

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

RECEIVED
FEB 25 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

COMMENTS

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments in response to the *Further Notice of Proposed Rulemaking* ("FNPRM") issued in the above-captioned proceeding in which the Commission seeks comment regarding rules and policies to promote access to televised emergency information by persons with hearing disabilities.^{1/}

I. Introduction

As the principal trade association of the wireless cable industry, WCA is keenly interested in the issues that are under consideration in the *FNPRM*. WCA's membership includes virtually every wireless cable operator in the United States (which are subject to the Commission's closed captioning rules) as well as 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

^{1/} See *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, FCC 98-3, at ¶ 1 (rel. Jan. 14, 1998)[hereinafter cited as the "*FNPRM*"].

No. of Copies rec'd 024
DATE

manufacturers of wireless cable transmission and reception equipment. WCA was also an active participant in the earlier stages of this proceeding which led to the Commission's adoption of its August 22, 1997 *Closed Captioning Order*.^{2/} Accordingly, WCA's membership has a vital interest in the outcome of this proceeding.

As a preliminary matter, WCA wishes to emphasize that it has long supported the objective of promoting access to video programming by hearing impaired persons through closed captions and other such technologies. WCA firmly believes that expanding the availability of closed captioned programming is clearly in the best interests of the wireless cable industry and its subscribers. Indeed, the wireless cable industry voluntarily committed to the use of technology necessary to retransmit closed captioned programming intact long before the Commission adopted any requirement that wireless cable operators do so.^{3/} WCA thus offers its comments in a spirit of cooperation, with the intent of offering suggestions as to how to ensure that the health and safety goals underlying the *FNPRM* may be achieved without imposing undue economic burdens on the wireless cable industry and other alternative multichannel video program distributors.

^{2/} See *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, FCC 97-279 (rel. Aug. 22, 1997)[hereinafter cited as "*Closed Captioning Order*"].

^{3/} See *Wireless Cable Association International, Inc. Comments*, MM Docket No. 95-176 (filed Feb. 28, 1997).

II. Compliance With Additional Closed Captioning Requirements For Emergency Information Programming Should Be Imposed Upon Program Producers and Providers.

As it considers the issues raised in the *FNPRM* concerning additional closed captioning requirements with respect to emergency information programming, the Commission must keep in mind that captioning is most efficiently and economically provided and inserted by the producers of such programming. This is particularly true with respect to the programming that is the subject of this *FNPRM*.

Live news and emergency reports are generally produced by local broadcast television news organizations or other such local news producers. A wireless cable system simply retransmits that emergency programming and any closed captioning included therein to its subscribers intact.^{4/} 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. Although the Commission's closed captioning rules generally place the responsibility for compliance on video programming distributors (defined as all entities who provide video programming directly to customers' homes),^{5/} both Congress and the Commission have recognized that it would be economically inefficient to require multiple program distributors to insert independently closed captioning in the programming that is rebroadcast over their systems as opposed to having that information inserted by the producer. Congress

^{4/} The Commission acknowledged this reality in its 1996 report to Congress on the status of closed captioning accessibility in the video marketplace. *See Matter of Closed Captioning and Video Description of Video Programming*, 11 FCC Rcd 19,214, 19,248 (1996).

^{5/} *See* 47 C.F.R. § 79.1(a), (b).

recognized that “it 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.”^{6/} The Commission has agreed, noting earlier in this proceeding that “[F]rom a practical standpoint, . . . captioning is most efficiently placed at the production stage.”^{7/} In recognition of this fact, the *Closed Captioning Order* established a certification process whereby distributors may demonstrate compliance with the closed captioning rules by relying on certifications from program producers, networks and syndicators that expressly state that the programming is either captioned or exempt for the closed captioning rules.^{8/}

In the case of emergency information programming, it is particularly true that captioning by the program producer will be most efficient and economical. It is evident that the producer of a live news broadcast of an emergency event will be the party most aware of the occurrence of the event that is to be reported upon and will be best able to secure the necessary personnel for real-time closed captioning. Compare this to the situation of the wireless cable operator who is distant in the distribution chain and generally will not even know of the emergency broadcast until it begins. The *FNPRM* is unclear as to how a wireless cable operator must react in this

^{6/} H.R. Rep. 104-204, 104th Cong., 1st Sess. at 114 (1995) [emphasis added].

^{7/} See *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, 11 FCC Rcd 4912, 4916 (1997).

^{8/} See *Closed Captioning Order*, at ¶ 28. Should the Commission choose to adopt new captioning requirements here, it should confirm that distributors may rely on such certifications for emergency information to the same extent as allowed under existing closed captioning rules.

event. Would a wireless cable operator have to suspend emergency broadcasts until it can secure the services of a real-time captioner, meanwhile delaying the transmission of the emergency information to the public at large? And if no real-time captioning services can be secured, should the wireless cable operator remain off the air, lest it risk a violation of the closed captioning requirements?

Since emergency information programming is generally live, any captioning requirement will require substantial real-time captioning resources, the availability of which is unclear.^{9/} Yet should the Commission require each distributor to caption their transmissions independently, every emergency event will give rise to a sudden increase in demand from multiple video program distributors for closed captioning services. Needless to say, unless emergency information captioning is required to be inserted at the source, real-time captioning services will be extremely hard to come by in times of emergency.

