

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

In the Matter of	)	
	)	
SJTV LLC	)	CGB-CC-1226
	)	
Petition for Exemption from the	)	CG Docket No. 06-181
Closed Captioning Requirements	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 19, 2015**

**Released: February 19, 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 SJTV LLC (SJTV) for an exemption from the Federal Communications Commission's (FCC's or Commission's) closed captioning requirements for its program, *CNY's Open House*. Because we conclude that SJTV 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 its program, *CNY's Open House*, for a period of two years from the date of the release of this Order. *CNY's Open House* must be closed captioned no later than the end of the two year temporary exemption, which is February 21, 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,<sup>1</sup> and directing the Commission to prescribe rules to carry out this mandate.<sup>2</sup> In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.<sup>3</sup> The Commission's closed

<sup>1</sup> 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, 104<sup>th</sup> 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).

<sup>2</sup> 47 U.S.C. §§ 613(b)-(c).

<sup>3</sup> 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.<sup>4</sup>

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.”<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> 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).

<sup>5</sup> *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*).

<sup>6</sup> 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).

<sup>7</sup> 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.<sup>8</sup>

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

6. SJTV initially filed a petition for exemption by letter dated March 28, 2012 (hereinafter Petition).<sup>12</sup> Subsequently, the Consumer and Governmental Affairs Bureau (Bureau) determined that it required additional and updated information to enable it to determine whether the programming that was the subject of this petition should be exempt from the Commission's closed captioning obligations.<sup>13</sup> In response to the Bureau's request for further information, SJTV supplemented its petition by letter dated

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<sup>8</sup> 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](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*).

<sup>9</sup> 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.

<sup>10</sup> *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*)).

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

<sup>12</sup> See Letter from Scot D. Hayes, Owner, SJTV LLC, to Office of the Secretary, FCC (Mar. 28, 2012) (filed Mar. 29, 2012) (Petition).

<sup>13</sup> See Letter from Roger Holberg, Disability Rights Office, CGB, FCC, to SJTV, LLC d/b/a CNY's Open House (June 27, 2012).

July 25, 2012.<sup>14</sup> In a Public Notice released on September 6, 2012, the Bureau invited comment on the Petition.<sup>15</sup> Certain consumer organizations jointly filed an opposition to the Petition.<sup>16</sup> Subsequently, the Bureau again determined that it required additional and updated information to enable it to determine whether the programming that was subject of the Petition should be exempt from the Commission's closed captioning obligations.<sup>17</sup> In response to the Bureau's request for further information, SJTV supplemented its Petition by letter dated October 28, 2013.<sup>18</sup> The Bureau again placed the Petition on Public Notice for comment on February 10, 2014.<sup>19</sup> Again, several consumer groups jointly opposed the Petition.<sup>20</sup>

### III. DISCUSSION

7. SJTV produces *CNY's Open House*, a 30 minute program that is broadcast weekly by multiple stations.<sup>21</sup> SJTV describes *CNY's Open House* as a show that features "home improvement projects and professional services companies from Central New York's local businesses along with area community groups and events."<sup>22</sup> SJTV maintains that requiring its program to comply with the Commission's closed captioning requirements would be economically burdensome.<sup>23</sup> Specifically, SJTV claims that adding the cost of closed captioning each week "would result in a large monthly loss for SJTV LLC and make it very difficult to continue producing the show as is."<sup>24</sup> In addition, SJTV states that the cost providing closed captioning would require it to alter its production schedule "to accommodate the turnaround time for the closed captioning company," resulting in "less time to produce new content and therefore less income from sponsors/clients."<sup>25</sup>

8. SJTV submitted two quotes to caption its program. The first quote, from CaptionMax, is for

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<sup>14</sup> See Letter from Scot D. Hayes, Owner, SJTV LLC, to Roger Holberg, Office of the Secretary, FCC (July 25, 2012) (filed July 26, 2012) (July 2012 Petition Supplement).

<sup>15</sup> *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).

<sup>16</sup> See Re: SJTV LLC Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-1226, CG Docket No. 06-181, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO) (Oct. 9, 2012).

<sup>17</sup> See Letter from Roger Holberg, Disability Rights Office, CGB, FCC, to SJTV, LLC d/b/a CNY's Open House (Sept. 26, 2013).

<sup>18</sup> See Letter from Scot D. Hayes, Owner, SJTV LLC, to Roger Holberg, Office of the Secretary, FCC (Oct. 28, 2013) (filed Nov. 4, 2013) (October 2013 Petition Supplement).

<sup>19</sup> *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).

<sup>20</sup> 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, TDI, NAD, DHHCAN, CPADO, and CCASDHH (collectively, Consumer Groups) at 2-4, 12-13 (Mar. 12, 2014) (Consumer Groups Opposition).

