

CGB-CC-0426

COPY

LUVAAS / COBB

777 High Street, Suite 300
Eugene, OR 97401-2787

Mailing: P.O. Box 10747
Eugene, OR 97440-2747

Phone: 541-484-9292 / Fax: 541-343-1206
Email: dmonahan@luvaascobb.com

J. DOMINIC MONAHAN
Attorney at Law

February 8, 2006

RECEIVED

FEB - 8 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

RE: Request for Exemption of Closed Captioning Rules
(47 CFR §79.1(f)), of Lush Productions, LLC

Dear Ms. Dortch:

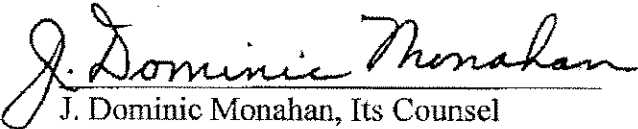
There is transmitted herewith on behalf of Lush Productions, LLC, a Request for Exemption of the Closed Captioning Requirements on grounds compliance would result in an "undue burden" as set forth under §79.1(f) of the Commission's Rules.

Please be advised that this request was previously filed with the Commission's offices in Capitol Heights, Maryland on February 3, 2006. The purpose of this filing is to cure confirmation for outside vendors that in fact the request is pending before the Commission.

Should additional information be desired concerning this Request for Exemption, please contact the undersigned counsel. I have enclosed a self-addressed stamped envelope and an additional copy to be return to my office.

Respectfully Submitted,

LUSH PRODUCTIONS, INC.


J. Dominic Monahan, Its Counsel

JDM/nlk

Enclosures

cc: Frank Reskin (w/enclosure)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB - 8 2006

Federal Communications Commission
Office of Secretary

In Re the Matter of

Lush Productions, Inc.
Video Programming Accessibility

File No.

TO: Chief, Media Bureau

***REQUEST FOR EXEMPTION OF
CLOSED CAPTIONING REQUIREMENTS***

Lush Productions, LLC ("Lush"), through its counsel, respectfully submits this Request for Exemption from the Commission's closed captioning rules on grounds that compliance by Lush would result in an "undue burden" as set forth in the Commission's Rules (*see* 47 CFR §79.1(f)). In support, the following is shown.

Lush is a startup entity which was formed in the State of Oregon on December 29, 2005. As an initial startup it is in the process of developing a video production company which provides half-hour weekly real estate programs to various markets in the Western United States. These programs, entitled *This Week in Real Estate*, feature residences available for sale in each of the particular markets.¹ As of December 31, 2005, Lush has

¹The format of each real estate program is tailored to each of the current 28 markets. Each program includes four two-minute interstitials and seven minutes for commercial inserts and public service announcements.

provided weekly real estate programs to television stations in 14 markets and anticipates adding 15 more markets by April 1, 2006. These programs are labor intensive and costly to produce because the production facilities and staff must handle video and pictorial material and content from various real estate services in each of the different markets, and distill and assemble the material into a finished program every five days. The finished program product is then overnighted to each of the 28 markets. ²

Only recently Lush became aware of the change in the Commission's rules which now require essentially 100% of all English language programming to be closed captioned. As set forth below, Lush simply does not have the present ability or resources to provide closed captioning.

To implement closed captioning of Lush's 28 weekly programs will require Lush to hire three additional employees at a minimum basic salary of \$36,000.00 per year, or \$108,000.00 in additional labor costs. In addition because of the expected growth to 29 markets within 60 days, Lush must purchase a minimum of three SDI and Analogue CC Encoders/Decoders at \$3,375.00 each, and associated software at \$4,995.00 for each unit. (This capacity is required because of the sheer number of different programs which must be produced each week.) As evidenced by the attached quote from Link Electronics the total cost is \$8,821.00 per captioning unit, or a total of \$26,463.00. (See Attachment 1) Together with the additional labor costs necessary to conduct closed

²To date the average cost of each of the 28 programs produced during the 2005 calendar year is \$80,810.00.

captioning, this will increase Lush's production expenses well in excess of \$134,000.00. This figure does not include the additional expenses for the software and equipment that will be required to integrate the captioning units into the video production equipment already on hand. This equipment will cost approximately \$9,500.00 for a total initial outlay of \$142,500.00 to implement closed captioning.

