

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

In the Matter of)
Ministry of Communications of the Archdiocese of) CGB-CC-0369
Miami, FL)
Petition for Closed Captioning Exemption) CG Docket No. 06-181
Application for Review)

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 2017

Released: May 26, 2017

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by the Ministry of Communications of the Archdiocese of Miami, Florida (ADOM), regarding the Consumer and Governmental Affairs Bureau’s (Bureau) dismissal of its petition for an exemption from, or a waiver of, the closed captioning requirements for its Sunday Mass program. We conclude that the Bureau erred in finding that ADOM failed to provide verification of its efforts to obtain closed captioning assistance from video programming distributors. In addition, we conclude that the Bureau erred in failing to address ADOM’s waiver request. Accordingly, we grant the AFR in those respects and remand this matter to the Bureau for further proceedings.

II. BACKGROUND

2. General. Pursuant to section 713 of the Communications Act of 1934, as amended (the Act), the Commission has established requirements for closed captioning of video programming to ensure access to such programming by people who are deaf or hard of hearing.1 The Commission’s closed captioning rules currently require video programming distributors, absent an exemption, to caption 100 percent of all new English and Spanish language programming.2

3. Individual Exemptions. Section 713(d)(3) of the 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.”3 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

1 47 U.S.C. § 613; 47 CFR 79.1 et seq. “Video programming” means “programming by, or generally considered comparable to programming provided by a television broadcast station.” 47 U.S.C. § 613(h)(2); see also 47 CFR § 79.1.

2 47 CFR § 79.1(b)(1).

3 47 U.S.C. § 613(d)(3), (e); see also 47 CFR § 79.1(f)(2).

79.1(f) of the Commission's rules.⁴ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.⁵

4. *Categorical Exemptions.* In addition to providing for individual exemptions, section 713(d)(1) of the Communications Act allows the Commission to establish categorical exemptions from the television closed captioning requirements for categories of programming for which the Commission has determined that the provision of captions would be economically burdensome.⁶

5. *Procedural history.* On December 29, 2005, ADOM filed a petition for an individual closed captioning exemption for the English-language version of *Sunday Mass*, an ADOM-produced half-hour television program that is broadcast weekly on Sunday mornings on a Miami television station.⁷ In a Public Notice released on February 22, 2006, the Bureau invited comment on the petition.⁸ The Bureau subsequently granted the exemption to ADOM on September 11, 2006.⁹ In 2011, the Commission reversed certain Bureau grants of exemption, including the exemption granted to ADOM.¹⁰ By letter dated October 25, 2011, the Bureau notified ADOM of this reversal and explained that ADOM 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.¹¹ On January 18, 2012, ADOM submitted a new petition, in which it requested an exemption for only the Spanish-language version of *Sunday Mass*.¹² On November 12, 2013, the Bureau determined that it required additional and updated information to enable it to determine whether the programming described in the petition should be exempt from the Commission's closed captioning obligations.¹³ ADOM filed a supplement to its petition on December 12, 2013.¹⁴ On February 4, 2014, the Bureau determined that the petition remained incomplete, and dismissed the petition without prejudice.¹⁵ On

⁴ 47 CFR § 79.1(f)(1). 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." *Id.*

⁵ 47 U.S.C. § 613(d)(3); 47 CFR § 79.1(f)(11).

⁶ 47 U.S.C. § 613(d)(1).

⁷ Petition for Exemption and/or Waiver of the Television Center of the Archdiocese of Miami, Florida, at 2 (filed Dec. 29, 2005) (2005 Petition). The Commission's rule requiring 100 percent of a video programming distributor's new non-exempt English-language video programming to be provided with captions became effective January 1, 2006. 47 CFR § 79.1(b)(1)(iv) (2015).

⁸ *Consumer and Governmental Affairs Bureau Action: Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, 21 FCC Rcd 1659 (CGB 2006).

⁹ See Letter from Thomas E. Chandler, Chief, Disability Rights Office, CGB, to Television Center of the Archdiocese of Miami (Sept. 11, 2006).

¹⁰ *Anglers for Christ Ministries, Inc., et al.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14949, para. 25, 14972, Appx. A (2011) (*Anglers Reversal MO&O*).

¹¹ See Letter from Joel Gurin, Chief, CGB, to ADOM, CGB-CC-0369 (Oct. 25, 2011) (*2011 Bureau Letter*); see also 47 CFR § 79.1(f)(11); *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, para. 16 & n.60.

