

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

In the Matter of)	
)	
Gerald Bryant TV, Inc.)	CGB-CC-0024
)	
Petition for Exemption from the)	CG Docket No. 06-181
Closed Captioning Requirements)	

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2014

Released: July 30, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by Gerald Bryant TV, Inc. (Bryant), for an exemption from the Federal Communications Commission’s (FCC’s or Commission’s) closed captioning requirements for its program, *JBTV*. Because we conclude that Bryant has demonstrated that its compliance with the Commission’s closed captioning requirements would be economically burdensome to it, we grant it a temporary exemption for the program for a period of two years from the date of the release of this Order. *JBTV* must be closed captioned no later than the end of the two-year temporary exemption, which is August 1, 2016.

II. BACKGROUND

2. In 1996, Congress added section 713 to the Communications Act of 1934, as amended (Communications Act), establishing requirements for closed captioning of video programming to ensure access to such programming by people who are deaf or hard of hearing,¹ and directing the Commission to prescribe rules to carry out this mandate.² In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.³ The Commission’s closed

¹ Section 305 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 613). As recognized by Congress, the goal in captioning video programming is “to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.” H.R. Rep. 104-458 (Conf. Rep.) at 183-184, 104th Cong., 2d Sess. (1996). “Video programming” means “programming by, or generally considered comparable to programming provided by a television broadcast station.” 47 U.S.C. § 613(h)(2).

² 47 U.S.C. §§ 613(b), (c).

³ See 47 C.F.R. § 79.1; *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 13 FCC Rcd 3272 (1997) (*Closed Captioning Report and Order*); *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*).

captioning rules currently require video programming distributors, absent an exemption, to caption 100% of all new, English and Spanish language programming.⁴

3. Section 713(d)(3) of the Communications Act authorizes the Commission to grant individual exemptions from the television closed captioning requirements upon a showing that the requirements would be economically burdensome, defined as imposing on the petitioner a “significant difficulty or expense.”⁵ Any entity in the programming distribution chain, including the owner, provider, or distributor of the programming, may petition the Commission for such an exemption under section 79.1(f) of the Commission’s rules.⁶ When making its determination as to whether a petitioner has made the required showing, the Commission, in accordance with section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules, considers the following factors on a case-by-case basis: (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.⁷

4. The Commission requires the following information and documentation to be submitted with closed captioning exemption petitions to enable its consideration of the above factors:

⁴ 47 C.F.R. §§ 79.1(b)(1)(iv), (b)(3)(iv). A “video programming distributor” is defined as (1) any television broadcast station licensed by the Commission; (2) any multichannel video programming distributor (MVPD) as defined in section 76.1000(e); and (3) any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. 47 C.F.R. § 79.1(a)(2). The Commission’s rules also require closed captioning of 75% of a programming distributor’s pre-rule, nonexempt English and Spanish language programming that is distributed and exhibited on each channel during each calendar quarter. 47 C.F.R. §§ 79.1(b)(2)(ii), (b)(4)(ii). “Pre-rule” programming refers to analog video programming first published or exhibited before January 1, 1998, or digital video programming first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(6). Bilingual English-Spanish language programming is subject to the same closed captioning requirements for new and pre-rule programming. *See Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2288-89, ¶ 115 (2014).

⁵ *See* 47 U.S.C. §§ 613(d)(3), (e); *see also* 47 C.F.R. § 79.1(f)(2). As originally enacted in 1996, section 713 of the Communications Act authorized the Commission to grant individual closed captioning exemptions upon a showing that providing closed captioning would “result in an undue burden.” Pub. L. No. 104-104, § 305, 110 Stat. 126 (1996). Section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) replaced the term “undue burden” with the term “economically burdensome.” Pub. L. No. 111-260, § 202(c), 124 Stat. 2771, amending 47 U.S.C. § 613(d)(3). For purposes of evaluating individual exemptions, the Commission has determined that Congress intended the term “economically burdensome” to be synonymous with the term “undue burden” as defined by section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules. *See Interpretation of Economically Burdensome Standard, Amendment of Section 79.1(f) of the Commission’s Rules, Video Programming Accessibility*, Report and Order, 27 FCC Rcd 8831, 8834, ¶ 7 (2012) (*Economically Burdensome Standard Order*).