Lush's precarious financial position attached are two financial statements for Lush. One was prepared by ISCO, Certified Public Accountants in Klamath Falls, Oregon, demonstrating that during its first nine months of operation in 2005, Lush suffered operating losses of \$1,032,443.08 on income of \$635,109.88. An extended profit and loss statement for the entire year of 2005 shows that losses by year's end had increased to \$1,692,750.14 on a final year-end on income of \$663,030.55. (See Attachments 2 and 3).

Given that Lush's revenue for the January-December 2005 year realized a total income of only \$663,000.00, the added cost of closed captioning would exceed more than 20% of revenues.³ It is Lush's goal to increase the number of markets in which it sells its program to 50 by the end of the year 2006. However, the addition of each additional ten (10) markets will require employment of five (5) employees. At the same time, Lush anticipates growing its revenue by the sale of ad time during the seven minute

³Section 79.1(d)(ii) exempts video programming providers from being required to expend any money to caption video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous year.

which is available during the program. Ultimately Lush envisions profitability by late 2007.

Lush would point out that its business model is very much like that of a network providing a half hour real estate program addressing residential sales in each of the 14 markets it now serves and the additional 15 markets it expects to add to its network within the next 60 days. Given this model, Lush respectfully requests that the Commission, in its evaluation of this request, consider the automatic exemption from the closed captioning requirement which is extended to startup networks during the first four (4) years of operation (see §79.1(d)(9)). Lush submits this is a persuasive factor relevant to this request.

Given the modest revenues of \$663,00.00 achieved by Lush in the year 2005, Lush also submits that the provisions of §79.1(d)(12) are also germane to this request. There a video provider automatically qualifies for an exemption of revenues er channel are less than \$3 million per year. Here, Lush's revenues in 2005 of \$663.000.00 failed that threshold by almost 80% and further demonstrate the undue burden such a requirement would impose on it.

Finally, Lush points out that it does not seek to permanently avoid closed captioning of *This Week in Real Estate*. In fact, it seeks exemption based on undue hardship for a period of only two (2) years, or until December 31, 2007, when it expects to be financially viable. Moreover, Lush Productions is willing to commit to providing closed captioning before the end of this two year period as such time as it achieves

profitability sufficient to acquire the closed captioning equipment and add the necessary personnel to produce the closed captioning programming.

DATED this 2 day of February, 2006.

Respectfully Submitted,

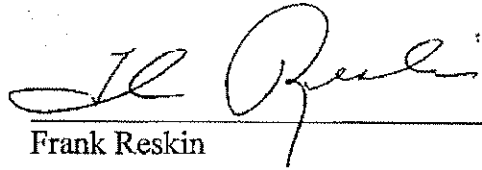
LUSH PRODUCTIONS, INC.


J. Dominic Monahan, Its Counsel

DECLARATION

I, FRANK RESKIN, declare under penalty of perjury, that I have read the attached *Request for Waiver of Closed Captioning Requirements* and to the best of my knowledge it is a true and correct statement of facts.

DATED this 2nd day of February, 2006.


Frank Reskin

Attachments:

Estimate from Lenk Electronics
2 financial statements

QUOTATION



ISSUING OFFICE:
 Link Electronics, Inc.
 Stuart Brenner
 19 Crockett
 Irvine, CA 92620
 Phone: (949) 981-3924
 FAX: (949) 733-3014
 EMAIL: stuartbrenner@pacbell.net

Rob Rector
 Lush Productions
 5700 River Road
 Santa Rosa, CA 95401
 Phone (707) 570-0600
 EMAIL
 FAX #
 QUOTE # **012306sb**

Terms of Sale:	Net 30-Days: FOB, Cape Girardeau MO: Delivery 30 Days ARO	Discount	25%
----------------	---	----------	-----

