

CGB-CC-0669

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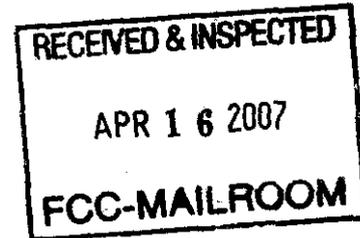
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April 9, 2007



Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: **CGB-CC-0669 - Amended Petition for Exemption
from Closed Captioning Requirements Filed by
Ridgecrest Baptist Church, 1231 Fortner Street,
Dothan, Al**

Dear Ms. Dortch:

This is an Amended Petition filed by Ridgecrest Baptist Church for an exemption from the closed captioning requirements for video programming contained in Section 79.1 of the Commission's Rules.

Please consider the following:

1. Ridgecrest Baptist Church, 1231 Fortner Street, Dothan, Alabama, 36301 is a non-profit corporation organized and existing under the laws of the State of Alabama.

2. The only income Ridgecrest Baptist Church receives is from charitable donations which come primarily from members of the church and other individuals making charitable donations to the church.

3. The programming produced by Ridgecrest Baptist Church and distributed by it consists of non-news programming with no repeat value. The programming is locally produced by members and staff of Ridgecrest

Baptist Church and consists of devotionals, church services and church musicals. These items have no repeat value and are solely of local public interest and are not news programmings. The programs are as follows:

WIVY-4 - Sunday at 7:00 A.M. - 30 min. - Heart Truth - Cost:	\$ 25,480.00 per yr.
WDHN-18 - Sunday at 9:00 A.M. - 1 hr. - Heart Truth - Cost:	26,500.00 per yr.
Comcast Ch. 6 - Saturday at 8:00 P.M. 1 hr. - Heart Truth - Cost:	5,400.00 per yr.
Time Warner Ch. 9 - Thursday at 9:00 A.M. and Saturday at 8:00 P.M. 1 hr. - Heart Truth - Cost:	7,800.00 per yr.
Graceba Ch. 6 - Thursday at 9:00 A.M. and Saturday at 8:00 P.M. 1 hr. - Heart Truth - Cost:	Donated by Graceba
WDHN-18 - Weekdays at 7:25 A.M. 5 min. - Today's Heart Truth - Cost:	<u>13,000.00 per yr.</u>
TOTAL COST PER YEAR	\$ 78,180.00

Ridgecrest knows of no electronic newsroom technique of captioning available for the petitioner. Ridgecrest requests an undue burden exemption pursuant to Section 79.1(d)(8) of the Commission's Rules.

4. Requiring Ridgecrest to comply with the Commission's closed captioning requirements would have a substantial impact on the operations of Ridgecrest. Ridgecrest is a non-profit corporation and does not receive compensation for making their programming available. Mandated closed captioning would cause significant difficulties for Ridgecrest and the continued production of Ridgecrest programming because of the significant expense involved would be jeopardized. Moreover, applying captioning requirements to this programming could result in the religious programs not being televised at all because of the significant hardship.

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5. Ridgecrest respectfully requests the Commission to consider that it is a non-profit corporation, does not receive compensation from video programming distributors from the airing of its programming and that in the absence of an exemption may have to terminate or substantially cut back its programming or other activities important to its religious mission.

6. The Commission is familiar with the Memorandum Opinion and Order, DA 96-1802 (2006) *In the Matter of Anglers for Christ Ministries, Inc.*, a copy of which is attached for the convenience of the Commission as Exhibit "1." The Commission applied the undue burden exemption which is defined by the statute to mean "significant difficulty or expense" upon consideration of 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."

Both Petitioners in *Anglers*, supra were religious associations or corporations publishing TV programs of a religious nature. The programs would have to be sent to an outside source for captioning and the added production costs would make production unaffordable and have a negative impact on Petitioners' ability to meet air date deadlines. The religious associations appear to be donor supported, non-profit organizations and would have to discontinue programs and cease broadcast operations if required to close caption.