⁶ 47 C.F.R. § 79.1(f)(1). A “video programming provider” is defined as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.” 47 C.F.R. § 79.1(a)(3). *See also* n.4, *supra* (for definition of “video programming distributor”). A petitioner may seek an exemption for “a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider.” 47 C.F.R. § 79.1(f)(1).

⁷ 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2). A petitioner may also 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. 47 C.F.R. § 79.1(f)(3). The Commission has delegated the responsibility for evaluating and ruling on these petitions to the Consumer and Governmental Affairs Bureau. *Economically Burdensome Standard Order*, 27 FCC Rcd at 8834-35, ¶ 8.

- the name of the programming (or channel of programming) for which an exemption is requested;
- information and documentation about the petitioner's costs associated with closed captioning each program and efforts to find companies that can provide captioning at a reasonable cost;
- an explanation of the impact that having to provide closed captioning will have on the petitioner's programming activities;
- information and documentation of the petitioner's financial resources, including its income, expenses, current assets, and current liabilities for the two most recent completed calendar or fiscal years;
- verification that the petitioner has sought closed captioning assistance from its video programming distributor(s); and
- verification that the petitioner has sought additional sponsorships (other than from its video programming distributor(s)), or other sources of revenue for captioning.⁸

5. Each petition must contain a detailed, full showing of any facts or considerations relied upon, supported by affidavit.⁹ Failure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request.¹⁰ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.¹¹

6. Bryant initially filed a petition for exemption on December 30, 2005, and subsequently supplemented it (hereinafter Petition).¹² In a Public Notice released on March 17, 2006, the Consumer and Governmental Affairs Bureau (CGB or Bureau) invited comment on that Petition, as supplemented.¹³ In 2012, the Bureau notified Bryant of the need to file updated information with respect to its pending Petition.¹⁴ In response, on June 26, 2012, Bryant updated its Petition.¹⁵ Bryant again supplemented its

⁸ This is a summary of the list of "Required Information to Provide in Filing a New Petition to be Exempt from the Closed Captioning Requirements," provided by the staff to captioning exemption petitioners and available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf, which the Bureau developed, based on the Communications Act, the Commission's rules, and Commission history and experience evaluating such petitions. See *Anglers for Christ Ministries, Inc., et al.; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-56, ¶ 28 (2011) (*Anglers Reversal MO&O*).

⁹ 47 C.F.R. § 79.1(f)(9). A petition for exemption may also be supported by an unsworn written statement signed by a declarant under penalty of perjury. 47 C.F.R. § 1.16.

¹⁰ *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28 (citing *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 13611, 13614, ¶ 12 (Cable Services Bureau, 2001) (*Wild Outdoors 2001*)).

¹¹ 47 U.S.C. § 613(d)(3); 47 C.F.R. § 79.1(f)(11).

¹² See Letter from Darlene M. Oliver, Robinson Curly & Clayton, P.C., to Amelia Brown, Disability Rights Office, Federal Communications Commission (Mar. 7, 2006).

¹³ *Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, DA 06-604 (Mar. 17, 2006).

¹⁴ See *Notice of Need to File Updated Information with Respect to Pending Petitions for Exemption from Commission's Closed Captioning Rules, Which Were Filed Prior to October 2010*, Public Notice, 27 FCC Rcd 3106 (CGB 2012) (alerting petitioners of the need to affirm that information previously provided is still accurate and up-to-date; to update that information; or to withdraw their petitions). See also Letter from Kris Anne Monteith, Acting Chief, Consumer and Governmental Affairs Bureau, to Robinson Curly & Clayton, P.C. (Apr. 5, 2012).

