

Before the  
**Federal Communications Commission**  
 Washington, DC 20554

Accepted/Filed

JUN 10 2014

In the Matter of: )  
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 Tunuva Media, LLC )  
 )  
 Video Programming Accessibility )  
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 Petition for Exemption of Closed )  
 Captioning Requirements )

CSR \_\_\_\_\_  
 GC Docket No. 06-181

FCC Office of the Secretary

**TUNUVA MEDIA, LLC.**  
**PETITION FOR EXEMPTION OF CLOSED CAPTIONING REQUIREMENTS**

Tunuva Media, LLC ("Tunuva"), by counsel, hereby petitions for an exemption of the closed captioning requirements of Section 79.1 of the Commission's rules.<sup>1</sup>

**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.<sup>2</sup> Section 713 of the Act allows the Commission to grant two types of exemptions from its captioning mandates: categorical exemptions and individual exemptions. Individual exemptions are considered on a case-by-case basis upon submission of a petition to the Commission.<sup>3</sup>

The Commission's rules provide that a video programming provider, video programming producer or video programming owner may petition the Commission for a

<sup>1</sup> 47 C.F.R. § 79.1.

<sup>2</sup> 47 U.S.C. § 613.

<sup>3</sup> 47 U.S.C. § 613(d). The other type of exemptions, categorical exemptions, are permitted under Section 613(d)(1) of the Act. (allowing the Commission to "exempt by regulation programs, classes of programs or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming"). Pursuant to this authority, in 1997, the Commission created thirteen categorical exemptions. 47 C.F.R. § 79.1(d). The *Anglers Order* (*supra.*) referred to these as "self-implementing" exemptions. *Anglers Order*, 21 FCC Rcd at 10095, P 3.

full or partial exemption from the closed captioning requirements for television programming.<sup>4</sup> A petition for exemption must provide sufficient evidence to demonstrate that compliance with the closed captioning requirements would be economically burdensome (*i.e.*, impose a "significant difficulty or expense"), as determined by the Commission.<sup>5</sup> The facts and information provided in a petition for exemption must be supported by an affidavit<sup>6</sup> and address the following four factors for the Commission's consideration: (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.<sup>7</sup> The petitioner also may present for the Commission's consideration any other factors the petitioner deems relevant to the Commission's final determination, including alternatives that might constitute a reasonable substitute for closed captioning.<sup>8</sup> *See also Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility, CG Docket Nos. 06-181 and 11-175, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-57, PP 28, 29 (2011).* The Commission conducts a case-by-case review of each petition, and makes individual determinations on the extent to which providing captioning would be economically burdensome for each petitioner based on information provided in the petition, any supplemental information and documentation provided by the petitioner, and any comments or oppositions

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<sup>4</sup> 47 C.F.R. § 79.1(f)(1) and (2).

<sup>5</sup> 47 C.F.R. § 79.1(f)(1).

<sup>6</sup> 47 C.F.R. § 79.1(f)(9).

<sup>7</sup> 47 C.F.R. § 79.1 (f).

<sup>8</sup> 47 C.F.R. § 79.1(f)(3).

received.<sup>9</sup> During the pendency of an economic burden determination, the video programming subject to the request for exemption is exempt from the captioning requirements.<sup>10</sup>

Sections 79.1(f), 79.1(d)(11) and 79.1(d)(12) are all intended to address the problems of small video programming providers that are not in a position to devote significant resources toward closed captioning by relieving small entities of any burdensome obligation to provide closed captioning. The section 79.1(f) mechanism in particular allows the Commission to address the impact of these rules on individual entities and grant exemptions to the rules to accommodate individual circumstances.

Section 79.1(d)(8) provides an exemption for locally produced and distributed non-news programming with no repeat value and of local interest.<sup>11</sup> Section 79.1(d)(4) also provides an exemption for video programming for which the content of the soundtrack is displayed visually through text.<sup>12</sup>

Tunuva is in the business of producing program-length commercials for its clients, primarily local area car dealers and mortgage companies.<sup>13</sup> 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. Tunuva contracts with local television stations to air the commercials, generally during the Saturday/Sunday early morning day-parts. Each

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<sup>9</sup> 47 C.F.R. § 79.1(f)(10).

<sup>10</sup> 47 C.F.R. § 79.1(f)(11).

<sup>11</sup> 47 C.F.R. § 79.1(d)(8).

<sup>12</sup> 47 C.F.R. § 79.1(d)(4).

<sup>13</sup> The statements herein are supported by the Declaration of John C. Riemann, General Manager of Tunuva. *See*, Exhibit 1 hereto.

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 must be prepared for most car dealers in each DMA.

