Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Dawson Memorial Baptist Church	)	CGB-CC-0144
	)	
Petition for Exemption from the	)	CG Docket No. 06-181
Closed Captioning Requirements	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2014 **Released: December 19, 2014**

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by Dawson Memorial Baptist Church (Dawson) for an exemption from the Federal Communications Commission's (FCC's or Commission's) closed captioning requirements for its program, *Dawson Memorial Baptist Church*. Because we conclude that Dawson has not demonstrated that its compliance with the Commission's closed captioning requirements for this program would be economically burdensome to it, we deny the petition. In light of our action, Dawson must provide closed captioning for its program no later than March 19, 2015, which is 90 days from the date of the release of this Order.

II. BACKGROUND

2. In 1996, Congress added section 713 to the Communications Act of 1934, as amended (Communications Act), establishing requirements for closed captioning of video programming to ensure access to such programming by people who are deaf or hard of hearing,[1] and directing the Commission to prescribe rules to carry out this mandate.[2] In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.[3] The Commission's closed

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

[2] 47 U.S.C. §§ 613(b)-(c).

[3] *See* 47 C.F.R. § 79.1; *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997) (*Closed Captioning Report and Order); Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*).

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

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

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[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 programing first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(6). Bilingual English-Spanish language programming is subject to the same closed captioning requirements for new and pre-rule programming. *See Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2288-89, ¶ 115 (2014).

[5] *See* 47 U.S.C. §§ 613(d)(3),(e); *see also* 47 C.F.R. § 79.1(f)(2). As originally enacted in 1996, section 713 of the Communications Act authorized the Commission to grant individual closed captioning exemptions upon a showing that providing closed captioning would "result in an undue burden." Pub. L. No. 104-104, § 305, 110 Stat. 126 (1996). Section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) replaced the term "undue burden" with the term "economically burdensome." Pub. L. No. 111-260, § 202(c), 124 Stat. 2771, amending 47 U.S.C. § 613(d)(3). For purposes of evaluating individual exemptions, the Commission has determined that Congress intended the term "economically burdensome" to be synonymous with the term "undue burden" as defined by section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission's rules. *See Interpretation of Economically Burdensome Standard, Amendment of Section 79.1(f) of the Commission's Rules, Video Programming Accessibility*, CG Docket No. 11-175, Report and Order, 27 FCC Rcd 8831, 8834, ¶ 7 (2012) (*Economically Burdensome Standard Order*).

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

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

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

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

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

6. Dawson initially filed a petition for exemption by letter dated December 12, 2005, which was received by the Commission on December 27, 2005.[12] The Consumer and Governmental Affairs Bureau (CGB or Bureau) requested more information about the petition on February 13, 2006.[13] Dawson supplemented the petition by an undated letter, which was received by the Commission on March 13, 2006.[14] Dawson further supplemented the petition by letter dated April 3, 2006, which was received by

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[8] This is a summary of the list of "Required Information to Provide in Filing a New Petition to be Exempt from the Closed Captioning Requirements," provided by the staff to captioning exemption petitioners and available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf, which the Bureau developed, based on the Communications Act, the Commission's rules, and Commission history and experience evaluating such petitions. *See Anglers for Christ Ministries, Inc., et al.; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*, CG Docket Nos. 06-181 and 11-175, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-56, ¶ 28 (2011) (*Anglers Reversal MO&O*).

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

[10] *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28 (citing *The Wild Outdoors*, *Video Programming* Accessibility*, Petition for Waiver of Closed Captioning Requirements*, CSR Docket No. 5444, 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* Letter from Janelle Hite, Director of Media, Dawson Memorial Baptist Church, to Office of the Secretary, FCC (Dec. 12, 2005).

[13] *See* Letter from Amelia Brown, Attorney, Disability Rights Office, CGB, to Dawson Memorial Baptist Church (Feb. 13, 2006).

