commercials, without the need for government mandates. Informal surveys indicate the number of commercials captioned annually has increased every year; NAD appears to ignore such evidence.

Conclusion

AAAA applauds the FCC's decision to not include short advertisements in the closed captioning rules. Clearly, Congress did not intend to include advertisements when it required captioning of "programming." The marketplace has provided the most compelling incentive for advertisers to

caption their commercials -- the attraction and retention of all consumers, including the hearing-impaired.

With AAAA and other industry groups fully committed to voluntary closed captioning of commercials, the number of captioned advertisements continues to increase without a demonstrated need for government mandates. The FCC should deny the requests to impose captioning requirements on commercials, and allow the advertising community to continue their forward progress.

Sincerely,

Harold A. Shoup
Executive Vice President
American Association of
Advertising Agencies
1899 L Street, NW
Washington, DC 20036
(202)331-7345