We submit that *Anglers*, supra finds application in this case. If the Commission requires Ridgecrest to comply with closed captioning requirements, it will have a substantial and adverse impact on its television ministry. Ridgecrest does not receive any compensation for making this programming available. The continued production of Ridgecrest programming at best would be hindered and jeopardized and at worst be terminated. Ridgecrest respectfully requests the Commission to balance the goal of **ensuring video programming being accessible** to those with hearing disabilities against the economic burdens caused by closed captioning requirements.

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Clearly, the Commission has exempted categorically from closed captioning requirements locally produced and distributed non-news programming with no repeat value such as are listed above. These programs are of interest only to a limited audience and have an inherently fragile economic support system being supported by charitable donations and contributions and not by fixed costs. Ridgecrest has no ministries or programs self-supporting or "remunerative in itself" and therefore has no inducement to continue these programs in the event substantial additional costs are incurred from the application of applying captioning requirements to these programs. Quoting from the decision as follows:

"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."

Certainly, Ridgecrest Baptist Church, Dothan, Alabama, falls within this exemption.

Respectfully submitted,

HARDWICK, HAWK E, SEGREST & WALDING

BY: 

Jere C. Segrest

JCS/bt

Enclosure

cc: Mr. Ray Jones, Senior Pastor

Mr. Charles Olive

Ridgecrest Baptist Church

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)?

II. BACKGROUND

2. Section 713 of the Act directs the Commission to adopt regulations to phase in closed captioning requirements for video programming.² 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 ~~also~~ **also** provide for certain exemptions to the closed captioning requirements. A number of these exemptions ~~are~~ self-implementing? Entities ~~that~~ do not qualify for a self-implementing exemption may petition the Commission for an “undue burden” exemption.⁵ 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.⁶ The statute defines “undue burden” to mean “significant difficulty or expense,”⁷ 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.” 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.”⁸ 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.” 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.”⁹

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 Red 3272 (1997) (Closed Captioning Report and Order), recon. granted in part, Order on Reconsideration, 13 FCC Red 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.” 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.“ 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.”

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.” 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 334748, 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?

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 ~~Angiers~~ 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**

STATE OF ALABAMA,
HOUSTON COUNTY.

**AFFIDAVIT IN SUPPORT OF
AMENDED PETITION FOR EXEMPTION
FROM CLOSED CAPTIONING REQUIREMENTS
FILED BY RIDGECREST BAPTIST CHURCH**

Before me, the undersigned authority, personally appeared Charles Olive, who is the Minister of Administration of Ridgecrest Baptist Church, who being known to me after first being duly sworn deposes and says as follows:

1. I have been Minister of Administration at Ridgecrest Baptist Church in Dothan, Alabama, for 13 years and have personal knowledge of the facts stated in this Affidavit. I have reviewed in detail the Amended Petition prepared by Jere C. Segrest, Attorney for Ridgecrest Baptist Church, to which this Affidavit is attached.

2. The facts stated in the Amended Petition are true and correct to the best of my knowledge, information and belief.

3. The opinions stated in this Affidavit are my opinions and are based on my judgment and experience in my employment as Minister of Administration at Ridgecrest for many years.

4. I express no opinions concerning the legal argument made by Mr. Segrest in paragraph 7 of the Amended Petition.

5. In the event Ridgecrest is required to close caption the programs outlined in the Petition for Exemption, Ridgecrest would have to substantially cut back its programming or fully cease broadcast operations if required to close caption these productions.

6. Each of the programs are produced locally and in-house by Ridgecrest Baptist Church and are distributed non-news programs with no repeat value.

7. This program is produced solely by salaried ministers and other employees at Ridgecrest without additional compensation to them for the production for television. Ridgecrest receives no income or other compensation for making these programs available. None of the programs are remunerative standing alone or in itself but are faith based programs intended solely to acquaint people with Christ.



CHARLES OLIVE, Minister of
Administration

Sworn to and subscribed before me on this the 5th
day of April, 2007.

Barbara W Thomas
Notary Public

My Commission Expires: 10-23-2010

(SEAL)