[14] *See* Letter from Janelle Hite, Director of Media, Dawson Memorial Baptist Church, to Amelia Brown, Disability Rights Office, FCC (Mar. 13, 2006).

the Commission on April 5, 2006.[15] In a Public Notice released on April 7, 2006, the Bureau invited comment on the petition.[16] No comments were received. The Bureau granted the petition and issued an exemption to Dawson by letter order dated September 11, 2006.[17] In 2011, the Commission reversed certain Bureau grants of exemption, including that to Dawson.[18] By letter dated October 25, 2011, the Bureau notified Dawson of this reversal and explained that Dawson 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] In response, on January 17, 2012, Dawson filed a new petition, which was received by the Commission on January 18, 2012 (hereinafter Petition).[20] On February 8, 2012, the Bureau invited comment on the Petition.[21] Certain consumer groups jointly filed an opposition to the Petition.[22] On March 28, 2012, Dawson submitted a reply to the opposition, which was received by the Commission on March 29, 2012.[23] 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.[24] In response to a Bureau letter dated September 27, 2013, Dawson supplemented its Petition.[25] The Bureau again placed the Petition on Public Notice for comment

[15] *See* Letter from Janelle Hite, Director of Media, Dawson Memorial Baptist Church, as delivered by Bennet & Bennet, PLLC, to Office of the Secretary, FCC (Apr. 3, 2006) (2006 Letter).

[16] *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 3610 (CGB 2006).

[17] *See* Letter from Thomas E. Chandler, Chief, Disability Rights Office, CGB, to Dawson Memorial Baptist Church (Sept. 11, 2006).

[18] *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 25, and 14972 (Appendix A). 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, ¶ 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.5, *supra.*

[19] *See* Letter from Joel Gurin, Chief, CGB, to Dawson Baptist Church (Oct. 25, 2011). *See also* 47 C.F.R. § 79.1(f)(11); *Anglers Reversal MO&O,* 26 FCC Rcd at 14949, ¶ 16, n.60.

[20] Letter from Rowan Smith, Business Administrator, Dawson Memorial Baptist Church, as hand delivered by Robert A. Silverman, Bennet & Bennet, PLLC, to Office of the Secretary, FCC (Jan. 17, 2012) (Petition). The cover letter from Robert A. Silverman is dated January 18, 2012.

[21] *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules,* CG Docket No. 06-181, Public Notice, 27 FCC Rcd 1384 (CGB 2012).

[22] *See* Opposition to Dawson Memorial Baptist Church Request for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0144, CG Docket No. 06-181, 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), Association of Late-Deafened Adults (ALDA), and Cerebral Palsy and Deaf Organization (Mar. 9, 2012).

[23] *See* Letter of Rowan Smith, Business Administrator, Dawson Memorial Baptist Church, to Office of the Secretary, FCC (Mar. 28, 2012).

[24] *See* Letter from Cheryl J. King, Attorney, Disability Rights Office, CGB, to Dawson Memorial Baptist Church (Sept. 27, 2013).

[25] *See* Letter from Shannon Lindsay, Director of Media Outreach and Marketing, Dawson Memorial Baptist Church, to Office of the Secretary, FCC (Oct. 30, 2013) (Supplement).

on December 26, 2013.[26] Again, several consumer groups jointly opposed the Petition,[27] and Dawson filed a response.[28]

III. DISCUSSION

7. Dawson produces *Dawson Memorial Baptist Church*, a one-hour program that is broadcast weekly on Station WIAT(TV), Birmingham, AL (WIAT), on Sunday mornings.[29] Dawson's program airs on a one-week delay – the service broadcast is that which was held one week prior to broadcast.[30] The program is aimed at church members and others who are not otherwise able to attend local worship services.[31] Dawson publishes weekly sermon notes on its website and provides "a volunteer sign language translator to sign each service and television broadcast."[32] Dawson contends that it is unable to afford closed captioning for the weekly broadcasts, and that the cost of captioning would have the result of possibly "forcing Dawson to forego other key religious services and missions in order to afford the cost of closed captioning or even cause Dawson to discontinue the broadcast altogether, depriving the community's elderly and disabled members from participating in church services."[33]

