

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of : )  
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Shop At Home Network )  
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 )  
Complaint Regarding Compliance with )  
Closed Captioning Requirements )  
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MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2002

Released: January 29, 2002

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. In this *Order*, we address a complaint filed by the National Association of the Deaf (“NAD”) against the Shop at Home Network<sup>1</sup> (“Shop at Home”) alleging that Shop at Home failed to comply with Section 79.1 of the Commission’s rules requiring the closed captioning of its programming.<sup>2</sup> Shop at Home filed a response to the complaint. For the reasons set forth below, we grant the complaint.

II. BACKGROUND

2. Section 713 of the Communications Act of 1934, as amended (“Communications Act”), required the Commission to prescribe rules and implementation schedules for the closed captioning of video programming<sup>3</sup> regardless of the entity that provides the programming to consumers or the category of

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<sup>1</sup> Shop At Home describes itself as a national electronic specialty retailer, which through interactive electric media, including broadcast television, offers specialty products for sale to consumers. Shop At Home owns and operates five UHF television stations located in the San Francisco, Boston, Cleveland, Raleigh and Bridgeport markets, all of which broadcast the Shop At Home retail marketing programs 24 hours per day. Shop At Home is affiliated with a number of independently-owned television stations across the country that broadcast the network’s programs. Shop At Home Response at 2.

<sup>2</sup> 47 C.F.R. § 79.1.

<sup>3</sup> Closed captioning is an assistive technology designed to provide access to television for persons with hearing disabilities. Closed captioning is similar to subtitles in that it displays the audio portion of a television signal as printed words on the screen. To assist viewers with hearing disabilities, captions may also identify speakers, sound effects, music and laughter. Unlike subtitles, however, closed captioning is hidden as encoded data transmitted within the television signal. See *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 11 FCC Rcd 19214 (1996) (“*Report*”); *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 12 FCC Rcd 1044 (1997) (“*Notice*”).

programming.<sup>4</sup> Section 713 required the Commission to adopt rules including implementation schedules to ensure that: (1) video programming first published or exhibited after the effective date of such regulations ("new programming") is fully accessible through the provision of closed captions; and (2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations ("pre-rule programming") through the provision of closed captions.<sup>5</sup>

3. The statute directed the Commission to adopt exemptions from the general captioning requirements for programs, classes of programs, or services for which we determine that the provision of closed captioning would be economically burdensome to the provider or owner of such programming.<sup>6</sup> The statute also states that a provider of video programming or program owner may petition the Commission for an exemption from closed captioning when the requirements would impose an undue burden, which is defined as significant difficulty or expense.<sup>7</sup> Section 713 also gave the Commission exclusive jurisdiction with respect to any complaint under this section.<sup>8</sup> To implement Section 713, the Commission added a new Part 79, Closed Captioning of Video Programming, to its rules, which became effective on January 1, 1998.<sup>9</sup>

4. We established an eight-year transition schedule to phase in closed captioning for new non-exempt video programming with benchmarks set at two-year intervals.<sup>10</sup> Captioning is measured on a per channel, calendar quarter basis.<sup>11</sup> To ensure that video programming distributors have sufficient time to make the necessary arrangements to comply with the closed captioning requirements, the initial benchmark for captioning was set for the first calendar quarter of 2000.<sup>12</sup> For example, the timetable for closed captioning of new English language programming is set forth in Section 79.1(b)(1) of the Commission's rules. In 2000 and 2001, video program distributors were required to provide at least 450 hours of captioned new programming per channel during each calendar quarter. In 2002 and 2003, that number will increase to 900 hours per channel, per calendar quarter. In 2004 and 2005, that number will increase to an average of 1,350 hours per channel, per calendar quarter. As of January 1, 2006, 100% of a

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<sup>4</sup> Notice, 12 FCC Rcd at 1048; *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272, 3276 (1997) ("Report and Order").

<sup>5</sup> 47 U.S.C. § 613(b) & (c).

<sup>6</sup> 47 U.S.C. § 613(d)(1). In addition, under Section 713, a provider of video programming or the owner of any program carried by the provider is not obligated to supply closed captions if such action would be inconsistent with contracts in effect on February 8, 1996, the date of enactment of the 1996 Act. 47 U.S.C. § 613(d)(2).

<sup>7</sup> 47 U.S.C. § 613(d)(3) & (e).

<sup>8</sup> 47 U.S.C. § 613(h).

<sup>9</sup> See *Report and Order*, 13 FCC Rcd at 3280-82; see also 47 C.F.R. Part 79.

<sup>10</sup> Programs first shown on or after January 1, 1998, are considered "new" programming.

<sup>11</sup> 47 C.F.R. § 79.1(e)(1).