QTY	ITEM	DESCRIPTION	LIST EACH	COST EACH	COST TOTAL
1	PDA-895	SDI & Analog CC Encoder/Decoder	\$4,500.00	\$3,375.00	\$3,375.00
1	Modem OP/2	Optional internal telephone modem for 886,890,895	\$180.00	\$126.00	\$126.00
1	CPC-710	Closed Captioning software for Windows (real-time and off-line)		\$4,995.00	\$4,995.00
1	TCR	Adrienne Time Code Reader Card for VITC and LTC		\$325.00	\$325.00
				TOTAL	\$8,821.00

Stuart Brenner

Authorization: _____
Stuart Brenner

Date: 23-Jan-06

Acceptance: _____
Signature

Date: _____

Printed Name/Title: _____

October 4, 2005

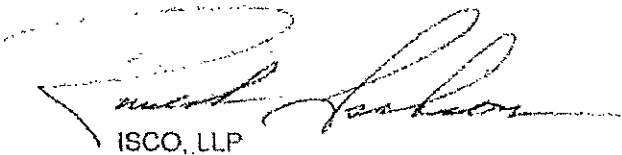
Lush Productions, LLC
Klamath Falls, Oregon

We have compiled the statement of revenue and expenses – of Lush Productions, LLC (a Limited Liabilities Company) for September 30, 2005 – income tax basis in the accompanying prescribed form in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the income tax basis of accounting (accrual method), which is a comprehensive basis of accounting other than generally accepted accounting principles. The income tax basis of accounting requires that depreciable property be depreciated in accordance with modified accelerated cost recovery rules. Under generally accepted accounting principles, the property would be depreciated using the straight line method of accounting.

Our compilation was limited to presenting in the form prescribed by Lush Productions, LLC information that is the representation of management. We have not audited or reviewed the income statement and supplementary information referred to above and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's revenues and expenses. Accordingly, these financial statements are designed for those who are informed about such matters.

We are not independent with respect to Lush Productions, LLC.



ISCO, LLP
Certified Public Accountants

October 4, 2005

Lush Productions LLC
Balance Sheet
As of September 30, 2005

Sep 30, 05

ASSETS	
Current Assets	
Checking/Savings	
US Bank Chocking - 7522	2,866.88
Total Checking/Savings	2,866.88
Accounts Receivable	
Accounts Receivable	-167,334.53
Total Accounts Receivable	167,334.53
Other Current Assets	
Contract in Progress	1,018,773.34
Total Other Current Assets	1,018,773.34
Total Current Assets	1,188,974.75
Fixed Assets	
Office Equipment	87,420.80
Total Fixed Assets	87,420.80
TOTAL ASSETS	<u>1,276,395.55</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	22,368.07
Total Accounts Payable	22,368.07
Credit Cards	
American Express	9,960.99
Total Credit Cards	9,960.99
Other Current Liabilities	
Current Liabilities	148,800.65
Deferred Contract in Progress	1,018,773.34
Payroll Liabilities	33,088.35
Total Other Current Liabilities	1,200,662.34
Total Current Liabilities	1,232,991.40
Long Term Liabilities	
Long Term Liability	101,739.87
Total Long Term Liabilities	101,739.87
Total Liabilities	1,334,731.27
Equity	
Arturo Lorente - Capital	50,000.00
Bette's Boy Production - Capita	50,000.00
Charles LaBowl - Capital	100,000.00
Haskins Properties, LLC-Capital	50,000.00
JJ&J, LLC - Capital	50,000.00
Kasha Enterprises LLC - Capital	709,000.00
Mougins Enterprises LLC- Capita	200,000.00
Thomas Jayne - Capital	100,000.00
Combined ently losses retained	-335,192.84
Net Income	-1,032,143.08
Total Equity	-58,335.72
TOTAL LIABILITIES & EQUITY	<u>1,276,395.55</u>

10

1. The first step in the process is to identify the problem. This involves a clear definition of the issue at hand and an understanding of the context in which it is being studied.

