

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

In the Matter of)
Gray Publishing, Inc.) CGB-CC-0287
Petition for Exemption from the)
Closed Captioning Requirements) CG Docket No. 06-181

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 2015

Released: January 22, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by Gray Publishing, Inc. (Gray) for an exemption from the Federal Communications Commission’s (FCC’s or Commission’s) closed captioning requirements for its program, Exploring Alaska Native Voices. Because we conclude that Gray 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, Exploring Alaska Native Voices, for a period of two years from the date of the release of this Order. Exploring Alaska Native Voices must be closed captioned no later than the end of the two year temporary exemption, which is Monday, January 23, 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,1 and directing the Commission to prescribe rules to carry out this mandate.2 In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.3 The Commission’s closed

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

2 47 U.S.C. §§ 613(b)-(c).

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

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

3. Section 713(d)(3) of the Communications Act authorizes the Commission to grant individual exemptions from the television closed captioning requirements upon a showing that the requirements would be economically burdensome, defined as imposing on the petitioner a “significant difficulty or expense.”⁵ Any entity in the programming distribution chain, including the owner, provider, or distributor of the programming, may petition the Commission for such an exemption under section 79.1(f) of the Commission’s rules.⁶ When making its determination as to whether a petitioner has made the required showing, the Commission, in accordance with section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules, considers the following factors on a case-by-case basis: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷

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

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

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

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

⁷ 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2). A petitioner may also present for the Commission’s consideration “any other factors the petitioner deems relevant to the Commission’s final determination,” including alternatives that might constitute a reasonable substitute for closed captioning. 47 C.F.R. § 79.1(f)(3). The Commission has delegated the responsibility for evaluating and ruling on these petitions to the Consumer and Governmental Affairs Bureau. *Economically Burdensome Standard Order*, 27 FCC Rcd at 8834-35, ¶ 8.

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

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

6. Gray initially filed an undated petition for exemption, which the Commission received on January 9, 2006 (hereinafter Petition).¹² On November 7, 2006, the Consumer and Governmental Affairs Bureau (CGB or Bureau) invited comment on the Petition.¹³ Certain consumer organizations jointly filed an opposition to the Petition.¹⁴ In 2012, the Bureau notified Gray of the need to file updated information

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

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

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

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

¹² See Petition for Full Exemption From Closed Captioning Requirements (filed Jan. 9, 2006) (Petition).

¹³ *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, 13158 (Appendix A) (CGB 2006).

¹⁴ See CGB-CC-0287 – Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Paul Gray, 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), 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).

with respect to its pending petition.¹⁵ In response, in a letter dated June 27, 2012, Gray affirmed that its Petition was accurate and up-to-date.¹⁶ By letter dated September 19, 2012, the Bureau requested additional and updated information from Gray, in which it explained the need for such information to determine whether the programming at issue should be exempt from the Commission's closed captioning obligations.¹⁷ In response to this letter, Gray again supplemented the Petition.¹⁸ On November 30, 2012, the Bureau again invited comment on the Petition,¹⁹ and certain consumer organizations jointly filed an opposition to the Petition.²⁰ The Bureau subsequently determined that it again required additional and updated information to enable it to determine the merits of a closed captioning exemption for Gray and requested such information in a letter dated September 27, 2013.²¹ In response, Gray further supplemented the Petition in a filing dated October 22, 2013.²² The Bureau again placed the Petition on Public Notice for comment on December 26, 2013.²³ Again, several consumer groups jointly filed an opposition to the Petition.²⁴ In a letter dated February 26, 2014, Gray filed a reply to the Consumer Groups Opposition.²⁵

III. DISCUSSION

7. Gray produces *Exploring Alaska Native Voices*, a half-hour program that is produced in Soldotna, Alaska and broadcast weekly on Sundays at 4:30 p.m. local time on Station KYUR(TV) (KYUR).²⁶ Gray describes *Exploring Alaska Native Voices* as an independent, local television program

¹⁵ See *Notice of Need to File Updated Information with Respect to Pending Petitions for Exemption from Commission's Closed Captioning Rules, Which Were Filed Prior to October 2010*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 3106 (CGB 2012) (alerting various 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, CGB, to *Exploring Alaska* (Apr. 5, 2012).

