

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

In the Matter of
Christian Video Ministries, Inc.
Petition for Exemption from the
Closed Captioning Requirements
CGB-CC-0235
CG Docket No. 06-181

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2015

Released: December 17, 2015

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 Christian Video Ministries, Inc. (CVM) for an exemption from the Federal Communications Commission’s (FCC’s or Commission’s) closed captioning requirements for CVM’s program, Drawing Men to Christ. Because we conclude that CVM 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. Drawing Men to Christ must be closed captioned no later than the end of this two-year exemption period, which is December 18, 2017.

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, and directing the Commission to prescribe rules to carry out this mandate. In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998. The Commission’s closed

1 December 17, 2017 is a Sunday.

2 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).

3 47 U.S.C. §§ 613(b)-(c).

4 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 (continued....)

captioning rules currently require video programming distributors, absent an exemption, to caption 100% of all new, English and Spanish language programming.⁵

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.”⁶ 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.⁷ 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.⁸

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Accessibility, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*).

⁵ 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. 05-251, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2288-89, para. 115 (2014).

⁶ *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, para. 7 (2012) (*Economically Burdensome Standard Order*).

⁷ 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).

⁸ 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

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

- documentation of the petitioner's financial status, including detailed information regarding finances and assets;
- verification that the petitioner has obtained information about the costs it would incur to provide closed captioning of the programming;
- verification that the petitioner has sought closed captioning assistance from its video programming distributor(s), noting the extent to which such assistance has been provided or rejected;
- verification as to whether the petitioner has sought additional sponsorships (other than from its video programming distributor(s)) or other sources of revenue for captioning; and
- a showing that the petitioner does not have the means to provide captioning for the programming.⁹

5. Each petition must contain a detailed, full showing of any facts or considerations relied upon, supported by affidavit.¹⁰ Failure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request.¹¹ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.¹²

6. CVM initially filed a petition for exemption with the Commission on January 4, 2006.¹³ The Consumer and Governmental Affairs Bureau (CGB or Bureau) granted the petition and issued an exemption to CVM by letter order dated September 12, 2006.¹⁴ On November 7, 2006, the Bureau issued a Public Notice holding in abeyance various letter orders granting exemptions and inviting comments on

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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, para. 8.

⁹ *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, para. 28 & nn. 100-04 (2011) (*Anglers Reversal MO&O*). The Bureau has provided additional guidance for petitioners regarding these requirements in the document "Required Information to Provide in Filing a New Petition to be Exempt from the Closed Captioning Requirements," which is provided by the staff to captioning exemption petitioners and is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf (*Bureau Information Guidance*).

¹⁰ 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.

¹¹ *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, para. 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*)).

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

¹³ Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (Dec. 20, 2005) (filed Jan. 4, 2006).

¹⁴ See Letter from Thomas E. Chandler, FCC, to CVM (Sept. 12, 2006).

certain exemption petitions, including CVM's.¹⁵ On March 2, 2007, Consumer Groups jointly filed an opposition to the Petition.¹⁶ On May 2, 2007, CVM submitted a reply to Consumer Groups Opposition.¹⁷ In 2011, the Commission reversed certain Bureau grants of exemption, including that to CVM.¹⁸ By letter dated October 25, 2011, the Bureau notified CVM of this reversal and explained that CVM would need to file a new exemption petition and supplement the record with up-to-date information, supported by affidavit, about its inability to provide closed captioning if it wished to receive a closed captioning exemption.¹⁹ CVM filed a new petition on January 3, 2012 (hereinafter Petition).²⁰ By letter of April 18, 2012, the Bureau requested supplemental information,²¹ which CVM provided on May 10, 2012.²² On August 8, 2012, the Bureau invited comment on the Petition.²³ Consumer Groups jointly filed an opposition to the new Petition.²⁴ 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. In response to Bureau inquiries,²⁵ CVM provided further supplementation to its Petition.²⁶ The Petition was again placed on

¹⁵ *Consumer and Governmental Affairs Bureau Action, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 21 FCC Rcd 13142 (CGB 2006).

¹⁶ *See In re: Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, CGB-CC-0235 - Opposition to the Petition for Exemption from Closed Captioning Requirements filed by Christian Video Ministries, Inc., filed by Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Hearing Loss Association of America (HLAA), Association of Late-Deafened Adults, Inc. (ALDA), American Association of People with Disabilities (AAPD) and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (Mar. 2, 2007) (Consumer Groups Opposition).