Petition on October 24, 2013, in response to a subsequent request from the Bureau for additional information.¹⁶ The Bureau placed the completed Petition on Public Notice on December 26, 2013.¹⁷ The Commission received one set of comments in response to the Public Notice.¹⁸

III. DISCUSSION

7. Bryant describes *JBTV* as a 60-minute show that features “local musicians and their amateur music videos, some concerts filmed in the Chicagoland area, and music videos from more well-known artists.”¹⁹ The producer of *JBTV*, Gerald Bryant, started *JBTV* as a “hobby” in 1986 and asserts that this program is America’s longest-running modern music television show and Chicago’s longest-running television show of any kind.²⁰ Bryant generally produces one new show each week for its weekly broadcast on Chicago area station WJYS(TV).²¹ Tuff TV, a program channel aired by television stations on their digital multicast channels in 37 U.S. markets, shows edited, repurposed content from Bryant’s prior shows at 1:00 a.m. on weekdays.²² Mr. Bryant reports that he is assisted by a small, all-volunteer staff, and that he uses his own personal funds to produce *JBTV*.²³ He also asserts that he requests that music videos submitted for his broadcasts be closed captioned, which results in closed captioning for approximately 50% of the music videos currently aired on *JBTV*.²⁴ Bryant maintains that requiring its programming to comply with the Commission’s closed captioning requirements would be economically burdensome.²⁵

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¹⁵ See Letter from Alan F. Curley, Robinson Curly & Clayton, P.C., to Office of the Secretary, Federal Communications Commission (Jun. 26, 2012) (Petition Update).

¹⁶ See Letter from Suzy Rosen Singleton, Attorney, Disability Rights Office, Consumer and Governmental Affairs Office, to Alan F. Curley, Robinson Curly & Clayton, P.C. (Sept. 26, 2012); Letter from Alan F. Curley, Robinson Curly & Clayton, P.C., to Office of the Secretary, Federal Communications Commission (Oct. 24, 2013) (Petition Supplement).

¹⁷ *Request for Comment/Request for Exemption from Commission’s Closed Captioning Rules*, Public Notice, 28 FCC Rcd 17100 (CGB 2013) (2013 Public Notice).

¹⁸ See Opposition to Petitions for Exemption from the Commission’s Closed Captioning Rules, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, California Coalition of Agencies Serving the Deaf and Hard of Hearing, National Association of the Deaf, and the Association of Late-Deafened Adults (collectively, Consumer Groups) at 2, 14-16 (Jan. 27, 2014) (Consumer Groups Comments).

¹⁹ Petition Supplement at 1.

²⁰ *Id.* at 4.

²¹ *Id.* at 1.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ Petition Update at 1. Bryant also asserts that *JBTV* qualifies for the exemption established under section 79.1(d)(8) of the Commission’s rules for locally produced and distributed non-news programming with no repeat value. *Id.* at 4-6. We disagree. This rule categorically exempts from the closed captioning requirements “[p]rogramming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the ‘electronic newsroom technique’ of captioning is unavailable.” 47 C.F.R. § 79.1(d)(8). In this context, the Commission defines “video programming distributor” as any television broadcast station licensed by the Commission, any multichannel video programming distributor, and “any other distributor of video programming for residential reception that delivers such programming directly to the
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8. Bryant obtained two quotes to caption its program. The first, from Chicago HD, is for \$1,006.25 per show, or a total annual cost of approximately \$52,325.00.²⁶ The second quote, from Caption Media Group, estimates that it will cost \$938.00 to caption each show, or a total annual cost of approximately \$48,776.00.²⁷

9. Bryant reports income of \$203,295.59, expenses of \$268,054.10, and a net loss of \$64,758.51 for 2011.²⁸ Bryant also reports income of \$135,008.00, expenses of \$276,280.68, and a net loss of \$141,272.68 for 2012.²⁹ Bryant reports current assets of \$45,694.18, current liabilities of \$494,716.81, and net current liabilities of \$449,022.63 as of December 31, 2011.³⁰ Bryant also reports current assets of \$111,732.08, current liabilities of \$670,692.77, and net current liabilities of \$558,960.69 as of December 31, 2012.³¹ Bryant represents that it incurs significant losses on *JBTV* and, given that the demand for Bryant's television commercial production services has "steeply decreased" and is a major source of Bryant's revenue, it expects that its net loss will increase in 2013.³²