<sup>12</sup> *Report and Order*, 13 FCC Rcd at 3294.

distributor's new, nonexempt programming must be provided with captions.<sup>13</sup>

5. Although Section 713 refers to the closed captioning of programming by providers<sup>14</sup> and owners of video programming, the Commission crafted rules in a manner designed to increase the availability of video programming with closed captions expeditiously and focus compliance responsibility. The Commission's rules hold video programming distributors responsible for compliance with the closed captioning rules.<sup>15</sup> We stated that placing compliance obligations on distributors allows the Commission to monitor and enforce the rules more efficiently, and makes it easier to identify a single entity to which complaints may be addressed.<sup>16</sup> We measure compliance with our closed captioning rules on the basis of each channel of video programming provided to consumers.

### III. DISCUSSION

6. In its complaint, NAD states that by letter dated June 13, 2001, it contacted Shop At Home questioning the absence of closed captioning on programming aired on the network.<sup>17</sup> NAD asserted that Shop At Home was expected to provide the minimum number of hours of closed captioning beginning in January 2000, as required by Section 79.1. To date, however, NAD observed that Shop At Home had failed to caption any of its programming.<sup>18</sup> NAD states that it encouraged the network to comply with the Commission's rules and also pointed out that the network could potentially increase its customer base if captioning were provided.<sup>19</sup> In its response to NAD, Shop At Home maintained that as a new network, it is exempt pursuant to Section 79.1(d)(9) and therefore is not required to provide captioning of its programming until January 2002.<sup>20</sup> Moreover, Shop At Home argued that closed captioning would be a difficult expense to bear.<sup>21</sup>

7. Thereafter, NAD filed a formal complaint with the Commission against Shop At Home

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<sup>13</sup> 47 C.F.R. § 79.1(b)(1).

<sup>14</sup> The term "providers" includes the specific television station, cable operator, cable network or other service that provides programming to the public.

<sup>15</sup> *Report and Order*, 13 FCC Rcd at 3286; *see also* 47 C.F.R. § 79.1(a)(2). Video programming distributors are defined as all entities that provide video programming directly to a customer's home, regardless of the distribution technology employed by such entities. Distributors include broadcasters, cable operators, wireless cable operators, SMATV operators, DBS providers, DTH providers, HSD providers and OVS operators.

<sup>16</sup> *Report and Order*, 13 FCC Rcd at 3286.

<sup>17</sup> *See* Letter to Shop At Home, General Counsel George J. Phillips, from NAD Law Center, Sarah S. Geer (June 13, 2001).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Letter to NAD Law Center, Sarah S. Geer, from Shop At Home, General Counsel George J. Phillips (June 14, 2001).

<sup>21</sup> *Id.*

alleging a violation of the closed captioning rules.<sup>22</sup> In its complaint, NAD asserts that between April and June, 2001, Shop At Home provided zero hours of captioned programming, contrary to the requirements of Section 79.1(b)(1) which requires a non-exempt video programming distributor to provide at least 450 hours of captioned video programming each calendar quarter between January 1, 2000 and December 31, 2001.<sup>23</sup> NAD also challenges Shop At Home's assertion that it is a new network, stating that in literature and an official network web site, Shop At Home describes itself as being in operation since 1986 and the "second oldest television shopping network."<sup>24</sup>

8. In response, Shop At Home counters that it is a new network under Section 79.1(d)(9) of the Commission's rules and therefore exempt from complying with the closed captioning requirements until January 1, 2002.<sup>25</sup> Shop At Home notes that while the Commission adopted rules requiring video program distributors to close caption their programming to ensure that such programming would be accessible to hearing-impaired viewers, it also adopted several permanent and temporary exemptions to the closed captioning requirements and to the implementation schedule.<sup>26</sup> It explains that under the new network exemption, those networks that were launched prior to January 1, 1998, and had not reached their fourth anniversary as a network as of that date, must begin closed captioning their video programming no later than January 1, 2002, and networks launched after January 1, 1998, are exempt from the closed captioning requirements for a four year period calculated from the network's launch date.<sup>27</sup> Shop At Home states that it was established in 1986 and that its "broadcast distribution system did not evolve into a network," as the term is defined in Section 73.658(g)(1) of the Commission's rules, until February 1996.<sup>28</sup> It asserts that it clearly had not yet reached its fourth network anniversary as of January 1, 1998, and therefore qualified for the "new network" closed captioning exemption.<sup>29</sup> Shop At Home argues that while NAD points out that this definition of network is applied in the broadcast context, the use of the definition is well established and used in a number of regulatory contexts applicable to television stations.<sup>30</sup> For example, Shop At Home notes that Section 76.55(f) of the Commission's rules uses the same definition to define network in the context of a cable operator's mandatory carriage obligations.<sup>31</sup> Moreover, Shop At Home asserts that reliance on such definition is necessary because the closed captioning rules do not include a definition of

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<sup>22</sup> See 47 C.F.R. § 79.1(g).

<sup>23</sup> NAD Complaint at 1. See 47 C.F.R. § 79.1(b)(1).

