

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

In the Matter of:
WDLP Broadcasting Co., LLC
Video Programming Accessibility
Petition for Waiver of Closed Captioning
Requirements
CSR 6296

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2005

Released: August 10, 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 WDLP Broadcasting Co., LLC (“WDLP”) regarding its Spanish language stations WSBS-TV, channel 22, Key West, Florida and WDLP-CA, Pompano 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, to which WDLP filed a reply (collectively “Commenters”). For the reasons discussed below, the petition is granted in part, 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; and (4) the type of operations of the provider or program owner. A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption

1 47 C.F.R. § 79.1.

2 47 U.S.C. § 613.

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

4 47 U.S.C. § 613(d)(1).

5 47 U.S.C. § 613(e).

6 Id.; see also 47 C.F.R. § 79.1(f).

video programming would cause an undue burden.⁷ Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.⁸

II. DISCUSSION

3. Section 713 of the Communications Act as implemented by Section 79.1(f) of the Commission's rules requires that the Commission consider exemptions from the closed captioning rules where compliance would cause an "undue burden," defined in the rules as meaning "significant difficulty or expense."⁹ In their Opposition to WDLP's brief one page request for exemption from the captioning requirements, TDI, NAD, DHHCAN, and SHHH argue that an exemption from the closed captioning rules should not be granted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors pursuant to Section 79.1(f)(2).¹⁰ In addition, Commenters argue that WDLP generally requests an exemption from captioning without specifying the rule provision supporting its application and for which it may be eligible.¹¹ They assert that if WDLP is seeking an exemption under Section 79.1(d)(11), Petitioner should verify its costs to caption video programming would exceed 2 percent of the gross revenues for both channels during the prior calendar year.¹² Commenters argue that Petitioner has failed to establish that it qualifies for an exemption from the captioning requirements under Section 79.1(d)(11).¹³ Additionally, Commenters state that WDLP fails to demonstrate that it may be eligible for an exemption from captioning requirements under Section 79.1(d)(12) of the Commission's rules.¹⁴ Commenters assert that Petitioner should verify it is seeking an exemption pursuant to Section 79.1(d)(12) and verify that its annual gross revenues are under \$3,000,000 during the previous calendar year.¹⁵

4. In its Reply, WDLP provides detailed information supporting its exemption request. Formerly infomercial television stations, WDLP states that it was re-launched in 2003 and the stations currently broadcast four hours of live, local programming in Spanish serving the Spanish-speaking audience in South Florida.¹⁶ WDLP indicates that the ambitious change in its programming effort has resulted in massive financial losses and it does not have the resources to absorb the cost of closed captioning.¹⁷ The financial information submitted shows a loss, for the six month period preceding the filing, of almost \$2,000,000.¹⁸ An affidavit accompanying the filing verifies that it was prepared in

⁷ 47 C.F.R. § 79.1(f)(2).

⁸ 47 C.F.R. § 79.1(f)(3).

⁹ 47 C.F.R. § 79.1(f)(2).

¹⁰ Opposition Comments at 5-9.

¹¹ Opposition Comments at 9.

¹² *Id.* Section 79.1(d)(11) exempts video programming providers from being required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year.

¹³ Opposition Comments at 9.

¹⁴ Opposition Comments at 10. In Section 79.1(d)(12) the Commission exempted video programming producers from being required to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received.

¹⁵ Opposition Comments at 10.

¹⁶ Reply at 3.

¹⁷ Reply at 1-5.

¹⁸ Reply at 1.

consultation with WDLP Broadcasting's certified public accountant and that the loss data reflects no charges for depreciation or amortization and excludes any payments to principals.¹⁹ WDLP also indicates that it broadcasts an unusually extensive amount of local live prime time programming but already it has been forced to cancel some programs on account of its financial difficulties.²⁰ In addition to financial difficulties regarding station operations, WDLP points out that because it broadcasts in Spanish language it would likely encounter logistical difficulties associated with obtaining qualified and skilled practitioners to perform Spanish language captioning.²¹ However, WDLP asserts that it is willing to "acquire and provide closed captioning for South Florida's deaf community in the very first financial quarter that it achieves profitability."²²

5. Based on evidence submitted here by WDLP, we conclude that a waiver has been justified with respect to the programming that WDLP Broadcasting Co. produces locally for distribution on the referenced television stations. The combination of factors establishing the financial difficulties experienced by WDLP leads to our determination that an exemption based upon an undue burden is warranted. In light of these circumstances, we conclude that WDLP has demonstrated that full compliance with the captioning rules would be an undue burden as defined in the rules and that a waiver, for a period of three years should be granted. Should WDLP "achieve profitability" and is able to initiate captioning before the end of this waiver period, it should notify the Commission in writing that it is initiating closed captioning. Although not the focus of its petition, we note also that, pursuant to Section 79.1(d)(12), video programming providers are exempt from the captioning obligation (other than the requirement that already included captions be passed through) if they have annual revenues of less than \$3,000,000 during the last calendar year. Depending on a full year of financial data, WDLP may be exempt under Section 79.1(d)(12).

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 GRANTED** to the extent indicated herein. Petitioner must comply with the captioning requirements within 3 years from the release date of this *Order*. WDLP should notify the Commission when it begins closed captioning.

7. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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¹⁹ Reply at 4. See Appendix B.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

²² Reply at 5.

²³ 47 C.F.R. § 0.283.