¹⁶ See Letter from Paul Gray, Producer, *Exploring Alaska TV Show*, to FCC (June 27, 2012) (filed June 29, 2012).

¹⁷ See Letter from Roger Holberg, Disability Rights Office, CGB, to *Exploring Alaska TV Show* (Sept. 19, 2012).

¹⁸ See Affidavit of Paul Gray (Oct. 16, 2012) (filed Oct. 18, 2012) (October 2012 Petition Supplement).

¹⁹ *Request for Comment/Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 14921 (CGB 2012).

²⁰ See Re: Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181, CGB-CC-0203, CGB-CC-0287, CGB-CC-0572, CGB-CC-0923, CGB-CC-1019, CGB-CC-1032, CGB-CC-1170, CGB-CC-1240, CGB-CC-1252, CGB-CC-1253, CGB-CC-1256, TDI, NAD, DHHCAN, ALDA, and Cerebral Palsy and Deaf Organization (CPADO) (Jan. 14, 2013).

²¹ See Letter from Cheryl J. King, Disability Rights Office, CGB, to "Exploring Alaska" (Sept. 27, 2013).

²² See Affidavit of Paul Gray (with attachments, including 2011 and 2012 income tax returns for Gray Publishing, Inc., and closed captioning quotes) (Oct. 22, 2013) (filed Oct. 24, 2013) (October 2013 Petition Supplement).

²³ *Request for Comment/Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, 28 FCC Rcd 17100 (CGB 2013) (2013 Public Notice).

²⁴ See Re: Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181, CGB-CC-0001, CGB-CC-0024, CGB-CC-0143, CGB-CC-0144, CGB-CC-0287, CGB-CC-0303, TDI, DHHCAN, CPADO, CCASDHH, NAD, and ALDA (collectively, Consumer Groups) at 2, 13-14 (Jan. 27, 2014) (Consumer Groups Opposition).

²⁵ See Letter from Paul Gray, to Marlene H. Dortch, Secretary, Office of the Secretary, FCC (Feb. 26, 2014) (filed Mar. 7, 2014) (Reply to Opposition).

²⁶ October 2012 Petition Supplement at 1; October 2013 Petition Supplement at 1. In its Petition, Gray states that it produces 26 shows a year. Petition at 1. However, in its October 2013 Petition Supplement, Gray states that the program airs "weekly" and provides an estimate of the annual cost to provide closed captioning for 52 programs per (continued....)

that provides historical and educational information.²⁷ According to Gray, the program is produced in “rural Alaska,” and the owner of the company, Paul Gray, single-handedly films, edits, and produces the show and has “no employees.”²⁸ Gray maintains that requiring its program to comply with the Commission’s closed captioning requirements would be economically burdensome.²⁹

8. Gray submitted two recent quotes to caption its program.³⁰ The first quote, from Caption Associates, LLC, is for \$270.00 per show, or \$14,040.00 per year (*i.e.*, for 52 programs).³¹ The second “quote,” from Caption Depot, is actually a range of quotes depending on the number of videos for which captioning is requested and the turnaround time required.³² The lowest quote from Caption Depot, with a turnaround time of ten business days, is \$330.00 for the first five videos and \$280.50 for any subsequent videos, or \$14,833.50 per year (*i.e.*, for 52 programs).³³

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year. October 2013 Petition Supplement at 1. For the purposes of this exemption order, we assume that Gray presently produces 52 programs per year.

²⁷ October 2012 Petition Supplement at 1; October 2013 Petition Supplement at 1.

²⁸ October 2013 Petition Supplement at 1; Petition at 1.

²⁹ October 2013 Petition Supplement at 1.

