DOCKET FILE COPY ORIGINAL ORIGINAL

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

RECEIVED
FEB 23 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of	)	MM Docket No. 99-339
Video Description of	)	
Video Programming	)	

COMMENTS

The Wireless Communications Association International, Inc. ("WCA") hereby submits its comments with respect to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[1/]

As a preliminary matter, WCA wishes to emphasize that it fully supports the efforts by Congress and the Commission to promote the distribution of video description services through single-channel television broadcast stations and through wired and wireless multichannel video programming distributors ("MVPDs"). At least insofar as wireless broadband MVPDs operating in the MDS/ITFS bands are concerned, WCA firmly believes that the needs of visually impaired subscribers will be addressed through voluntary MVPD efforts to pass through any "described" programming supplied by television broadcast stations and cable networks, and that the

[1/] FCC 99-353 (rel. Nov. 18, 1999). WCA's membership includes virtually every wireless broadband provider offering MVPD service in the United States, 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 broadband MVPDs, producers of video programming and manufacturers of wireless broadband transmission and reception equipment. Accordingly, WCA has a vital interest in the Commission's proposal to impose video description requirements on MVPDs and other distributors of video programming in national and local markets.

No. of Copies rec'd 0+4
List A B C D E

Commission therefore need not regulate with a heavy hand in this area. Indeed, the wireless broadband industry voluntarily committed to the use of technology necessary to retransmit closed captioned programming intact long before the Commission adopted any requirement that MVPDs do so.[2/] WCA thus offers its comments in a spirit of cooperation, with the intent of offering suggestions as to how any Commission regulation of video description might best achieve the laudable objectives of proceeding, without imposing undue economic burdens on wireless broadband MVPDs and other alternative distributors of multichannel video programming.

As in the case of closed captioning, WCA continues to believe that video description is most efficiently and economically provided and inserted by the producers of video programming, and not by wireless broadband MVPDs who represent the last link in the chain of distribution to their subscribers. Subject to that caveat, WCA generally supports the Commission's proposal to model its video description rules on the rules it has already adopted for closed captioning.[3/] In particular, WCA believes it is absolutely critical that the Commission's video description rules incorporate the categorical exemption for all video programming transmitted by ITFS licensees, as set forth in Section 79.1(d)(7) (47 C.F.R. § 79.1(d)(7)). As already acknowledged by the Commission,

> [ITFS] programming is intended for specific receive sites and not for general distribution to residential television viewers. To the extent that persons with

---

[2/] *See, e.g.,* Comments of The Wireless Cable Association International, inc., MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997).

[3/] *NPRM* at ¶ 21.

> 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.[4]

The above applies with equal force where video description is concerned, particularly in view of the Commission's corresponding proposal to exempt noncommercial educational television stations from its video description rules.[5] Accordingly, WCA requests that the categorical exemption for ITFS programming set forth in Section 79.1(d)(7) of the Commission's rules be incorporated *verbatim* in any rules the Commission adopts in this proceeding for video description.

WCA also supports the Commission's proposal to impose video description requirements initially only on those larger MVPDs whose audience reach is comparable to that of local network stations.[6] Here it must be remembered that wireless broadband MVPDs in the MDS/ITFS bands remain a vital source of competitive multichannel video service in smaller markets and rural areas where cable overbuilds and/or DBS "local into local" service may not

---

[4] *Closed Captioning and Video Description of Video Programming*, 13 FCC Rcd 3272, 3348 (1997) (the "*Closed Captioning Order*"); *see also Closed Captioning and Video Description of Video Programming (Order on Reconsideration)*, 13 FCC Rcd 19973, 20000-20001 (1998).

[5] *NPRM* at ¶ 25.

[6] *Id.*

be available for the foreseeable future. Indeed, MDS operators such as CNI Wireless (Somerset, Kentucky), W.A.T.C.H. TV (Lima, Ohio), CFW Cable (Charlottesville, Virginia and the surrounding area), Wireless One (various communities throughout the state of Mississippi)[7] and WHTV Broadcasting Corp. (various communities in Puerto Rico) have long been the only *bona fide* competition to incumbent cable operators in their respective markets. Given Congress's ongoing concern as to the lack of multichannel video competition in more sparsely populated areas, the need to minimize administrative and regulatory burdens on these entities should not be underestimated.[8]

WCA thus believes that in lieu of a case-by-case waiver approach, the Commission can and should incorporate a blanket "small system" exemption into its video description rules, as the Commission has already proposed to do with respect to its signal leakage reporting requirements for broadband service providers.[9] Specifically, WCA recommends that the Commission include a provision in its video description rules that, in addition to the exemptions already set forth in the Commission's closed captioning rules, exempts any wireless broadband MVPD with no more than 15,000 subscribers from the Commission's video description

---

[7] Wireless One was recently acquired by MCI Worldcom. *See* Farrell, "MCI Buys Another MMDS Operator," *Multichannel Online*, (viewed July 26, 1999) <http://www.multichannel.com>.