¹⁷ Affidavit of Janora Dunson, Secretary, CVM (May 2, 2007).

¹⁸ *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, para. 25. The Commission reversed this and other Bureau letter orders that had failed to analyze the individual circumstances of the petitioners under the "undue burden" criteria, as required under the Communications Act and the Commission's rules. *Id.*, 26 FCC Rcd at 14949, para. 26. As explained earlier, the economically burdensome criteria now used by the Commission to evaluate closed captioning exemption requests are identical to the undue burden criteria. *See* n.6, *supra*.

¹⁹ *See* Letter from Joel Gurin, FCC, to CVM (Oct. 25, 2011). (This letter was returned to the Commission on December 9, 2011, and re-sent to an updated address on December 12, 2011.) *See also* 47 C.F.R. § 79.1(f)(11); *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, para. 16, n.60.

²⁰ Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (Dec. 28, 2011) (filed Jan. 3, 2012) (Petition).

²¹ Letter from Roger Holberg, FCC, to CVM (Apr. 18, 2012).

²² Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (Apr. 30, 2012) (filed May 10, 2012) (2012 Supplement).

²³ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 9268 (CGB 2012).

²⁴ *See Re: Christian Video Ministries, Inc. Petition for Exemption from Commission's Closed Captioning Rules, Case No. CGB-CC-235, CG Docket No. 06-181*, submitted by TDI, NAD, DHHCAN, ALDA, and Cerebral Palsy and Deaf Organization (CPDO) (Sept. 10, 2012).

²⁵ Letter from Cheryl King, FCC, to CVM (Sept. 27, 2013); Letter from E. Elaine Gardner, FCC, to CVM (May 30, 2014); Letter from E. Elaine Gardner, FCC, to CVM (Dec. 19, 2014).

²⁶ *See* Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (filed Oct. 21, 2013) (Oct. 28, 2013) (2013 Supplement); Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (July 10, 2014) (filed July 14, 2014) (2014

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Public Notice on February 12, 2015.²⁷ Consumer Groups jointly filed an opposition on March 16, 2015.²⁸

III. DISCUSSION

7. The programming at issue was previously produced by CVM, but is continuing to be broadcast as re-runs on television. Specifically, CVM used to produce *Drawing Men to Christ*,²⁹ a one-hour program of taped sermons,³⁰ of which 175 are still aired as re-runs.³¹ CVM airs the program on multiple stations.³² Each program consists of a “chalk talk” sermon, wherein a Baptist preacher “illustrates his Sunday evening sermon. . . in colored chalk.”³³ CVM contends that it is unable to afford closed captioning for all of its 175 taped sermons, as the cost of such captioning would be “EXTREMELY burdensome (and probably impossible)” for it to meet.³⁴

8. CVM obtained two quotes to caption its program, one for \$275.00 per hour from VITAC,³⁵ and another for \$275.00 per hour from CaptionLabs.³⁶ Based on these quotes, CVM states that the cost of captioning all of its 175 one-hour programs would be \$48,125.00 using either service.³⁷ In

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Supplement) (CVM requested, and was granted, a fourteen day extension to provide the July 14, 2014 supplement.); Letter from Mrs. Jerry Dunson, Secretary, CVM, to FCC (Jan. 18, 2015) (2015 Supplement).

²⁷ *Request for Comment, Request for Exemption from Commission’s Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 30 FCC Rcd 1199 (CGB 2015).

²⁸ *See Re: Opposition to Petition for Exemption from Commission’s Closed Captioning Rules, CGB Dkt No. 06-181, Christian Video Ministries, Inc., CGB-CC-235*, submitted by TDI, Cerebral Palsy and Deaf Organization (CPADO), NAD, ALDA, Deaf Seniors of America (DSA), CCASDHH, and American Association of the Deaf-Blind (AADB) (collectively, Consumer Groups) (Mar. 16, 2015) (Consumer Groups 2015 Opposition).

²⁹ 2012 Supplement at 1.

³⁰ 2013 Supplement at 1.

³¹ 2012 Supplement at 1, 5; 2014 Supplement at 4.

³² 2014 Supplement at 1, 6.