³⁰ *Id.* at 21-22. In addition to providing documentation for two recent quotes to caption its program, Gray states that closed captioning will “increase the cost per week” for producing the show by \$300.00, resulting in an increased production cost of \$15,600.00 per year. *Id.* at 1. It is not clear how Gray reaches this figure, given the documented captioning quotes of \$270.00 per show and \$330.00 for the first five shows and \$280.50 for any subsequent shows that it provides, *id.* at 21-22, so we do not consider the estimate of \$15,600.00 per year in making our determination as to whether providing closed captioning would be economically burdensome to Gray.

³¹ *Id.* at 22. The annual cost of closed captioning based on the quote from Caption Associates, LLC, is calculated by multiplying the cost per show (\$270.00) by the number of shows per year (52).

³² *Id.* at 21 (providing quotes for videos mailed to Caption Depot for captioning of \$505.00 for the first five videos and \$429.25 for any subsequent videos with a turnaround time of two business days; \$360.00 for the first five videos and \$306.00 for any subsequent videos with a turnaround time of five business days; and \$330.00 for the first five videos and \$280.50 for any subsequent videos with a turnaround time of ten business days). Gray did not specify the turnaround time needed to caption its program. Caption Depot also provided quotes for captioning videos that are uploaded and sent to Caption Depot via the Internet. Because Gray states that it produces the program in rural Alaska and “do[es] not have fast internet service,” *id.* at 1, and includes an estimate of the cost to ship tapes of the program via FedEx to and from the captioning agency, October 2012 Petition Supplement at 1, it seems that Gray may be unable to electronically transmit its program to Caption Depot for captioning. Thus, we do not consider these quotes.

³³ *See* October 2013 Petition Supplement at 21. The annual cost of closed captioning based on the lowest quote from Caption Depot is calculated by adding \$1650.00 (\$330.00 – the cost of captioning each show for the first five shows – multiplied by five) and \$13,183.50 (\$280.50 – the cost of captioning each subsequent show – multiplied by 47). Although, in a previous submission, Gray asserted that it would incur an additional cost of \$84.00 per week, or \$4,368.00 per year, to ship tapes of its program back and forth between the captioning provider and itself, October 2012 Petition Supplement at 1, Gray did not include these shipping costs in its October 2013 Petition Supplement. Thus, we have not included these costs in our calculations of Gray’s total costs of captioning. However, even with the lower captioning estimates, we have determined, as discussed more fully below, that Gray warrants a captioning exemption.

9. With its Petition, as supplemented, Gray submitted United States Income Tax Returns for an S Corporation, Form 1120S, for 2011 and 2012.³⁴ For 2011, Gray reports income of \$94,250.00, expenses of \$58,063.00, and net income of \$36,187.00.³⁵ For 2012, Gray reports income of \$87,935.00, expenses of \$54,731.00, and net income of \$33,204.00.³⁶

10. Gray's 2011 and 2012 income tax returns also report its current assets and current liabilities.³⁷ Gray reports total current assets as of December 2011 of \$1,385.00 and no current liabilities.³⁸ Gray also reports total current assets as of December 2012 of \$6,121.00 and no current liabilities.³⁹

11. Gray reports that it requested captioning assistance from its video programming distributor, KYUR; however, KYUR was unable to offer captioning assistance.⁴⁰ Gray further indicates that it has sought additional sponsorship sources for closed captioning.⁴¹ Gray asserts that, absent an exemption from the captioning requirements, it would have to "cease production" of *Exploring Alaska Native Voices*.⁴²

12. Consumer Groups, which were the only parties to comment on the Petition in response to the *2013 Public Notice*, contend that Gray failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.⁴³ First, Consumer Groups acknowledge that Gray obtained captioning quotes from multiple providers but argue that Gray did not provide documentation that it negotiated with those providers for lower costs.⁴⁴ Second, Consumer Groups acknowledge that Gray sought closed captioning assistance from the broadcast station that airs its program but argue that Gray did not describe and provide documentation of its efforts to seek other sources of sponsorships for closed captioning.⁴⁵ Third, with regard to Gray's financial resources, Consumer Groups argue that, because Gray provided only its annual tax returns, it did not provide sufficiently detailed information about its organization's finances and assets to enable the public to evaluate whether Gray's program would qualify for an exemption.⁴⁶ Consumer Groups also argue that the financial information that Gray did supply shows that requiring Gray to provide closed captioning for its program would not be economically burdensome.⁴⁷ Specifically, Consumer Groups claim that because