10. Bryant reports that its requests for captioning assistance from its video programming distributors WJYS and Tuff TV were declined.³³ Bryant further claims that it "has been unable to generate significant revenue from corporate sponsors" for its program.³⁴ Bryant asserts that, absent an exemption from the captioning requirements, "[i]t is a near certainty that closed captioning *JBTV* will render [Bryant] unable to continue producing the show."³⁵

11. Consumer Groups, which were the only parties to comment on the Petition in response to the *2013 Public Notice*, do not oppose the grant of a temporary 12- to 18-month exemption because Bryant's reported financial losses demonstrate that captioning would be economically burdensome.³⁶ Consumer Groups state that they recognize that Bryant operates at a significant loss and has insufficient sponsorships and outstanding debts.³⁷ They claim, however, that Bryant's captioning costs are likely

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home and is subject to the jurisdiction of the Commission." 47 C.F.R. § 79.1(a)(2). As such, based on Bryant's submissions, we conclude that *JBTV* is not exempt under this rule because Bryant is not a "video programming distributor" as so defined.

²⁶ *Id.* at 2, 7.

²⁷ *Id.* at 2, 8-9.

²⁸ *Id.* at 10 ("Profit & Loss" statement for 2011) (these amounts reflect the total of revenues, interest income, and other income; and the total of cost of goods sold and other expenses).

²⁹ *Id.* at 12 ("Profit & Loss" statement for 2012) (these amounts reflect the total of revenues, interest income, and other income; and the total of cost of goods sold and other expenses).

³⁰ *Id.* at 11 ("Balance Sheet" as of December 31, 2011). Excluding "Loan from Shareholder" (\$82,399.35) and "Loan Payable" (\$343,104.75), which may not be "current" liabilities, results in net current liabilities of \$23,518.53.

³¹ *Id.* at 13 ("Balance Sheet" as of December 31, 2012). Excluding "Loan from Shareholder" (\$294,426.50) and "Loan Payable" (\$341,017.70), which may not be "current" liabilities, results in net current assets of \$76,483.51.

³² *Id.* at 3.

³³ *Id.* at 2.

³⁴ *Id.* at 3. *JBTV*'s only recurring sponsorship is \$5,000.00 a month from a computer store. *Id.* at 2.

³⁵ *Id.* at 2. Bryant also expresses concern that captioning services will delay the airing of the show, rendering its content untimely. *Id.* at 3.

³⁶ Consumer Groups Comments at 2. Consumer Groups further acknowledge that Bryant demonstrated "a substantial, multi-year loss for its entire operation" and "documented financial stress." *Id.* at 15.

³⁷ *Id.* at 14-15.

overstated, but recognize that “even smaller captioning costs would still represent an additional expense on top of [Bryant’s] multi-year loss.”³⁸ Consumer Groups state that a temporary waiver would allow Bryant “to obtain a more solid financial footing and caption its programming,” but request that the exemption has a “firm expiration date.”³⁹ Consumer Groups further point to the fact that Bryant has been exempt since its Petition was initially filed with the Commission in December 2005, and thus Bryant has known about, and should now begin to budget for compliance with, the captioning requirements.⁴⁰

12. *Determination.* After a careful review of the record, the Bureau finds that Bryant has successfully demonstrated that the provision of closed captioning for *JBTV* would be economically burdensome. Our conclusion is supported by the information and documentation Bryant has provided, which shows that it has been operating at a loss for at least the past two years, and its net losses in 2011 and 2012 indicate a significant deterioration in its financial condition.⁴¹ We are persuaded, based on these materials, that having to caption its program will exacerbate these losses and possibly lead to the termination of the program.

