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July 24, 2012


VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 – 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554
ATTN: Disability Rights Office, Room 3-B431

Dear Ms. Dortch

The Los Angeles Unified School District filed a Petition for Exemption on July 5, 2012. transmitted herewith is an original and two copies of an "Addendum to Petition for Exemption". The Addendum provides updated information (including a deletion) as to five programs produced by outside sources and reference to FCC Staff decision in support of the requested exemptions.

Yours very truly


Robert B. Jacobi

RBJ:btc

Enclosures

BEFORE THE
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Los Angeles Unified School District)
Video Programming Accountability)
Updated Petition for Exemption)

To: Office of the Secretary
ATTN: Disability Rights Office
Room 3-B431

ADDENDUM TO PETITION FOR EXEMPTION

The Los Angeles Unified School District (hereinafter “LAUSD”), licensee of noncommercial station KLCS-TV, Los Angeles, California (hereinafter “KLCS”) filed a Petition for Exemption on July 5, 2012 requesting exemption of Closed Captioning for 25 programs.¹ Twenty of the programs are locally produced by station KLCS. The purpose of the Addendum is to provide updated information as to the five programs produced by outside sources and to bring to the Commission’s attention an FCC Staff Memorandum Opinion and Order; Anglers for Christ Ministries/New Beginning Ministries, 21 FCC Rcd. 10094 (2006) as follows:

1. “Shakespeare Shorts”: The request for exemption should be deleted. The program now includes closed captioning. See Appendix A;
2. “Hispanic Lifestyles”: The producer was contacted on July 18, 2012, asserted financial hardship and, if mandated to

¹ A Petition for Exemption was initially filed on December 12, 2005 and a Supplement was filed on March 17, 2006.

closed captioning, would cease production. See appendix A;

3. "SoCal Prep Report"/
"Game of the Week": Both programs are produced by LA36, a cable channel licensed to the City of Los Angeles. The producer was contacted on July 18, 2012 and stated that the cable station was not "required to close caption any of their locally produced programming". See Appendix A;
4. "Destinos": The majority of the program episodes are delivered on tapes and are closed captioned. A small number of the episodes are delivered on DVD, which also includes closed captioning. However, the problem is "local" (not with the producer) in that the conversion of the DVDs to the station's equipment results in the loss of the closed captioning. To remedy the problem, additional LAUSD personnel and new equipment for station KLCS would be required, neither of which is possible in light of the extreme financial crisis. See Appendix A.

With respect to the exemption request for the program "Destinos," it should be noted that the episodes (both tape and DVD) are closed captioned by the outside producer and the reason for the absence of closed captioning is solely attributable to LAUSD's lack of financial resources.

The Commission's attention is directed to the FCC Staff Memorandum Opinion and Order in *Anglers for Christ, Inc./New Beginning Ministries*, 21 FCC Rcd. 10094 (2006), specifically, paragraph 11 (*Ibid.*, p. 10097),

"... in the future, when considering an exemption petition filed by a non-profit organization that does not receive compensation from video programming distributors from the airing of its programming, and that, in the absence of an exemption, may terminate or substantially curtail its programming, or curtail other activities important to its mission, we will be inclined favorably to grant such petition because, as the petitions of Anglers and New Beginning demonstrate, this confluence of factors strongly suggests that mandated closed captioning would pose an undue burden on such a petitioner."


A copy of the Memorandum Opinion and Order is attached as Appendix B.²

The programs for which exemptions are requested (produced by KLCS and from outside sources) primarily are directed to students in classrooms and at home; to the general public in order that the general public will understand the mission of the LAUSD, its plans and programs; and to provide continuing adult education (see Petition, pp 5-6 and Appendix A.)

The Petition is and remains absolute as to the consequences of exemption denials – the programs will be cancelled. The factual situations described in Anglers parallels the factual situation confronting LAUSD, i.e., a financial crisis “. . . . that will curtail its programming”. The Commission policy applied in Anglers should be equally applicable to LAUSD.

