



NATIONAL ASSOCIATION OF THE DEAF

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May 17, 2007

Via Electronic Filing

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CG Docket No. 06-181; Notice of Ex Parte Meeting

Dear Ms. Dortch:

On behalf of myself, Jenifer Simpson of the American Association of People with Disabilities, and Lise Hamlin of the Northern Virginia Resource Center, notice is being provided of an *ex parte* meeting today regarding the above-referenced docket with Commissioner Robert M. McDowell.

We discussed the recent activity related to petitions for undue burden exemptions from the closed captioning rules, the 494 petitions posted on Public Notice DA 06-2287 (November 7, 2006), and the additional 54 petitions posted on Public Notice in 2007. We presented a brief summary of the above (copy attached), with copies of excerpts from the FCC website about closed captioning exemptions, the Anglers Order, our Application for Review, and similar documents. We also discussed captioning technologies and the availability of information regarding captioning for live and pre-recorded television programs. We described our process for analyzing, determining recommendations, and preparing comments and oppositions for each individual petition. We also provided a CD containing the charts we prepared during this process which identify and summarize key elements of each petition and our recommendations for FCC action, charts which were previously filed in the above-referenced docket.

We asked for support to ensure that the FCC upholds and adheres to the existing regulations for closed captioning exemptions.

Respectfully submitted,

/ s /

Rosaline Crawford

Director, NAD Law and Advocacy
Center



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DATE: May 15, 2007

TO: FCC Commissioners

FROM: Rosaline Crawford
Director, Law and Advocacy Center
National Association of the Deaf

RE: Petitions for Undue Burden Exemptions from the Closed
Captioning Rules
Consumer Interest in Upholding Process and Regulatory
Standards

As you may recall, multiple consumer groups¹ filed an Application for Review of the Anglers Order² and hundreds of deaf and hard of hearing consumers contacted the FCC by phone and e-mail to protest the FCC's actions involving closed captioning last fall.

The FCC took steps to address some of the concerns raised in our Application for Review, such as posting all petitions for undue burden exemption on public notice for comment in accordance with the closed captioning rules. As part of that process, the Anglers Order and the hundreds of petitions for exemption that the FCC granted, based on that Order, are being held in abeyance until the comment period expires, on or about May 7, 2007.

We have filed comments and recommended specific FCC action on each of the 494 petitions posted on public notice in 2006 and each of the 54 petitions posted on public notice in 2007. In addition hundreds of deaf and hard of hearing consumers filed comments.

¹ Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), the National Association of the Deaf ("NAD"), the Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), the Hearing Loss Association of America ("HLAA"), the Association of Late-Deafened Adults, Inc. ("ALDA"), the American Association of People with Disabilities ("AAPD"), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH").

² Anglers for Christ Ministries, Inc.; New Beginning Ministries. Granted two separate petitions for exemption from the closed captioning requirements for video programming contained in section 79.1 of the Commission's rules. Action by: Chief, Consumer and Governmental Affairs Bureau. Adopted: 09/11/2006 by MO&O. (DA No. 06-1802).

The FCC is now poised to decide a total of 548 petitions for exemption from the closed captioning rules. We remain concerned about the Anglers Order and the impact it may have on how the FCC may decide these matters. We seek your support to ensure that the FCC upholds and adheres to the existing regulations for closed captioning exemptions.

BACKGROUND

In 1996, Congress required video program distributors (cable operators, broadcasters, satellite distributors, and other multi-channel video programming distributors) to close caption their television programs. The FCC closed captioning rules were established in 1998. These rules established benchmarks for the amount of closed captioning to be increased gradually over a period of 8 years. Since January 2006, 100% of all new TV programs must be captioned, with some exceptions. All of these exceptions, or “exemptions,” are self-implementing, except one – the “undue burden” exemption. An “undue burden” was defined as a significant difficulty or expense, mirroring the language in the Americans with Disabilities Act (ADA). The FCC established a process for entities to request an undue burden exemption from the closed captioning rules for certain television programs. These requests must be supported by sufficient evidence from the program provider to demonstrate that compliance with the closed captioning rules would be an undue burden.

Closed Captioning Undue Burden Exemption Requests

Between 1999 and 2005 (6 years), 67 television programs petitioned for an undue burden exemption. The FCC granted only 3 of those 67 petitions, and only for a limited time (1 to 3 years each). Most of the requests did not provide enough information for the FCC to determine whether an undue burden existed and most of the requests were denied on that basis and given 3 months to comply or re-apply with sufficient information.

On September 12, 2006, the Anglers Order established, without any rulemaking process, a new category of television programming that the FCC said it would be “inclined favorably” to grant exemptions from the closed captioning rules. Specifically, the Order stated that the Commission would be inclined favorably to grant petitions filed by non-profit organizations that do not receive compensation from video programming distributors from the airing of its programming and, in the absence of an exemption, may terminate or substantially curtail its programming, or curtail other activities important to its mission.

Within days of that Order, the FCC granted permanent exemptions (for the first time ever) to almost 300 programs, most of which had never been put on public notice for the requisite comment period. Those petitions were granted without discussion and solely on the basis established in the Anglers Order; not on merit.

On November 7, 2006, the FCC posted on public notice for comments/oppositions 494 requests for exemption from the closed captioning rules that had not previously been posted on public notice, and reduced the prescribed period for comment from 30 to 20 days. In its November 2006

public notice, the FCC announced that the Anglers Order and the subsequent grants of hundreds of petitions for exemption were being held “in abeyance” until the comment period expired. We filed a request for and received an extension of time (120 days) to file comments, or until March 27, 2007. The FCC, on its own initiative, increased the time for the 494 petitioners to reply from 20 to 40 days, or until May 7, 2007.

We read and analyzed each petition and then prepared and filed comments/oppositions to each of the 494 petitions for exemption, recommending a range of responses:

- A. denying (57) petitions that provided sufficient information and failed to demonstrate undue burden, requiring compliance within 3 months;
- B. denying (345) petitions with insufficient information to make any determination, requiring compliance or reapplication with sufficient information within 6 months;
- C. granting two-year exemptions to (40) petitions that provided sufficient information to demonstrate that an undue burden may exist (40); and
- D. granting (52) petitions that requested only a temporary exemption for the time period requested or 3 months if that time period has passed (52);

The categories of programming were varied, but the majority (approximately 55%) was from faith-based organizations:

- Auto Sales (27)
- Faith Based (268)
- Food (9)
- Health (8)
- Hunting / Fishing / Outdoors (19)
- Infomercials and Long-Form Advertising (9)
- Miscellaneous (49) (includes a few home improvement programs, talk shows, youth-oriented programs, one-of-a-kind programming, and some programs that were insufficiently described)
- Music, Arts, and Entertainment (21)
- Public/Community Affairs (12)
- Real Estate Sales (28)
- Sports (19)
- xxxx (Stations/Channels/Broadcasters) (25)

Hundreds of deaf and hard of hearing consumers also filed comments/oppositions to these 494 petitions for exemption.

In addition, we read and analyzed, and prepared and filed comments/oppositions to another 54 requests for exemptions posted on public notice by the FCC in 2007.

What's Next?

The FCC is now poised to decide a total of 548 petitions for exemption from the closed captioning rules. We remain concerned about the Anglers Order and the impact it may have on how the FCC may decide these matters. We seek your support to ensure that the FCC upholds and adheres to the existing regulations for closed captioning exemptions.