³⁴ See October 2013 Petition Supplement at 3-11 (2012 United States Income Tax Return for an S Corporation), 12-20 (2011 United States Income Tax Return for an S Corporation). Gray explains that "the great majority" of Gray's income comes from "non broadcast video production." Reply to Opposition at 1.

³⁵ October 2013 Petition Supplement at 12.

³⁶ *Id.* at 3.

³⁷ See *id.* at 6, 10, 15, 18.

³⁸ *Id.* at 15, 18.

³⁹ *Id.* at 6, 10.

⁴⁰ *Id.* at 1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Consumer Groups Opposition at 13-14.

⁴⁴ *Id.* at 13.

⁴⁵ *Id.*

⁴⁶ *Id.* at 13-14.

⁴⁷ *Id.* at 14.

Gray's 2012 tax return indicates gross revenues of \$88,000.00 and a profit distribution of \$27,284.00, Gray's financial resources are sufficient to cover the estimated cost of \$15,600.00 for closed captioning.⁴⁸

13. *Determination.* After a careful review of the record, the Bureau finds that Gray has demonstrated that the provision of closed captioning for *Exploring Alaska Native Voices* would be economically burdensome. Our conclusion is supported by the information and documentation Gray has provided, which shows that Gray had net income of \$36,187.00 in 2011 and \$33,204.00 in 2012, with only minimal net current assets of \$1,385.00 as of December 2011 and \$6,121.00 as of December 2012.⁴⁹ If Gray were required to provide closed captioning for its program at an annual cost of \$14,040.00 (the lower of the two estimates provided by Gray),⁵⁰ it would have had to spend as much as 38.8% of its 2011 net income and 42.3% of its 2012 net income on closed captioning.⁵¹ In addition, Gray's net current assets of \$1,385.00 and \$6,121.00 as of 2011 and 2012, respectively, were insufficient to cover these captioning costs.⁵² We are persuaded, based on this information, that having to caption *Exploring Alaska Native Voices* would have a significant detrimental impact on Gray's financial resources and possibly lead to the termination of the program.⁵³

14. We are not persuaded by Consumer Groups' arguments in opposition to the Petition. Contrary to suggestions by Consumer Groups,⁵⁴ we do not require petitioners to demonstrate that they negotiated with closed captioning service providers for captioning costs that are lower than the quotes

⁴⁸ *Id.*

⁴⁹ See ¶¶ 9-10, *supra*. We do not base our determination that providing closed captioning would be economically burdensome on a comparison of the cost of closed captioning to the production budget for *Exploring Alaska Native Voices*, as Gray suggests. See October 2013 Petition Supplement at 2. The Commission has rejected suggestions "to consider only the resources available for a specific program" in making the determination of whether provision of closed captioning is economically burdensome. See *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"). Thus, we consider the overall financial resources of Gray in determining whether it would be economically burdensome for Gray to comply with the Commission's closed captioning requirements.

⁵⁰ As noted above, see n.30, *supra*, we are unable to determine the basis for Gray's claim that closed captioning its program (without including shipping costs) would cost \$15,600.00 annually and, accordingly, we do not consider this estimate in determining whether providing closed captioning would be economically burdensome for Gray. *Id.*

⁵¹ See ¶ 9, *supra* (stating Gray's net income in 2011 and 2012). We note that the 2011 and 2012 tax returns submitted by Gray do not list any salaries or wages, October 2013 Petition Supplement at 3, 12, suggesting that Mr. Gray did not receive a salary for his work on the program.

⁵² See ¶ 10, *supra* (stating Gray's net current assets in 2011 and 2012).