13. Bryant does not specify a timeframe for the exemption that it requests. As the Commission has previously noted, an exemption from the captioning rules is “not designed to perpetually relieve a petitioner of its captioning obligation.”⁴² The Commission has recognized that “changes in technology, the economics of captioning, or the financial resources of a video programming provider may affect the justification for an undue burden exemption” over time and, therefore, “it is better to maintain the flexibility to limit the duration of an undue burden exemption if the facts before us indicate that the particular circumstances of the petition warrant a limited exemption.”⁴³ Similarly, the Commission has stated its intention to “consider time limits . . . when evaluating requests for undue burden exemptions on the basis of the information regarding individual circumstances.”⁴⁴ The situation of a petitioner may change over time, and may no longer warrant continuation of the exemption. In the event that a petitioner does continue to need an exemption, it may submit a new petition to extend the exemption for additional time.

³⁸ *Id.* at 15, n.48.

³⁹ *Id.* at 15 (citing *Anglers Reversal MO&O*, 26 FCC Rcd at 14953, ¶ 23).

⁴⁰ *Id.* at 15-16. See also ¶ 6, *supra*.

⁴¹ Petition Supplement at 10 (“Profit & Loss” statement for 2011) and 12 (“Profit & Loss” statement for 2012).

⁴² See, e.g., *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 20 FCC Rcd 11873, 11874, ¶ 3 (MB 2005) (*Wild Outdoors 2005*); *Awakening Ministries, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 20 FCC Rcd 10740, 10741, ¶ 4 (MB 2005). See also *Anglers Reversal MO&O*, 26 FCC Rcd at 14953, ¶ 23.

⁴³ *Closed Captioning Report and Order*, 13 FCC Rcd at 3366, ¶ 205, quoted in *Anglers Reversal MO&O*, 26 FCC Rcd at 14952, ¶ 22. See also, e.g., *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 13605, 13609, ¶ 12 (Cable Services Bureau 2001) (granting an exemption for one year); *Wild Outdoors 2001*, 16 FCC Rcd 13611 (one year); *WDLB Broadcasting Co, LLC, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 20 FCC Rcd 13531 (MB 2005) (three years). See also *Anglers Reversal MO&O*, 26 FCC Rcd at 14953, ¶ 23.

⁴⁴ *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 20022, ¶ 112 (stating also that “[w]hile a specific time limit may be appropriate for some cases, a longer or shorter period may be appropriate in others”), quoted in *Anglers Reversal MO&O*, 26 FCC Rcd at 14952, ¶ 22 n.78. See also n.5, *supra* (confirming that the term “undue burden” is synonymous with the term “economically burdensome” for purposes of petitions for exemption from the Commission’s closed captioning rules).

14. As discussed above, in the instant case, Bryant has demonstrated that its current financial situation makes captioning costs economically burdensome. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of Bryant may change, we conclude that an exemption of two years is warranted in this case. We believe this period of time will give Bryant ample time to locate ways to comply with the closed captioning requirements.

IV. ORDERING CLAUSES

15. Accordingly, pursuant to section 713 of the Communications Act of 1934, as amended, and sections 0.141(f) and 79.1(f) of the Commission's rules,⁴⁵ IT IS ORDERED that the Petition filed by Bryant, requesting an exemption from the Commission's closed captioning rules, IS GRANTED, and it is granted such an exemption for a period of two years from the release of this Order or until August 1, 2016.

16. IT IS FURTHER ORDERED that Bryant shall commence closed captioning of the programming that is the subject of its Petition no later than August 1, 2016.

17. IT IS FURTHER ORDERED that Bryant must inform the Commission of the date on which it commences closed captioning of its programming in accordance with this Order and the Commission's rules by e-mail to captioningexemption@fcc.gov.⁴⁶ The e-mail must reference Case Identifier CGB-CC-0024.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

⁴⁵ 47 U.S.C. § 613, 47 C.F.R. §§ 0.141(f), 79.1(f).

⁴⁶ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, Public Notice, 29 FCC Rcd 3960 (CGB 2014).