

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

In the Matter of:	)	
	)	
Awakening Ministries	)	
	)	CSR 6287
Video Programming Accessibility	)	
	)	
Petition for Waiver of Closed Captioning	)	
Requirements	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2005

Released: June 15, 2005

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 Awakening Ministries (“Awakening”) regarding its video program. Telecommunications for the Deaf, Inc. (“TDI”), National Association of the Deaf (“NAD”), The Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), and Self Help for Hard of Hearing People (“SHHH”) filed oppositions to the petition for exemption, to which Awakening filed a reply.<sup>3</sup> For the reasons discussed below, Awakening’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.<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, NAD, DHHCAN, and SHHH 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. In its Petition and Reply, Awakening asserts that its video program is a locally produced and distributed non-news program with no repeat value, pursuant to Section 79.1(d)(8) of the Commission's rules.<sup>10</sup> However, the Commission intended that the exemption for locally produced and distributed non-news programming with limited repeat value be a narrowly focused exemption. It is intended to apply only to a limited class of truly local materials, including, for example, local parades, local high school and other nonprofessional sports, live unscripted local talk shows and community theatre productions.<sup>11</sup> Moreover, the Commission concluded that the programming in question would have to be locally created and not networked outside of the local service area or market of a broadcast station.<sup>12</sup> Awakening fails to explain or provide support for its contention that the scope of its program relates only to local issues and that the program is truly local in nature. In addition, because Awakening provides no information on the extent of distribution of its program, it is difficult to determine whether Petitioner's programming reaches beyond its locale. Therefore, because Awakening has failed to provide sufficient information, we are unable to determine whether the Section 79.1(d)(8) exemption applies here.<sup>13</sup> However, the option of an undue burden exemption still remains available if Petitioner makes the proper showing.

4. Awakening indicated that it did not have the financial resources to absorb the cost of closed captioning.<sup>14</sup> Section 79.1(f)(11) provides that during the pendency of an undue burden determination, video programming subject to the request for exemption is exempt from the closed captioning requirements.<sup>15</sup> Awakening has been exempt from the captioning requirements since the filing of its petition in 2003. Ideally, this period of exemption should have allowed Awakening the opportunity to identify additional sources of financial sponsorship, identify affordable captioning providers, and develop a solid infrastructure for its programming. We emphasize that this exemption was not designed to perpetually relieve a petitioner of its captioning obligation. Awakening has been given a sufficient amount of time to benefit from its exemption from the closed captioning requirements. Therefore, Awakening is expected to complete the process of making closed captioning available to viewers with hearing disabilities.

5. Our decision herein is without prejudice to Awakening bringing a future petition for exemption that adequately documents that compliance with our rules continues to 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 Awakening, is the question of the extent to which the distributors of its programming

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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 and Reply at 1.

<sup>11</sup> See *Report and Order*, 13 FCC Rcd 3272, 3348 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> See 47 C.F.R. § 79.1(d)(8).

<sup>14</sup> Petition at 1.

<sup>15</sup> 47 C.F.R. § 79.1(f)(11).

can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether Awakening 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.

6. 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** to the extent indicated herein. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

7. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>16</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>16</sup> 47 C.F.R. § 0.283.