³³ Petition at 1-3. CVM suggests that the visual chalk presentation could be considered as an alternative to closed captioning. Although Section 79.1(d)(4) of the Commission’s rules exempts video programming that is primarily textual, the Commission previously has rejected such exemptions when the program’s spoken dialogue contains information that would be lost without captions. *See e.g., Home Shopping Club L.P. Petition for Waiver of Closed Captioning Requirements*, CSR Docket No. 5459, Memorandum Opinion and Order, 15 FCC Rcd 10790, 10793-4, para. 10 (Cable Services Bureau 2000) (rejecting petitioner’s argument that closed captioning would be duplicative of information already displayed visually on-screen, noting that “spoken dialog in programs that use graphics and text to sell products or services adds information that would be lost to consumers with hearing disabilities” without closed captioning) (citing *Closed Captioning Report and Order*, 13 FCC Rcd at 3344; *see also Closed Captioning Reconsideration Order*, 13 FCC Rcd at 20008, para. 79. We note, however, that we need not decide the extent to which the textual information in *Drawing Men to Christ* covers the spoken dialogue and other audio information provided in this program in the instant case given our conclusion that CVM has otherwise met the criteria necessary to receive a captioning exemption. Additionally, we note that CVM is incorrect in suggesting that “closed captioning would distort the picture for the viewer,” because closed captioning only appears when activated. *Id.* at 3.

³⁴ 2014 Supplement at 5 (emphasis in original).

³⁵ *Id.* at 8.

³⁶ 2015 Supplement at 3-4.

³⁷ 2014 Supplement at 4.

addition to the cost of captioning services, CVM indicates that it would incur dubbing costs of \$125.00 for every five copies of each captioned master copy for distribution to the stations which broadcast for [CVM], plus postage of \$12.75 for mailing the dubbed copies of each master,³⁸ for a total of \$24,106.25.³⁹ Finally, CVM cites the cost of shipping the tapes and DVDs to and from the closed captioning company to be \$6,650.00.⁴⁰ Accordingly, CVM states that its total cost for captioning all of its 175 programs, dubbing enough copies for distribution purposes, and shipping same, would result in a one-time cost of \$78,881.25.⁴¹

9. CVM submitted tax returns for the calendar years 2012 and 2011. For 2012, CVM reports income of \$120,016.00, expenses of \$123,712.00, and a net loss of \$3,696.00.⁴² For 2011, CVM reports income of \$180,487.00, expenses of \$174,511.00, and an excess of revenue over expenses of \$5,976.00.⁴³

10. CVM reports current assets as of December 31, 2012 of \$8,417.00, and reports no current liabilities for 2012.⁴⁴ CVM reports current assets as of December 31, 2011 of \$11,039.00,⁴⁵ and reports no current liabilities for 2011.⁴⁶

11. CVM reports that it requested captioning assistance from each of its video programming distributors, and each responded “negatively.”⁴⁷ CVM further reports that it has been unsuccessful in

³⁸ 2015 Supplement at 1. CVM provides documentation from Matson Multi Media to support this cost. 2014 Supplement at 3.

³⁹ 2015 Supplement at 1.

⁴⁰ *Id.* at 1. Earlier, CVM had calculated postage for mailing its captioned programs at \$6,125.00. 2014 Supplement at 4. CVM later explained that was an approximation, and that the “best possible exact figure” would be \$38.00 for each master, for the total of \$6,650.00 it now claims. *Id.*

⁴¹ CVM provides the “conservative” estimate of \$75,000.00 for the total cost. 2014 Supplement at 4. The more precise figure of \$78,881.25 is the sum of the captioning cost from either estimate (\$48,125.00), the dubbing expense (\$24,106.25), and the postage (\$6,650.00). *Id.* See *infra* at para. 14 for further discussion of CVM’s captioning costs.

⁴² 2013 Supplement at 18.

⁴³ *Id.* at 49.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.* at 35, 48. In its itemization, CVM includes non-current items, such as equipment and accumulated depreciation, in its listing of “Total Assets.” *Id.* at 35. For purposes of this determination, we look only to its current assets items listed; “Cash” (\$10,939.00) and “Petty Cash” (\$100.00). *Id.* As noted in our prior decisions, “depreciation expenses represent the systemic and rational decrease in the future economic benefits of long term and fixed assets. Our analysis in determining whether providing closed captioning would be economically burdensome does not focus on long term assets. Instead, it focuses on current assets, current liabilities, working capital, and the operating cash flows of the organization.” See *e.g.*, *Van Buren First Assembly of God; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0045, CG Docket 06-181, Memorandum and Order, 30 FCC Rcd 7368, at 7373 (CGB 2015) (removing depreciation expenses from petitioner’s expenses for purposes of analysis). Accordingly, when considering CVM’s overall financial resources to determine whether providing closed captioning would be economically burdensome, we do not consider depreciation expenses.

