



Federal Communications Commission
Washington, D.C. 20554

November 18, 2015

Also transmitted via E-mail

Steven Turner, CEO
Interconnect Media Network Systems, LLC
c/o Eric M. Page, Member
Eckert Seamans Cherin & Mellott, LLC
SunTrust Center
919 East Main Street, Ste. 1300
Richmond, VA 23219

Re: Case Identifier: CGB-CC-1356
CG Docket No. 13-318
Petition for Closed Captioning Exemption
Dismissal of Petition

Dear Mr. Page:

This letter concerns your Petition for Exemption from the Federal Communications Commission's (FCC's) closed captioning rules. The FCC's Consumer and Governmental Affairs Bureau (Bureau) advises you that, for the reasons stated below, your above-referenced petition for exemption from the FCC's closed captioning rules has been dismissed as incomplete and you must begin providing closed captions for the programming that is the subject of your Petition within ninety (90) days of the date of this letter.

Pursuant to Section 79.4(d)(11) of the FCC's rules,¹ the programming that is the subject of your Petition has been exempt from the Commission's closed captioning requirements since it was first filed on February 20, 2015.² After reviewing your Petition, the Bureau determined that it required additional and updated information to enable it to determine whether your programming should be exempted from the FCC's closed captioning requirements because you allege captioning such programming would be economically burdensome to your organization. Accordingly, on March 31 2015, the Bureau sent to you a letter requesting additional and updated information regarding your Petition, specifically about the cost of captioning your programs, especially because programming sources are required to provide you with caption files

¹ 47 C.F.R. § 79.4(d)(11).

² See Petition for Exemption from Closed Captioning Requirements for Video Programming Delivered Using Internet Protocol, filed by Steven Turner, CEO, IMN Systems, to Ms. Marlene H. Dortch, Secretary, FCC (Feb. 17, 2015) (filed Feb. 20, 2015) (Petition).

to accompany the program files.³ The letter stated that, unless you submitted the required information and materials outlined in the Bureau's letter by April 30, 2015, the Bureau would dismiss your Petition.⁴ Your supplemental materials were received on April 21, 2015, and indicated that you obtained a quote for 100 of your most popular titles in order to determine the approximate cost of captioning.⁵ Additionally, your supplemental materials indicated that the content provider for your largest video on demand catalogs, Blue Wave Media (BWM), replied in response to your inquiry that "it is not required to provide closed captioning."⁶

On July 14, 2015, the Bureau again requested supplemental information to clarify the contradictory information received by the Bureau from BWM about its captioning obligations; and to request documentation of captioning quotes to provide closed captioning specifically for all of your uncaptioned programs that need to be captioned in accordance with the Commission's closed captioning requirements, as well as the annual captioning cost.⁷ The letter stated that, unless you submitted the required information and materials outlined in the Bureau's letter by August 13, 2015, the Bureau would dismiss your Petition.⁸ On August 13, 2015, we granted your request for a 60-day extension, until October 13, 2015.⁹ On October 13, 2015, we received your supplemental response, which stated that you have relied on BWM's written reassurances that the content it provided to you does not require captioning, that you have asked BWM to inform you when that obligation changes, and that you seek an exemption in part because of this potential obligation.¹⁰

Your Petition is dismissed without prejudice because it is moot. Your supplemental information clarified that you rely on written assurances from BWM that the content it provided to you does not require captioning. You may rely in good faith on those assurances, assuming they include an explanation of why captioning is not required, and you may produce those

³ See 47 C.F.R. § 79.4(c). See Letter from Suzy Rosen Singleton, Attorney, Disability Rights Office (DRO), Consumer and Governmental Affairs Bureau (CGB), FCC, to Steven Turner, CEO, IMN Systems, c/o Eric M. Page, Attorney at Law, LeClairRyan, (Mar. 31, 2015) (CGB First Request for Supplemental Information).

⁴ All the information and materials noted in the Bureau's letter is required in order for the Commission to consider a petition for exemption. *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, FCC 11-159, 26 FCC Rcd 14941, 14955-6, ¶ 28 (2011). See CGB First Request for Supplemental Information at 1.

⁵ See Letter from Steven Turner, CEO, IMN Systems, to Ms. Marlene H. Dortch, Secretary, FCC (Apr. 21, 2015) (IMN April 2015 Supplement).

⁶*Id.*

⁷ See Letter from Suzy Rosen Singleton, Attorney, DRO, CGB, FCC, to Steven Turner, CEO, IMN Systems, c/o Eric M. Page, Member, Eckert Seamans Cherin & Mellott, LLC (July 14, 2015) (CGB Second Request for Supplemental Information).

⁸ See CGB Second Request for Supplemental Information at 1.

