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DEC - 9 2005

Before the
Federal Communications Commission
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the Matter of:)	
)	
JCR Advertising & Production)	
)	CSR _____
Video Programming Accessibility)	
)	
Petition for Exemption of Closed)	
Captioning Requirements)	

JCR ADVERTISING & PRODUCTION
PETITION FOR EXEMPTION OF CLOSED CAPTIONING REQUIREMENTS

JCR Advertising & Production (“JCR”), by counsel, hereby petitions for an exemption of the closed captioning requirements of Section 79.1 of the Commission’s rules.¹

Background. Section 713 of the Communication Act of 1934, as amended (“the Act”), Video Programming Accessibility, was added to the Act by Section 305 of the Telecommunications Act of 1996.² In enacting Section 713, Congress recognized that, in certain 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.³ Congress defined “undue burden” to mean “significant difficulty or expense.”⁴ In 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 47 U.S.C. § 613(d)(1).
⁴ 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.⁵

Section 79.1(d)(8) provides an exemption for locally produced and distributed non-news programming with no repeat value and of local interest.⁶ Section 79.1(d)(4) also provides an exemption for video programming for which the content of the soundtrack is displayed visually through text.⁷

JCR is in the business of producing program-length commercials for its clients, primarily local area car dealers and mortgage companies.⁸ The commercials are market and client specific. For example, a commercial might feature used cars held in inventory by a Nissan dealer in the Los Angeles Designated Market Area (“DMA”). A typical commercial is about 28 minutes in length and is aired on one or more television stations in the same DMA. JCR contracts with local television stations to air the commercials, generally during the Saturday/Sunday early morning day-parts. Each commercial receives a limited play; it is broadcast only about two or three times. After about 48 hours, due to state laws regulating the sale of cars, the car dealer cannot broadcast the same commercial. Thus, every week a new commercial has to be prepared for most car dealer in each DMA.

JCR produces on average about 33 new commercials in English and in Spanish per week. JCR’s primary competition is the print media. The production cost difference between a half hour commercial compared to print media is significant, because newspapers do not charge their clients production fees. JCR’s costs, on the other hand,

⁵ *Id. see also* 47 C.F.R. §79.1 (f).

⁶ 47 C.F.R. § 79.1(d)(8).

⁷ 47 C.F.R. § 79.1(d)(4).

⁸ The statements herein are supported by the Declaration of John C. Riemann, President and CEO of JCR. *See*, Exhibit 1 hereto.

are significant. JCR estimates that its production net profit margin is 11.2%. In order to implement an in-house closed captioning department, JCR estimates an additional \$13,277 per month in payroll, \$255,000 in capital expenditures for edit bays and \$60,000 for office expansion, for a total first year outlay of \$474,3224.⁹ The closed captioning costs would result in a net loss of .3% for JCR. Since television program-length commercial production costs are considered high compared to other media, JCR does not believe it can pass these cost on to its customers. Rather, JCR believes that the additional costs will result in advertiser migration to other media venues such as print, radio and billboards. As a result, JCR will suffer, but so will the television stations that rely on this type of advertisement for their revenues.

To complicate matters, JCR must operate on very strict production schedules. California law, for example, requires a car dealer to withdraw advertising on any vehicle within 48 hours after it is sold.¹⁰ This means that JCR must create a new program-length commercial each week in order to replace sold inventory with new cars, edit the show, make a master and all dubs and get the show out by Thursday for broadcast on Saturday and/or Sunday. JCR estimates that closed captioning in English or Spanish will add three hours to the production of each program length commercial. This will make it difficult for JCR to meet its deadline for airing, which, as discussed above, state law requirements dictate.

JCR is required by state law to make certain on-screen disclosures. For each car shown, JCR is required to print on screen, the make, model, year, pricing and payments

⁹ See, Exhibit 2.

¹⁰ California Vehicle Code § 11713(a). "It is unlawful for a dealer to fail, within 48 hours, in writing to withdraw any advertising of a vehicle that has been sold or withdrawn from sale." Other states where JCR operates have similar legislation.

and a complete disclosure of down payments, interest and payment details for purchasing or leasing the vehicle. An example of the text information required to be placed on the screen is attached hereto as Exhibit 3. The audio for the commercial, if any, is mostly banter designed to attract the attention of channel surfing viewers.

Discussion. Advertising is generally regarded as ancillary to the main programming content, which is the focus of Section 713. In this regard, the statute does not provide for captions on all televised material, nor does it specifically address advertising. The Commission recognized that in some contexts advertising should be treated separate from programming and thus not subject to the captioning obligations.¹¹ The Commission, however, concluded that program-length commercials should be subject to captioning requirements. The Commission reasoned that “such programs are generally prerecorded, generally distributed nationwide, and are formatted to resemble traditional television.”¹² In the case of JCR produced commercials, while the programs are prerecorded, applicable state law requires that the commercials be prerecorded approximately 48 hours before airing, leaving little time for closed captioning. JCR’s commercials are not distributed nationwide. They are made for local-market customers and are aired only in that DMA and then only for a very limited period of time (generally Saturday and Sunday mornings). Finally, JCR’s commercials are not formatted to resemble traditional television programming. Rather they are merely an inventory of available cars offered for sale in a particular market.

