Federal Communications Commission
Washington, D.C. 20554

2006 SEP 11 P 3: 51

Reference: CGB-CC-0059

Whitesburg Baptist Church
Carlton Berry
600 Whitesburg Dr.
Huntsville, AL 35802

Re: Petition for exemption from the closed captioning rules under the "undue burden" standard, 47 C.F.R. § 79.1(f)

Dear Mr. Berry,

As you were previously notified, the Federal Communications Commission received the petition you filed on behalf of Whitesburg Baptist Church on December 12, 2005 seeking an exemption from the closed captioning requirements set forth in section 79.1 of the Commission's rules.[1] The exemption sought was based on the undue burden standard set forth in section 79.1(f). As explained below, after careful consideration we grant your petition for exemption from the closed captioning requirements for Whitesburg Baptist Church.

Pursuant to section 79.1(f) of the Commission's rules, an exemption from closed-captioning requirements 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 upon the petitioner. Furthermore, the statute and the Commission's rules define the term "undue burden" to mean "significant difficulty or expense."[2] Applying this standard, the Consumer and Governmental Affairs Bureau recently issued an Order granting exemptions from the closed captioning requirements under the undue burden standard to two entities that are similarly situated to the petitioner in the instant case.[3] In that Order, the Bureau noted that in addressing undue burden petitions:

> [W]e must "balance the need for closed captioned programming against the potential for hindering the production and distribution of

[1] 47 C.F.R. § 79.1, implementing section 713 of the Communications Act of 1934, as amended, 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] 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2).

[3] *In the Matter of Anglers for Christ Ministries, Inc.,New Beginning Ministries, Video Programming Accessibility Petitions for Exemption from Closed Captioning Requirements*, Case Nos. CGB-CC-0005 and CGB-CC-0007, Memorandum Opinion and Order, DA 06-1802, (CGB rel. Sept 11, 2006).

> programming." 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 . . . this confluence of factors strongly suggests that mandated closed captioning would pose an undue burden on such a petitioner.[4]

After careful review of the circumstances set forth in your petition, and in light of the relevant precedent discussed above, we conclude that application of the closed captioning requirements in this case would cause an undue burden. We therefore grant your petition pursuant to section 79.1(f).[5]

Any inquiries regarding this matter should be directed to the undersigned at (202) 418-1475 (voice), (202) 418-0597 (TTY), or Thomas.Chandler@fcc.gov. Please refer to the case identifier number noted above in any email correspondence or telephone conversations with Commission staff.

Sincerely,

Thomas E. Chandler
Chief, Disability Rights Office
Consumer and Governmental Affairs Bureau

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[4] *Id.* at para 11 (citation omitted).

[5] Section 79.1(f) sets forth certain procedures to guide the Commission's consideration of undue burden petitions, including that the petition be placed on Public Notice and that the petition contain detailed facts supported by affidavit. 47 C.F.R. § 79.1(f)(5)-(9). The Commission, however, may waive its rules for good cause, and, in light of the facts set forth in your petition and the precedent discussed above, we conclude that waiving these requirements in the instant case is consistent with the public interest.