



# PUBLIC NOTICE

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## NOTICE OF ELECTRONIC FILING PROCEDURES FOR CLOSED CAPTIONING EXEMPTION REQUESTS FOR VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL (IP)

CG Docket No. 13-318

By this *Notice*, the Federal Communications Commission's (FCC's or Commission's) Consumer and Governmental Affairs Bureau (CGB or Bureau), by delegated authority, announces electronic filing procedures for petitions for exemption from the Commission's closed captioning requirements for video programming delivered using Internet protocol (IP).<sup>1</sup> On January 12, 2012, the Commission released the *IP Closed Captioning Order* adopting rules that require, among other things, that all individual closed captioning exemption petitions for IP-delivered video programming, all comments and oppositions responsive to such petitions, and all replies to comments or oppositions to such petitions be filed electronically.<sup>2</sup> The electronic filing procedures set forth below and established pursuant to the *IP Closed Captioning Order*, will take effect thirty (30) days from the date of publication in the Federal Register of this Public Notice.<sup>3</sup>

*Exemption Petitions.* The Commission's IP closed captioning rules state that a video programming, provider, or owner may petition the Commission for a full or partial exemption from the

<sup>1</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787, 828, ¶ 66 (2012) (*IP Closed Captioning Order*) (delegating to the Chief, CGB, authority to establish by Public Notice the electronic filing procedures for individual exemption requests); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785 (2013); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (2014); see also 47 C.F.R. § 0.401(a)(1)(iii) (electronic filings, where permitted, must be transmitted as specified by the Commission or relevant Bureau or Office).

<sup>2</sup> *IP Closed Captioning Order*, 27 FCC Rcd at 828, ¶ 66. The requirement to submit electronic filings is codified in the Commission's rules at 47 C.F.R. §§ 79.4(d)(4) (requiring electronic filings of petitions and responsive pleadings) and 47 C.F.R. § 79.4(f)(6) (stating that any interested person may electronically file comments or oppositions to the petition).

<sup>3</sup> The Office of Management and Budget approval for electronic filing of petitions for exemption under the captioning rules (OMB control number 3060-1162), was granted on July 24, 2012. The IP closed captioning rules subject to that approval, including those governing the filing of exemption petitions, became effective on August 6, 2012. *Notice of Effective Date of IP Closed Captioning Rules Requiring OMB Approval*, Public Notice, 27 FCC Rcd 9118 (2012)

closed captioning requirements for IP-delivered video programming.<sup>4</sup> In addition, because the IP closed captioning rules use the same definition for both video programming distributors and video programming providers, video programming distributors also are permitted to petition the Commission for a captioning exemption.<sup>5</sup> A petition for exemption by any of these entities must provide sufficient evidence to demonstrate that compliance with the closed captioning requirements would be economically burdensome to the petitioner (*i.e.*, impose a “significant difficulty or expense”), as determined by the Commission.<sup>6</sup> The facts and information provided in a petition for exemption must be supported by an affidavit<sup>7</sup> and address the following four factors for the Commission’s consideration:<sup>8</sup>

- The nature and cost of the closed captions for the programming;<sup>9</sup>
- The impact on the operation of the video programming provider or owner;
- The financial resources of the video programming provider or owner; and
- The type of operations of the video programming provider or owner.

In order to file a petition for exemption from the IP closed captioning rules electronically, the petitioner must send the petition, together with documentation supporting such a petition, via e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).<sup>10</sup> Upon receipt of a petition, the Commission will send an

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<sup>4</sup> 47 C.F.R. § 79.4(d)(1). Such an option is available because the IP closed captioning rules define a “[v]ideo programming distributor or video programming provider” as “[a]ny person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.” 47 C.F.R. § 79.4(a)(3).

<sup>5</sup> See 47 C.F.R. § 79.4(a)(3).

<sup>6</sup> 47 C.F.R. § 79.4(d)(2).

<sup>7</sup> 47 C.F.R. § 79.4(d)(9).

<sup>8</sup> 47 C.F.R. § 79.4(d)(2). The Commission uses these same factors to determine whether an economic burden exists for entities seeking an exemption from the Commission’s rules governing the provision of closed captions on television. 47 C.F.R. § 79.1(f)(2). The petitioner also may describe for the Commission’s consideration any other factors the petitioner deems relevant to the Commission’s final determination, including available alternatives that might constitute a reasonable substitute for closed captioning. 47 C.F.R. § 79.4(d)(3). The Commission’s website contains a comprehensive list of information and supporting documentation needed to make an economic burden showing at <http://transition.fcc.gov/cgb/dro/information-for-filing-petition-exempt-internet-closed-captioning.pdf>. 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, ¶¶ 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 received. 47 C.F.R. § 79.4(d)(3). During the pendency of an economic burden determination, the video programming subject to the request for exemption is exempt from the captioning requirements. 47 C.F.R. § 79.4(d)(11).