8. Dawson obtained two quotes to caption its program, one for $400 per week from Master Video,[34] and another for $500 per week from Gemstone Media, Inc.[35] Based on these quotes, Dawson states that the cost of captioning services for a full year of *Dawson Memorial Baptist Church* (*i.e.*, 52 programs) would be $20,800 and $26,000, respectively.[36]

9. In addition, Dawson provides an estimate of captioning costs for in-house captioning. If Dawson opted to caption in-house instead of using a service, it estimates that it would cost $16,610.79 to obtain closed captioning equipment and produce in-house captioning for the first year.[37] Dawson

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[26] *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 28 FCC Rcd 17100 (CGB 2013) (*2013 Public Notice*).

[27] *See* Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules, TDI, DHHCAN, Cerebral Palsy and Deaf Organization, California Coalition of Agencies Serving the Deaf and Hard of Hearing, NAD, and ALDA (collectively, Consumer Groups) at 2, 5-8 (Jan. 27, 2014) (Consumer Groups Opposition).

[28] *See* Letter from Rowan D. Smith, Business Administrator, Dawson, as hand delivered by Robert A. Silverman, Bennet & Bennet, PLLC, to Office of the Secretary, FCC (Feb. 18, 2014) (Reply to Consumer Groups Opposition).

[29] Petition at 2, Supplement at 2.

[30] *Id.*

[31] *Id.*

[32] Petition at 4.

[33] Petition Supplement at 2. *See also* Petition at 2-5.

[34] This would be discounted to $350 per program if Dawson was able to "stagger the show by one week." *See* Supplement, Exhibit B at 4.

[35] This would be discounted to $400 per program if Dawson committed to using the service for six months. *See* Supplement, Exhibit B at 1.

[36] *See* Supplement at 2. Petitioner inaccurately annualized the quote from Master Video in its Supplement and its Reply to Consumer Opposition as $39,520, which reflects a weekly cost of $760. Supplement at 2, Reply to Consumer Opposition at 1. The quote from Master Video cited the $760 figure from "the price list for one of the nations (*sic*) top closed captioning companies." Supplement, Exhibit B at 4. That figure was cited for comparison purposes only; Master Video's quote was for $400, or $350 if the show could be staggered. *Id.*

[37] *See* Supplement, Exhibit C.

estimates the cost of software upgrades and personnel costs in subsequent years to range between $10,000 and $12,000.[38]

10. Dawson submitted financial statements for 2011 and 2012. For 2011, Dawson reports total income of $7,716,592.05, total expenses of $7,829,007.10, and excess of expenses over revenue of $112,415.05.[39] For 2012, Dawson reports income of $8,325,179.22, expenses of $8,577,158.74, and excess of expenses over revenue of $251,979.52.[40]

11. Dawson also submitted balance sheets for 2011 and 2012. Dawson reports current assets as of December 31, 2011 of $1,857,307.83, and current liabilities of $6,908.03, resulting in net current assets of $1,850,399.80.[41] Dawson also reports current assets as of December 31, 2012 of $1,830,779.42, and current liabilities of $10,588.36, resulting in net current assets of $1,820,191.06.[42]

12. Dawson reports that it requested captioning assistance from its video programming distributor, WIAT; however WIAT was unable to offer captioning assistance.[43] Dawson further states that it did not solicit captioning assistance from other sources because Dawson allegedly is precluded from doing so lest it jeopardize its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.[44] Dawson asserts that, absent an exemption from the captioning requirements or securing of a donor for the captioning, it may possibly have to forego other key religious services and missions or discontinue its broadcast of *Dawson Memorial Baptist Church*.[45] Dawson also estimates that, at the earliest, it would be able to budget for, and afford, closed captioning in fiscal year 2015.[46]

13. Consumer Groups, which were the only parties to comment on the Petition in response to the *2013 Public Notice*, contend that Dawson failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.[47] First, Consumer Groups acknowledge that Dawson obtained captioning quotes from multiple providers, but argue that it did not provide documentation that it bargained with those providers for lower costs or to identify the most affordable provider or most reasonable rates.[48] Specifically, Consumer Groups assert that Dawson

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[38] Supplement at 2.

