

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

In the Matter of)
)
Outdoorsmen Productions, LLC) CGB-CC-0639
)
Petition for Exemption from the) CG Docket No. 06-181
Closed Captioning Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 2014

Released: November 13, 2014

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by Outdoorsmen Productions, LLC (Outdoorsmen) for an exemption from the Federal Communications Commission’s (FCC’s or Commission’s) closed captioning requirements for its program, *Outdoorsmen Adventures*. Because we conclude that Outdoorsmen 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 *Outdoorsmen Adventures* for a period of two years from the date of the release of this Order. *Outdoorsmen Adventures* must be closed captioned no later than the end of the two-year temporary exemption, which is November 13, 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*, MM Docket No. 95-176, 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*, MM Docket No. 95-176, 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 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*, CG Docket No. 05-231, 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*, CG Docket No. 11-175, 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.

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:

- 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. Outdoorsmen initially filed a petition for exemption dated December 28, 2006 (hereinafter Petition), which the Commission received on January 3, 2007.¹² In a Public Notice released on January 26, 2007, the Consumer and Governmental Affairs Bureau (CGB or Bureau) invited comment on the Petition.¹³ Consumer Groups jointly filed an opposition to the Petition,¹⁴ and Outdoorsmen filed a

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*, CG Docket Nos. 06-181 and 11-175, 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 Affidavit of Gary E. Howey, Exemption from Federal Closed Captioned Viewing Requirements for Outdoorsmen Productions, LLC (Dec. 28, 2006) (with appendices, including a letter from Gary Howey to Office of the Secretary, Federal Communications Commission (Dec. 27, 2006)).

¹³ *Consumer and Governmental Affairs Bureau Action Requests for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 22 FCC Rcd 993 (CGB 2007).

¹⁴ See CGB-CC-0639 – Opposition to Petition for Exemption from Closed Captioning Requirements Filed by Outdoorsmen Productions, LLC, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America,

(continued....)

response.¹⁵ In 2012, the Bureau notified Outdoorsmen of the need to file updated information with respect to its pending Petition.¹⁶ In response, on April 16, 2012, Outdoorsmen supplemented its Petition.¹⁷ Outdoorsmen again supplemented its Petition on August 7, 2012, in response to a subsequent request from the Bureau for additional information.¹⁸ On September 6, 2012, the Bureau again invited comment on the Petition,¹⁹ and Consumer Groups jointly filed an opposition to the Petition.²⁰ Subsequently, the Bureau determined that it required additional and updated information to enable it to determine whether the programming that was the subject of the Petition should be exempt from the Commission's closed captioning obligations.²¹ In response to the Bureau's request for further information, Outdoorsmen supplemented its Petition on October 7, 2013.²² The Bureau again placed the Petition on Public Notice for comment on February 10, 2014.²³ Again, Consumer Groups jointly filed an opposition to the Petition.²⁴

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Association of Late-Deafened Adults, Inc., American Association of People with Disabilities, and California Coalition of Agencies Serving the Deaf and Hard of Hearing (collectively, Consumer Groups) (Feb. 23, 2007).

¹⁵ See Rebuttal to Protestants Opposition to an Exemption from Federal Closed Captioned Viewing Requirements for Outdoorsmen Productions, L.L.C., Gary E. Howey, d/b/a Outdoorsmen Productions, L.L.C. (Mar. 8, 2007) (2007 Rebuttal).

¹⁶ *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*, CG Docket No. 06-181, 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 Outdoorsmen Productions, LLC (Apr. 5, 2012).

¹⁷ See Letter from Gary E. Howey, President, Outdoorsmen Productions LLC, to Office of the Secretary, Federal Communications Commission (Apr. 16, 2012) (April 2012 Petition Supplement).

¹⁸ See Letter from Roger Holberg, Attorney, Disability Rights Office, Consumer and Governmental Affairs Bureau, to Outdoorsmen Productions LLC, Attn: Gary E. Howey, President (July 18, 2012); Letter from Gary E. Howey, Producer/Host, Outdoorsmen Adventures TV, to Federal Communications Commission (Aug. 7, 2012).

¹⁹ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 10895 (CGB 2012).

²⁰ See Re: Outdoorsmen Productions, LLC Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0639, CG Docket No. 06-181, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, California Coalition of Agencies Serving the Deaf and Hard of Hearing, and Cerebral Palsy and Deaf Organization (collectively, Consumer Groups) (Oct. 9, 2012).

²¹ See Letter from Roger Holberg, Attorney, Disability Rights Office, Consumer and Governmental Affairs Bureau, to Outdoorsmen Productions, LLC, Attn: Gary E. Howey, President (Sept. 26, 2013).