Respectfully submitted,

LOS ANGELES UNIFIED SCHOOL DISTRICT

By: 

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Its Attorneys

Date: July 24, 2012

² Counsel is aware of the Report and Order pertaining to the “Interpretation of Economically Burdensome Standard” released on July 20, 2012; that the term “economically burdensome” is deemed synonymous with the term “undue burden”; and that the replacement of the term “undue burden” by the term “economically burdensome” does not reflect “any substantive change to the criteria that the Commission consistently has used for individual closed captioning petitions. . . .”

APPENDIX A

STATEMENT UNDER PENALTY OF PERJURY

Statement Under Penalty of Perjury

My name is Thomas Taitt, I am employed as a Broadcast Compliance Specialist for Station KLCS, Los Angeles, California which is licensed to and operated by the Los Angeles Unified School District ("LAUSD"). I have served in this capacity since March 26, 2012. As Station KLCS' Broadcast Compliance Specialist, I am responsible for the timely filing and reporting of various matters to the Federal Communications Commission, (FCC), Public File, Member Services and LAUSD District Rule Compliance.

As directed by Sabrina Thomas, General Manager of Station KLCS, I prepared and submitted a Petition for Exemption regarding Closed Captioning, in a timely manner on July 5, 2012. The purpose of this attachment is to update the current status of four non-Station KLCS producers who provide non-closed captioned programs which currently are being broadcast on Station KLCS. The programs, producers and their reasons for not closed captioning are as follows:

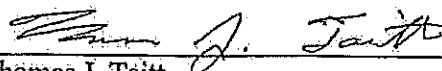
1. Hispanic Lifestyles – Richard Sandoval – I spoke to Mr. Sandoval on July 18, 2012. The producer claims extreme financial hardship, and if mandated to close caption the program it would be forced to cease production.
2. LA36 Game of the Week & SoCal Prep Report – LA36 – I spoke to Ms. Nancy Cain, the operations manager of LA36, which is a cable access station licensed to the City of Los Angeles. Ms. Cain explained that they are not required to close caption any of their locally produced programming. She went on to state that the costs would be prohibitive and the high school sports programming is provided as a community service.
3. Shakespeare Shorts – GPN- This program is now close captioned and Station KLCS requests that it be removed from the Petition for Exemption.

4. Destinos – Annenberg – The majority of these programs are delivered on tapes with closed captioning. A small number of episodes are delivered on DVDs, which also include closed captioning. The problem, however, is that the conversion of the DVDs to the station's equipment results in the loss of the closed captioning. To remedy the conversion problem, additional personnel and new equipment would be required. As is set forth in the LAUSD Petition, there are NO available funds either for additional personnel or new equipment. As is emphatically stated in the July 5, 2012 Petition, the station (and the Los Angeles Unified School District) is under an extreme financial crisis. Consequently, an exemption is requested for the programs identified in the July 5, 2012 Petition covering both station produced programs and outside sources produced programs. Absent, an exemption, the programs cannot be aired.

The programs for which exemptions are requested (produced by KLCS and outside sources) are primarily directed to students in K-12 classrooms and at home; to the general public – to enable viewers to understand the mission of LAUSD; and to provide continuing adult education.

As KLCS' Broadcast Compliance Specialist, I and others on the staff have assisted and worked directly in compiling this information. I have reviewed the response and the statements in them are true and correct to the best of my knowledge, information and belief.

Executed under penalty of perjury this 19th day of July, 2012.