Further, as the Commission has acknowledged, the costs of real-time captioning are quite high.^{10/} WCA agrees with the point made by others earlier in this proceeding that the costs of real-time captioning obligations may give rise to a disincentive for video program distributors, causing them to decide not to show emergency news reports that are not made available by the producers with captioning.^{11/} Given the importance emergency information programming to the public, it would be ironic if regulations designed to improve accessibility to emergency

^{9/} See *FNPRM*, at ¶ 9.

^{10/} See *id.* at ¶ 75.

^{11/} See *id.*

programming lead to the opposite result.

III. The Commission Should Permit Video Program Distributors To Ensure Access To Emergency Information Programming Through Either Closed Captioning Or Equivalent Methods That Convey The Substance Of The Emergency Information.

The Commission has previously recognized that access to emergency information programming for the hearing impaired can be accomplished through methods other than closed captioning. Indeed, the *FNPRM* recognizes that Section 73.1250(h) of the Commission's Rules allows "television stations to 'use any method of visual presentation which results in a legible message conveying the essential emergency information,' including, but not limited to, slides, electronic captioning, manual methods (e.g., hand printing), or mechanical printing processes."^{12/} Similarly, in the *Closed Captioning Order*, the Commission acknowledged that other means of ensuring accessibility to emergency information programming are available:

We believe that it is very important for emergency programming to be accessible and that there are methods to provide this vital information in some format for persons with hearing disabilities. We note that video programming providers currently can use open visual scrawls, open captioning, slides or other methods to provide this information in visual form. In the absence of closed captioning, we expect video programming providers to use these other methods to ensure that all of the details of this information is fully accessible.^{13/}

In response to the *FNPRM*'s invitation to comment on the propriety of extending this flexibility to all video program distributors, WCA suggests that it would be entirely appropriate to extend this flexibility to all video program distributors. Indeed, extending this flexibility for all emergency information programming would lessen the burden of an all-or-nothing captioning

^{12/} *FNPRM*, at ¶ 14.

^{13/} *Closed Captioning Order*, at ¶ 253.

requirement and would thus mitigate the disincentive (discussed above) that may cause video program distributors not to show emergency programming at all.

WCA urges the Commission to retain this flexibility in the event new emergency information accessibility requirements are adopted. WCA is concerned, however, about the Commission's tentative conclusion in the *FNPRM* "that any textual presentation of emergency information programs should be required to incorporate substantially the entire text of the audio portion of the program."^{14/} This tentative conclusion implies a strict content requirement that may be unnecessary. Instead, the Commission should permit video program distributors to use any method that would convey the substance of the emergency information. Such an approach would be in keeping with the principles underlying the flexibility afforded broadcasters in visually presenting emergency messages.^{15/}

IV. ITFS Licensees Should Remain Exempt From All Closed Captioning Obligations.

The Commission should confirm that all programming transmitted by an ITFS licensee is entitled to an exemption under newly-adopted Section 79.1(d) of the Rules. The *Closed Captioning Order* specifically exempted ITFS programming from any captioning obligation in recognition of the specialized instructional nature of ITFS programming.^{16/} In adopting that

^{14/} *FNPRM*, at ¶ 12.

^{15/} See *Amendment of Part 73 of the Rules to Establish Requirements for Captioning of Emergency Messages on Television*, 61 FCC 2d 18, 19 (1976) (Adopting "rules [which] would require that television stations transmit emergency information aurally and visually; however, the manner by which the visual display is produced is not specified but left to the discretion of the licensee.")

^{16/} See *Closed Captioning Order* at ¶ 77 ("We will exempt ITFS programming from our closed captioning requirements."); 47 C.F.R. § 79.1(d)(7). WCA notes that it has sought clarification

exemption, the Commission reasoned:

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 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.^{17/}

Should an ITFS licensee choose to transmit emergency information programming, this reasoning would still apply. 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 the Commission confirm that all ITFS programming transmitted by an ITFS licensee pursuant to Section 74.931 of the Commission's Rules shall remain exempt from closed captioning requirements.

of the ITFS programming exemption, as the precise language of Section 79.1(d)(7) is overly restrictive relative to the Commission's intention as expressed in the *Closed Captioning Order*. See WCA's Petition for Clarification or Reconsideration, MM Docket No. 95-176 (filed Oct. 15, 1997).

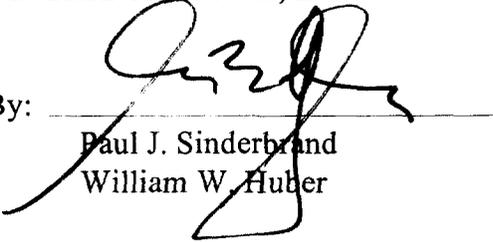
^{17/} *Id.*

For the foregoing reasons, WCA supports the adoption of rules and policies for the captioning of emergency information programming in accordance with these comments.

Respectfully submitted,

THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

By: _____


Paul J. Sinderbrand
William W. Huber

WILKINSON, BARKER, KNAUER & QUINN, LLP
2300 N Street, N.W.
Washington, D.C. 200037-1128
(202) 783-4141

Its Attorneys

February 25, 1998