<sup>21</sup> Petition at 1; October 2013 Petition Supplement at 2.

<sup>22</sup> October 2013 Petition Supplement at 2.

<sup>23</sup> *Id.* at 1-2.

<sup>24</sup> Petition at 1.

<sup>25</sup> October 2013 Petition Supplement at 1.

\$175 per show, or \$9,100 per year (*i.e.*, for 52 programs).<sup>26</sup> The second quote, from VITAC, is from VITAC, is for \$300 per show with a 24 hour turnaround, or \$15,600 per year.<sup>27</sup> SJTV asserts that a 24 hour turnaround is the “only viable option” for it to obtain closed captioning, which means that it would have to incur captioning costs of \$15,600 annually.<sup>28</sup>

9. With its Petition, as supplemented, SJTV submitted United States Income Tax Returns for an S Corporation Form 1120S for 2012 and 2011.<sup>29</sup> For 2012, SJTV reports total income of \$127,785, total expenses of \$112,539, and net income of \$15,246.<sup>30</sup> For 2011, SJTV reports total income of \$128,736, total expenses of \$111,377 and net income of \$17,359.<sup>31</sup>

10. SJTV reports total current assets as of December 2012 of \$16,090 and total current liabilities of \$3,639, resulting in net current assets of \$12,451.<sup>32</sup> SJTV also reports total current assets as of December 2011 of \$12,477 and total current liabilities of \$10,638, resulting in net current assets of \$1,839.<sup>33</sup>

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<sup>26</sup> *Id.* at 1, 3. The quote from CaptionMax does not specify the turnaround time for the provision of closed captions.

<sup>27</sup> *Id.* at 1, 5. The annual cost of closed captioning based on the VITAC quote of \$300 is calculated by multiplying the cost per show (\$300) by the number of shows per year (52).

<sup>28</sup> *Id.* at 1.

<sup>29</sup> *See id.* at 8-32 (2011 Income Tax Return for an S Corporation); 33-52 (2012 Income Tax Return for an S Corporation).

<sup>30</sup> *Id.* at 33. SJTV submitted Profit and Loss Statements and Balance Sheets for 2012 and 2011 and United States Income Tax Returns for an S Corporation Form 1120S for 2012 and 2011. Based on our review, we have determined that the financial information contained in SJTV’s tax returns has the necessary supplemental data needed for our analysis. Therefore, we have relied on the financial information contained in the tax returns, in lieu of the financial information contained in its Profit and Loss Statements and Balance Sheets, in making our determination as to whether providing closed captioning would be economically burdensome to SJTV. SJTV’s total income is reported on line 1c (\$127,785) of its 2012 U.S. Income Tax Return for an S Corporation Form 1120S. SJTV’s total expenses are calculated by adding its cost of goods sold, reported on line 2 (\$38,200) with its total deductions, reported on line 20 (\$74,339) = \$112,539. SJTV’s net income is calculated by subtracting its total expenses (\$112,539) from its total income (\$127,785) = \$15,246.

<sup>31</sup> *Id.* at 8. *See n. 28, supra.* SJTV’s total income is calculated by adding its gross receipts or sales, reported on line 1b of its 2011 U.S. Income Tax Return for an S Corporation Form 1120S (\$128,782) and its other income, reported on line 5 (\$885) and subtracting its returns and allowances plus any other adjustments, reported on line 1d (\$931) = \$128,736. SJTV’s total expenses are calculated by adding its cost of goods sold, reported on line 2 (\$67,431) with its total deductions, reported on line 20 (\$43,946) = \$111,377. SJTV’s net income is calculated by subtracting its total expenses (\$111,377) from its total income (\$128,736) = \$17,359.

<sup>32</sup> *Id.* at 36. SJTV’s current assets and current liabilities as of December 31, 2012, are reported on Schedule L of its 2012 U.S. Income Tax Return for an S Corporation Form 1120S. SJTV’s current assets as of December 31, 2012 are calculated by adding the amount reported as “Cash” on line 1(d) of Schedule L (\$133) and the amount reported as “Trade notes and accounts receivable”, “Less allowance for bad debts” on line 2b(d) of Schedule L (\$15,957) = \$16,090. SJTV’s current liabilities as of December 31, 2012 are calculated by adding the amount reported as “Accounts Payable” on line 16(d) of Schedule L (\$3,135) and the amount reported as “Other current liabilities” on line 18(d) of Schedule L (\$504) = \$3,639. SJTV’s net current assets as of December 31, 2012 are calculated by subtracting its current liabilities (\$3,639) from its current assets (\$16,090) = \$12,451.

