



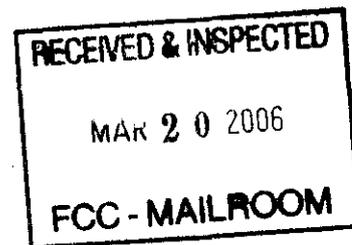
Niagara Ministries

2074 Lockport Road
Niagara Falls, New York 14304
Tele. 716-297-2871
Fax 716-297-2947

March 08, 2006

VIA U.S. Postal Service Priority Mail

Amelia Brown
Federal Communication Commission
Secretary's Office
Closed Captioning
445 12th Street SW
Washington DC 20554



0009
Regarding: **CGB-CC-009** - Reply to Opposition from Swidler Berlin
Of Petition for Exemption from Closed Captioning
Requirements Filed by Niagara Ministries.

Dear Ms Brown;

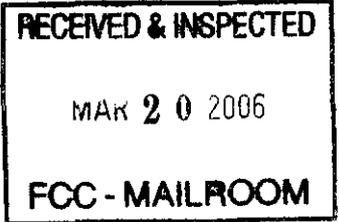
An original and two (2) copies of this "Reply to Opposition" are enclosed.

We would like to thank both the FCC, you, and Mr. Paul Gagnier of Swidler Berlin for graciously allowing us to late file our response to "Opposition." (We were not fully aware of the format involved with regards to public notice and response dates involved.)

Respectfully submitted,

Dr Thelma J. Bunce

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**



CGB-CC-009

**RESPONSE TO OPPOSITION OF THE COUNSEL OF SWIDLER BERLIN
TO THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING
REQUIREMENTS (DUE TO IMPOSING AN UNDUE BURDEN) FILED BY
NIAGARA MINISTRIES**

1. INTRODUCTION

We feel the Introduction would be a good place to give a better understanding of Niagara Ministries in response to "Oppositions" statement on page 9 (Fourth factor.) *"Petitioner provides insufficient information regarding the type of operations that it runs."* More information about Niagara Ministries is found on page 6 addressing this point of "Opposition" under heading of Fourth factor.

Niagara Ministries as stated in our petition of November 9, 2005 is a Church Body of approximately 90 people located here in Niagara Falls. For the past 25 years we have produced a 30-minute television program titled "Digging In with Joanne Bunce." We are a non-profit, donor supported organization. Our mandate (and miracle) from the beginning has been to make the "Word of God" available and known to as many as possible via radio and television.

One of the key features of the 5 day a week television show is and has been, a 24 hour phone prayer line number displayed on screen for virtually all of the show airing time. Over the years we have had thousands of documented calls and answers of prayers for; potential suicides (lives saved), marriages restored, relationships restored, (children to parents etc) healings from sickness and disease, alcoholics and drug addicts straightened out, employment etc. (The letters and phone in prayer requests and answers form a center piece in our Church Sanctuary.)

This knowledge of a very real God active in people's lives is only permitted because of the donor-support of the likes of the people mentioned in the above. (The Television show of "Digging In" is only possible because of this support.)

We have stated and continue to affirm (as addressed in the following) that according to Part 79.1- Section f compliance would impose an undue burden (significant difficulty or expense) to Niagara Ministries.

The four factors under Section 713 in consideration of evaluating an undue burden will be addressed next in response to "Oppositions" statements under A.Exemption Criteria Under section 79.1(f)(2) pages 5-9 of their submittal. This will be followed by a brief response to "Oppositions" B. Exemption Criteria Under Section 79.1(d) 12 (pages 10-11) of their submittal.

To simplify our "Response" format we have followed that of the "Opposition" Document.

A. Exemption Criteria Under Section 79.1(f)(2)

First factor: The nature and cost of the closed captions.

- (1) sought competitive pricing from multiple sources - In response to "Oppositions" statement on page 6 "*Petitioner has not given any indication that efforts were made to seek competitive pricing from alternative captioning companies or, if it did, who those companies or individuals may be*" we respond that competitive pricing was sought from multiple sources. Contacts were made with WB CH49 and ABC CH7 in Buffalo NY, Kenneth Copeland Ministries Fort Worth TX, Tri-State Christian Television in Marion IL, and Christian Television Network in Tampa FL from which the following sources of Closed Captioning services were obtained.
 - New Day Media Inc Tulsa OK (Photocopy A enclosed)
 - Infinity Concepts Export PA (Photocopy B enclosed)
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes. - In response to "Oppositions" statement on its page 6, "*In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources*" we respond quoted

prices were received from the above of which the lowest price was declared in our original petition.