[8] *See, e.g.*, Remarks of Rep. Christopher B. Cannon, 145 Cong. Rec. H2320 (daily ed. April 27, 1999) ("Unfortunately, . . ., many [in rural Utah] still do not have access to local network programming. This means they cannot be informed about their communities and State without installing an antenna or other additional equipment, and even then a clear signal is difficult. Rural residents should have the same convenient access to television programming as those who live in urban areas.").

[9] *Telecommunications Services - Inside Wiring*, 13 FCC Rcd 3659, 3781 (1997).

requirements. This represents the definition of a "small cable system" for purposes of cable rate regulation and, in WCA's view, will encompass a sufficiently large number of smaller operators and reduce the Commission's processing burden, without having any material effect on the amount of "described" programming available in the marketplace.[10/]

The Commission also requests comment on whether it should adopt regulations to ensure that public safety messages "scrolled" across the television screen should be "described" or otherwise made more accessible to visually impaired views.[11/] WCA submits that the public interest objectives of this proposal can be best achieved by according video programming distributors (multichannel or otherwise) sufficient flexibility to provide whatever aural information they believe is appropriate to convey the substance of an emergency message to the visually disabled community. By way of example, in the context of closed captioning, 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

---

[10/] *Id.*, n. 746; *see also* 47 C.F.R. § 76.934(c)(11).

[11/] *NPRM* at ¶ 32.

[12/] 47 C.F.R. § 73.1250(h); *see also Closed Captioning and Video Description of Video Programming*, 13 FCC Rcd 5627, 5632 (1998) (the "*Closed Captioning Further Notice*"); 47 C.F.R. § 11.47(a) (stating that broadcast stations may additionally transmit Emergency Alert System ("EAS") messages through other communications means besides the main audio channel).

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]

Furthermore, since emergency information programming generally is live, any video description requirements for that programming would require substantial real-time video description resources, the availability of which is unclear. And, as alluded to in the *NPRM*, the costs of real-time video description are likely to be substantial, and thus may create a disincentive for MVPDs to carry emergency news reports or other emergency programs that have not already been "described" by the program producer.[14] Given the importance of emergency information to the public, it would be ironic if regulations designed to improve the visually disabled community's access to emergency programming lead to the opposite result.

Finally, there will be instances where video programming distributors must retain discretion to deliver emergency messages to the visually disabled community in the most practical manner possible, particularly in cases where an emergency message interrupts a "described" news program already in progress. Since simultaneous narrations are likely to be unworkable in such situations, the public interest will be best served by permitting video programming distributors to exercise their good faith judgment as to the priority to be accorded

---

[13] *Closed Captioning Order*, 13 FCC Rcd at 3386.

[14] *NPRM* at ¶ 26.

to emergency messages versus other "described" programming of critical interest to visually disabled viewers, and permitting video programming distributors to take whatever action is necessary to ensure that those viewers are fully informed as to emergency situations.

Accordingly, as the Commission has already proposed to do *vis-a-vis* closed captioning, the Commission should extend the above-described flexibility to all distributors of video programming where video description of emergency messages is concerned.[15] Given that video description technology is in its earliest stages of development, it would be premature for the Commission to impose mandatory video description requirements for emergency messages unless and until the Commission has determined that alternative methods of "description" devised voluntarily by video programming distributors have not adequately addressed the problem.[16] In addition, this approach would lessen the financial and administrative burden of an all-or-nothing video description requirement and would thus mitigate any disincentives that may cause video programming distributors not to show emergency programming at all. WCA thus recommends that the Commission's video description rules permit video programming distributors to "describe" emergency programming either via video description or equivalent methods that convey the substance of the emergency information at issue.

---

[15] *See Closed Captioning Further Notice*, 13 FCC Rcd at 5632-3.

[16] It should also be noted that the Commission's Emergency Alert System ("EAS") rules, effective October 1, 2002, require wireless broadband MVPDs in the MDS/ITFS bands with at least 5,000 subscribers to equip their systems to provide audio and video EAS messages on all channels. 47 C.F.R. 11.11(a). Systems with fewer than 5,000 subscribers must be capable of transmitting video interrupt and audio alert messages on all channels, and audio/video EAS messages on at least one channel. *Id.*

WHEREFORE, The Wireless Communications Association International, Inc. respectfully requests that the Commission resolve the issues raised in the *NPRM* in accordance with the comments set forth above.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

By: _____
Paul J. Sinderbrand
Robert D. Primosch

WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 783-4141

Its Attorneys

February 23, 2000