11

12

13

14

Lush Productions LLC
Profit & Loss
 January through September 2005

	<u>Jan - Sep 05</u>
Ordinary Income/Expense	
Income	
Focus Group Income	23,200.00
Video Production Income	611,909.88
Total Income	<u>635,109.88</u>
Cost of Goods Sold	
Advertising Costs	6,330.02
Film Production Costs	591,937.50
Focus Group Costs	16,894.94
Video Production Costs	40,147.50
Total COGS	<u>655,309.96</u>
Gross Profit	-20,200.08
Expense	
Bank Service Charges	1,212.21
Car/Truck Expense	501.50
Conference Registration	90.00
Depreciation Expense	26,984.38
Dues and Subscriptions	1,093.95
Guaranteed Payments	109,000.00
Insurance	46,230.17
Interest Expense	2,943.31
Marketing & Promotional Expense	2,280.00
Office Supplies	31,703.75
Payroll Expenses	430,548.71
Payroll Tax Expense	44,091.70
Postage and Delivery	13,753.46
Professional Development	1,570.00
Professional Fees	53,895.04
Rent	28,890.63
Repairs	493.18
Training & development	370.00
Travel & Entertainment	199,179.21
Utilities	17,111.80
Total Expense	<u>1,011,943.00</u>
Net Ordinary Income	-1,032,143.08
Net Income	<u>-1,032,143.08</u>

Lush Productions LLC
Profit & Loss
 January through December 2005

Basis

	Jan - Dec 05
Ordinary Income/Expense	
Income	
4300 - Film Production Income	1,500.00
4400 - Video Production Income	
4410 - Ad fees	80,205.31
4420 - Real Estate fees	581,325.24
Total 4400 - Video Production Income	661,530.55
Total Income	663,030.55
Cost of Goods Sold	
5100 - Advertising Costs	
5300 - Film Production Costs	6,330.02
5301 - Airtime	
5302 - Voice Overs	808,561.84
5300 - Film Production Costs - Other	6,214.50
	35,391.82
Total 5300 - Film Production Costs	852,168.16
5400 - Video Production Costs	
	48,577.50
Total COGS	907,075.68
Gross Profit	-244,045.13
Expense	
6100 - Marketing & Promotional Expense	
6120 - Bank Service Charges	395.00
6130 - Car/Truck Expense	2,121.69
6132 - Gas	
	622.30
Total 6130 - Car/Truck Expense	622.30
6150 - Depreciation Expense	
6160 - Dues and Subscriptions	43,505.00
6180 - Insurance	1,066.00
6192 - Medical Insurance	
	71,327.69
Total 6180 - Insurance	71,327.69
6245 - Miscellaneous	
6255 - Postage and Delivery	163.80
6260 - Conference Registration	30,319.48
6265 - Professional Development	690.00
6270 - Professional Fees	6,050.00
6271 - Legal Fees	
6272 - Accounting Fees	500.00
6274 - Independent Contractor	50,016.27
6275 - janitorial	14,333.34
6276 - Consulting Fees	1,678.00
6270 - Professional Fees - Other	25,398.38
	17,207.70
Total 6270 - Professional Fees	109,133.69
6300 - Rent	
6301 - Rental Car	
6300 - Rent - Other	11,948.99
	22,355.35
Total 6300 - Rent	34,304.34
6310 - Repairs	
6311 - Computer Repairs	
	493.18
Total 6310 - Repairs	493.18
6330 - Office Supplies	
6331 - Computer	
6332 - General	11,299.05
6333 - Printing and Reproduction	24,628.33
6330 - Office Supplies - Other	273.42
	6,145.99
Total 6330 - Office Supplies	42,346.79
6340 - Training & development	370.00

