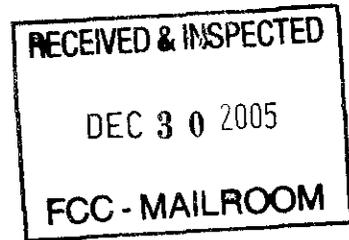


Office of the Secretary  
Federal Communications Commission  
Attention: CGB Room 3-B431  
445 12th Street SW  
Washington, DC 20554



## **Petition for Exemption from Closed Captioning Requirements**

### **Introduction**

Real Estate TV is an independent real estate home show that I started about a year ago in Columbus, GA. Our first few months we lost money, but during the last year we have slowly increased business and just now are beginning to be profitable. Adding Closed Captioning at this point would be devastating to our business because it would represent a 42% cost increase. This would use up almost all of the profits that we currently receive even with the most generous of estimates.

Real Estate TV is locally produced by Kevin Mellenberg (me) and features homes from various real estate companies. Unlike other real estate shows that are specific to one company, we gain nothing but profit. Name recognition does us no good because we don't do anything else but produce the program.

Each episode is 30 minutes long and the show airs once a week for two weeks. Thus we produce about two new shows per month. It airs at 5:30 pm on Saturdays on our local FOX affiliate (WXTX).

For the reasons set forth below, Real Estate TV hereby requests an undue burden exemption from the closed captioning rules for Real Estate TV, pursuant to § 79.1(f) of the Commission's rules.

## **Nature and Cost of Closed Captions**

I was contacted by my FOX representative a few weeks ago about this Closed Captioning issue. I've looked into several options. The best estimate for adding closed captioning to my show that I have received is from Video Caption Corporation for \$190 per show (attached). I received an additional estimate at \$210 per episode (attached). My FOX representative got another estimate at \$337 per show (not attached). In each case I would have to ship the show out a week in advance in order to make this happen which would make the show less timely. This is a great concern among my customers.

Another option is to purchase equipment to do close captioning for my show at a cost of approximately \$6000 but I don't feel like that would be a wise purchase at this time. I would have to get a loan and the show has not demonstrated that it can consistently make that kind of profit.

I have also considered an alternative to Closed Captioning. The show is really self explanatory by looking at the pictures of the homes on the screen. In addition, each real estate agent's name, company and phone number appear on-screen during their entire ad. I also would be willing to put the basic details and price of the house on the screen if that would be sufficient for an exemption.

## **Impact on the Operation of the Program Provider**

My cost to produce this show is as minimal as possible because I do all of the production myself. I have purchased some equipment (\$3475) and we travel some to take pictures. Even if we completely ignore those costs, our profit is minimal. The airtime costs me \$225 each week. I charge the realtors and advertisers for two weeks at a time. Each ad costs them \$25 for two weeks. For the entire year our average gross income was about \$600 per two weeks. Using that

figure, if you subtract out the \$450 for airtime (2 weeks at \$225 per week), my net on average for the last year was \$150 per two weeks (per episode). Even on our best two weeks my net would only be \$450 (\$900 minus \$450 for airtime). Using the lowest Closed Captioning estimate at \$190 per episode, that would take my profit on our best two weeks of the year to \$260 (42% decrease). On our average two week period we would have actually lost money (\$600 minus \$450 for airtime, minus \$190 for Closed Captioning equals -\$40). Essentially it would be almost a 50% increase in total cost to do business (current \$450 per two weeks, with closed captioning cost \$640). I have attached my full financial documents (weekly income statement, profit and loss statement, and airtime cost statement) so that you can look at each week and see what we grossed per two weeks.

I could conceivably add \$10-15 to each ad for my clients, but I have been struggling to get them to pay the \$25. I don't believe I can raise the cost by 50% and even merely maintain my current client base. I have yet to get a show completely full. I may even lose business if I raise my prices rather than make up any difference. Basically if I am forced to fully comply, and my alternative of adding basic information on the screen will not suffice, then I will have to cease to do business and I will have wasted a year of effort and thousands of dollars in getting this business started.

### **Financial Resources of the Program Provider**

This is a part-time job and I do also have a full time job currently, but my family is dependent upon this income. My wife is a stay at home mom of three children and I have worked very hard to put us in a position where we can maintain that lifestyle. Losing this business at this point will force us further into debt and cause us to lose what we have worked so hard to begin.