¹¹ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3345 (1997). (“Closed Captioning Order”).

¹² *Id.* at 3346.

Section 79.1(d)(4) provides an exemption for video programming for which the content of the soundtrack is displayed visually through text.¹³ In codifying this section of the rules the Commission reasoned, “that a requirement for captioning of such programming, where information is already provided visually with little or no relevant audio track, would be unnecessary and economically burdensome as it would outweigh the benefits provided by the captions.”¹⁴ In the case of JCR’s commercials, all the relevant data about the cars offered for sale, as a matter of state law, must be provided visually as text. As discussed above, each car shown must display on the screen, the make, model, year pricing and payments and a complete disclosure of down payments, interest and payment details for purchasing or leasing the vehicle.¹⁵ The information presented aurally is mere banter, designed to grab the attention of channel surfing viewers.

Section 79.1(d)(8) provides an exemption for locally produced and distributed non-news programming with no repeat value and of local interest.¹⁶ The commercials that JCR produces are non-news programming specifically prepared for the particular market in which they are broadcast. Because state law requires that a car dealer must withdraw advertising within 48 hours after a car is sold, the commercials have no repeat value.

JCR produces program-length commercials in both Spanish and English.

Requiring JCR to caption its program length commercials would place an undue burden

¹³ 47 C.F.R. § 79.1(d)(4).

¹⁴ *Closed Captioning Order*, at p.3344.

¹⁵ See, Exhibit 3.

¹⁶ 47 C.F.R. § 79.1(d)(8).

on JCR, and cause it to incur significant difficulty and expense.¹⁷ As discussed above, the cost of providing closed captioning in both English and Spanish would be prohibitive. Further, JCR does not believe it could pass on the cost of closed captioning to its advertisers. JCR competes with radio and print media. In all likelihood, advertisers would shift their advertising budgets to more cost-effective forms of advertising. Not only would JCR lose business, but so would the television stations that serve the local community and rely on these program-length commercials to supplement their revenues. The programming in question is advertising which does not merit the same public interest considerations as news or entertainment programming. Further, state law requires that all relevant information such as the price, make and model number of the car be displayed on the television screen. A hearing-impaired person watching a JCR produced commercial would get not only the name and telephone number of the car dealer, but also all the relevant information, as required by state law, concerning the automobile being offered for sale. Little more could be provided and then only at great expense.

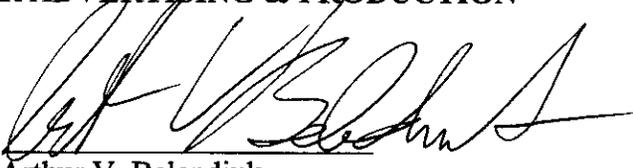
¹⁷ 47 C.F.R. § 79.1.

Conclusion. For the reasons set forth herein, JCR should be granted an exemption from Section 79.1 of the Commission's rules.

Respectfully submitted,

JCR ADVERTISING & PRODUCTION

By


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December 9, 2005

Exhibit 1

DECLARATION

I, John Riemann, declare under penalty of perjury that the following is true and correct:

I am the President and C.E.O. of JCR Advertising & Production.

I have read the foregoing Petition for Exemption of Closed Captioning Requirements.

Except for facts of which official notice may be taken or for which another source is cited, the statements made in the Petition for Exemption of Closed Captioning Requirements are true and correct to the best of my knowledge and belief.

Executed this 8 day of December 2005.


John Riemann

Exhibit 2

ATTACHMENT A -- Closed Caption Cost Impact

Here is an example of a typical week in our editing department plus the addition of closed captioning.

