

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

NPG of Idaho, Inc.)
(KIFI-TV))
Idaho Falls, ID)

FILED/ACCEPTED

OCT 28 2008

Federal Communications Commission
Office of the Secretary

To: Secretary

Attn: Amy Brown
Consumer & Govt. Affairs Bureau
Room 3-B431

PETITION FOR EXEMPTION UNDER 47 CFR §79.1

Pursuant to 47 CFR § 79.1, NPG of Idaho, Inc. ("NPG"), licensee of KIFI-TV-DT, Idaho Falls/Pocatello, ID ("Station"), respectfully submits this Petition for Exemption under 47 CFR §79.1 (or for other appropriate relief), with respect to a proposed, one-time local Public Affairs program regarding a local ballot issue that is of critical public health and safety importance to citizens within the Station's "underserved" viewing area.¹

Justification for Exemption

1. The Station, as part of its obligation to serve the local needs of its viewers, intends to present a special, one-time broadcast on or about October 29, 2008, regarding a November 4, 2008 ballot issue in Pocatello, ID, concerning the future Portneuf Medical Center ("Portneuf Medical"), a Pocatello-Bannock County hospital that was built with taxpayer funds. The upcoming ballot issue concerns a proposal that the assets of Portneuf Medical be transferred to a

¹ Pocatello, ID, is part of the Nation's #163 DMA, with only five full power commercial TV stations.

not-for-profit community organization, which would then sell a majority interest to a for-profit group.

2. In 2002, Intermountain Healthcare sold the Pocatello Regional Medical Center to the county's only other hospital, the county-owned Bannock Regional Medical Center. The new entity, Portneuf Medical, has strategically positioned itself as a regional referral center, rather than a community hospital -- which resulted in the creation of a new Heart and Vascular Center, which opened in the Fall of 2004 and which is largely responsible for attracting over 50 doctors to the area in just the last five years.²

3. Shortly after the 2002 merger, a master plan for the county's future healthcare led to the interim conclusions that (a) neither Portneuf Medical nor the Heart and Vascular Center was adequate to serve the county's health needs and (b) that constructing a new hospital in a third location would be too expensive; accordingly, it was decided that the "newer" Pocatello Regional Medical Center -- which has easy access to a freeway and nearly 40 acres for future growth -- would be the site for expansion. Thus, with the Heart and Vascular Center as "Phase One" (financed by county revenue bonds that were paid by hospital fees), the construction to expand Portneuf Medical was about 20% complete when an Idaho Supreme Court decision affected the integrity of the county revenue bonds and, thus construction on that expansion was halted.³

4. The upcoming, November 4th ballot issue asks voters to approve a transfer of the county-owned assets of Portneuf Medical (about \$65 million) to the Portneuf Health Care Foundation, which would invest those assets into the Community Benefit Organization ("CBO"), a joint

² The lower campus is the prior Bannock Regional Medical Center and the upper campus is the prior Pocatello Regional Medical Center.

³ The expansion project generally involves remodeling the upper campus facility and closing the older Bannock Regional Medical Center.

venture with Legacy of Plano, Texas (which would obtain a 77% ownership interest in CBO by investing \$200 million), which would pay off Portneuf Medical's existing debt and complete the expansion/remodeling project that was halted when the Idaho Supreme Court's decision forced its suspension.

5. The pros and cons of the November 4th ballot issue have received some coverage by Pocatello-area media but, from its ongoing ascertainment of local needs, the Station's management has concluded that a special program regarding this critical local issue would greatly serve the community by presenting an extended, thorough exploration of these complex ownership issues and by presenting contrasting viewpoints regarding this significant local matter.

6. Although committed to developing this local issue and to generating more public debate about this important local health and safety issue via the proposed 30-minute TV special, the Station's revenues and modest public affairs budget would not permit the expenditure of tens of thousands of dollars on closed captioning of this 30-minute special public affairs program. This unscripted program is also not a likely candidate for electronic newsroom technique ("NT"). In short, despite the FCC's recent attempts to encourage all broadcasters to intensify their local programming efforts, this important local public affairs program could not be produced and aired by KIFI-TV without an exemption from the closed captioning rules. See generally In Re Broadcast Localism, MB Docket No. 04-233, released January 24, 2008; see also 19 FCC Rcd 12425 (2004).⁴

7. In fact, the program proposed by KIFI-TV appears to be within the list of express exemptions to the FCC's closed captioning rules. Subsection 47 CFR 79.1(d)(8) provides an exemption to the FCC's closed captioning rules for "locally produced and distributed non-news

⁴ Accord: FCC Field Hearings, Testimony of Martin Kaplan, Associate Dean, Annenberg School for Communication, USC (Monterey Tr. 63-68); Public Interest Obligations of TV Broadcast Licensees, 14 FCC Rcd 21633, 21640-41 (1999).

programming with no repeat value." The program here proposed by KIFI-TV is unquestionably locally produced, it is a public affairs program and not a news show or coverage of a news event, and it will not be repeated (it has no repeat value). Moreover, we submit that it is beyond dispute that this program would have "local public interest." Id. Accordingly, this Petition seeks a confirmation that the program falls within the recognized exemption for closed captioning as a "locally produced and distributed non-news program with no repeat value."⁵

8. Alternatively, and merely out of an abundance of caution, we also submit that this Petition also may be granted under the "undue burden" exemption provided in 47 CFR 79.1(f). The approximately \$25,000 cost of closed captioning that would be required for this one-time special public affairs program -- more than the cost of an entire week's news programming for KIFI-TV -- would make this program an impossible budgetary proposition for a station whose local news/public affairs budgets have already been curtailed by KIFI-TV's parent company, as a result of the current national financial crisis and expected global recession. See Appendix A.