<sup>33</sup> *Id.* at 11. SJTV’s current assets and current liabilities as of December 31, 2011, are reported on Schedule L of its 2011 U.S. Income Tax Return for an S Corporation Form 1120S. SJTV’s current assets as of December 31, 2011 are calculated by adding the amount reported as “Cash” on line 1(d) of Schedule L (\$697) and the amount reported as “Trade notes and accounts receivable”, “Less allowance for bad debts” on line 2b(d) of Schedule L (\$11,780) = \$12,477. SJTV’s current liabilities as of December 31, 2011 are calculated by adding the amount reported as

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11. SJTV reports that its video programming distributors are unable to offer captioning assistance.<sup>34</sup> SJTV also reports that it “receives income from monthly sponsors” and regularly “seeks out the addition of new sponsors.”<sup>35</sup> However, SJTV states, in the past, “sponsors have threatened or have discontinued their support of the program” when SJTV attempted to raise sponsorship rates.<sup>36</sup> SJTV asserts that, absent an exemption from the captioning requirements, it would have “significant difficulty and expense in continuing the show.”<sup>37</sup>

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2014 *Public Notice*, contend that SJTV failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.<sup>38</sup> First, Consumer Groups argue that SJTV has artificially driven up the estimated annual cost of closed captioning by requiring a 24 hour turnaround time for closed captioning, a requirement that, according to Consumer Groups, seems to conflict with a statement in an October 28, 2013 email from VITAC to SJTV stating that SJTV mentioned that it may be able to provide its program to VITAC for captioning a week in advance.<sup>39</sup> Second, Consumer Groups argue that SJTV did not provide documentation that it bargained with closed captioning providers for lower costs.<sup>40</sup> Third, Consumer Groups argue that SJTV “offers no evidence that it requested captioning assistance from its programming distributor or that it sought captioning sponsorship of any kind.”<sup>41</sup> Fourth, with regard to SJTV’s financial resources, Consumer Groups argue that SJTV’s financial records “indicate that it can pay to caption its programming.”<sup>42</sup> Specifically, Consumer Groups acknowledge that SJTV “may have had some financial difficulty in 2011” but assert that it has “an annual budget of about \$120,000” and had “a surplus of \$4,977” in 2012.<sup>43</sup> Thus, Consumer Groups conclude, SJTV has failed to show that providing closed captioning would be economically burdensome.<sup>44</sup>

13. *Determination.* After a careful review of the record, the Bureau finds that SJTV has demonstrated that the provision of closed captioning for *CNY’s Open House* would be economically burdensome. As an initial matter, the Commission has previously determined that, when conducting an economically burdensome analysis, “all of the petitioners’ available resources” must be taken into

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“Accounts Payable” on line 16(d) of Schedule L (\$10,483) and the amount reported as “Other current liabilities” on line 18(d) of Schedule L (\$155) = \$10,638. SJTV’s net current assets as of December 31, 2011 are calculated by subtracting its current liabilities (\$10,638) from its current assets (\$12,477) = \$1,839.

<sup>34</sup> Petition at 1.

<sup>35</sup> *Id.* at 1.

<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.* at 1.

<sup>38</sup> Consumer Groups Opposition at 9-10.

<sup>39</sup> *Id.* at 9 (stating that “[a]lthough SJTV states that a 24-hour turnaround is the ‘only viable option; for its production schedule, . . . this claim conflicts with SJTV’s statement to a captioning service that it could get a week ahead to obtain a lower rate for a later turnaround”) (footnote omitted).

<sup>40</sup> *Id.* at 9.

<sup>41</sup> *Id.* at 9-10.

<sup>42</sup> *Id.* at 10.

<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Id.* at 10.

consideration.<sup>45</sup> The Commission has rejected suggestions “to consider only the resources available for a specific program” in making the determination of whether the provision of closed captioning is economically burdensome.<sup>46</sup> Therefore, we now consider the overall financial resources available to SJTV in determining whether it would be economically burdensome to comply with the Commission’s closed captioning requirements.

14. According to the information and documentation it has provided, SJTV had net income of \$15,246 in 2012 and \$17,359 in 2011.<sup>47</sup> SJTV also had net current assets of \$12,451 and \$1,839 as of December 31, 2012 and December 31, 2011, respectively.<sup>48</sup> SJTV asserts that the annual cost of obtaining closed captioning for *CNY’s Open House* would be \$15,600.<sup>49</sup> SJTV’s net income in 2012 and 2011, along with its minimal net current assets as of December 31, 2012 and December 31, 2011, provide evidence that the provision of closed captioning would be economically burdensome. We are therefore persuaded, based on this information, that having to caption *CNY’s Open House* would possibly lead to the termination of the program.