²² See Letter from Gary E. Howey, Outdoorsmen Productions LLC, to Office of the Secretary, Federal Communications Commission (Oct. 7, 2013) (October 2013 Petition Supplement).

²³ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 29 FCC Rcd 1248 (CGB 2014) (2014 Public Notice).

²⁴ See Re: Opposition to Four Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181, CGB-CC-0493, CGB-CC-1226, CGB-CC-1295, CGB-CC-0639, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (collectively, Consumer Groups) at 2-4, 12-13 (Mar. 12, 2014) (Consumer Groups Opposition).

III. DISCUSSION

7. Outdoorsmen produces *Outdoorsmen Adventures*, a half-hour program that is broadcast weekly by 30 stations.²⁵ Outdoorsmen describes *Outdoorsmen Adventures* as a show that features “hunting, fishing and other related game and fishing type events.”²⁶ The producer of *Outdoorsmen Adventures*, Gary Howey, reports that he does most of the outdoor hunting and fishing featured on the program and is assisted by one part-time employee and a college intern in producing the program, when such assistance is affordable.²⁷ Outdoorsmen maintains that requiring its program to comply with the Commission’s closed captioning requirements would be economically burdensome.²⁸

8. Outdoorsmen submitted two recent quotes to caption its program. The first quote, from Video Caption Corporation, is for \$235.00 per show, or \$12,220.00 per year (*i.e.*, for 52 programs).²⁹ Video Caption Corporation also provides a quote of \$75.00 per closed caption master copy.³⁰ Outdoorsmen states that it would require 30 master copies each week to send to the stations carrying the show, resulting in an additional cost of \$2,250.00.³¹ Accordingly, Outdoorsmen estimates that its total annual cost for closed captioning based on the quote from Video Caption Corporation would be \$14,470.00.³² Outdoorsmen states that its second captioning estimate, from VITAC, would result in a cost of \$11,700.00 per year, which suggests a rate of \$225.00 to caption each program.³³ Outdoorsmen again states that it would require 30 master copies each week to send to the stations carrying the show, this time at a cost of \$40.00 per copy, resulting in an additional cost of \$3,000.00.³⁴ Accordingly, Outdoorsmen’s second estimate of total annual costs for closed captioning is \$14,700.00.³⁵

²⁵ October 2013 Petition Supplement at 1 (noting the need for “30 master closed-captioned copies to be sent out each week to the stations carrying the show”), 3, 7-8, 9-10.

²⁶ Petition at 1.

²⁷ *Id.*; April 2012 Petition Supplement at 1; October 2013 Petition Supplement at 3.

²⁸ October 2013 Petition Supplement at 1.

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.* at 1.

³² *Id.*

³³ *Id.* at 1. The rate of \$225.00 to caption each program is calculated by dividing the annual estimate provided by Outdoorsmen (\$11,700.00) by the number of episodes of *Outdoorsmen Adventures* per year (52).

³⁴ *Id.* at 1. Outdoorsmen does not identify the source of the \$40.00 per copy cost or explain how it calculated the additional cost of \$3,000.00 for 30 master copies, which suggests a cost of \$100.00 per copy.

³⁵ *Id.* at 1. Outdoorsmen also asserts that the annual cost to caption its program, based on its two estimates, would be 36% to 37% of its gross receipts and sales. *Id.* Outdoorsmen had earlier suggested that it should be exempt because the cost to caption its program would exceed 2% of its gross revenues. *See* 2007 Rebuttal at 3 (asserting that Outdoorsmen should be exempt under section 79.1(d)(11) of the Commission’s rules because the cost to caption its program, estimated at that time to be \$8,840.00, exceeded 2% of its \$87,012.00 gross sales in 2006). *See also* April 2012 Petition Supplement at 1 (“Even if I were to receive a discount on close[d] captioning, the cost would still be in excess of 2% of my gross revenues.”). Section 79.1(d)(11) of the Commission’s rules states that “[n]o video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that *channel* during the previous calendar year.” 47 C.F.R. § 79.1(d)(11) (emphasis added). This exemption applies only to video programming providers operating a *channel* of video programming, which Outdoorsmen does not appear to be.

9. With its Petition, as supplemented, Outdoorsmen submitted profit and loss statements for 2011 and 2012.³⁶ For 2011, Outdoorsmen reports income of \$76,817.07, expenses of \$96,544.83, and a net loss of \$19,727.76.³⁷ For 2012, Outdoorsmen reports income of \$71,776.40, expenses of \$75,760.01, and a net loss of \$3,983.61.³⁸

10. Outdoorsmen also submitted balance sheets for 2011 and 2012.³⁹ Outdoorsmen reports total current assets as of December 2011 of \$4,670.13 and no current liabilities.⁴⁰ Outdoorsmen also reports total current assets as of December 2012 of \$6,691.94 and no current liabilities.⁴¹ Accordingly, Outdoorsmen's total net current assets are \$4,670.13 as of December 2011 and \$6,691.94 as of December 2012.

