

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

In the Matter of:
Avery Outdoor Enterprises, LLC
Video Programming Accessibility
Petition for Waiver of Closed Captioning
Requirements
CSR 5950

MEMORANDUM OPINION AND ORDER

Adopted: June 16, 2005

Released: June 17, 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, implementing Section 713 of the Communications Act of 1934, as amended (the "Act"), filed by Avery Outdoor Enterprises, LLC ("Avery") regarding its video program "Outdoor Magazine." Telecommunications for the Deaf, Inc. ("TDI") filed an opposition to the petition for exemption, to which Avery filed a reply. For the reasons discussed below, Avery'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.<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, Avery indicated that it did not have the financial resources to absorb the cost of closed captioning.<sup>10</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>11</sup> Avery has been exempt from the captioning requirements since the filing of its petition in 2002. Ideally, this period of exemption should have allowed Avery 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. Avery has been given more than a sufficient amount of time to benefit from its exemption from the closed captioning requirements. Therefore, Avery is expected to complete the process of making closed captioning available to viewers with hearing disabilities.

4. Our decision herein is without prejudice to Avery 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 Avery, 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 Avery 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.

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** to the extent indicated herein. 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>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division

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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 1-3. Petitioner Reply at 1-3.

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

<sup>12</sup> 47 C.F.R. § 0.283.

Media Bureau