Thomas J. Taitt

APPENDIX B

MEMORANDUM OPINION AND ORDER

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

In the Matter of)	
)	
Anglers for Christ Ministries, Inc.)	CGB-CC-0005
)	
New Beginning Ministries)	CGB-CC-0007
)	
Video Programming Accessibility)	
)	
Petitions for Exemption from Closed Captioning)	
Requirements)	

MEMORANDUM OPINION AND ORDER

Adopted: September 11, 2006

Released: September 12, 2006

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (*Order*), we grant two separate petitions for exemption from the closed captioning requirements for video programming contained in section 79.1 of the Commission's rules,¹ filed by two video programming owners -- Anglers for Christ Ministries, Inc. (Anglers) and New Beginning Ministries (New Beginning).²

II. BACKGROUND

2. Section 713 of the Act directs the Commission to adopt regulations to phase in closed captioning requirements for video programming.³ In 1997, pursuant to section 713, the Commission

¹ 47 C.F.R. § 79.1, implementing section 713 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 613, which was added to the Communications Act by section 305 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*).

² See Anglers Request for Exemption from Commission's Closed Captioning Rules, Case No. CGB-CC-0005, filed Oct. 12, 2005 (Anglers Petition); New Beginning Request for Exemption from Commission's Closed Captioning Rules, Case No. CGB-CC-0007, filed Nov. 1, 2005 (New Beginning Petition). In accordance with sections 79.1(f)(5)-(6) of the Commission's rules, 47 C.F.R. § 79.1(f), the Consumer and Governmental Affairs Bureau placed both of these petitions on public notice, and invited interested persons to file comments on or oppositions to the petitions. See *Request for Exemption from Commission's Closed Captioning Rules*, Case No. CGB-CC-0005, Public Notice, 21 FCC Rcd 1124 (CGB 2006); Case No. CGB-CC-0007, Public Notice, 20 FCC Rcd 20126 (CGB 2005). Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), The Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), and the Hearing Loss Association of America (HLAA) (collectively, Commenters) filed a consolidated opposition to the New Beginning Petition. Opposition of TDI, NAD, DHHCAN, and HLAA to the Petition for Exemption from Closed Captioning Requirements Filed by New Beginning, Case No. CGB-CC-0007, filed Jan. 19, 2006 (Commenters Opposition).

³ 47 U.S.C. § 613(b). As of January 1, 2006, 100% of nonexempt, new English language video programming had to be provided with captions. 47 C.F.R. § 79.1(b)(1)(iv).

adopted rules and implementation schedules for the closed captioning of video programming.⁴

3. The statute and corresponding Commission rules also provide for certain exemptions to the closed captioning requirements. A number of these exemptions are self-implementing.⁵ Entities that do not qualify for a self-implementing exemption may petition the Commission for an “undue burden” exemption.⁶ Undue burden exemptions may be granted for “a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider” upon a finding that the closed captioning requirements will result in an undue burden.⁷ The statute defines “undue burden” to mean “significant difficulty or expense,” and provides a list of factors for the Commission to consider in making this determination: “(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.”⁸ A petition for an undue burden exemption also may present for the Commission’s consideration “any other factors the petitioner deems relevant to the Commission’s final determination.”⁹ The petitioners’ programming in these cases meets this standard.

III. PETITIONS FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS

A. Background

4. *Anglers’ Petition for Exemption.* In its petition, Anglers, a non-profit organization, states that it began airing its programming, the “Christian Angler Outdoors Television Show,” in January 2005, operating solely on contributions, but without a base of continued contributions.¹⁰ In a follow-up letter, Anglers describes the show as a faith-based outdoor show consisting of outdoor segments, along with a segment hosted by kids called “Reel Kids in the Outdoors.” The program is produced in-house by volunteer staff of Anglers, and is aired without compensation to Anglers. Anglers asserts that requiring closed captioning for its show would create an undue burden, and “possibly cause us to stop production.”¹¹

5. *New Beginning’s Petition for Exemption.* New Beginning produces a 30-minute television program titled “In His Image,” which airs once per week and appears to be a religious program. New Beginning indicates that captioning would impose an undue burden because its program would have to be sent to an outside source for captioning, and that the added production cost would make production unaffordable and have a negative impact on its ability to meet air-date deadlines.¹²

⁴ *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997) (*Closed Captioning Report and Order*), *recon. granted in part*, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*).

⁵ See 47 U.S.C. § 613(d)(1); 47 C.F.R. § 79.1(d).

