

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Closed Captioning Requirements for Digital)	ET Docket No. 99-254
Television Receivers)	

REPLY COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES
and the
WESTERN TELECOMMUNICATIONS ALLIANCE

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the Western Telecommunications Alliance (WTA)² hereby submit these Reply Comments in the above captioned proceedings.³ OPASTCO and WTA members and their affiliates are increasingly providing video along with voice and broadband data services in sparsely populated, high-cost areas. In addition to having higher costs, OPASTCO and WTA members lack the economies of scale and scope that are enjoyed by large multichannel video programming distributors (MVPDs), and have only a small number of employees available to ensure compliance with an array of regulatory requirements. Therefore, the burdens of new requirements on closed captioning would be disproportionately heavy on these small companies,

¹ OPASTCO is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² WTA is a trade association that represents approximately 250 rural telephone companies operating throughout the 24 states west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

³ *Consumer & Governmental Affairs Bureau Seeks To Refresh The Record On Notices Of Proposed Rulemaking Regarding Closed Captioning Rules*, Public Notice, CG Docket No. 05-231, ET Docket No. ET 99-254, DA 10-2050 (rel. October 25, 2010) (“Notice”).

negatively impacting their ability to provide consumers with affordable offerings in the video market, as well as their ability to maintain, expand and improve broadband services to rural consumers. Subsequently, OPASTCO and WTA concur with comments filed in this proceeding illustrating that new rules and requirements on closed captioning would be unnecessary, costly, and overly burdensome.

II. ADDITIONAL RULES, STANDARDS, OR REPORTING REQUIREMENTS FOR CLOSED CAPTIONING ARE UNNECESSARY AND WOULD BE DISPROPORTIONATELY BURDENSOME ON SMALL MVPDS

Rural carriers have a history of helping people with disabilities obtain access to telecommunications services, and have facilitated the use of Telecommunications Relay Services (TRS) for those with hearing impairments for many years. Similarly, rural carriers and their MVPD affiliates are dedicated to providing closed captioned programming to their customers. However, as has been noted by commenters in this proceeding, additional rules, standards, or reporting requirements are unnecessary at this time. In fact, imposing new burdensome rules and requirements on small MVPDs operating in hard-to-serve, high-cost areas would only impede their ability to provide affordable video and broadband services to their customers.

The Notice requests comment on whether quality standards should be established for spelling, grammar, placement of text, and similar aspects of closed captioning.⁴ As the National Cable and Telecommunications Association (NCTA) remarked, the Commission has previously declined to impose such requirements due in part to concerns about the burdens that would be imposed upon MVPDs.⁵ As NCTA stated, the Commission's earlier concerns regarding these burdens remain valid, and the imposition of new rules would not result in the correction of any

⁴ Notice, p. 2

⁵ NCTA, p. 3.

captioning errors.⁶ Similarly, NCTA observed that the Commission's new captioning complaint process was only recently implemented.⁷ OPASTCO and WTA concur that it is premature to adjust the rules before there has been adequate time to assess whether the new complaint process suffers from any major deficiencies.

The Notice also seeks comment on whether to establish forfeiture amounts for failure to comply with captioning rules.⁸ As noted by NCTA, the Commission is empowered to assess fines for willful or repeated violation of its rules.⁹ Technical failures and other inadvertent incidents leading to brief captioning problems will inevitably occur on occasion. When these arise, the Commission should allow an MVPD to address any temporary, accidental lapse in captioning prior to resorting to forfeitures.¹⁰

Furthermore, the Notice also inquires whether video providers should be required to file compliance reports.¹¹ Once again, NCTA observed that the Commission has previously found such a requirement to be costly and burdensome.¹² Nothing has changed in the interim to alter the Commission's earlier finding. Therefore, OPASTCO and WTA urge the Commission to decline to impose new rules or reporting requirements.

The costs and burdens of additional regulations and reporting procedures would result in disproportionate impacts on small MVPDs and their customers. The provision of video services is currently a break-even prospect, at best, for most rural LECs that have entered this market. As a result, the costs of new requirements would have to be passed onto consumers through higher rates, and/or through reductions in customer service or improvements to network infrastructure.

⁶ *Id.*, pp. 3-4.

⁷ *Id.*, pp. 5-7.

⁸ Notice, p. 2.

⁹ NCTA, p. 8.

¹⁰ *Id.*

¹¹ Notice, p. 2.

¹² NCTA, p. 9.

Therefore, in the event that the Commission considers the imposition of new rules or reporting requirements, it should exempt small MVPDs or, in the alternative, provide for expedited waivers. Any rules that may be applied to small MVPDs would have to be justified by a thorough and detailed Regulatory Flexibility Analysis that would quantify the costs of compliance for small MVPDs, and specifically illustrate how these would be outweighed by demonstrable benefits.

III. CONCLUSION

The imposition of new rules or reporting requirements regarding closed captioning would be unnecessary and disproportionately costly and burdensome for small MVPDs serving high-cost rural areas. Consumers would bear the brunt of these costs through higher rates, compromised service quality, and/or less robust broadband networks. Therefore, the Commission should decline to impose new rules or reporting requirements on small MVPDs.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES

By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy
and Business Development

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

2020 K Street, NW
7th Floor
Washington, DC 20006

202-659-5990

THE WESTERN TELECOMMUNICATIONS ALLIANCE

By: /s/ Derrick B. Owens

Derrick B. Owens

Director of Government Affairs

317 Massachusetts Ave., NE 300C
Washington, DC 20002

202-548-0202

December 9, 2010

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance was sent via first class mail or electronic mail, on this, the 9th day of December 2010, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
CG Docket No. 05-231
ET Docket No. 99-254

Rick Chessen
Diane B. Burstein
Stephanie L. Podey
National Cable & Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431

Winslow L. Sargeant, Ph.D.
Chief Counsel for Advocacy
Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration
409 3rd Street, S.W.
Suite 7800
Washington, DC 20416

Eric Malinen
Office of Communications Business Opportunities
Federal Communications Commission
eric.malinen@fcc.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com