⁹ See Letter from Eric Page, Eckert Seamans Cherin & Mellott, LLC, to Ms. Marlene H. Dortch, Secretary, FCC (Aug. 12, 2015) (requesting a sixty day extension); see Letter from Suzy Rosen Singleton, Attorney, DRO, CGB, FCC, to Eric M. Page, Attorney at Law, Eckert Seamans Cherin & Mellott, LLC (Aug. 13, 2015) (granting the sixty day extension.).

¹⁰ See Letter from Steven Turner, CEO, IMN Systems, to Ms. Marlene H. Dortch, Secretary, FCC (Oct. 13, 2015) at 1 (IMN October 2015 Supplement).

written assurances to the Commission in the event a complaint is filed against you for distributing uncaptioned content provided by BWM.¹¹ In addition, you asked BWM to inform you when that obligation changes, which is a mechanism contemplated by the Commission's rules to inform you on an ongoing basis whether BWM-provided content is subject to the closed captioning requirements.¹² As such, it appears that, with respect to content provided by BWM, you are in compliance with the closed captioning rules and your Petition is, therefore, moot.

Additionally, your October 13, 2015 supplemental response explained that you recently agreed to distribute a number of cable television channels, that you believe you must provide closed captioning for 43 of those channels, and that this is the only content that you currently receive or will receive in the near future that is subject to the closed captioning requirements.¹³ You further estimate that it will cost almost \$18 million per year to caption this new source of programming.¹⁴ As discussed in our earlier letters, each video programming owner must send program files to IMN Systems with captions as required by the FCC's closed captioning rules.¹⁵ Video programming owners must also agree with IMN Systems, and vice versa, on a mechanism to keep IMN Systems informed about whether the programming is subject to the Commission's closed captioning requirements.¹⁶ IMN Systems may rely in good faith on a certification by a video programming owner that the video programming need not be captioned if the certification includes a clear and concise explanation of why captioning is not required and IMN Systems is able to produce the certification to the Commission in the event of a complaint.¹⁷ IMN Systems must enable the rendering or pass through of all required captions to the end user.¹⁸ The Commission may grant petitions for exemption upon a finding that *these requirements* would be economically burdensome.¹⁹ These requirements are designed to repurpose the captions produced when a program is shown on television when that program is distributed via Internet protocol; they are not designed to require video programming distributors to produce the captions again.

As such, the purpose of these requirements would be defeated if video programming owners, providers, and distributors are permitted to evade or avoid their obligations under the Commission's closed captioning rules by claiming that all of the programming, whether it is subject to the captioning requirements or not, must be captioned again for distribution via

¹¹ 47 C.F.R. § 79.4(c)(2)(ii).

¹² 47 C.F.R. § 79.4(c)(2)(ii). BWM's agreement to that mechanism may be implied absent any objection.

¹³ IMN October 2015 Supplement at 1-2.

¹⁴ IMN October 2015 Supplement at 2.

¹⁵ 47 C.F.R. § 79.4(c)(1)(i). A video programming owner is any person or entity that either (1) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user via Internet protocol, or (2) acts as the video programming distributor or provider and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user via Internet protocol. 47 C.F.R. § 79.4(a)(4).

¹⁶ 47 C.F.R. §§ 79.4(c)(1)(ii), (c)(2)(ii).

¹⁷ 47 C.F.R. § 79.4(c)(2)(ii).

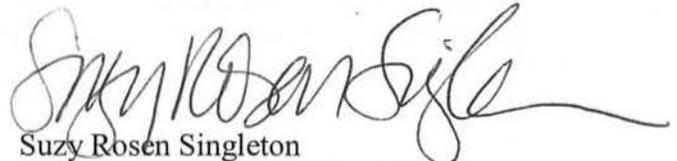
¹⁸ 47 C.F.R. § 79.4(c)(2)(i).

¹⁹ 47 C.F.R. § 79.4(d).

Internet protocol, and that doing so is economically burdensome. Should you be unable to obtain the caption files as required by the FCC's captioning rules, you may file a complaint with us.²⁰

As noted above, beginning with the date that your Petition was received by the Commission, the programming that was the subject of your Petition has been exempt from the FCC's closed captioning requirements. However, we remind you that, with this dismissal, you must begin providing closed captioning for the programming that was the subject of your Petition, if such captioning is required under the Commission's rules, within ninety (90) days of the date of this letter. Specifically, you must begin providing closed captioning by **February 16, 2016.**²¹

If you have additional questions pertaining to this letter or to the filing of an exemption request, please contact the FCC's Disability Rights Office at captioningexemption@fcc.gov.



Suzy Rosen Singleton
Attorney, Disability Rights Office
Consumer and Governmental Affairs Bureau

²⁰ 47 C.F.R. § 79.4(e).

²¹ February 15 is a Federal holiday.