¹² ADM Ministry of Communications, Petition of the "Sunday Mass" for Exemption and/or Waiver (filed Jan. 18, 2012) (2012 Petition). The Commission's rule requiring 100 percent of a video programming distributor's new non-exempt Spanish-language video programming to be provided with captions became effective January 1, 2010. 47 CFR § 79.1(b)(3)(iv) (2015).

¹³ Letter from Perlesta Hollingsworth, Disability Rights Office, CGB, to Robert Lewis Thompson, Smithwick & Belendiuk, P.C., Counsel for ADOM, CGB-CC-0369 (Nov. 12, 2013) (*CGB 2013 Request for Supplemental Information*).

¹⁴ ADOM, Response and Supplement to Petition, CGB-CC-0369 (filed Dec. 12, 2013) (Petition 2013 Supplement).

¹⁵ Letter from Perlesta Hollingsworth, Disability Rights Office, CGB, to Robert Lewis Thompson, Smithwick & Belendiuk, P.C., Counsel for ADOM, CGB-CC-0369 (Feb. 4, 2014) (*CGB Dismissal Without Prejudice Letter*).

March 5, 2014, ADOM filed its AFR requesting the Commission to reverse the dismissal of its petition and grant appropriate administrative relief.¹⁶

III. DISCUSSION

6. *Economically burdensome exemption.* In the *Anglers Reversal MO&O*, the Commission identified the material that must be provided with such a petition to address the four factors set forth by Congress in section 713 of the Act.¹⁷ Specifically, a petitioner must: (1) provide documentation of its financial status to demonstrate its inability to afford closed captioning; (2) verify that it has obtained information about the costs it would incur to caption their programming; (3) verify that it has sought closed captioning assistance from its video programming distributors, noting the extent to which such assistance has been provided or rejected; (4) indicate whether it has sought additional sponsorship sources or other sources of revenue for captioning; and (5) show that it does not have the means to provide captioning for its programming.¹⁸ In part, the Bureau's dismissal of ADOM's petition relied on determinations as to the adequacy of documentation submitted by ADOM, including information about ADOM's financial status and the costs that would be associated with captioning its programming. However, in dismissing ADOM's petition, the Bureau stated that ADOM failed to provide verification that ADOM sought closed captioning assistance from its video programming distributor.¹⁹ We find that the Bureau erred on this point. The record indicates that ADOM did describe unsuccessful efforts to obtain financial support from its video programming distributor.²⁰ Accordingly, we find that the record does not support the Bureau's determinations that ADOM failed to provide such information.

7. *"Good cause" waiver.* We also conclude that the Bureau erred by failing to address Petitioner's "good cause" waiver request.²¹ The dismissal letter does not indicate that this request was considered by the Bureau.

8. Therefore, we remand ADOM's petition to the Bureau for further consideration in light of the above rulings.²²

¹⁶ ADOM, Application for Review, CGB-CC-0369 (Mar. 5, 2014) (AFR).

¹⁷ *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, para. 28. The four factors that are to be considered by the Commission in determining whether captioning would create an economic burden are: (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. See 47 U.S.C. § 613(e). "Failure to support an exemption request with adequate explanation and evidence to make these showings will result in dismissal of the request." *Anglers Reversal MO&O*, 26 FCC Rcd at 14956, para. 28 (citing *The Wild Outdoors et al.*, Memorandum Opinion and Order, 16 FCC Rcd 13611, 13614, para. 12 (CSB 2001)).

¹⁸ *Anglers Reversal MO&O*, 26 FCC Rcd at 14956, para. 28. In addition, the Bureau has issued specific guidance on the information and documentation needed to support a petition and to allow the Bureau to make reasoned and consistent determinations. See CGB, *Required Information and Documentation to Provide in Filing a New Petition to be Exempt from the Television Closed Captioning Requirements*, https://apps.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf (last visited Nov. 17, 2016).

¹⁹ *CGB Dismissal Without Prejudice Letter* at 1.

²⁰ AFR at 8-9; 2012 Petition, Appendix A, paras. 8-9.

²¹ See AFR at 10; Petition at 8-9.

²² Because we remand the petition to the Bureau for the reasons explained above, we do not reach at this time the other arguments advanced in ADOM's application for review. See AFR at 3-8 (arguing that the Bureau's denial of an exemption violated ADOM's First Amendment rights and that the Bureau erroneously failed to address ADOM's claim that it is covered by a categorical exemption from closed captioning).

IV. ORDERING CLAUSES

9. Accordingly, pursuant to section 1.115 of the Commission's rules,²³ IT IS ORDERED that the Application for Review filed by ADOM IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that ADOM's petition is remanded to the Bureau for further proceedings.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ 47 CFR § 1.115.