Dealer	Eng/Span	Shoot Day	Editing Times	Closed Caption	Edit Finished	Audit	CC Time	Out	People @ 9 hrs
						Mins	Mins		
Bakersfield Mazda	Eng	Fri	9-12	12-3	Tues	30	180	Thur	
Bakersfield Chrys	Eng	Fri	9-12	12-3	Tues	30	180	Thur	
Glendale Nissan	Eng	Mon	9-12	12-3	Tues	30	180	Thur	
Universal Nissan	Eng	Mon	12-3	3-6	Tues	30	180	Thur	
Moreno Valley	Eng	Mon	12-3	3-6	Tues	30	180	Thur	
PH PBG	Eng	Mon	12-3	3-6	Tues	30	180	Thur	
Rio Rancho	Eng	Mon	3-6	6-9	Tues	30	180	Thur	
Ph Toyota	Eng	Tues	3-6	6-9	Tues	30	180	Thur	
							24	hrs	3.00
Glendale Nissan	Span	Mon	9-12	12-3	Tues	30	180	Thur	
Universal Nissan	Span	Mon	9-12	12-3	Tues	30	180	Thur	
Inland Valley PBG	Span	Mon	12-3	3-6	Tues	30	180	Thur	
Moreno Valley	Span	Mon	12-3	3-6	Tues	30	180	Thur	
PH PBG	Span	Mon	3-6	6-9	Tues	30	180	Thur	
Rio Rancho	Span	Mon	3-6	6-9	Tues	30	180	Thur	
							18	hrs	2.00
Tuesday additional people requirement									5.00
Claremont Ford	Eng	Tues	9-12	12-3	Wed	30	180	Thur	
Claremont Toyota	Eng	Tues	9-12	12-3	Wed	30	180	Thur	
Honda Serramonte	Eng	Tues	9-12	12-3	Wed	30	180	Thur	
Superior Nissan Fremont	Eng	Tues	12-3	3-6	Wed	30	180	Thur	
Superior 3 Way	Eng	Tues	12-3	3-6	Wed	30	180	Thur	
Rancho Valley/Mirada	Eng	Tues	12-3	3-6	Wed	30	180	Thur	
							18	hrs	2.00
Capitol Ford	Span	Tues	9-12	12-3	Wed	30	180	Thur	
Claremont Ford	Span	Tues	9-12	12-3	Wed	30	180	Thur	
Claremont Toyota	Span	Tues	12-3	3-6	Wed	30	180	Thur	
Ph Toyota	Span	Tues	12-3	3-6	Wed	30	180	Thur	
Superior 3 Way	Span	Tues	3-6	6-9	Wed	30	180	Thur	
Superior Nissan PH	Span	Tues	3-6	6-9	Wed	30	180	Thur	
							18	hrs	2.00
Wednesday additional people requirement									4.00
No County GMC	Eng	Wed	9-12	12-3	Thur	30	180	Thur	
PH Ford/VW Combo	Eng	Wed	9-12	12-3	Thur	30	180	Thur	
Right Toyota S/Off	Eng	Wed	9-12	12-3	Thur	30	180	Thur	
							9	hrs	1.00

Ken Grody	Span	Wed	9-12	12-3	Thur	30	180	Thur	
No County Ford	Span	Wed	9-12	12-3	Thur	30	180	Thur	
Right Toyota	Span	Wed	12-3	3-6	Thur	30	180	Thur	
Superior 1 Auto Sales	Span	Wed	12-3	3-6	Thur	30	180	Thur	
							12	hrs	1.33
Thursday additional people requirement								3.00	

The normal sequence for our weekly shows is as follows:

1. Shoot on location – get the tapes into the offices that evening
2. After tape arrives at the office, it is digitized that evening in order for the editors to start editing the next morning.
3. Editing process – this process can be delayed if we don't receive all of the required disclosures and pricing from the dealer in a timely manner.
4. Audit process – each finished product is reviewed in its entirety to catch any mistakes. If any mistakes are found they must be corrected immediately in order to send out on Thursday.

JCR currently has 5 edit bays. We would have to add closed caption people on Tuesdays @ 9 hours each minimum, 4 closed caption people on Wednesdays @ 9 hours minimum and 3 closed caption people on Thursdays @ 9 hours minimum for two of them and 4 hours for the third. As you can see from the schedule above, all of the bays are being used by our existing editors in order to get the shows ready for the close captioning, thus requiring JCR to add 5 additional bays which would be used 2 ½ days per week. To further complicate things, we would need to find "experienced" people willing to work 2 ½ days from 12:00pm to 9:00pm and some that are fluent in Spanish.

The added cost in payroll would be \$13,277 per month including taxes. Additional capital expenditures would be 5 edit bays at \$51,000 per or \$255,000. We would need to expand our existing office space which would cost at least \$60,000 for a total 1st year outlay of payroll and capital expenditures of \$474,324.

Exhibit 3

\$189
PER MONTH
\$8,995
CASH PRICE

1995 DODGE RAM

VIN#367029, SALE PRICE \$8,995, \$189 PER MONTH, 4.99% APR. FOR 60 MONTHS. PLUS \$49 DOWN. PLUS GOVERNMENT FEES AND TAXES. ANY DEALER DOCUMENT PREPARATION CHARGE. ANY FINANCE CHARGES AND ANY EMISSION TESTING CHARGE. ON APPROVED CREDIT. MUST HAVE 730 CREDIT SCORE OR HIGHER & 5 YEAR CREDIT HISTORY. SOME BUYERS WILL NOT QUALIFY. SUBJECT TO PRIOR SALE.

Capitol  Expressway

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\$16,095 MSRP
 \$14,795 FAMILY PLAN PRICE
 \$296 DISCOUNT
 \$14,499 SALE PRICE
 \$3,000 FACTORY REBATE

\$11,499

NET TO CUSTOMER

AT THIS PRICE VIN: 807595
 PLUS GOVERNMENT FEES AND TAXES. ANY DEALER DOCUMENT PREPARATION CHARGE, ANY FINANCE CHARGES, AND ANY EMISSION TESTING CHARGE. SUBJECT TO PRIOR SALE.

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