## **Type of Operations of the Program Provider**

This business is for-profit. Unlike a real estate television show done by a company like Coldwell Banker or Re/Max where there is the hidden benefit of name recognition and community awareness, we have nothing to gain in that way. We are not affiliated with that type of organization and are completely independent.

## **Other factors**

Petitioner believes that the local, non-news exemption to the closed captioning rules also applies to Real Estate TV.<sup>1</sup> As noted above, the program is produced and distributed locally, and is of primarily local public interest. The episodes are not news, they do not have repeat value (the houses will be sold), and the electronic newsroom technique is not available.

Notwithstanding the applicability of the exemption, we have filed this petition in an abundance of caution and for the purpose of establishing certainty.

## **Conclusion**

As shown by this Petition and its attachments, the Commission should grant a waiver of the closed captioning requirements in this case, because requiring closed captioning would create an undue burden. The costs of captioning would be excessively high and would have a significant impact on Petitioner's operations. The Petitioner's type of operations and financial resources are different in kind and magnitude from a mainstream programming provider. Because of the significant difficulty and expense of providing closed captions, a waiver under §

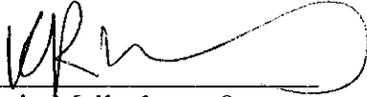
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<sup>1</sup> This exemption is self-implementing, and therefore Petitioner notes its applicability without expecting or requesting FCC action on it.

79.1(f) is warranted. If more information is needed, please contact me at the address provided below.

Respectfully submitted,

Real Estate TV  
By: Kevin Mellenberg

A handwritten signature in black ink, appearing to read 'KM', with a large, sweeping flourish extending to the right.

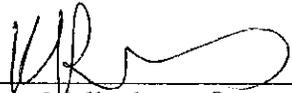
Kevin Mellenberg, Owner  
Real Estate TV  
1001 Ruth Creek Court  
Columbus, GA 31909  
(706) 570-7904  
(706) 317-2924

Dated: December 28, 2005

Exhibits checklist:

1. Declaration:

I, Kevin Mellenberg, am the Owner of Real Estate TV, and I have reviewed the Petition for Exemption for Closed Captioning Requirements filed on behalf of Real Estate TV in this matter, and, upon information and belief, believe the statements regarding our organization and Real Estate TV to be true and accurate.

  
\_\_\_\_\_  
Kevin Mellenberg, Owner

12/28/05  
\_\_\_\_\_  
Date

## 2. Schedule

This show airs weekly from 5:30pm to 5:59pm Saturdays on WXTX, FOX-54, Columbus, GA except where the show is pre-empted for national FOX broadcasts.