⁶ See 47 U.S.C. § 613(d)(3), (e); 47 C.F.R. § 79.1(f).

⁷ 47 C.F.R. § 79.1(f)(1).

⁸ 47 U.S.C. § 613(e); see also 47 C.F.R. § 79.1(f)(2).

⁹ 47 C.F.R. § 79.1(f)(3).

¹⁰ Anglers Petition.

¹¹ Letter from Tony Sellars, CEO, Anglers for Christ Ministries, Inc., to Amelia Brown, Federal Communications Commission, Case No. CGB-CC-0005 (filed Jan. 20, 2006).

¹² New Beginning Petition at 1.

New Beginning also asserts that it is a donor supported, non-profit organization, and that it would have to discontinue its program and cease broadcast operations if it is required to close caption.¹³ New Beginning further notes that the substantial majority of its annual expenses consists of payments to the Christian Television Network (CTN); New Beginning pays CTN \$750 per week to air its show.¹⁴ In addition, New Beginning claims that "In His Image" is a locally produced and distributed non-news program with no repeat value, thus meriting an exemption pursuant to section 79.1(d)(8) of the Commission's rules.¹⁵ Commenters opposing the petition contend that "In His Image" is broadcast nationwide on a weekly basis over the Sky Angel network, as well as broadcast on CTN in Eastern and Western Florida, such that New Beginning fails to qualify for an exemption from captioning under section 79.1(d)(8) of the Commission's rules.¹⁶

B. Discussion

6. We find that undue burden exemptions from the Commission's closed captioning requirements are appropriate for the petitioning video programming owners' programming. Requiring these video programming owners to comply with the Commission's closed captioning requirements would have a substantial impact on their operations. These entities are non-profits that do not receive compensation for making their programming available. As explained further below, mandated closed captioning would cause significant difficulties for these entities; indeed, the continued production of their programming could be jeopardized.¹⁷

7. The structure of section 713 of the Act, and the legislative history that underlies it, evince that the goal of ensuring that video programming is accessible to those with hearing disabilities must, in certain circumstances, be balanced against the economic burdens that closed captioning requirements present to the providers or owners of such programming.¹⁸ In this regard, Congress expressly recognized that "the cost to caption certain programming may be prohibitive given the market demand for such programs and other factors."¹⁹

8. Furthermore, we note that the Commission has exempted categorically from the closed captioning requirements "locally produced and distributed non-news programming with no repeat value,"²⁰ because such programs are of interest to a limited audience, and have "an inherently fragile economic support system."²¹ The Commission further found that much of this programming is "not remunerative in itself," and applying captioning requirements to such programming "could result in a sufficient economic burden that such programs are not televised at all."²² Similarly, the Commission has

¹³ *Id.*

¹⁴ New Beginning Petition Attach., Aff. of Costs.

¹⁵ New Beginning Petition at 1.

¹⁶ Commenters Opposition at 8-10.

¹⁷ See *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 20002, para. 70 (class of programming might otherwise become substantially less available absent an exemption).

¹⁸ See 47 U.S.C. § 613(d)(1),(3), (e).

¹⁹ H.R. Rep. No. 104-204, pt. 1, at 114 (1995). See also *Closed Captioning Report and Order*, 13 FCC Rcd at 3342, para. 143.

²⁰ See 47 C.F.R. § 79.1(d)(8).

²¹ *Closed Captioning Report and Order*, 13 FCC Rcd at 3347, para. 158.

