

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking, CG Docket No. 05-231.

A main focus of this item is to shift the burden involving the quality of closed captions from the programming distributors to the programmers themselves. While I can generally agree with the concept, I suspect it will be much messier – and therefore punitive – than what is suggested in the text. I also worry that the item doesn't make a similar shift for the burden to provide closed captions. The same logical argument for the quality shift should apply to provisioning. In any event, I will support these portions notwithstanding.

Disappointingly, the item seeps into troubling areas in at least two key places. First, the item creates an extremely convoluted mechanism by which a consumer closed captioning quality complaint could be forwarded from a video distributor to the programmer and then back again. Under this structure, the personal consumer information would be redacted before the forwarding could occur. But during consideration of an item last month, it was alleged that it was too difficult to redact the personal information for broadcasters' correspondence files, so the Chairman graciously agreed to move a separate item to eliminate the correspondence file in its entirety. How can it be that redacting personal information and the creation of a unique identifier is easy for video distributors but not for broadcasters? Doesn't anyone check these items for consistency?

Second, the item creates a three-tiered compliance ladder for the electronic newsroom technique procedures and then subsequently rejects it by establishing a special "rule allowing CGB to refer a captioning quality rule violation directly to the Enforcement Bureau for enforcement action, or for the Enforcement Bureau to pursue an enforcement action on its own, without first going through the compliance ladder..." for certain violations. Thanks to Commissioner Pai we now have a tighter standard of "intentional and deliberate" violations. Anyone want to guess how that is going to be applied by the Bureaus? Why wouldn't the compliance ladder capture such a violation? No justification is given. Instead, the item creates a fake compliance ladder that the CGB or Enforcement Bureau or both will climb over anytime they want. In essence, this creates an illusion of a thoughtful and judicious regulator, but it preserves the right to throw that out the window without any questions asked whenever the Bureaus feel like it. No thank you.