

Numerous Small Television Producers Seek Waiver of FCC Closed Captioning Rules

February 12, 2012 by [Brendan Holland](#)

In the wake of Commission's rejection of hundreds of closed captioning waivers last year, many small television producers are now seeking new waivers for relief from the Commission's television closed captioning rules. Last October, the Commission overturned nearly 300 "economically burdensome" captioning waivers on the grounds that the FCC had failed to apply the correct standard of review and had failed to follow the proper procedure for considering the requests on a case-by-case basis after public comment. (See our earlier posting [here](#) for further details about the Commission's October decision.) Since that decision, over 150 new waiver requests have been filed with the FCC, with most of them coming in the past month or so. The vast majority of these waiver requests have been filed by very small program producers who assert that requiring closed captions for the television program they produce would be economically burdensome. These waiver requests often involve religious programs, local real estate shows, and local sports or entertainment programs. Consistent with FCC's October clarification, the Commission's Consumer and Governmental Affairs Bureau is releasing Public Notices soliciting comment and input on each waiver request. So far, the Commission has issued 14 such public notices in the past few days. An example of one such notice is available [here](#). Once the particular request is put out for public notice, interested parties will have 30 days to file comments or oppositions with the FCC. The recent public notices are careful to instruct parties to file comments or oppositions with the Commission in paper. Any comments or oppositions sent via email will not be considered part of the official record.

The Commission's October decision clarified the proper standard to be applied when considering a request for waiver of the television closed captioning rules on the basis that compliance would be economically burdensome. Although that decision confirmed that the bar for obtaining a captioning waiver is rather high and requires a thorough and well-supported showing, most of the recent waiver requests that have been filed in the past month or two are very short and lack supporting documentation. Given the large number of such small television program producers, it is likely that many similar waiver requests will continue to be filed in coming weeks. But as many of the recent waiver requests appear to lack the proper supporting documentation and detailed showing that the Commission expects, it seems that many of these requests for waiver of the captioning rules are destined to fail. In fact, many of the requests appear to consist of little more than a letter to the FCC stating that compliance would be impossible and

asking that the Commission waive the captioning requirement. As the Commission is just starting to solicit comments on these waivers and to consider the requests, decisions are at least a month or two away. If small program producers do not have the ability to caption their shows on their own and cannot obtain a waiver of the Commission's rules, then they will either need to find additional sponsorship to defray the costs, convince a television station or cable operator to assist with the costs, or else cease producing the program. We will continue to track the FCC's consideration of these waiver requests and will provide future updates.

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