<sup>24</sup> NAD Complaint at 2.

<sup>25</sup> Shop At Home Response at 1.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* Section 73.658(g)(1) states, in part, "that for purposes of this paragraph, the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states." 47 C.F.R. § 73.658(g)(1).

<sup>29</sup> Shop At Home Response at 2. Shop At Home states that on January 4, 2000, it filed a letter informing the Commission of Shop At Home's status as a "new network" and that Shop At Home would begin complying with the closed captioning rules as soon as feasible, but no later than January 1, 2002.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> See 47 C.F.R. § 76.55(f).

network.<sup>32</sup>

9. Although Shop At Home asserts that it “evolved into a network” in February 1996, the definition it uses as support is one that was developed in a wholly different context for wholly different purposes. Shop At Home’s network definition is located in Part 73 of the Commission’s rules (Radio Broadcast Services) rather than Part 79 (Closed Captioning and Video Description of Video Programming), and there is no cross reference in the Part 79 rules directing parties to the Section 73.658(g)(1) network definition. For this, and the reasons set forth below, we find Shop At Home’s reliance on Section 73.658(g)(1) to be unreasonable.

10. When it created the exemption(s) from the closed captioning requirements, the Commission recognized the significant start-up costs faced by new networks and determined that the additional costs of captioning could pose an economic burden that might deter entry.<sup>33</sup> The “new network” exemption allowed networks launched prior to the effective date of the rules that had not yet reached their fourth anniversary to be exempt for a four-year period beginning on January 1, 1998.<sup>34</sup> The exemption was not designed to completely relieve new networks of their captioning obligation, but rather to allow new networks an opportunity to develop the infrastructure to provide captioning during the early phases of their development.<sup>35</sup>

11. Shop At Home correctly notes that the Commission did not define the term “video programming network” as part of the closed captioning rules. Given the rationale for the new programming exemption discussed above, however, it is apparent that the programming of Shop At Home does not fall within the Section 79.1(d)(9) exemption for programming on new networks. Although Shop At Home asserts it “evolved into a network” in 1996, its corporate web page indicates that in 1996 net sales for Shop At Home were approximately \$41 million. Indeed, Shop At Home has been in operation, producing programming, garnering revenue, and employing staff for approximately 15 years. In any event, it is clear that by 1995 Shop At Home was providing 24 hours of programming, 7 days a week, simultaneously to more than one interconnected broadcast station.<sup>36</sup> Given this fact, Shop At Home attained network status as of that time, if not before, for purposes of Section 79.1(d)(9).

12. In sum, Shop At Home should have begun complying with the captioning provisions beginning in the first quarter of the year 2000. We note that, even were we to agree that Shop At Home qualified for the new network exemption, captioning of its programming already should have been included in its operation plans and provided to the public. By its own admission, Shop At Home must be captioning

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<sup>32</sup> Shop At Home Response at 3.

<sup>33</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 19973, 19994 (1998) (“*Order on Reconsideration*”).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 19998.

<sup>36</sup> *See* Television and Cable Factbook (1996). Although Shop At Home has been in existence since 1986, information regarding Shop At Home does not appear to be included in editions of the Television and Cable Factbook prior to 1996. As a result, information regarding the number of hours of programming on a daily or weekly basis prior to 1995 is uncertain. Television and Cable Factbook is a reference guide for the broadcast and cable industry which includes financial, personnel, and programming information.

at the level required each quarter during the new benchmark period.<sup>37</sup> Between January 1, 2002, and December 31, 2003, video programming distributors will be required to provide at least 900 hours of captioned video programming per quarter. If it fails to comply with these requirements, Shop At Home's violation of its captioning obligations may result in penalties, as provided in Section 79.1(g)(8).<sup>38</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, for the reasons set forth above, the complaint filed by the National Association of the Deaf **IS GRANTED** to the extent indicated above.

14. **IT IS ORDERED** that beginning in January, 2002, Shop At Home must comply with the captioning level established by the Commission's rules for each calendar quarter between January 1, 2002 and December 31, 2003 and the levels specified by our rules for periods thereafter.

15. **IT IS FURTHER ORDERED** that following each calendar quarter during the 2002-2003 benchmark period, Shop At Home is to report to the Commission on its compliance with the closed captioning rules. Such report shall be filed with the Chief, Cable Services Bureau, or any successor thereto, no later than 30 days after the end of each quarter.

16. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.<sup>39</sup>

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree  
Chief, Cable Services Bureau

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<sup>37</sup> With regard to the new network exemption, the Commission concluded that while these networks would have additional discretion for phasing in captioning, it expected such networks to begin efforts to caption programming during the exemption period, so that captioning would be at the level in effect at the expiration of the exemption. *See Order on Reconsideration*, 13 FCC Rcd at 19998.

<sup>38</sup> *See* 47 C.F.R. § 79.1(g)(8).

<sup>39</sup> 47 C.F.R. § 0.321.