- New Day Media (photocopy A enclosed) \$375.00/half hour (Ref Kat)
- Infinity Concepts (photocopy B enclosed) \$230.00/half hour (Our Petition declared Closed Captioning Costs using this lowest rate \$230 X 260 days = \$59,800.00 per year.)

- (3) provided details regarding its financial resources; and - In response to *"Oppositions" statement on its page 7 "Petitioner also fails to describe its general financial condition"* we have included the overall figures from our Financial Statement for 2004 as prepared by our outside accountant - Haick Accounting Services Inc. (716 695-9542) (Photocopy C enclosed) The net figures are receipts from all sources of \$219,105.93 (as declared in our original petition) with expenses totaling \$263,714.61. (A net loss of \$53,495.55 for the year of 2004.)
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.

Niagara Ministries has sought means to recoup the cost of closed captioning through a regular appeal for support at the end of every TV program. Unlike TV networks which rely on paid commercials to pay for their program airtime we are reliant on donor support only.

We had mentioned in our Introduction (page 1) that the program viewers - donors - people we have heard from by phone and letters - people who have had alcohol, drug problems, marriage problems, sickness, potential suicide - etc - these are the people who are paying for the Word of God that they hear on Television...also that others may hear. Page 7 of "Opposition" states *"Petitioner also fails to describe its general financial condition, and state whether it has other means to recoup the cost of captioning, such as through sponsorships or grants"* We have stated that the people who need the program (donors) pay for the program and as such request that if the "Deaf and Hard of Hearing Associations, Networks etc " want our program then we would officially here request funding (finances) from them to pay the Closed Captioning Costs.

"Opposition" continues to state in its page 7 *"and state whether Petitioner solicited captioning assistance from the distributors of its programming."* The Television Station distributor of our program is CTN CH22 in Tampa Florida. The airing rates given to us by this station are the lowest rates given to any paid programming. The CTN Network has also greatly helped us by giving us occasionally free time on its network stations to which we are very appreciative. These already generous low rates have allowed us to air our "Bible Teaching Program" to the public and without this favor would never have been possible.

Second factor: The impact on the operation of the provider or program owner.

"Opposition" states in its page 7 *"Petitioner claims that compliance with the closed captioning rules would require Petitioner to send the program to an outside source for captioning, which would make production unaffordable and impact the ability to meet air-date deadlines. However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. Petitioner's affidavit merely states that the additional, unverified annual cost of \$59,800.00 per year far exceeds in-house production costs."* These financial issues were addressed in First factor points (2) & (3) with photocopies attached.

"Opposition" states in its page 8 *"Petitioner generally asserts that adding captioning would cause delay, but fails to explain what its deadlines are, what time restraints it faces in meeting those deadlines, what the likely time delay would be for adding closed captioning,"*

Under our present production format, final editing of the master tapes is done the same day of production. Tapes are then dubbed within 1 - 2 days and forwarded to the TV Station for airing. (Approximately 2 weeks airing lead-time.)

Delays would occur because we do not have qualified people to do the transcribing and would have to resort to outside closed captioning services. The turn around time would be 3-4 business days upon receipt of materials plus 5-6 total days in transit both ways resulting in approximately ten (10) business days delay. Some of our programs contain time sensitive material relevant to current affairs eg. Tsunami, hurricanes, earthquakes, mine disaster etc which would cause the teachings to lose its impact by experiencing time delays.

Third factor: the financial resources of the provider or program owner.

"Opposition" states on its page 8 *"Additionally in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner - and not merely the cost of captioning in relation to a particular program. Here Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the high costs of captioning and vague statements concerning production costs and income. Beyond Petitioner's unsubstantiated assertion that it has annual income of \$219,105.93, and that annual cost for airtime for the program "Digging In with Joanne Bunce totals approximately \$78,084, Petitioner provides no information about its financial condition or programming budget."*

In response to "Opposition" we have given truthful declarations of both our total income from all sources plus captioning and programming air costs. We have included photocopies to substantiate these figures. ("Opposition" raises the very same point of the finances under First factor, his pages 6 & 7.)

