

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

In the Matter of:)
Little Heart Entertainment, LLC)
Video Programming Accessibility) CSR 6571
Petition for Waiver of Closed Captioning)
Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 2005

Released: September 8, 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 Little Heart Entertainment (“Little Heart”) regarding its television program, “Dooley and Pals Christian Children’s Ministry Series”. 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. 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. 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

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.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. Little Heart submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. It asserts that the program "Dooley and Pals Christian Children's Ministry Series" 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.¹⁰ 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.¹¹ 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.¹² Little Heart 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, Little Heart provides no information on the extent of distribution of its program. TDI, NAD, DHHCAN, and SHHH assert that although Little Heart does not indicate in its petition the broadcasting outlets used or the communities reached by its program, a search of the Internet reveals that the program is carried on 99 different broadcast stations in the United States.¹³ In addition, because this television program is carried on the DayStar Television Network, TDI, NAD, DHHCAN, and SHHH state that it is potentially carried on many more television stations throughout the United States, as well as aired potentially internationally.¹⁴ Therefore, because Little Heart has failed to provide sufficient information and based on the information provided in the Opposition filed, we do not believe that the Section 79.1(d)(8) exemption applies here.¹⁵ 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.¹⁶ Little Heart's petition, however, fails to disclose detailed information regarding finances and assets, gross or net proceeds, or sponsorships solicited for assisting in captioning. Little Heart provided no documentation from which its financial condition can be assessed. Although Little Heart indicates that it "is not funded or granted in

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 1.

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

¹² *Id.*

¹³ Opposition at 10. See <http://www.dooleyandpals.tv/schedule-usa.shtml> Although the name of the television program noted by the Opposition and appearing at the website is different, "Dooley and Pals", it appears it is the same television program at issue, which is produced by Little Heart Entertainment.

¹⁴ Opposition at 10.

¹⁵ See 47 C.F.R. § 79.1(d)(8).

¹⁶ 47 C.F.R. § 79.1(f)(2).

any way by outside sources”, without documentation, it is impossible for the Commission to determine whether Little Heart has sufficient justification supporting an exemption from the closed captioning requirements for its television program. Our decision herein is without prejudice to Little Heart bringing a future petition for exemption that adequately documents that the Section 79.1(d)(8) exemption is applicable to Little Heart’s television program or 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 Little Heart, 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 Little Heart 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

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.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ 47 C.F.R. § 0.283.