

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

In the Matter of: )
On Stage )
Video Programming Accessibility ) CSR 6547
Petition for Waiver of Closed Captioning )
Requirements )

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 2005

Released: June 30, 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,1 implementing Section 713 of the Communications Act of 1934, as amended (the “Act”),2 filed by “On Stage” regarding its television program aired on WXEL-TV, Boynton Beach, Florida. 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 a consolidated opposition to the petition for exemption.3 For the reasons discussed below, the 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.4 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.5 Congress defined “undue burden” to mean “significant difficulty or expense.”6 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

1 47 C.F.R. § 79.1.

2 47 U.S.C. § 613.

3 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.

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).

operation of the provider or program owner; (3) the financial resources of the provider or program owner; 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. 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>10</sup> On Stage submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. On Stage's petition, however, fails to disclose detailed information regarding finances and assets, gross or net proceeds, or sponsorships solicited for assisting in captioning. On Stage provided no documentation from which its financial condition can be assessed. Without documentation it is impossible for the Commission to determine whether On Stage has sufficient justification supporting an exemption from the closed captioning requirements for its television program. Our decision herein is without prejudice to On Stage 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 On Stage, 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 On Stage solicited captioning assistance from the distributors of its programming and the response to these solicitations.<sup>11</sup> 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** to the extent indicated herein. 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.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
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> 47 C.F.R. § 79.1(f)(2).

<sup>11</sup> On Stage may be eligible for an exemption pursuant to Section 79.1(d)(8) which states that locally produced and distributed non-news programming with no repeat value and of local interest shall be exempt from the captioning requirements. However, without more information, we are unable to determine the applicability of that exemption to the program.

<sup>12</sup> 47 C.F.R. § 0.283.

Media Bureau