6:32 PM
 01/05/06
 Cash Basis

Lush Productions LLC
Profit & Loss
 January through December 2005

	Jan - Dec 05
Ordinary Income/Expense	
Income	
4300 · Film Production Income	1,500.00
4400 · Video Production Income	
4410 · Ad fees	80,205.31
4420 · Real Estate fees	581,325.24
Total 4400 · Video Production Income	661,530.55
Total Income	663,030.55
Cost of Goods Sold	
5100 · Advertising Costs	6,330.02
5300 · Film Production Costs	
5301 · Airtime	808,561.84
5302 · Voice Overs	8,214.50
5300 · Film Production Costs - Other	35,391.82
Total 5300 · Film Production Costs	852,168.16
5400 · Video Production Costs	48,577.50
Total COGS	907,075.68
Gross Profit	-244,045.13
Expense	
6100 · Marketing & Promotional Expense	395.00
6120 · Bank Service Charges	2,121.69
6130 · Car/Truck Expense	
6132 · Gas	622.30
Total 6130 · Car/Truck Expense	622.30
6150 · Depreciation Expense	43,505.00
6160 · Dues and Subscriptions	1,066.00
6180 · Insurance	
6192 · Medical Insurance	71,327.69
Total 6180 · Insurance	71,327.69
6245 · Miscellaneous	163.80
6255 · Postage and Delivery	30,319.46
6260 · Conference Registration	690.00
6265 · Professional Development	6,050.00
6270 · Professional Fees	
6271 · Legal Fees	
6272 · Accounting Fees	500.00
6274 · Independent Contractor	50,016.27
6275 · Janitorial	14,333.34
6276 · Consulting Fees	1,678.00
6270 · Professional Fees - Other	25,398.38
Total 6270 · Professional Fees	17,207.70
Total 6270 · Professional Fees	109,133.69
6300 · Rent	
6301 · Rental Car	
6300 · Rent - Other	11,948.99
Total 6300 · Rent	22,355.35
6310 · Repairs	34,304.34
6311 · Computer Repairs	493.18
Total 6310 · Repairs	493.18
6330 · Office Supplies	
6331 · Computer	11,299.05
6332 · General	24,628.33
6333 · Printing and Reproduction	273.42
6330 · Office Supplies - Other	6,145.99
Total 6330 · Office Supplies	42,346.79
6340 · Training & development	370.00

6:32 PM
 01/05/06
 Cash Basis

Lush Productions LLC
Profit & Loss
 January through December 2005

	Jan - Dec 05
6350 · Travel & Entertainment	
6351 · Entertainment	1,960.98
6352 · Meals	38,886.70
6353 · Travel	125,792.42
6354 · Fuel	471.92
6355 · Internet	447.23
6356 · Lodging	104,316.01
6357 · Other	3,167.67
6358 · Parking	3,411.73
6359 · Taxi	3,703.80
6350 · Travel & Entertainment - Other	26.36
Total 6350 · Travel & Entertainment	282,184.82
6560 · Payroll Expenses	619,843.86
6570 · Payroll Tax Expense	61,788.92
6580 · Guaranteed Payments	
6581 · Kasha Enter-Guaranteed pmts	
6581.1 · Car Allowance	2,500.00
6581 · Kasha Enter-Guaranteed pmts - Other	33,000.00
Total 6581 · Kasha Enter-Guaranteed pmts	35,500.00
6582 · Bette's Boy Prod-Guaranteed pmt	
6582.1 · Car Allowance	3,000.00
6582 · Bette's Boy Prod-Guaranteed pmt - Other	30,000.00
Total 6582 · Bette's Boy Prod-Guaranteed pmt	33,000.00
6583 · Mougins Enter-Guaranteed pmts	
6583.1 · Car Allowance	2,500.00
6583 · Mougins Enter-Guaranteed pmts - Other	38,000.00
Total 6583 · Mougins Enter-Guaranteed pmts	40,500.00
Total 6580 · Guaranteed Payments	109,000.00
6600 · Utilities	
6601 · Internet	4,216.44
6602 · Natural gas	726.83
6603 · Power	1,022.22
6604 · Trash	97.50
6605 · Water	123.05
6606 · Telephone	
6606-1 · Cell Phone	6,634.19
6606 · Telephone - Other	7,156.20
Total 6606 · Telephone	13,790.39
6607 · Telephone & Fax	9,749.86
Total 6600 · Utilities	29,726.29
8100 · Interest Expense	
8110 · Loan interest	2,753.81
8100 · Interest Expense - Other	498.35
Total 8100 · Interest Expense	3,252.16
Total Expense	1,448,705.01
Net Ordinary Income	-1,692,750.14
Other Income/Expense	
Other Income	
7200 · Other Income	35,000.00
Total Other Income	35,000.00