"Opposition" claims on bottom page 8 and top of page 9 of its report that *"Digging In with Joanne Bunce claims to reach over 500 million viewers."* - This was true only on Sunday mornings up until Dec 25, 2005 which was our last airing date (due to non-response) over CTN International Satellite covering all of S. America.

The Digging In TV program is currently broadcast in the United States only via SkyAngel Satellite (dish required for reception), (not *internationally* as stated on page 9 of "Opposition.")

"Opposition" states also on its page 9 *"Petitioner also neglects to provide information as to other available resources."* and *"Petitioner has not explained to the Commission why it cannot use revenue from other parts of its organization to support captioning."*

As shown in our financial statement of 2004 there are no other sources of income to be used. (Also the year of **2004 produced a deficit.**)

Fourth factor: The type of operation of the provider or program owner.

"Opposition" states in its page 9 "*Petitioner provides insufficient information regarding the type of operation that it runs.*"

It has already been stated in our Petition that Niagara Ministries is a Church of approximately 90 people located here in Niagara Falls NY and that we produce a 30 minute television bible teaching program. That's our operation.... a church with traditional church functions of Sunday services, mid week prayer and bible teaching meetings. Sunday services may be filmed and used for television or separate teachings by Rev Joanne Bunce will be filmed within the church building. Volunteer labor is used in the filming and editing of the TV program. Office staff consists of two (2) full time paid employees. The physical Church building located here at this address contains a Church Sanctuary, meeting rooms, children's Sunday school class rooms, Pastor's office, general office and a room set up as a studio for TV filming.

The exemption from the captioning rules is based on undo burden due to financial costs involved and have been clearly stated and substantiated by original Affidavit of Costs. Photocopies of declared costs are also included with this "Reply." (As mentioned previously)

B. Exemption Criteria Under Section 79.1(d)(12)

"Opposition" states in its top of page 10, "Petitioner also argues that it is exempt from closed captioning requirements because it earns less than (than) \$3,000,000 a year."

In response the information Niagara Ministries had available in making our petition application for exemption was the following Document: (Photocopy D - pages 1-9 enclosed)

FCC Report and Order on Captioning Summary

Deaf and Hard of Hearing Access Program (DHHAP)-Technical Assistance Center
DHHAP Information and Technical Assistance Series

Categories: Technology, Captioning
FCC Report and Order on Captioning: Summary
(Source: Caption Center)

Prepared by:
The Caption Center
125 Washington Ave
Boston MA 02134

Page 4 of this Summary reads simply *"Providers with less than \$3,000,000 in gross annual revenues will not be required to spend any money to caption programming. However, they will be required to pass through programming which has already been captioned with these captions intact."*

There is in this context no mention of "channels - owners of channels, not individual video producers " as stated by "Opposition" in its page 10.

In January 2006 after having filed Petition for exemption in November of 2005 we were notified of the FCC Consumer & Governmental Affairs Bureau Web Site containing Info of self-implementing exemption - meaning that a provider does not need to ask Commission approval of the claimed exemption.(Page 1)

"Section 79.1(d) of the Commission's rules contains several exemptions to the closed captioning rules. These are self-implementing exemptions, meaning that a provider does not need to seek Commission approval of the claimed exemption."
(Photocopy E enclosed)

"EXEMPTIONS FROM CLOSED CAPTIONING RULES"

(11) Captioning expense in excess of 2% of gross revenues. No video captioning provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.

Does Niagara Ministries qualify to the above statement? (\$59,800 per year in closed captioning costs at 2% interprets to \$2,990,000 in gross revenues.)

In Summary we at Niagara Ministries are so grateful that God has given us the opportunities to bring such a hope of the integrity of His Word to millions of people over the years across this great nation!

We sincerely believe that our request for exemption from the closed captioning requirements is supported by clear and simple evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

Thank you.