⁴⁶ 2013 Supplement at 35, 48.

⁴⁷ 2012 Supplement at 1.

locating sponsorships, that it “continues to seek support and ‘sponsorship,’” and that “if and when sponsorship becomes available, CVM will go forward with the closed captioning.”⁴⁸

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2015 *Public Notice*, contend that CVM failed to provide an adequate explanation as to why the provision of closed captioning would be an economic burden.⁴⁹ In particular, Consumer Groups assert that CVM has failed to provide “a full financial picture to the Commission with supporting evidence. . . since [CVM] renewed its petition more than three years ago.”⁵⁰ First, Consumer Groups criticize the captioning costs provided by CVM.⁵¹ Consumer Groups assert that CVM would only be required, under the Commission’s rules, to caption programs as they are re-broadcast.⁵² Consumer Groups argue that CVM’s failure to indicate how many episodes re-air each year renders it “impossible to determine its actual annual captioning costs.”⁵³ Second, Consumer Groups criticize the inclusion of estimated costs for duplication without sufficient justification as to “why it must dub and create five master copies of each captioned program. . . as opposed to making one master captioned copy that could then be duplicated.”⁵⁴ Third, Consumer Groups assert that the costs of program distribution are not costs directly related to captioning, stating that these costs are part of the programmers’ larger budgets, as programming must be distributed regardless of whether or not closed captioning is provided.⁵⁵ Consumer Groups conclude that, as CVM has had several years to set forth its captioning costs, and has nevertheless failed to meet its burden, its petition must be dismissed.⁵⁶ Alternatively, Consumer Groups ask that the Commission grant “an extremely short waiver” of “six to 12 months.”⁵⁷ Consumer Groups acknowledge that CVM has “limited financial resources,” and that even reduced captioning costs might still pose an economic burden, but urge an extremely short waiver, citing CVM’s *de facto* waiver of the rules since December 2005 and its repeated failure to meet its burden of proof.⁵⁸

13. *Determination.* After a careful review of the record, the Bureau finds that CVM has demonstrated that the provision of closed captioning for CVM would be economically burdensome. However, we reach this conclusion using an estimate of captioning costs that differs from that put forth by CVM. As noted above, CVM asserts a one-time estimate of captioning costs of \$78,881.25, which includes the costs of captioning all 175 shows of its archival programming, along with the costs of dubbing, duplication, and distribution. CVM explains that these distribution costs are necessary because if it is required to caption, it would have to re-distribute all of its archived programming.

⁴⁸ 2015 Supplement at 1.

⁴⁹ Consumer Groups 2015 Opposition at 3-5.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 3-4.

⁵² *Id.* at 4 (*citing* 47 C.F.R. §79.1).

⁵³ *Id.* at 4.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 5.

⁵⁸ *Id.*

14. When considered against the costs of most other petitioners seeking captioning exemptions, we agree with consumers that some of CVM's costs appear to be excessive.⁵⁹ Consumers raise three objections to CVM's calculations of these costs. First, we agree with consumers that, under the Commission's rules, CVM would only be required to provide captioning on programs as they are re-broadcast,⁶⁰ yet we do not have information on the number of episodes CVM intends to show annually. Second, Consumer Groups state that CVM has not provided sufficient justification for needing five master copies of each captioned program.⁶¹ While we agree with Consumer Groups that supplemental information would be needed to justify CVM's claim that five master captioned copies of each program is necessary, we clarify that CVM submitted information indicating that only one captioned master copy is made for each of its program, and "at least five copies will be made of each for distribution to the stations which broadcast for [CVM]."⁶² Finally, consumers oppose inclusion of the costs of redistributing CVM's programs once they are captioned.⁶³ Consumers are correct that this third category of costs generally have not been included in calculating captioning costs for purposes of our economically burdensome determinations. While CVM tries to make the case that the programs it has in its possession are now archived, and that the only reason it would have to incur these high redistribution costs would be to re-send its now caption-equipped programs out to its distributors, it is only because CVM did not incorporate captions into its programs when they were first produced that it would now have to incur these higher costs. In other words, were we to reject CVM's request for a captioning exemption – and issue a finding that it had not been economically burdensome for CVM to have captioned its programs when they were first aired – then it follows that these costs would have had to have been included in CVM's overall programming budget as it produced this programming, and that the higher after-the-fact costs that it must incur because of this initial failure should not be permitted in our economically burdensome calculation.