[39] Supplement, Exhibit A_1 at 1, 11. The total expenses are calculated by adding the reported excess of expenses over revenue of $112,415.05 to the total income of $7,716,592.05. ($112,415.05 + $7,716.592.05 = $7,829.007.10.) The combined audited statements in Exhibit E_2 of the Supplement could not be used because they combined restricted and non-restricted funds and revenue, such as construction draws, and included capitalized items. Supplement, Exhibit E_2 at 5-6.

[40] Supplement, Exhibit A_2 at 1, 11. The total expenses are calculated by adding the reported excess of expenses over revenue of $251,979.52 to the total income of $8,325.179.22. ($251,979.52 + $8,325.179.22 = $8,577,158.74.) The combined audited statements in Exhibit E_2 of the Supplement could not be used because they combined restricted and non-restricted funds and revenue, such as construction draws, and included capitalized items. Supplement, Exhibit E_2 at 3-4.

[41] *See* Supplement, Exhibit F_1 at 1.

[42] *See* Supplement, Exhibit F_2 at 1.

[43] *See* Supplement, Exhibit D.

[44] Supplement at 3.

[45] Petition at 3, Supplement at 2.

[46] *See* Supplement at 3. Dawson made similar requests for a temporary waiver in order to budget for captioning expenses in its 2006 and 2012 submissions. 2006 Letter at 1, Petition at 4.

[47] Consumer Groups twice commented in opposition to this Petition, in response to both the *2012 Public Notice* and the *2013 Public Notice*. *See* n. 22 and n. 27, *supra*.

[48] *See* Consumer Groups Opposition at 10.

did not follow up with one provider's offer to reduce the cost quoted to Dawson if it was willing to "stagger" its show by one week.[49] Second, Consumer Groups acknowledge that Dawson sought closed captioning assistance from the broadcast station that airs its program, but argue that Dawson's unwillingness to solicit other sponsors out of concerns that such would jeopardize its nonprofit status under the Internal Revenue Code is not based on fact and cannot be used to avoid its captioning obligations.[50] Third, with regard to Dawson' financial resources, Consumer Groups argue that there would be no economic burden in requiring Dawson to caption its programming.[51] Consumer Groups ask the Commission to consider Dawson's annual budget, which it states was $8.33 million in 2012 with a budget carryover of $251,980, as compared to its annual captioning expenses estimated at $26,000.[52] Consumer Groups argue that because these captioning costs represent only 0.3 percent of Dawson's annual budget and roughly ten percent of its excess revenue carryover, Dawson can easily afford to caption its programming.[53] Thus, Consumer Groups conclude, requiring Dawson to caption its program cannot be considered economically burdensome.[54] Finally, Consumer Groups urge denial of Dawson's request that its requirement to provide captioning be delayed until 2015. They point out that Dawson has not had to caption its program for eight years since the filing of its initial petition, and add that despite having nearly a decade to budget for its captioning expenses, Dawson has made no measureable progress toward providing captioning in that time.[55]

14. In its Reply to Consumer Groups Opposition, Dawson asserts that the estimated costs for it to caption its program have increased from $230 - $250 per week in 2011 to $500 - $760 per week in 2012.[56] In this regard, it contends that the small discounts offered it by captioning services nevertheless leave captioning costs estimated in 2012 beyond the estimates it received in 2011.[57] Additionally, Dawson reports that the cost to broadcast its program has increased, further eroding its ability to afford closed captioning.[58] Dawson reminds the Commission that it remains willing to caption if given sufficient additional time to reassess its budget and incorporate the funds required, asserting that a temporary waiver would provide it with regulatory certainty.[59] Since 2006, Dawson continues, it has relied on its previously granted permanent captioning exemption and, since the reversal of that exemption

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[49] *Id*.