<sup>9</sup> Where video programming providers or distributors subject to the IP closed captioning rules display or render captions, such as through a video player or application that they provide to consumers, they must implement certain functional requirements (*e.g.*, font style, color, and size), unless doing so is economically burdensome. See 47 C.F.R. § 79.103(c) and accompanying Note. In the case of a petition for exemption from these caption display requirements, the Commission may consider the costs associated with implementing those requirements.

<sup>10</sup> Petitions must be filed electronically by e-mail and may not be filed via ECFS. At this time, the Commission’s e-mail system does not accept attachments in the form of .ZIP files or file sizes larger than 13.3 megabytes. If a petitioner has concerns that its file size will exceed this limitation, it may contact Commission staff listed at the end of this *Notice*.

acknowledgement to the petitioner by e-mail. The Commission will also assign a case identifier number (for example, “CGB-CC-2345”) to the petition. This case identifier number and the reference to “CG Docket No. 13-318” must be included on all correspondence with the Commission regarding the petition, including any supplemental information to support the petition and subsequent pleadings in response to comments on or oppositions to the petition.

Once the petitioner provides the required information and documentation to the Commission, the petition will be placed on public notice, pursuant to the Commission’s rules, to permit interested parties to file comments on or oppositions to the petition.<sup>11</sup> The Commission will make the petition, as well as any supporting information and documentation provided, available for public inspection in the Commission’s Reference Information Center and through the Commission’s Electronic Comment Filing System (ECFS) at <http://apps.fcc.gov/ecfs/>.<sup>12</sup> As such, petitioners are encouraged not to include personally sensitive information in their petitions, such as social security numbers, bank account and routing numbers, and other similarly sensitive information. If a petitioner nevertheless includes such sensitive information in its filing, it must redact (remove or conceal with black ink) such information from its submission. Unless otherwise directed by the petitioner, anything in the body of the petitioner’s e-mail will not be considered as part of the petition; rather only the attachments will be considered as part of the petition and posted on ECFS. If the petitioner wishes to also include content contained in the body of the e-mail as part of the petition, which will be posted on ECFS, it should state so in the e-mail.

*Confidential Treatment.* A petitioner may request confidential treatment of any information contained in or submitted in support of its petition.<sup>13</sup> A petitioner seeking such treatment for any such information must submit, via e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov), a written request for confidential treatment and two versions of the petition: (1) a confidential version that contains the complete, unredacted submission; and (2) a public version that redacts any claimed confidential information. A request for confidential treatment may not be filed via ECFS. The request must comply with the requirements of Section 0.459 of the Commission’s rules, including: (a) identification of the specific information submitted for which confidential treatment is sought; (b) a statement of the reasons for withholding those materials from public inspection; and (c) an explanation of how public disclosure of the information could result in substantial competitive harm.<sup>14</sup> The request must show by a preponderance of the evidence that nondisclosure is consistent with the provisions of the Freedom of Information Act<sup>15</sup> Mere conclusory or generalized allegations cannot support a request for nondisclosure.<sup>16</sup> In light of the Commission’s desire for openness in its exemption petition review processes, if the Bureau determines that members of the public should have access to portions of a filing that the petitioner asserts are confidential, it may allow such access pursuant to a protective order. To help achieve such openness

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<sup>11</sup> 47 C.F.R. §§ 79.4(d)(5), (6).

<sup>12</sup> Because petitions and any supporting information and documentation provided by e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov) will be uploaded to ECFS by the Commission, petitioners must follow the ECFS document format guidelines available at <http://apps.fcc.gov/ecfs/userManual/upload/documents.jsp> when submitting petitions and any supporting information and documentation via e-mail.

<sup>13</sup> See 47 C.F.R. § 0.459.

<sup>14</sup> See, e.g., 47 C.F.R. §§ 0.459(b)(1), (3), (5).

<sup>15</sup> See 47 C.F.R. § 0.459(d)(1)(2); see also 5 U.S.C. § 552(b)(4) (stating that the government need not disclose “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential”).