CERTIFICATE OF SERVICE

I, Wilfred Gray, do hereby certify that, on March 08, 2006, a copy of the foregoing "Reply by Niagara Ministries, the Petitioner for Exemption from Closed Captioning Requirements" as filed with the Federal Communications Commission in CGB-CC-0009, was served by first class mail, postage prepaid, upon the "Counsel for the Opposition" to the Petition:

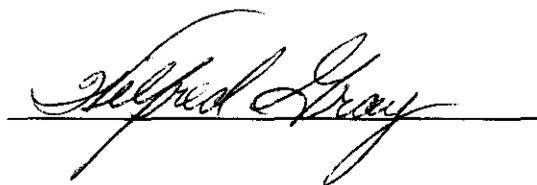
SWIDLER BERLIN

Att: Paul O. Gagnier/Troy F. Tanner

The Washington Harbour

3000 K Street., Suite 300

Washington DC 20007-5116

A handwritten signature in cursive script, reading "Wilfred Gray", is written over a horizontal line.

From: "Steven Cunningham" <Scunningham@ctnonline.com>
Subject: Re: Closed Caption
Date: August 16, 2005 12:12:29 PM EDT
To: "Wifred Gray" <tjb@buffnet.net>
2 Attachments, 149 KB

Wifred,

Here are a couple other closed caption co. info. I have no experience with them but thought it would give you something to go on.

Gary Murphy, President
New Day Media, Inc.
8282 S. Memorial Dr
Suite 102
Tulsa, OK 74133
(918) 250-4588
(800) 834-6606

ref. Kate #375.00 / 1/2 Hr

Paul McDonald, Media Director
Infinity Concepts, LLC
5201 Triangle Lane
Export, PA 15632
Phone: (724) 733-1200
Cell: (412) 860-8758
Fax: (724) 733-1201
paul@infinityconcepts.net
(additional information attached)

*#230.00 / 1/2 Hr
QUOTE ATTACHED*



Steven Cunningham
Christian Television Network
Director of Sales & Programming
P.O. Box 6922
Clearwater, FL 33758-6922
727.535.5622
Email: scunningham@ctnonline.com
Web site: www.ctnonline.com



Strategic Solutions for Success

CLOSED CAPTIONING SERVICES SALES SHEET

PRE-RECORDED CAPTIONING SERVICE

Roll-up Offline Service: \$460/program hour (\$230/half-hour)
Pop-on Offline Service: \$680/program hour (\$340/half-hour)

- **Client provides:**
 - Master tape of program on Beta SP or DVCPro
 - Scripts, notes or other information about the episode, including host and guest names, unique words or spellings, etc.

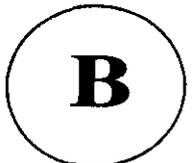
- **Infinity Concepts provides:**
 - TAPE STOCK (Beta SP or DVCPPro) for closed captioning master
 - Roll-up or pop-on captioning, as desired
 - Free transcripts as desired
 - Turnaround in THREE to FOUR business days from receipt of materials

- If additional masters are required that can use the same closed captioning file (for example, programs that contain the same audio content, but use different graphics), a fee of \$50 per half-hour master or \$75 per one-hour master will be charged.

Add 50% to caption preparation rate for 48-hour turnaround, 100% for 24-hour turnaround.
Tape costs and return shipping are additional. Rates are billable in quarter-hour increments.

We are very proud of the work that we caption, and we thank you for the opportunity to be considered for this programming. Our closed captioning agency has been trusted to caption such high-profile events as the Super Bowl, World Series, NBA Finals, the Emmys, the Golden Globes, the Oscars, and the 2004 Summer Olympics just to name a few. We are confident that *you will not find a better overall value* in captioning services than what Infinity Concepts offers.

For more information:
Paul McDonald
Infinity Concepts
724.733.1200
paul@infinityconcepts.net



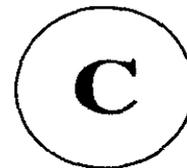
**Financial Statement
for**

NIAGARA MINISTRIES

**For The Month
Ending**

DECEMBER 31, 2004

Haick Accounting Services Inc.
695-9542 or 695-6578



NIAGARA MINISTRIES
Income Statement
For the period ended December 31, 2004

12 Months Ended
Dec. 31, 2004

RECEIPTS

TOTAL RECEIPTS

219,105.93

TOTAL EXPENSES

263,714.61

Other Income

GROSS INCOME BEFORE TAX

(53,496.55)

TAXES

Net income (loss)

\$ (53,496.55)

Deaf and Hard of Hearing Access Program (DHHAP)-Technical Assistance Center
DHHAP Information and Technical Assistance Series

Categories: Technology, Captioning
FCC Report and Order on Captioning: Summary
(Source: Caption Center)

The FCC has published its Report and Order on closed captioning. The original document is 148 pages long and is available at the FCC's web site (www.fcc.gov). We hope you find this summary helpful.