15. Notwithstanding the merits of some of the Consumer Groups' arguments, even if we were to reduce CVM's captioning estimate by excluding these various costs, we conclude that the cost of CVM's captioning would nevertheless, result in an economic burden to CVM at this time, a result that Consumer Groups themselves acknowledge.⁶⁴ For example, even if CVM only broadcasts 52 episodes a year, and duplication, dubbing and distribution costs are not considered, at \$275.00 per episode, its annual captioning cost would be \$14,300.00. According to the information and documentation it has provided, CVM operated at a profit for only one of the past two years. It operated at a loss of \$3,696.00 for 2012.⁶⁵ Even in 2011, however, CVM showed only a modest excess of revenue over expenses of \$5,976.00.⁶⁶ When compared to a closed captioning estimate of \$14,300.00, we conclude that CVM's net revenues

⁵⁹ Compare, for example, captioning estimates reported in *Lima Baptist Temple Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0218, CG Docket 06-181, Memorandum and Order, 30 FCC Red. 8300, at 8304-8305 (CGB 2015) (annual captioning cost estimates of \$15,600.00 and \$16,900.00 for a weekly one hour program); *Victory Temple Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0406, CG Docket 06-181, Memorandum and Order, DA 15-1324, __ FCC __ (CGB 2015) (annual captioning cost estimates of \$13,000.00 and \$15,600.00 for a weekly one hour program).

⁶⁰ *Id.* at 4.

⁶¹ *Id.* at 4.

⁶² 2014 Supplement at 1.

⁶³ Consumer Groups 2015 Opposition at 4.

⁶⁴ *See id.* at 5.

⁶⁵ *See* para. 9, *supra*.

⁶⁶ *Id.*

were not sufficient to cover the cost to caption its program. While CVM had net current assets of \$8,417.00 as of December, 31, 2012, and current assets of \$11,039.00 as of December 31, 2011,⁶⁷ these assets also would not have been sufficient to cover the costs of closed captioning in 2012, and would barely have been enough in 2011, leaving CVM with minimal excess revenue in that year. Accordingly, based on our review and analysis, we conclude that closed captioning would be economically burdensome for CVM at this time.⁶⁸

16. CVM 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.”⁶⁹ 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.”⁷⁰ 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.”⁷¹ 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.

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

⁶⁷ See para. 10, *supra*.

⁶⁸ We have considered, and reject, Consumer Groups opposition to the CVM Petition. Consumer Groups base their opposition on faults that they find with CVM’s captioning estimates. See para. 12, *supra*. However, we agree that a roll-out of captioning versions of this program’s episodes over a period of time might become feasible for CVM, and is something that the Bureau may consider at the conclusion of the waiver period granted herein, should CVM file a new petition for exemption at that time.

⁶⁹ See, e.g., *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, CSR Docket No. 5949, Memorandum Opinion and Order, 20 FCC Rcd 11873, 11874, para. 3 (MB 2005) (*Wild Outdoors 2005*); *Awakening Ministries, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, CSR Docket No. 6287, Memorandum Opinion and Order, 20 FCC Rcd 10740, 10741, para. 4 (MB 2005). See also *Anglers Reversal MO&O*, 26 FCC Rcd at 14953, para. 23.

⁷⁰ *Closed Captioning Report and Order*, 13 FCC Rcd at 3366, para. 205, quoted in *Anglers Reversal MO&O*, 26 FCC Rcd at 14952, para. 22. See also, e.g., *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, CSR Docket 5443, Memorandum Opinion and Order, 16 FCC Rcd 13605, 13609, para. 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*, CSR Docket No. 6296, Memorandum Opinion and Order, 20 FCC Rcd 13531 (MB 2005) (three years). See also *Anglers Reversal MO&O*, 26 FCC Rcd at 14953, para. 23.

⁷¹ *Closed Captioning Reconsideration Order*, 13 FCC Rcd at 20022, para. 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, para. 22 n.78. See also n.6, *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).

IV. ORDERING CLAUSES

18. 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,⁷² IT IS ORDERED that the Petition filed by CVM, 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 December 18, 2017.

19. IT IS FURTHER ORDERED that CVM shall commence closed captioning of the programming that is the subject of its Petition no later than December 18, 2017.

20. IT IS FURTHER ORDERED that CVM 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.⁷³ The e-mail must reference Case Identifier CGB-CC-0235 and will be posted on the docket to be publicly available.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

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

⁷³ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, Public Notice, 29 FCC Rcd 3960 (CGB 2014).