²² *Id.* at 3347-48, para. 158.

exempted video programming transmitted by Instructional Television Fixed Service (ITFS) licensees,²³ whose programming is instructional, and who operate with limited resources to devote to captioning of their programming, such that applying captioning requirements to them likely would result in the elimination of such programming from distribution on wireless systems.²⁴

9. We grant the captioned petitions under the undue burden exemption. Both of the petitioners have demonstrated that requiring them to close caption their programming would cause them significant hardship. In light of this, we have little difficulty concluding that there is a significant risk that mandated closed captioning could cause both organizations to terminate their programming.²⁵

10. Moreover, we note that the program owners and programming at issue here share characteristics with previously identified exemptions. For example, both of the petitioning video program owners are entities that are not producing their programming primarily for a commercial purpose; indeed, both of the organizations here are non-profit. Moreover, all of the subject programming is “not remunerative in itself,” insofar as the programming owners either are offering it free to providers, or paying for its exhibition.

11. Therefore, like ITFS programming and programming exempted under section 79.1(d)(8) of the Commission’s rules, we must “balance the need for closed captioned programming against the potential for hindering the production and distribution of programming.”²⁶ For these reasons, we note that, in the future, when considering an exemption petition filed by a non-profit organization that does not receive compensation from video programming distributors from the airing of its programming, and that, in the absence of an exemption, may terminate or substantially curtail its programming, or curtail other activities important to its mission, we will be inclined favorably to grant such a petition because, as the petitions of Anglers and New Beginning demonstrate, this confluence of factors strongly suggests that mandated closed captioning would pose an undue burden on such a petitioner.

²³ ITFS since has been renamed the Educational Broadband Service (EBS), *see* 47 C.F.R. § 27.1200, but the exemption still applies to video programming transmitted by EBS licensees. *See* 47 C.F.R. § 79.1(d)(7).

²⁴ *See Closed Captioning Report and Order*, 13 FCC Rcd at 3340, para. 140. In the *Closed Captioning Reconsideration Order*, similar considerations led the Commission to exempt categorically from the closed captioning requirements instructional programming that is locally produced by public television stations for use in schools. *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 20002, para. 70. In setting forth the exemption, the Commission noted that such programming “shares some characteristics with locally produced non-news programming without repeat value,” as well as with ITFS programming, and concluded that “this programming appears to straddle two previously identified exemptions while clearly not fitting in either category.” *Id.* at para. 70 n.214. The Commission also based the exemption on its determination that the programming at issue is a “class of programming that might otherwise become substantially less available absent an exemption.” *Id.* at para. 70.

²⁵ In *The Wild Outdoors*, the Media Bureau suggested that a petitioner seeking an undue burden exemption is required first to seek captioning assistance from the distributors of their programming. *See The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Case No. CSR 5949, Memorandum Opinion and Order, 20 FCC Rcd 11873, 11874 (Med. Bur. 2005). In this case, New Beginning did submit evidence that CTN refused to caption its programming at no cost while Anglers did not make any similar representation on this score. Nevertheless, we believe that a *per se* rule requiring all petitioners to make the specific representation that they solicited captioning assistance from the distributors of their video programming is unwarranted, and any suggestion to the contrary in *The Wild Outdoors* hereby is overruled. While we continue to encourage programmers to solicit captioning assistance from distributors and any such unsuccessful solicitations may constitute evidence in support of an undue burden petition, we do not believe that the statute requires such a solicitation as a necessary precondition of receiving an undue burden exemption.

²⁶ S. Conf. Rep. No. 104-230, at 183 (1996), *cited in Closed Captioning Report and Order*, 13 FCC Rcd at 3363, para. 199.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 5(c) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155 and 613, and sections 0.141, 0.361, and 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, and 1.3, this *Order* IS ADOPTED.

13. IT IS FURTHER ORDERED that the petition for exemption from the closed captioning requirements of section 79.1 of the Commission's rules, 47 C.F.R. § 79.1, filed by Anglers for Christ Ministries, Inc., IS GRANTED.

14. IT IS FURTHER ORDERED that the petition for exemption from the closed captioning requirements of section 79.1 of the Commission's rules, 47 C.F.R. § 79.1, filed by New Beginning Ministries, IS GRANTED.

15. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This *Order* also can be downloaded in Word and Portable Document Format at <http://www.fcc.gov/cgb/dro>.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief
Consumer and Governmental Affairs Bureau