Entities responsible for compliance

The FCC defines video programming as programming which is distributed and exhibited for residential use. Program distributors who provide programming directly to consumers' homes are responsible for compliance. Program distributors are defined as:

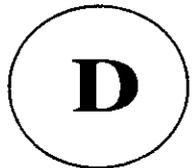
- broadcasters
- cable operators
- wireless cable operators
- instructional television fixed services (ITFS) or local multipoint distribution services (LMDS)
- satellite master antenna television (SMATV) operators
- direct broadcast satellite (DBS) providers
- direct-to-home (DTH) providers
- home satellite dish (HSD) providers
- open video system (OVS) operators

Although the FCC holds these program distributors responsible, the Commission expects that captioning will actually be a shared responsibility between distributors, program providers and program owners.

New programming requirements

The FCC defines "new programming" as programming that is first published or exhibited on or after January 1, 1998, the first day the ruling takes effect.

The phase-in period for new programming rules is eight years. Compliance will be measured on a calendar-quarter basis. Based on a 20-hour broadcast day (see exemption below re: programs airing between 2 AM and 6 AM), the FCC states that:



- Program distributors must continue to provide captioned video programming at the same level as the average level of captioning that they provided during the first six months of 1997 even if that amount of captioning exceeds the requirements. This has been referred to as the "no backsliding" provision.
- Between January 1, 2000, and December 31, 2001, program distributors must provide at least 450 hours of captioned programming per calendar quarter or five hours per day. If the program distributor provides less than 450 hours of new programming, then 95% of its new programming must be captioned;
- Between January 1, 2002, and December 31, 2003, program distributors must provide at least 900 hours of captioned video programming per calendar quarter, or 10 hours per day. If the programming distributor provides less than 900 hours of new programming, then 95% of its new programming must be captioned;
- Between January 1, 2004, and December 31, 2005, program distributors must provide at least an average of 1,350 hours of captioned video programming per calendar quarter or 15 hours per day. If the program distributor provides less than 1,350 hours of new programming, then 95% of its new programming must be captioned;
- As of January 1, 2006, and thereafter, 95% of the program distributor's new programming must be captioned.

Programs produced and aired prior to January 1, 1998 The FCC refers to programs published or exhibited prior to January 1, 1998 as pre-rule programming. This has also been referred to as library programming. The FCC established a 10-year phase-in period for captioning of 75% of this programming. Full compliance is expected by 2008 and will also be measured on a calendar-quarter basis. While the FCC established no benchmarks for this rule, the Commission will revisit this issue in four years (2002). If sufficient progress has not been made, the FCC may institute benchmarks at that time. The FCC may also adjust the percentage of pre-rule programming required to be captioned.

Passing on captions intact to the consumer

All programs which are captioned must be passed to consumers with captions intact. However, if the distributor edits the captioned program, reformatting the captions is not required. See more in Reformatting below.

Reformatting

The FCC established no rule requiring the reformatting of programs, which is necessary

if a captioned program is edited. However the Commission does state that it "expects that video programming providers will make the reformatting of captions a common practice when programs are edited." The FCC will revisit this issue as the rules are implemented and will consider at that time whether a reformatting requirement is necessary.