[50] *See id.* at 10-11. Consumer Groups claim that charitable solicitation regulation is primarily a matter of state, not federal, law, and that under Alabama state law, there is no prohibition preventing Dawson from seeking sponsors to pay its captioning expenses. *Id.* at 11.

[51] *Id*.

[52] *Id.*

[53] *Id*.

[54] *Id*.

[55] *Id.*

[56] *See* Reply to Consumer Groups Opposition at 1-2. In this Reply, Petitioner again inaccurately cites the quote from Master Video as $760 per week, when in fact the Master Video quote was for $400. Petition Supplement, Exhibit B at 4. *See* n. 36, *supra.*

[57] *See* Reply to Consumer Groups Opposition at 2. Nor, it continues, can it take advantage of the discount for "staggering" its captioning because its program must air as timely as possible in order reach members unable to attend its live service. *Id.*

[58] *Id*.

[59] *Id*. at 2-3.

it has "reasonably awaited the possibility that the Commission might grant Dawson with a permanent closed captioning exemption."[60]

15. *Determination.* After a careful review of the record, the Bureau finds that Dawson has not demonstrated that the provision of closed captioning for its program 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 consideration.[61] 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.[62] Therefore, we now consider the overall financial resources available to Dawson in determining whether it would be economically burdensome to comply with the Commission's closed captioning requirements.

16. According to the information and documentation it has provided, although Dawson has excess expenses over revenue for at least 2011 and 2012, it had sufficient net current assets during that period to sustain captioning costs.[63] Dawson had net current assets of $1,850,399.80 as of December 31, 2011, and $1,820,191.06 as of December 31, 2012,[64] which, when compared to the lower of the closed captioning estimates of $20,800.00 provided by Dawson,[65] provides evidence that the provision of closed captioning would not be economically burdensome.[66] Moreover, Dawson had cash reserves in a Reserve Fund and a Miscellaneous Fund in the amount of $882,407.20 and $357,411.00, respectively as of December 31, 2012.[67] Based on our review and analysis, we conclude that Dawson has more than

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[60] *See id.*

[61] *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").

[62] *Id.*

[63] Dawson had excess expenses over revenue for 2011 and 2012 of $112,415 and $251,980, respectively. Supplement, Exhibit A_1 at 11 and Exhibit A_2 at 11.

[64] *See* ¶ 11, *supra*. *Also see* Supplement, Exhibit F_1 at 1, and Exhibit F_2 at 1.

[65] Supplement, Exhibit B. *Also see* n. 36, *supra*.

[66] Further, while the petitioner is Dawson, according to the information contained in its audited combined financial statements as of December 31, 2012, Dawson appears to have an affiliated not-for-profit organization, Dawson Memorial Baptist Church Foundation (the Foundation). *See* Supplement, Exhibits E_1 at 6 and E_2 at 7. We note that one of the Foundation's primary functions is to support the television ministry. Reply, Exhibit E_1 at 6 and Exhibit E_2 at 7. However, no Foundation expenditures to support the television ministry are shown in Petitioner's financial showing for the years 2010, 2011, or 2012. Note 3 to the combined audited financial statements states that as of December 31, 2012, and December 31, 2011, the fair market value of the cash and investments of the Foundation was $2,632,032.00 and $2,550,126.00, respectively. Supplement, Exhibit E_2 at 8. Although this independent auditor's report makes a point of noting that Dawson and its Foundation are not-for-profit organizations, the Commission previously has determined that an entity's not-for-profit status is not a determinative factor for the Commission in assessing the merits of closed captioning exemption petitions, noting that "in the *Closed Captioning Report and Order,* the Commission specifically rejected requests by commenters to adopt a categorical exemption for all non-profit entities based solely on their non-profit status." *See Anglers Reversal MO&O*, 26 FCC Rcd at 14950, ¶18. Also, the fact that the Financial Statements are combined for Dawson and the Foundation suggests that these organizations may be considered, for purposes of determining their financial capabilities, to be a single entity. However, because we conclude, based on the information provided by Dawson, that Dawson itself has adequate financial resources to enable it to afford the costs of captioning its television program, we do not need to reach this question of whether or not the organizations are combined.

