Closed Captioning Requirements for Digital Television Receivers, Report and Order, ET Docket No. 99-254.

**Statement of Commissioner Harold W. Furchtgott-Roth,
Concurring in Part and Dissenting in Part**

I concur in all of today's Order but Part B, which adopts "additional enhancements" that go beyond the minimum decoder requirements of Section 9 of the industry's EIA-708 standard. I would simply have implemented the Section 9 plan, a course of action that would have been more consistent with our statutory directive in this proceeding.

In the Television Decoder Circuitry Act, Congress required the Commission to adopt rules governing television circuitry designed to display closed captioning. We adopted such rules in 1991. *See* 47 C.F.R. section15.119. Congress further instructed, however, that "[a]s new video technology is developed, the Commission shall take such action as it deems appropriate to ensure that closed captioning services *continues to be available* to consumers." 47 U.S.C. section 330(b) (emphasis added).

I believe that, in essence, this provision instructs us to carry over our current analog closed captioning rules into the digital television age. That is, section 330(b) tells us to guarantee that the closed captioning provided today under section 15.119 is not somehow omitted or diminished – *i.e.,* that it "continues to be available" -- as the industry moves toward new digital technology. To "continue" means to maintain the *status quo*; it does not mean to create a new, more expansive regulatory regime. Thus, section 330(b) does not create authority to add further requirements regarding features and functionalities not now required, as the do the "enhancements" adopted today.

To all of this, the Commission responds by citing Part 1 of the TDCA. *See Report & Order* at para. 17. That section, however, is simply a legislative finding. It is not, of course, a binding statutory directive. However one might construe it, then, it cannot trump the plain meaning of section 330(b).

For these reasons, I must respectfully dissent from the decoder requirements that go over and above those of Section 9.

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