3. Financial documentation:

Purchaser	1-Jan	8-Jan	22-Jan	5-Feb	19-Feb	5-Mar	19-Mar	2-Apr	16-Apr	30-Apr	14-May	28-May	4-Jun	9-Jul	16-Jul	6-Aug	20-Aug	3-Sep	17-Sep	1-Oct	22-Oct	5-Nov	19-Nov	3-Dec	Total	Paid		
Wade Gasaway	0	0	0	0	0	0	0												25	25	25				75	75		
Billy Roper	0	75	75	75	75	75	100	100	75	75			0	25	25	50	50	50	50	25	25				1000	1000		
Dorothy Napier	0	75	75	75	100	100	100	100	100	100	75	75	37.5	50	50	75	100	75	75	75	75	75	75	75	75	1813	1437.5	
Ben Lowe	10	0	0	25	50	50	50	50	50	25			12.5	0												322.5	322.5	
Dan Gaylor	30	25	25	25	25	25	15	15	40	40				20	65	65	40	40	40	40	40	15	15	15	15	675	675	
Jerry Santiago																25										25	25	
Susan Whitehead															25	25	25									75	75	
Wanda Brown														25	25	25	25	25	25	25	25	50	50	25	25	325	50	
Chris Allison	0	0	0	0	0	0	0	0									25	25	25	25	25	25	25	25	25	200	0	
Tammy Pierce	0	25	0	0	0	0	0	0																		25	25	
Mike Foley	0	0	0	0	0	0	0	0											100							100	100	
Jimmy Nicholson	0	100	100	100	0	0	0	0																		100	100	
Curtis Green	0	25	25	25	0	0	0	0																		75	75	
Ty Smith	10	25	25	25	25	0	0	0		25	25	25	25	0												210	210	
Larry Garrett	10	25	25	0	0	25	0	0																		85	85	
Tammy Pitts	20	25	0	0	0	0	0	0																		20	20	
Annette Stroud	0	0	0	0	50	25	25	25	25	25	25	25	12.5	25											35	322.5	322.5	
Lisa Duty	20	0	0	0	0	0	0	0														25	25			45	45	
RoseAnne Erickso	0	140	105	35	125	125	135	125	70	50			35	60	210	120	100	120	245	225	120	100	205	175	2625	2145		
Cindy Robinson	0	70	0	25	0	0	25	25					17.5	0	35	60	75				50					382.5	382.5	
Ricki Lynn Cook																35	25									60	60	
Julie Boswell	0	35	35	0	0	0	0	0																		70	70	
Judy Dean							35		35	25			25	70	25											215	215	
Dan Fisher			50	50	50	50	0	0																		150	150	
Rock Edmonds			25	25	25	0	0	0																		75	75	
CPI Inspections			25	25	25	25	25	25																		75	75	
Dennis Youngs			0	25	0	0	0	0														35				60	60	
Linda Boyd			0	0	0	0	0	0									50	50								100	50	
Rodney Milner					25	25	25	25																		75	75	
Billy Harrelson					25	25	0	0																		50	50	
Curt Harrell					75	75	75	75	75	75	50	50	25	25	25	50	50	25	25	25	25	75	75	50	25	1025	1050	
Janice Crenshaw							25	25	50	50	50				35											35	35	
Al Smith							50	50	50	50																200	200	
Kenny Livingston						35	0	0																		35	35	
Vikki Traywick							35	25																		60	60	
Angela Cantrell			25	25	0	0	0	0																		50	50	
David Orr																			25	25						50	50	
Greg Colvin																			60	25	12.5					97.5	97.5	
Dana Carfrey																					25	25				50	50	
Juvelle Frost																				35	25					85	85	
Terri Van Patten																						25	25	25	25	75	75	
Kelly Barton																							25			25	25	
Epperly-Rich																			35							35	35	
Bi-City Heating & Air							30	30	30	30	30	30	30	15	30	30	30	30	30	30	30	30	30	30	30	30	555	555
Stone Furniture					30	30	30	30	30	30	30	30	30	15	30											285	285	
Durty Wurks					30	30	30	30	30	30	30	30	30	15	30	30	30	30	30	30	30	30	30	30	30	30	585	585
Mortgage America					0	60	60	60	60	60	60	60	60	0	60	60	60	60	60	60	60	60	60	60	60	60	1080	1080
Nolin Fence					0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	30	30
Stumpman					0	30	30	30	30	30	30	30	30	15	30	30	30	30	30	30	30	30	30	30	30	30	555	555
TOTALS	100	645	615	560	660	810	900	795	700	670	355	355	270	525	695	630	715	660	780	700	707.5	590	595	550	14343	12988		

**Profit and Loss Statement**

<b><u>Paid to</u></b>	<b><u>2004</u></b>	<b><u>2005</u></b>
TV and VCR combo	95	
Airtime	2250	8575
Find-a-Home	150	
Ledger (Newspaper)	206	51.5
MLS	200	100
CD Burner	50	
Website	50	10
Production Studio	300	800
Homes and Land		125
Editing Computer and Deck		3475
<b>2004 Expenses:</b>	<b>3301</b>	<b>13136.5</b>
<b>2004 Income:</b>	<b>2160</b>	<b>12987.5</b>
<b>2004 Net Loss:</b>	<b>-1141</b>	<b>-149</b>