11. Outdoorsmen reports that it requested captioning assistance from its video programming distributors; however, they were unable to offer captioning assistance.⁴² Outdoorsmen also reports that it has "approached numerous companies about working with [Outdoorsmen] as close[d] captioning sponsors, but they had no interest."⁴³ Outdoorsmen asserts that, absent an exemption from the captioning requirements, it would have to discontinue its broadcast of *Outdoorsmen Adventures*.⁴⁴

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2014 *Public Notice*, contend that Outdoorsmen failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds. First, Consumer Groups argue that one of the annualized costs of closed captioning that Outdoorsmen provided was not supported by the documentation of closed captioning quotes contained in its Petition, as supplemented,⁴⁵ and that Outdoorsmen did not provide documentation that it bargained with closed

³⁶ See October 2013 Petition Supplement at 11 ("Outdoorsmen Productions LLC, Profit & Loss, January through December 2011"), 12 ("Outdoorsmen Productions LLC, Profit & Loss, January through December 2012").

³⁷ *Id.* at 11. In its Petition, as supplemented, Outdoorsmen reports "total income" of \$73,253.61 and "total other income" of \$3,563.46 for 2011, which must be combined to accurately reflect Outdoorsmen's 2011 income: \$73,253.61 plus \$3,563.46 = \$76,817.07.

³⁸ *Id.* at 12. In its Petition, as supplemented, Outdoorsmen reports "total income" of \$68,356.40 and "total other income" of \$3,420.00 for 2012, which must be combined to accurately reflect Outdoorsmen's 2012: \$68,356.40 plus \$3,420.00 = \$71,776.40.

³⁹ See *id.* at 4 ("Outdoorsmen Productions LLC, Balance Sheet, As of December 31, 2011"), 5 ("Outdoorsmen Productions LLC, Balance Sheet, As of December 31, 2012").

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 5.

⁴² *Id.* at 3 (reporting that Outdoorsmen "sought Video Programmer assistance and [has] not been able to locate anyone who would help with this" and that some stations on which *Outdoorsmen Adventures* is broadcast are exempt from the Commission's closed captioning requirements), 7 (Letter from Ed Hoffman, General Manager, KTTW FOX 7, declining to provide assistance with closed captioning), 8 (Letter from Krisa Howland, National Sales Manager, KFXL, FOX Nebraska, stating that programs that air on the station do not need to be closed captioned).

⁴³ *Id.* at 3. See also *id.* at 6 (letter from Jim Hamilton, General Manager, Graham Tires, declining to sponsor closed captioning for *Outdoorsmen Adventures*).

⁴⁴ *Id.* at 1.

⁴⁵ Consumer Groups Opposition at 12 (arguing that Outdoorsmen states that captioning would cost \$11,700.00 per year when the actual cost based on the quotes obtained would be \$7,800.00 per year). See also n.55, *infra*.

captioning providers for lower costs or to identify the most affordable provider or most reasonable rates.⁴⁶ Second, Consumer Groups acknowledge that Outdoorsmen documented one attempt to receive sponsorship for closed captioning, but argue that “[t]his minimal effort to obtain sponsorships” is not sufficient to meet the Commission’s requirements.⁴⁷ Third, with regard to Outdoorsmen’s financial resources, Consumer Groups acknowledge that Outdoorsmen “has faced economic difficulties in the past” but assert that the deficit documented by Outdoorsmen for 2011 and 2012 “appears to be shrinking rapidly.”⁴⁸ Consumer Groups argue that Outdoorsmen’s “annual budget of over \$68,000” should allow it to afford to caption its programming, and that Outdoorsmen “should be able to budget for the cost of captioning just as it does every other cost of doing business.”⁴⁹ Thus, Consumer Groups conclude, Outdoorsmen’s Petition should be denied.⁵⁰

13. *Determination.* After a careful review of the record, the Bureau finds that Outdoorsmen has successfully demonstrated that the provision of closed captioning for *Outdoorsmen Adventures* would be economically burdensome. Our conclusion is supported by the information and documentation Outdoorsmen has provided, which shows that it has been operating at a loss for at least calendar years 2012 and 2011, with only minimal net current assets in those years.⁵¹ We are persuaded, based on these materials, that having to caption its program will exacerbate Outdoorsmen’s financial losses and possibly lead to the termination of the program.

