

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

In the Matter of :	)	
	)	
Lewis Memorial Baptist Church	)	
	)	CSR 6283
Video Programming Accessibility	)	
	)	
Petition for Waiver of Closed Captioning	)	
Requirements	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 9, 2004

Released: August 12, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission’s rules,<sup>1</sup> implementing Section 713 of the Communications Act of 1934, as amended (the “Act”),<sup>2</sup> filed by Lewis Memorial Baptist Church, (“Lewis”) producer of the television program Daily Walk aired on two television stations in the Huntington, West Virginia area. Telecommunications for the Deaf, Inc. (“TDI”) and the National Association of the Deaf (“NAD”) filed oppositions to the petition for exemption.<sup>3</sup> For the reasons discussed below, Lewis’ petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.<sup>4</sup> In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.<sup>5</sup> Congress defined “undue burden” to mean “significant difficulty or expense.”<sup>6</sup> When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner;

<sup>1</sup> 47 C.F.R. § 79.1.

<sup>2</sup> 47 U.S.C. § 613.

<sup>3</sup> TDI and NAD argue that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

<sup>4</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) (“Report and Order”).

<sup>5</sup> 47 U.S.C. § 613(d)(1).

<sup>6</sup> 47 U.S.C. § 613(e).

and (4) the type of operations of the provider or program owner.<sup>7</sup> A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.<sup>8</sup> Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.<sup>9</sup>

## II. DISCUSSION

3. Lewis submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. It asserts that its proposed budget for 2004 is \$1,200,000, "substantially under the \$3,000,000 revenue requirement from the FCC."<sup>10</sup> Section 79.1(d)(12) states that no video programming provider will be required to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous year.<sup>11</sup> Lewis seeks an exemption for an individual video program, not a channel or network of video programming. Therefore, the specific \$3,000,000 general revenue exemption of Section 79.1(d)(12) does not apply to Lewis' particular circumstances.<sup>12</sup> However, the option of an undue burden exemption still remains available if petitioner makes the proper showing.

4. Section 79.1(f) requires a petition for exemption from the closed captioning requirements to demonstrate that compliance would cause significant difficulty or expense.<sup>13</sup> Although Lewis indicates the amount of its proposed budget, it fails to disclose detailed information regarding its financial resources and expenditures. Moreover, Lewis fails to provide information regarding possible sponsorships solicited for assisting in captioning. Lewis provided no documentation from which its financial condition can be assessed. Without such documentation, it is impossible for the Commission to determine whether Lewis has sufficient justification supporting an exemption from the closed captioning requirements. Our decision herein is without prejudice to Lewis bringing a future petition for exemption that adequately documents that compliance with our rules will impose an undue burden. Implicit in the Section 79.1(f) requirement of a showing as to the financial resources of a petitioner, such as Lewis, is the question of the extent to which the distributors of its programming can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether Lewis solicited captioning assistance from the distributors of its programming and the response to these solicitations. Absent such a petition, petitioner is given 3 months from the release date of this *Order* to come into complete compliance with the rules.

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<sup>7</sup> *Id.*; see also 47 C.F.R. § 79.1(f).

<sup>8</sup> 47 C.F.R. § 79.1(f)(2).

<sup>9</sup> 47 C.F.R. § 79.1(f)(3).

<sup>10</sup> Petition at 1.

<sup>11</sup> See 47 C.F.R. § 79.1(d)(12). See *Report and Order*, 13 FCC Rcd at 3350.

<sup>12</sup> See 47 C.F.R. § 79.1(d)(12).

<sup>13</sup> 47 C.F.R. § 79.1(f)(2).

**III. ORDERING CLAUSE**

5. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED**. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>14</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>14</sup> 47 C.F.R. § 0.283.