Tunuva produces on average about 33 new commercials in English and in Spanish per week. Tunuva'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. Tunuva's costs, on the other hand, are significant. The car dealer must pay the cost of production, plus the fee for broadcasting its commercial on a local television station.

In the *Closed Captioning Quality Report and Order*,<sup>14</sup> the Commission note that the cost of using offline captioning was approximately \$ 375 to \$ 500 per hour and is relatively small compared to the high production costs that are often associated with putting a television program on the air. The FCC noted that an hour-long drama can cost as much as \$ 3 million an episode. *Id.* The Jay Leno Show (NBC) costs approximately \$ 500,000 per episode. *Id.* Generally, half-hour reality shows on cable are budgeted in the \$ 100,000 to \$ 500,000 range, per episode. *Id.* By comparison, Tunuva production costs per half our program length commercial are \$600. The cost of adding closed captioning would be significant and would make these types of commercials unviable. Since television program-length commercial production costs are considered high compared to other media, Tunuva cannot pass these cost on to its customers. Rather, Tunuva believes that the additional costs will result in advertiser migration to other media venues such as

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<sup>14</sup> *In the Matter of Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, 29 FCC Rcd 2221, 2266 (2014).

print, radio, the Internet and billboards. As a result, Tunuva will suffer, but so will the television stations that rely on this type of advertisement for their revenues.

To complicate matters, Tunuva 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.<sup>15</sup> This means that Tunuva 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. Tunuva 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 Tunuva to meet its deadline for airing, which, as discussed above, state law requirements dictate.

Tunuva is required by state law to make certain on-screen disclosures. For each car shown, Tunuva is required to print on 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. An example of the text information required to be placed on the screen is attached hereto as Exhibit 2. 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

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<sup>15</sup> 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.

treated separate from programming and thus not subject to the captioning obligations.<sup>16</sup> 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.”<sup>17</sup> In the case of Tunuva 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. Tunuva’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, Tunuva’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.

Section 79.1(d)(4) provides an exemption for video programming for which the content of the soundtrack is displayed visually through text.<sup>18</sup> 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.”<sup>19</sup> In the case of Tunuva’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,

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<sup>16</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3345 (1997). (“*Closed Captioning Order*”).

<sup>17</sup> *Id.* at 3346.

<sup>18</sup> 47 C.F.R. § 79.1(d)(4).

<sup>19</sup> *Closed Captioning Order*, at p.3344.

interest and payment details for purchasing or leasing the vehicle.<sup>20</sup> 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.<sup>21</sup> The commercials that Tunuva 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.

Tunuva produces program-length commercials in both Spanish and English. Requiring Tunuva to caption its program length commercials would place an undue burden on Tunuva, and cause it to incur significant difficulty and expense.<sup>22</sup> As discussed above, the cost of providing closed captioning in both English and Spanish would be prohibitive. Further, Tunuva does not believe it could pass on the cost of closed captioning to its advertisers. Tunuva 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 Tunuva 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

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<sup>20</sup> See, Exhibit 3.

<sup>21</sup> 47 C.F.R. § 79.1(d)(8).

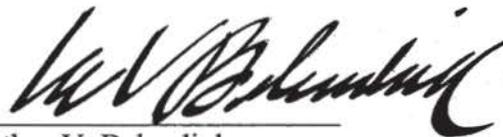
<sup>22</sup> 47 C.F.R. § 79.1.

watching a Tunuva 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.

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

Respectfully submitted,

**TUNUVA MEDIA, LLC.**

By   
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# EXHIBIT 1

**DECLARATION**

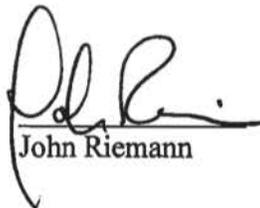
I, John Riemann, declare under penalty of perjury that the following is true and correct:

I am the General Manager of Tunuva Media, LLC.

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 9 day of June 2014.

  
John Riemann

# EXHIBIT 2

**\$199**

**\$99** 05 TOYOTA  
CAMRY  
al mes/per month

**\$6,995**

Precio Total

VIN#S29095 \$6,995 PRECIO. \$99 AL MES POR 48 MESES. \$199 CARGO FINANCIAMIENTO. MAS \$3,600 ENGANCHE. MAS CARGOS E IMPUESTOS DEL GOBIERNO. CUALQUIER CARGO DE PREPARACION DE DOCUMENTOS DEL VENDEDOR. CUALQUIER CARGO FINANCIERO Y CUALQUIER CARGO DE PRUEBA DE EMISION. CON CREDITO APROBADO. DEBE TENER UNA CALIFICACION DE CREDITO DE 730 PUNTOS Y UN HISTORIAL DE CREDITO DE 5 AÑOS. ALGUNOS COMPRADORES NO CALIFICARAN. SUJETO A VENTA PREVIA.

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