14. We are not persuaded by Consumer Groups’ arguments in opposition to the Petition. Contrary to the suggestions by Consumer Groups,⁵² we do not require petitioners to demonstrate that they negotiated with closed captioning service providers for captioning costs that are lower than the quotes they provide to the Commission or to identify the most affordable provider or the most reasonable rates.⁵³ Consumer Groups do not cite to any authority in support of such a requirement, and generally information on captioning costs from multiple sources has been sufficient to aid the Bureau in its analysis of the impact that closed captioning obligations can have on a petitioner’s programming operations.⁵⁴ We also do not agree that the Petition should be denied because Outdoorsmen may have incorrectly estimated the annual cost of closed captioning based on the quote from VITAC.⁵⁵ Even considering the lower closed

⁴⁶ *Id.* (arguing that one captioning provider “specifically states that it will ‘significantly discount’ its services for regular clients” but that Outdoorsmen did not document efforts to obtain a lower rate).

⁴⁷ *Id.* at 13.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See ¶¶ 9-10, *supra*.

⁵² See ¶ 12, *supra*.

⁵³ See *First Lutheran Church of Albert Lea; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0143, CG Docket No. 06-181, Memorandum Opinion and Order, 29 FCC Rcd 9326, 9333, n.63 (CGB 2014) (*First Lutheran Church of Albert Lea*).

⁵⁴ See *id.* (citing *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28, n.101). Additionally, we are not persuaded by Consumer Groups’ specific argument that Outdoorsmen should have documented efforts to obtain a lower rate from Video Caption Corporation. See ¶ 12, n.46, *supra*. Video Caption Corporation states that it would “significantly discount [its] rates for faster turnarounds and other services,” but does not state that it will provide a discount for closed captioning service itself. See October 2013 Petition Supplement at 10 (emphasis added).

⁵⁵ See ¶ 12, n.45, *supra*. Outdoorsmen’s second closed captioning quote, which came from VITAC, indicates a cost of \$150.00 to provide roll-up captions, \$200.00 to provide centered pop on captions, or \$300.00 to provide pop on captions for a 30-minute program. See October 2013 Petition Supplement at 9. We agree with Consumer Groups

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captioning estimate of \$7,800.00 per year, plus an additional cost for master closed-captioned copies,⁵⁶ we still conclude that Outdoorsmen has demonstrated that providing captions would be an economic burden. Finally, we reject Consumer Groups' assertion that Outdoorsmen's efforts to obtain outside sponsorship for closed captioning were insufficient.⁵⁷ Outdoorsmen states in its Petition, as supplemented, that it approached "numerous" companies about becoming closed captioning sponsors and provides one letter from a potential sponsor declining to provide sponsorship.⁵⁸ These efforts satisfy the Commission's requirement to seek outside sponsorship for closed captioning.

15. Outdoorsmen 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."⁵⁹ 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."⁶⁰ 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."⁶¹ 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.

16. As discussed above, in the instant case, Outdoorsmen 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

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that this differs from the total annual estimate given by Outdoorsmen of \$11,700.00. At \$150.00 per program, the annual cost to caption 52 programs would be \$7,800.00; at \$200.00 per program, the annual cost to caption 52 programs would be \$10,400.00; and at \$300.00 per program, the annual cost to caption 52 programs would be \$15,600.00. *See also* n.33, *supra*.

⁵⁶ *See* ¶ 8, *supra*

⁵⁷ *See* ¶ 12, *supra*.

⁵⁸ *See* ¶ 11, *supra*.

⁵⁹ *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.

⁶⁰ *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); *WDLP 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.

⁶¹ *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).

Outdoorsmen may change, we conclude that an exemption of two years is warranted in this case. We believe this period of time will give Outdoorsmen ample time to locate ways to comply with the closed captioning requirements.

IV. ORDERING CLAUSES

17. 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,⁶² IT IS ORDERED that the Petition filed by Outdoorsmen, requesting an exemption from the Commission's closed captioning rules, IS GRANTED and Outdoorsmen is granted such an exemption for a period of two years from the release of this Order or until November 13, 2016.

18. IT IS FURTHER ORDERED that Outdoorsmen shall commence closed captioning of the programming that is the subject of its Petition no later than November 13, 2016.

19. IT IS FURTHER ORDERED that Outdoorsmen 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.⁶³ The e-mail must reference Case Identifier CGB-CC-0639.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

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

⁶³ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, CG Docket Nos. 06-181 and 05-231, Public Notice, 29 FCC Rcd 3960 (CGB 2014).