15. We are not persuaded by Consumer Groups’ arguments in opposition to the Petition. First, we reject Consumer Groups’ argument that SJTV is claiming the need for a 24 hour turnaround for closed captioning solely to “artificially drive up” its closed captioning costs.<sup>50</sup> In its Petition, as supplemented, SJTV states a 24 hour turnaround time is its “only viable option” for closed captioning due to its production schedule, and SJTV provides an affidavit attesting to the truthfulness of this assertion.<sup>51</sup> In addition, SJTV’s statement in its Petition, as supplemented, that it requires a 24 hour turnaround time does not conflict with statements in the October 28, 2013 email from VITAC. The email from VITAC stated only that SJTV mentioned that it “perhaps” could provide the program a week in advance for captioning and further stated, “[Y]our turnaround for delivering a program to us on Thursday and needing to deliver to your client on Friday afternoon is tight.” Accordingly, we accept SJTV’s claim that it requires a 24 hour turnaround time to obtain closed captioning for its program, and thus, use the annual estimate for closed captioning costs of \$15,600 in determining whether providing closed captioning would be economically burdensome for SJTV. In addition, contrary to suggestions by Consumer Groups,<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

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<sup>45</sup> *Anglers Reversal MO&O*, 26 FCC Rcd at 14950, ¶ 17 (explaining that consideration of a petitioner’s request for exemption must take into account “the overall financial resources of the provider or program owner”).

<sup>46</sup> *Id.*

<sup>47</sup> See ¶ 9, *supra*.

<sup>48</sup> See ¶ 10, *supra*.

<sup>49</sup> See ¶ 8, *supra*.

<sup>50</sup> See ¶ 12, *supra*.

<sup>51</sup> See October 2013 Supplement at 1, 55.

<sup>52</sup> See ¶ 12, *supra*.

<sup>53</sup> 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*).

<sup>54</sup> See *id.* (citing *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28, n.101).

16. We also reject Consumer Groups' assertion that SJTV's Petition should be denied because it failed to offer "evidence" that it requested captioning assistance from its programming distributor or that it sought captioning sponsorships.<sup>55</sup> SJTV states in its Petition, as supplemented, that its video programming distributors are unable to offer captioning assistance and that it regularly "seeks out the addition of new sponsors,"<sup>56</sup> but that it has not been successful in securing such sponsorships.<sup>57</sup> We do not require petitioners to document their attempts to seek closed captioning assistance from their video programming distributors or their attempts to seek additional sponsorships.<sup>58</sup> Accordingly, SJTV's statement verifying that it sought additional sponsorships satisfies the Commission's requirement to seek outside sponsorships for closed captioning.

17. SJTV 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."<sup>59</sup> 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 [economic] burden exemption if the facts before us indicate that the particular circumstances of the petition warrant a limited exemption."<sup>60</sup> Similarly, the Commission has stated its intention to "consider time limits . . . when evaluating requests for [economic] burden exemptions on the basis of the information regarding individual circumstances."<sup>61</sup> 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.

As discussed above, in the instant case, we conclude that SJTV has demonstrated that its financial situation, as reflected in its submissions to the Commission, makes captioning costs economically burdensome for it. Given the evolution of technology, potential drops in the cost of captioning over time,

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<sup>55</sup> See ¶ 12, *supra*.

<sup>56</sup> See ¶ 11, *supra*.

<sup>57</sup> See *id.*; October 2013 Petition Supplement at 1.

<sup>58</sup> See *Anglers Reversal MO&O*, 26 FCC Rcd at 14951, ¶ 28 (requiring each petitioner to "indicate" whether it has sought additional sponsorship sources or other sources of revenue for captioning).

<sup>59</sup> *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.

<sup>60</sup> *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.

<sup>61</sup> *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).



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

#### 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,<sup>62</sup> IT IS ORDERED that the Petition filed by SJTV, 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 February 21, 2017.

19. IT IS FURTHER ORDERED that SJTV shall commence closed captioning of the programming that is the subject of its Petition no later than February 21, 2017.

20. IT IS FURTHER ORDERED that SJTV 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](mailto:captioningexemption@fcc.gov), which the Commission will make available for public inspection.<sup>63</sup> The e-mail attachment must reference Case Identifier CGB-CC-1226.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss  
Deputy Chief  
Consumer and Governmental Affairs Bureau

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<sup>62</sup> 47 U.S.C. § 613, 47 C.F.R. §§ 0.141(f), 79.1(f).

<sup>63</sup> See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, Public Notice, 29 FCC Rcd 3960 (CGB 2014).