[67] Supplement, Exhibit F_2 at 1-2.

adequate financial resources to enable it to afford the closed captioning of its television program, and that closed captioning would not be economically burdensome for Dawson at this time.[68]

17. Dawson asserts that, absent an exemption from the captioning requirements, Dawson would have "to forego other key religious services and missions in order to afford the cost of closed captioning."[69] The Commission previously has explained that in making its determinations on captioning exemptions, it must consider the extent to which the provision of captioning will impact the petitioner's programming activities, and not the extent to which it would "curtail other activities important to [a petitioner's] mission."[70] As the Commission previously stated, "applying such a factor would enable regulated parties to decide whether it is more important to comply with captioning requirements or to use their resources for other non-programming-related purposes."[71]

18. Dawson further asserts that, if not granted a captioning exemption, it may have to cease production of its telecast.[72] Because we conclude, based on the information provided by Dawson, that Dawson has adequate financial resources to enable it to afford the costs of captioning its television program,[73] we do not find credible Dawson' claimed uncertainty about continuing its program if it must provide closed captioning. Accordingly, we find that it would not be "economically burdensome" for Dawson to caption its program within the meaning of the Communications Act and the Commission's rules.

IV. ORDERING CLAUSES

19. 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,[74] IT IS ORDERED that the Petition filed by Dawson, requesting an exemption from the Commission's closed captioning rules, IS DENIED**.**

20. IT IS FURTHER ORDERED that Dawson shall commence closed captioning of the programming that is the subject of its Petition no later than March 19, 2015, which is 90 days from the date of the release of this Order.

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[68] Contrary to the suggestion by Consumer Groups, we do not require petitioners to demonstrate that they negotiated with closed captioning service providers for captioning costs that are lower than the quotes they provide to the Commission, or to identify the most affordable provider or most reasonable rates. *See* ¶ 13, *supra.* 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. *See Anglers Reversal Order*, 26 FCC Rcd at 14955-56, ¶ 28, n.101 (citing*, e.g.*, *Outland Sports*, Memorandum Opinion and Order, 16 FCC Rcd 13605, 13607, ¶ 7 (noting the importance of demonstrating efforts "to seek information from various sources on the cost of captioning"); *Wild Outdoors 2001,* 16 FCC Rcd at 13614, ¶ 7 (noting the need for "a listing of various prices quoted" as evidence of "their efforts to find companies that provide captioning at a reasonable cost")). Further, we do not reach the question of whether Dawson can avoid its closed captioning obligations because it is unwilling to seek additional sponsorships (other than from its program distributor) or other sources of revenue to caption its program, because we conclude that providing closed captioning for its program, even without this effort, would not be economically burdensome to it. *See Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28, n.103.

[69] Supplement at 2.

[70] *Anglers Reversal MO&O*, 26 FCC Rcd at 14951, ¶ 20.

[71] *Anglers Reversal MO&O*, 26 FCC Rcd at 14952, ¶ 21 (noting that such a factor is "impermissibly vague and inappropriate").

[72] *See* ¶ 7, *supra*.

[73] *See* ¶¶ 15-17, *supra*.

[74] 47 U.S.C. § 613, 47 C.F.R. §§ 0.141(f), 79.1(f).

21. IT IS FURTHER ORDERED that Dawson 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, which the Commission will make available for public inspection.[75] The e-mail attachment must reference Case Identifier CGB-CC-0144.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

[75] *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).