⁵³ We do not agree with Consumer Groups that the financial information that Gray submitted shows that providing closed captioning would not be economically burdensome. See Consumer Groups Opposition at 14. Consumer Groups argue that because Gray Publishing's 2012 gross revenue and profit distribution are "significantly more" than Gray's quoted annual captioning cost of \$15,600.00 and indicate that Gray is "financially solvent," providing closed captions would not be economically burdensome. *Id.* The amount of a petitioner's gross revenues and profit distributions alone are not sufficient to determine whether providing closed captioning would be economically burdensome. See ¶ 3, *supra*; *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") (emphasis added).

⁵⁴ See ¶ 12, *supra*.

they provide to the Commission.⁵⁵ 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.⁵⁶ We also reject Consumer Groups' assertion that Gray failed to provide sufficient description or documentation of its efforts to obtain outside sponsorships for closed captioning.⁵⁷ Gray verified that it unsuccessfully sought additional sponsorships for closed captioning.⁵⁸ We do not require petitioners to provide documentation of their efforts to obtain additional sponsorships.⁵⁹ Accordingly, Gray's statement verifying that it sought additional sponsorships satisfies the Commission's requirement to seek outside sponsorships for closed captioning.

15. Additionally, we do not agree that the Petition should be denied because Gray failed to provide sufficiently detailed financial information.⁶⁰ Although Gray did not submit "traditional accounting balance sheets" with the Petition,⁶¹ it did submit United States Income Tax Returns for an S Corporation for 2011 and 2012.⁶² As noted above, we consider certain factors when making a determination as to whether a petitioner has made the required showing that providing closed captioning would be economically burdensome.⁶³ For the most part, our analysis considers the ability of a petitioner to afford closed captioning costs in light of its financial resources and the impact that providing captions would have on the programming that is the subject of its petition.⁶⁴ From the tax returns that Gray provided, the Bureau is able to determine Gray's 2011 and 2012 income, expenses, and net income, as well as its current assets and current liabilities as of December 2011 and December 2012.⁶⁵ This information is sufficiently detailed to enable the Bureau to conduct an analysis regarding Gray's ability to afford closed captioning costs and the impact that providing captions would have on its program and to reach a determination regarding the economic burden of providing closed captioning. Thus, we conclude that the financial information that Gray submitted met our requirements at the time the Petition was submitted and supplemented. Finally, for the reasons stated above,⁶⁶ we do not agree with Consumer Groups that the financial information that Gray submitted shows that providing captions would not be economically burdensome.

16. Gray 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

⁵⁵ 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*).

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

⁵⁷ See ¶ 12, *supra*.

⁵⁸ See ¶ 11, *supra*; October 2013 Petition Supplement at 1.

⁵⁹ 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).

⁶⁰ See ¶ 12, *supra*.

⁶¹ See Consumer Groups Opposition at 13.

⁶² See ¶ 9, *supra*.

⁶³ See ¶ 3, *supra*.

⁶⁴ See 47 C.F.R. § 79.1(f)(2).

⁶⁵ See ¶¶ 9-10, *supra*.

⁶⁶ See ¶ 13, *supra*.

petitioner of its captioning obligation.”⁶⁷ 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.”⁶⁸ 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.”⁶⁹ 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, we conclude that Gray 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, and the possibility that the financial status of Gray may change, we conclude that an exemption of two years is warranted in this case. We further believe this period of time will give Gray 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,⁷⁰ IT IS ORDERED that the Petition filed by Gray, 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 January 23, 2017.

19. IT IS FURTHER ORDERED that Gray shall commence closed captioning of the programming that is the subject of its Petition no later than January 23, 2017.

20. IT IS FURTHER ORDERED that Gray must inform the Commission of the date on which it commences closed captioning of its programming in accordance with this Order and the

⁶⁷ *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.

⁶⁸ *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.

⁶⁹ *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).

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

Commission's rules by e-mail to captioningexemption@fcc.gov, which the Commission will make available for public inspection.⁷¹ The e-mail attachment must reference Case Identifier CGB-CC-0287.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

⁷¹ 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).