

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

In the Matter of :
Newsom Productions, Inc.
Video Programming Accessibility
Petition for Waiver of Closed Captioning
Requirements
CSR 6213

MEMORANDUM OPINION AND ORDER

Adopted: November 10, 2004

Released: November 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, implementing Section 713 of the Communications Act of 1934, as amended (the "Act"), filed by Newsom Productions, Inc. ("Newsom") producer of the television program Paul Newsom's Great Outdoors aired on The Outdoor Channel. Telecommunications for the Deaf, Inc. ("TDI") filed an opposition to the petition for exemption. For the reasons discussed below, Newsom's 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. 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. Congress defined "undue burden" to mean "significant difficulty or expense." 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;

1 47 C.F.R. § 79.1.

2 47 U.S.C. § 613.

3 TDI argues 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.

4 Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility, 13 FCC Rcd 3272 (1997) ("Report and Order").

5 47 U.S.C. § 613(d)(1).

6 47 U.S.C. § 613(e).

and (4) the type of operations of the provider or program owner.⁷ 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.⁸ Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.⁹

II. DISCUSSION

3. Newsom submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. Newsom's petition, however, fails to disclose information regarding its finances and assets or gross or net proceeds. With regard to receiving financial support from sponsors, Newsom notes that it has approximately \$75,000 in sponsorships pledged.¹⁰ Although such information is relevant in our consideration of Newsom's petition, Newsom fails to indicate whether it sought out additional sponsorship sources or whether it was indeed able to secure additional sources of revenue for the continued operation of its program. In addition, without documentation regarding Newsom's financial condition, it is impossible for the Commission to determine how the approximately \$75,000 in sponsorships will impact Newsom's ability to provide captioning. Newsom provided no documentation from which its financial condition can be assessed, and thus, there is not sufficient justification supporting an exemption from the closed captioning requirements. Our decision herein is without prejudice to Newsom 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 Newsom, 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 Newsom 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.

III. ORDERING CLAUSE

4. 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*.

5. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
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⁷ *Id.*; see also 47 C.F.R. § 79.1(f).

⁸ 47 C.F.R. § 79.1(f)(2).

⁹ 47 C.F.R. § 79.1(f)(3).

¹⁰ Petition at 2.

¹¹ 47 C.F.R. § 0.283.