Exemptions

- Programming bound by a contract in effect on or before February 8, 1996 in which closed captioning is prohibited by the contract. No further extension or renewal of such a contract is permitted.
- Non-English language programming with the exception of programs which are produced using an electronic news room system. Those programs must be captioned using an electronic news room captioning system.
- Primarily textual programming including channels dedicated to on-screen program schedules or guides, community calendars, etc.
- Late night programming that is distributed between 2 AM and 6 AM local time.
- If a program service covers more than one time zone, the program distributor providing the channel will be exempt for any four-hour period they choose, commencing no earlier than 12 AM local time and ending no later than 7 AM local time in any location where the service is delivered for viewing.
- Interstitials, promotional announcements and PSAs that are 10 minutes or less in duration.
- Advertising of less than five minutes in duration.
- Instructional television fixed service or ITFS programming that is intended for specific receive sites and not for general distribution to residential viewers.
- Locally Produced and Distributed Non-News Programming with no repeat value, of local public interest, and for which the electronic news room technique of captioning is unavailable is exempt. The programming must be locally created and not available outside of the local service area or market of a broadcast station or the equivalent for a cable system operator. The FCC gives examples of local parades, local high school and nonprofessional sports, unscripted local talk shows or community theater productions. The FCC anticipates a review of this exemption during the transition period.
- Programming on New Networks broadcast or nonbroadcast, national or regional will be exempt for four years. The number of years will be determined by the network's launch date. A network must comply with the closed-captioning rules at the end of the four-year exemption period.

- Music programming that is primarily non-vocal in nature such as symphony or ballet is exempt.
- No program distributor will be required to spend more than 2% of gross annual revenues on captioning. The gross annual revenues will be calculated based on the previous year's revenues. The provider must spend up to 2% of gross annual revenues on captioning whether or not this brings the distributor into compliance with the established benchmarks.
- Providers with less than \$3,000,000 in gross annual revenues will not be required to spend any money to caption programming. However, they will be required to pass through programming which has already been captioned with those captions intact.



Compliance

Compliance is calculated on a per-channel, calendar-quarter basis.

Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning.

Live programs or repeats of programs originally transmitted live that are captioned using the electronic news room technique will be considered captioned.

Live portions of PBS pledge fundraising activities which utilize automated software to create a continuous captioned message will be considered captioned.

Programming produced solely for closed circuit or private distribution is not subject to these rules.

Programming which is exempt, but which actually contains captions can count toward compliance up to January 1, 2006, except for those programs distributed between 2 AM and 6 AM.

If two or more networks or sources of programming share a single channel, each network or source individually must be in compliance with the rules.

Program distributors will not be required to provide closed captioning for programming that is by law not subject to their editorial control. This would include programming involving candidates for public office, commercial leased access, public access, governmental and educational access programming, programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement and programming distributed by a common carrier or that is distributed on an open video system. If the programming is not otherwise exempt from captioning, the entity that contracts for its distribution must comply with the closed captioning requirements.

Procedures for Exemptions Based on Undue Burden

Any party within the program distribution chain can file an undue burden petition. The FCC will consider how the captioning requirement might hinder program production and distribution.

The petition for exemption will be placed on public notice for public comment within a 30 day time period. To the extent possible, petitioners must provide proposals regarding alternative ways to provide access to their programming that are less burdensome than captioning. These solutions can include increased use of graphics or sign-language interpretation.

The FCC can deny or approve all or part of a petition.

While a petition for exemption based on undue burden is pending, the program is exempt from captioning requirements.

Standards for Accuracy and Quality

All program providers must ensure that programming with closed captions is delivered to viewers with the captions complete and intact. This is an extension of existing rules in the Cable Act.

Program providers are responsible for monitoring programming and maintaining their equipment and signal transmissions to ensure that captions are complete and intact. Video program providers can rely on certifications from programming suppliers that the program is indeed captioned.

At this time, the FCC is not adopting standards for non-technical aspects of captioning such as grammar, spelling, etc. However, the FCC will be monitoring all aspects of implementation including the quality of captioning and may adopt standards at a later date.

Complaints

Initial complaints should first go to the program distributor responsible for the delivery of the programming to the consumers' homes. The complaint must be in writing, state specifically what rule was violated and must contain evidence of the violation.

Violations include failure to meet the established benchmarks or failure to pass existing captions through to the consumer complete and intact.

Complaints must be filed by the end of the calendar quarter following the calendar quarter in which the violation occurred. They must be resolved by 45 days following the end of the calendar quarter when the violation occurred or by 45 days following the receipt of the complaint, whichever is later.

If the complaint is not resolved by the program distributor, it may be taken to the FCC by the complainant. The FCC will review the complaint, the response and all the documentation and determine if a violation occurred. If a violation has occurred the FCC may impose penalties. For flagrant violation, the FCC may require the program distributor to exceed the established captioning benchmarks.