<b>Air Dates</b>	<b>Balance</b>
Jan. 1 – paid by check in November (paid in Nov. through Jan. 1)	0.00
Jan. 8 – pre-empted show in December (make good)	0.00
Jan. 15 – show ran with bad color in December (make good)	0.00
Jan. 22 – Free show due to all the problems in December	0.00
Jan. 29 – 225.00	-225.00
PAYMENT 2/2..... 675.00	+450.00
Feb. 5 – 225.00	+225.00
Feb. 12 – 100.00	+125.00
Feb. 19 – 225.00	-100.00
Feb. 26 – 225.00	-325.00
Mar. 5 – 225.00	-550.00
Mar. 12 – 225.00	-775.00
PAYMENT 3/15..... 675.00	-100.00
Mar. 19 – 225.00	-325.00
Mar. 26 – 225.00	-550.00
Apr. 3 – 225.00	-775.00
Apr. 10 – 225.00	-1000.00
Apr. 17 – 225.00	-1225.00
PAYMENT 4/21..... 500.00	-725.00
Apr. 24 – 225.00	-950.00
May 1 – 225.00	-1175.00
May 8 – Pre-empted	-1175.00
May 15 – 225.00	-1400.00
PAYMENT 5/17..... 800.00	-600.00
May 22 – 225.00	-825.00
May 29 – 225.00	-1050.00
June 4 – 225.00	-1275.00
June 11 – Pre-empted	-1275.00
June 18 – Pre-empted	-1275.00
PAYMENT 6/20..... 850.00	-425.00
June 25 – 225.00	-650.00
July 2 – Did not run (not scheduled by AE)	-650.00
July 9 – 225.00	-875.00
July 16 – 225.00 (show ran 10 minutes late)	-1100.00
July 23 – Pre-empted	-1100.00
PAYMENT 7/25..... 875.00	-225.00
July 30 – Free show (due to all the errors, lateness and pre-empted)	-225.00
August 6 – 225.00	-450.00
August 13 – 225.00	-675.00
August 20 – 225.00	-900.00
August 27 – 225.00	-1125.00
September 3 – 225.00	-1350.00
September 10 – 225.00	-1575.00
PAYMENT 9/13..... 1125.00	-450.00
September 17 – 225.00	-675.00

September 24 – 225.00	-900.00
October 1 – 225.00	-1125.00
October 8 – 0.00 (5AM)	-1125.00
October 15 – 150.00 (1PM)	-1275.00
PAYMENT 10/20.... 1275.00	0.00
October 22 – 225.00	-225.00
October 29 – 225.00	-450.00
November 5 – 225.00	-675.00
November 12 – 225.00	-900.00
November 19 – 225.00	-1125.00
November 26 – 225.00	-1350.00
PAYMENT 11/28.... 1350.00	0.00
December 3 – 225.00	-225.00
December 10 – 225.00	-450.00

Other: letters from companies providing estimates for closed captioning costs.

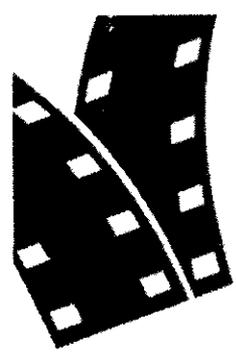
Letter #1:

Hello, Kevin.

Thanks for contacting VanKirk Media. Our normal charge for roll-up captioning for a half-hour show is \$210. Pop-on is \$240. If you need tape work such as mastering the caption file onto the master, there is an additional charge. Feel free to contact us should you have any additional questions. Here's hoping your holidays are great. Thanks again.

Sincerely,  
Jim Hooghkirk  
VanKirk Media  
818.381.1661  
714.992.4590

DC: 1984544-1



# VIDEO CAPTION CORPORATION

---

Date: 12/22/2005  
 TO: Kevin Mellenberg / Real Estate TV  
 FROM: Justin K. Macedonia / Video Caption Corporation  
 RE: Closed Captioning Proposal

Dear Kevin:

It was a pleasure speaking with you and having the opportunity to discuss close captioning your shows. Video Caption Corporation very much appreciates the opportunity to submit this proposal to caption programming for Real Estate TV.

As we discussed, Video Caption Corporation (VCC) is a full service captioning communications firm specializing in offline captioning services for broadcasters, corporations, independent producers, schools, libraries, churches, and government agencies.

VCC is proposing to close caption the following programs at the discounted rates set forth below. **Reduced rates reflect discounts for volume.**

<u>Program Titles</u>	<u># Shows / Length</u>
Bi-Weekly Show	26 half-hour shows
<b>Total number of shows</b>	<b>26</b>

### Pricing

#### ***Captioning Rate Breakdown:***

*Roll-up Captioning*.....\$275 / 30 minutes

#### ***Reduced Rates for Real Estate TV:***

*Roll-up Captioning*.....\$190 / 30 minutes

***Caption Encoding***.....*Included*

Kevin, we will always do our very best to make this process as easy and affordable as we can. If you have any questions or concerns, please do not hesitate to contact me at any time. I am certain we can develop a partnership that is mutually beneficial.

Thank you for your time and your consideration of our proposal. We look forward to working with you.

**Contact Information**

I am available if you have any questions about this proposal. Please contact me anytime.

Telephone: (800) 705-1203

Facsimile: (845) 868-1188

Email: [jkmacedonia@vicaps.com](mailto:jkmacedonia@vicaps.com)

Website: [www.vicaps.com](http://www.vicaps.com)

Justin K. Macedonia  
Video Caption Corporation