



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

The Honorable Edward J. Markey
Ranking Member
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter concerning recent Commission actions granting certain exemptions from our closed captioning rules. I share your commitment to ensuring that the disability community has access to all telecommunications goods and services, and I am happy to have this opportunity to explain in more detail our recent actions.

Today, the vast majority of programming is being captioned under the Commission's rules and the 100% benchmark for new English language programming. In granting any undue burden exemptions from the closed captioning rules, the Commission carefully considers the interests of both the programmers or distributors seeking the exemption and persons with disabilities. This balanced approach is consistent with Section 713 of the Communications Act and its legislative history, which reflects 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 of closed captioning. Moreover, Congress recognized that, in certain circumstances, "the cost to certain programming may be prohibitive, given the market demand for such programs and other factors," and also contemplated that the Commission would consider "the non-profit status of the provider" when evaluating whether organizations qualify for exemptions from the rules. The petitions recently addressed by the Commission involved non-profit organizations that, if required to caption, might not air their programs at all.

As you note, on September 11, 2006, the Commission's Consumer and Governmental Affairs Bureau adopted an *Order* resolving two petitions for exemption from the closed captioning rules. Petitioners, Anglers for Christ Ministries, Inc., and New Beginning Ministries are nonprofit organizations whose programming was produced by in-house volunteers with limited funding. Both alleged that compliance would be an undue burden and would likely cause them to discontinue their programming.

The Anglers and New Beginning petitions were put on Public Notice. Several deaf and hard-of-hearing advocacy groups – Telecommunications for the Deaf, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network and Hearing Loss Association of America – filed an opposition to the New Beginning petition. The Anglers petition was unopposed. The Bureau considered the arguments of the opponents to the New Beginning petition, but ruled in favor of both petitioners.

The programs at issue in the New Beginnings/Anglers order are akin to others that the Commission has exempted categorically from the closed captioning requirements. Because the petitioners are not “distributors” or providers programming channels, however, they do not qualify. For instance, the Commission has exempted providers of programming channels whose annual revenues are less than \$3 million per channel. If Anglers and New Beginnings were “providers,” they would both qualify for this exemption. There is also an exemption for providers of programming channels who would be required to spend more than two percent of their gross revenues from a channel in order to caption programming. Both Anglers and New Beginnings would qualify for this exemption too if they were “providers.”

Shortly after releasing the New Beginnings/Anglers decision, the Bureau released letter rulings in cases involving factual situations similar to those addressed in that *Order*. Concerns were raised that, because some of the petitions were not placed on Public Notice, interested parties did not have the opportunity to file specific oppositions. While the Bureau previously understood that the coalition was not going to file specific oppositions because of their limited resources, we responded to those concerns by placing on Public Notice every petition that had not been previously been on public, including those petitions that were the subject of the Bureau’s letter rulings. As a result, we put 494 additional petitions on Public Notice. Furthermore, we are holding the letter orders granted by the Bureau in abeyance until the comment cycle on these petitions has ended, and a final decision has been issued. I also note that the New Beginnings/Anglers decision, and related letter rulings, are also the subject of an Application for Review.

In addition, we have, as you suggested, placed all of the Bureau letter rulings on the Commission’s website through the Commission’s Electronic Comment Filing System (ECFS). Furthermore, all of the petitions, related pleadings and other filings are also publicly available through ECFS. Going forward, all such petitions are being placed on Public Notice and will also be available, along with related filings, on ECFS under docket number CG 06-181.

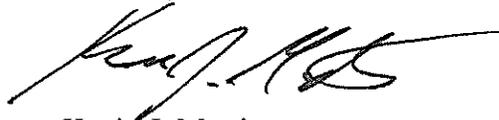
As you note, included in the letter rulings were petitions from five entities that had requested temporary waivers. As you indicated these petitions were granted as well, but have been held in abeyance while comments are filed and until a final decision is issued. I expect that these entities will eventually come into full compliance with the Commission’s closed captioning rules, as their applications indicated they would.

Finally, in answer to your specific question, consistent with the statutory undue burden test, “substantially” applies to both the impact on a programmer’s programming and the impact on its mission. Indeed, the Bureau specifically found that “[r]equiring these video programming owners to comply with the Commission’s closed captioning requirements would have a *substantial* impact on their operations.”

Page 3—The Honorable Edward J. Markey

Thank you, again, for your inquiry. I look forward to working with you, your colleagues and the deaf and hard-of-hearing community to ensure that their rights under Section 713 of the Act, and elsewhere, are protected.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Martin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin J. Martin
Chairman