9. Furthermore, and in support of both of the preceding arguments, we note the limited nature of this Petition places it in the same legal position of prior closed captioning cases where the FCC has held that the prerequisites for an exemption are met. See Petition for Exemption, filed December 29, 2005, by the Television Center of the Archdiocese of Miami, granted, ___ FCC Rcd ___ (2006) (half-hour, taped local TV Mass with no repeat value qualifies for exemption as a local, non-news program with no repeat value).

10. The factual matters raised in the foregoing paragraphs are verified by the general manager of station KIFI-TV. See Appendix A.

11. This Petition for Exemption is endorsed and supported by two prominent federal officials who represent Idaho in the U.S. Congress, whose signed statements argue that the FCC

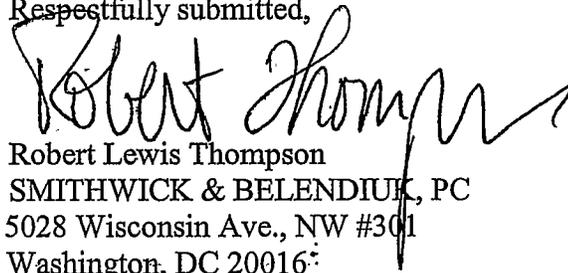
⁵ The local program, which will be taped shortly before broadcast, will be analogous to a live, unscripted talk show.

should find that the public interest would best be served by a grant of the Petition under 47 CFR § 79.1. See Appendix B.

CONCLUSION

In view of the foregoing, the Commission should (a) grant the Petition on the basis that the facts demonstrate that the program at issue is exempt under 47 CFR §79.1(d)(8) or, alternatively, (b) grant the Petition on the basis that the facts demonstrate that requiring closed captioning of this one-time only, local public affairs program would be an undue burden on the Licensee under 47 CFR § 79.1(f), or, alternatively, (c) for waiver of all relevant FCC rules because of good cause shown, in view of the substantial local public interest served by this program.

Respectfully submitted,



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Counsel for NPG of Idaho, Inc.

October 28, 2008

Appendix A

Sworn Statement of Mark Danielson

Mark Danielson, being sworn does declare:

1. My name is Mark Danielson, I am a resident of Idaho Falls, ID and am the General Manager of full power TV station KIFI-TV-DT, Idaho Falls-Pocatello, ID.
2. I have read the foregoing "**Petition for Exemption under 47 CFR § 79.1**" and I can confirm under penalty of perjury that the factual matters contained therein are true and correct to the best of my information and belief. Executed this 27th day of October 2008.


Mark Danielson

Appendix B

October 17, 2008

Mark Danielson
General Manager
KIFI News Group
1945 N. Yellowstone Highway
Idaho Falls, ID 83401

Dear Mr. Danielson:

I am writing in support of the Petition of KIFI-TV to the FCC, which seeks to confirm and obtain a one-time, limited exemption from the FCC closed captioning rules, in order that a special public affairs program can be presented by KIFI-TV to the Idaho Falls-Pocatello viewers.

I understand that this special program by KIFI-TV will address a local issue of public interest, involving the future of health care and hospital availability in this region of Idaho. I trust that the FCC will carefully balance all of the factors and conclude that an exemption in this case will best service the public interest in the dissemination of information regarding local health care in this area.

Please contact Lindsay Nothern on my state staff directly if I can further extend my views on this critical local issue. He can be reached at (208) 334-1776.

I urge the FCC to give this request all due consideration.

Sincerely,



Michael D. Crapo
United States Senator

MDC/rrf

MIKE SIMPSON

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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

October 27, 2008

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW.
Washington, D.C. 20554

Dear Chairman Martin:

I support the petition of KIFI-TV seeking a one-time, limited exemption from the FCC closed captioning rules. KIFI plans to broadcast a live public affairs program in the Idaho Falls-Pocatello market to educate voters on an important local issue involving health care and hospital availability in the region.

I certainly understand the importance of closed captioning, and I am concerned by the rising costs associated with it. Broadcasters in Idaho like KIFI are no longer able to offer live programming because of the high costs associated with closed captioning. As a result, important public service programs often cannot hit the airways as quickly as they should.

I trust that the FCC will conclude that an exemption for KIFI in this case will best serve the public interest. In addition, I hope that you will act to mitigate the rising costs of closed captioning for broadcasters, a problem that disproportionately affects rural areas and States like Idaho. Please contact Nathan Greene in my office at (202) 225-5531 if you would like more information on this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Simpson".

Mike Simpson

Member of Congress