Complete complaint procedures can be found in the FCC documents or on the FCC's website.

New Technologies

Captioning requirements will remain in place for digital or high definition television, or DTV. The FCC expects programming entities involved in the development of DTV will take into account the need to caption. When receiver standards for DTV are approved, the process for developing a standard captioning process for DTV will proceed normally. The FCC will formally gather information on DTV captioning needs when it approves DTV receiver standards.

The FCC recognizes the convergence of TV and computers and the growth of programming on the Internet and may address this at a later date.

Emergency Information

The FCC finds this a very important area and will issue a proceeding in the near future to examine the issue of accessible emergency information.

Matters for future review

- Benchmarks for pre-rule programming
- Exemptions for non-English language programming
- Exemptions for locally produced non-news programming
- The use of electronic news room captioning and whether to mandate real-time captioning of news
- Standards for non-technical quality of captions
- Reformatting of edited, previously captioned programs

- Programming that airs between 2 AM and 6 AM

Prepared by:

The Caption Center
125 Western Avenue
Boston, MA 02134
617 492-9225 - voice/TTY
617 562-0590 - fax
caption@wgbh.org - e-mail
www.wgbh.org/caption - Web

Consumer & Governmental Affairs Bureau

FCC > CGB > DRO > Closed Captioning > Exemptions from Closed Captioning Rules

FCC site map

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Organizational Chart

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Reference Information Center

En Español

Tribal

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Intergovernmental Advisory Committee

FCC Consumer Information Registry

How To Contact Us

Consumer Center

On-line Complaint Forms

Set Up A Meeting

How To Make A Comment (ECFS)

Request a Speaker

EXEMPTIONS FROM CLOSED CAPTIONING RULES

Section 79.1(d) of the Commission's rules contains several exemptions to the closed captioning rules. These are self-implementing exemptions, meaning that a provider does not need to seek Commission approval of the claimed exemption.

For purposes of determining compliance with Section 79.1, any video programming provider that meets one or more of the following criteria shall be exempt to the extent specified.

(1) Programming subject to contractual captioning restrictions.

Video programming that is subject to a contract in effect on or before February 8, 1996, but not any extension or renewal of such contract, for which an obligation to provide closed captioning would constitute a breach of contract.

(2) Video programming or video programming provider for which the captioning requirement has been waived.

Any video programming or video programming provider for which the Commission has determined that a requirement for closed captioning imposes an undue burden on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

(3) Programming other than English or Spanish language. All programming for which the audio is in a language other than English or Spanish, except that scripted programming that can be captioned using the "electronic news room" technique is not exempt.

(4) Primarily textual programming. Video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics (e.g., program schedule channels or community bulletin boards).

(5) Programming distributed in the late night hours. Programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Video programming distributors providing a chart consists of a service that is distributed and exhibited for viewing than a single time zone shall be exempt from closed captioning t service for any continuous 4 hour time period they may select, commencing not earlier than 12 a.m. local time and ending not l.

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7 a.m. local time in any location where that service is intended for viewing. This exemption is to be determined based on the primary reception locations and remains applicable even if the transmission is accessible and distributed or exhibited in other time zones on a secondary basis. Video programming distributors providing service outside of the 48 contiguous states may treat as exempt programming that is exempt under this paragraph when distributed in the contiguous states.

(6) **Interstitials, promotional announcements and public service announcements.** Interstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.

(7) **ITFS programming.** Video programming transmitted by an Instructional Television Fixed Service licensee pursuant to §§ 74.931(a), (b) or (c) of the rules.

(8) **Locally produced and distributed non-news programming with no repeat value.** Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable.

(9) **Programming on new networks.** Programming on a video programming network for the first four years after it begins operation, except that programming on a video programming network that was in operation less than four (4) years on January 1, 1998 is exempt until January 1, 2002.

(10) **Primarily non-vocal musical programming.** Programming that consists primarily of non-vocal music.



(11) **Captioning expense in excess of 2% of gross revenues.** No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.

(12) **Channels producing revenues of under \$3,000,000.** No video programming provider shall be required to expend any money 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 pursuant to paragraph (c) of this section.

(13) **Locally produced educational programming.** Instructional programming that is locally produced by public television stations for use in grades K-12 and post secondary schools.

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