<sup>16</sup> See *National Exchange Carrier Ass’n, Inc., et al., Request for Confidential Treatment of Certain Financial Information*, Memorandum Opinion and Order, 5 FCC Rcd 7184, ¶ 3 (1990) (quoting *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976)).

where a petitioner has sought confidentiality of certain information submitted in support of its petition, the petitioner should, to the extent possible, include in its petition the non-sensitive supporting information contained in the confidential materials so that members of the public may review, consider, and comment on the petition.

*Comments and Oppositions.* Comments on and oppositions to a petition are due within 30 days from the date of the public notice.<sup>17</sup> Parties who file comments on or oppositions to a petition must include a certification that the petitioner was served by delivering or mailing a copy to the last known address of the petitioner, its attorney, or its agent, or by sending a copy to the e-mail address last provided by the petitioner, its attorney, or its agent.<sup>18</sup> Comments on or oppositions to a petition must be filed electronically via ECFS at <http://apps.fcc.gov/ecfs/upload/begin?filedFrom=E>.<sup>19</sup> Comments or oppositions filed via ECFS must include “13-318” as the “Proceeding Number” on the ECFS form. In addition, filers must enter the four-digit case identifier number (e.g., “CC-2345”) as the “File Number” on the ECFS form.<sup>20</sup> If a filer wishes to file an identical set of comments or oppositions via ECFS on multiple petitions that have been assigned more than one case identifier number, the comments or oppositions must be filed separately for each petition/case identifier number. In such a case, a different case identifier number will have to be entered as the “File Number” for each separate filing (e.g., “CC-2345” entered as the File Number for the first filing and “CC-2346” entered as the File Number for the second filing and so on, even if the comments or oppositions being filed are identical to the first filing). Multiple case identifier numbers may not be entered as one “File Number.”

*Replies.* Any reply filed by a petitioner to the comments or oppositions in the record is due 20 days after the comment deadline.<sup>21</sup> Replies to comments or oppositions must include a certification that the commenting or opposing party was served by delivering or mailing a copy to the last known address of the party, its attorney, or its agent, or by sending a copy to the e-mail address last provided by the party, its attorney, or its agent.<sup>22</sup> Replies to comments on or oppositions to a petition must be filed electronically via ECFS at <http://apps.fcc.gov/ecfs/upload/begin?filedFrom=E>.<sup>23</sup> Replies must include “13-318” as the “Proceeding Number” and the four-digit case identifier number (e.g., “CC-2345”) as the “File Number” in this proceeding.<sup>24</sup> If a filer wishes to file an identical set of replies via ECFS on multiple petitions that have been assigned more than one case identifier number, the replies must be filed separately for each petition/case identifier number. In this case, a different case identifier number will have to be entered as the “File Number” for each separate filing (e.g., “CC-2345” entered as the File Number for the first filing and “CC-2346” entered as the File Number for the second filing and so on,

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<sup>17</sup> 47 C.F.R. § 79.4(d)(6).

<sup>18</sup> 47 C.F.R. § 79.4(d)(7).

<sup>19</sup> The “ECFS Express” form at <http://apps.fcc.gov/ecfs/hotdocket/list> cannot be used for the filing of comments or oppositions. If the submission is sent to the Commission only by e-mail, the Commission will upload the submission to ECFS.

<sup>20</sup> As noted above, the petition will be assigned a case identifier number when the petition is filed, for example, “CGB-CC-2345.”

<sup>21</sup> 47 C.F.R. § 79.4(d)(6).

<sup>22</sup> 47 C.F.R. § 79.4(d)(7).

<sup>23</sup> The “ECFS Express” form at <http://apps.fcc.gov/ecfs/hotdocket/list> cannot be used for this purpose. If the submission is sent to the Commission only by e-mail, the Commission will upload the submission to ECFS.

<sup>24</sup> As noted above, a petition will be assigned a case identifier number when the petition is filed, for example, “CGB-CC-2345.”

even if the replies being filed are identical to the first filing). Multiple case identifier numbers may not be entered as one "File Number."

*Accessible Formats:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements-video-programming-deli>.

*For Further Information Contact:* Caitlin Vogus, Consumer and Governmental Affairs Bureau, Disability Rights Office, 202-418-1264, [Caitlin.Vogus@fcc.gov](mailto:Caitlin.Vogus@fcc.gov); or Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau, Disability Rights Office, 202-510-9446, [Suzanne.Singleton@fcc.gov](mailto:Suzanne.Singleton@fcc.gov); or e-mail [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).

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