

FILED/ACCEPTED

DEC 30 2011

Federal Communications Commission
Office of the Secretary

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

In the Matter of)	
)	
MAMBO, LLC)	CG Docket No. 06-181
)	File No. CGB-CC-0771
Petition for Closed Captioning Exemption)	

**FURTHER SUPPLEMENT TO DECEMBER 31, 2007,
PETITION OF MAMBO, LLC FOR CLOSED CAPTIONING EXEMPTION**

Mambo, LLC ("Mambo"), pursuant to Sections 1.65 and 79.1 of the Commission's rules, by its undersigned attorney, respectfully submits this Further Supplement to the Petition for Closed Captioning Exemption¹ that was filed by Mambo on December 31, 2007 (the "Petition").²

Introduction

As was convincingly demonstrated in the Petition and the Supplement, which remain pending in CG Docket No. 06-181, File No. CGB-CC-0771,³ adherence to the Commission's

¹ On December 31, 2009, Mambo filed a pleading titled Supplement to December 31, 2007, Petition of Mambo, LLC for Closed Captioning Exemption (the "Supplement").

² Pursuant to Sections 0.457 and 0.459 of the Commission's rules, Mambo is requesting that the Commission protect confidential and proprietary information provided in this Supplement, including Mambo's financial data and closed captioning bids, from public disclosure. To that end, Mambo is simultaneously filing public (redacted) and non-public (un-redacted) versions of this Further Supplement.

³ During the pendency of the Petition, Mambo's programming has been exempt from closed captioning pursuant to the Commission's rules. See 47 C.F.R. § 79.1.

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closed captioning obligations would be an undue economic burden⁴ to Mambo's operations as a Spanish language program provider in the Miami-Ft. Lauderdale, Florida market. Mambo's start-up Spanish-language programming service has been in existence only since 2006. Over the first few years of its existence, as set forth in the Petition and Supplement, Mambo has lost substantial amounts of money.⁵ Although Mambo's financial health appears to continue to trend upward, it is evident from the supplementary information being provided herein that Mambo continues to lose significant sums of money and, as a result, the closed captioning requirements would be economically burdensome for Mambo.

In the Petition, Mambo initially requested a two year waiver,⁶ and in the Supplement, Mambo requested relief for, at least, an additional two-year period.⁷ Both the Petition and the Supplement expressly raised the possibility that application of the closed captioning requirements would continue to unduly burden Mambo beyond the time periods discussed therein;⁸ hence the filing of the instant Further Supplement to provide further supplemental

⁴ Mambo is aware that the "undue burden" nomenclature has now been changed to "economically burdensome." See, e.g., *Anglers for Christ Ministries, Inc.; Interpretation of Economically Burdensome Standard*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941 (Oct. 20, 2011) ("*2011 Anglers Order*"), ¶¶ 30-37. Because the Commission intends, at least during an interim period, to treat the analysis of an economically burdensome waiver request the same as under the undue burden standard, see *id.* at ¶¶ 36-37, this Further Supplement uses the two phrases interchangeably.

⁵ See Petition at 5; Supplement at 1-2.

⁶ See Petition at 1 (requesting "exemption through the end of calendar year 2009").

⁷ See Supplement at 2.

⁸ See Petition at 4 (projecting significant losses "over the course of *at least the next two years*"); *id.* at 5 ("Mambo intends to provide closed captioning promptly after the first financial quarter in which it achieves profitability, so it *currently asks only for a two-year waiver.*") (emphases added); *accord* Supplement at 2-3.

information continuing to demonstrate how economically burdensome application of the closed captioning requirements would be for Mambo. Accordingly, Mambo respectfully requests a continued closed captioning exemption, pursuant to the economically burdensome standard, for at least two more calendar years, through at least the end of 2013.⁹ Just as Mambo stated in the Petition and Supplement, Mambo reiterates herein that Mambo intends to provide closed captioning promptly after the first financial quarter in which Mambo achieves profitability.¹⁰

As more fully discussed in Mambo's Petition, in the closed captioning context, Congress defined "undue burden" to mean significant difficulty or expense.¹¹ The Commission recently determined that when Congress changed the statutory nomenclature of "undue burden" to "economically burdensome," it did not intend a substantive change with respect to the way the Commission will evaluate individual closed captioning exemption requests such as Mambo's.¹² Thus, the Commission, in evaluating whether closed captioning is economically burdensome to a

⁹ In the event a self-executing closed captioning exemption, such as the "new network" exemption, applies to Mambo, such self-executing exemption would moot the exemption sought in the Petition and Supplement as further supplemented herein. In fact, in 2009 and 2010, Mambo was working to launch its service as a network programming service, which would have qualified for exemption under the self-executing "new network" exemption provision in Section 79.1(d)(9). For now, those efforts have been tabled. Nevertheless, of course, in the event Mambo's operation in the future qualifies for the new network exemption or for any other self-executing exemption, the Petition, Supplement, and this Further Supplement will become moot to the extent that Mambo's programming is exempt from closed captioning pursuant to such self-executing exemption.

¹⁰ See Petition at 5; Supplement at 3.

¹¹ See 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2); see also Petition at 2-3.

¹² See *2011 Anglers Order*, ¶ 36 ("Accordingly, as an interim measure, we interpret the term 'economically burdensome' in section 713(d)(3) of the Act, as amended by the CVAA, to be synonymous with the term 'undue burden' as this section was originally drafted in the 1996 Amendments, and as it is defined by the original four undue burden factors contained in section 713(e).").

program provider or distributor, considers (1) the nature and cost of the closed captioning; (2) the effect on operations; (3) the financial resources of the provider or distributor; and (4) the type of programming operations.¹³ The Commission will also consider any additional “factors relevant to a petitioner’s situation, [including] any other data or information” a petitioner offers that tends to show the closed captioning requirements are unduly burdensome.¹⁴

To that end, Mambo hereby further supplements the Petition as follows:

A. Further Supplemental Information Regarding the Nature and Cost of Mambo’s Closed Captioning

Mambo recently obtained closed captioning quotes from three reputable closed captioning service providers—Caption House, Caption Max, and The Kitchen—that offer Spanish-language closed captioning services. These three quotes are included in Exhibit 1 to this Further Supplement. The rates vary from a low of \$ REDACTED per hour for live captioning (Caption Max) to a high of \$ REDACTED per hour for “roll-up” captioning for pre-recorded programming (The Kitchen, at \$ REDACTED per minute). Caption House only offers pre-recorded captioning services while Caption Max and The Kitchen offer both live captioning and pre-recorded captioning services.

In addition, Mambo has obtained a quote for closed captioning services from Esteno, which is a firm located in Chile. Esteno’s quote was for rates that are significantly less than the other three providers, a circumstance which makes Mambo wary. Nonetheless, Mambo has included those figures in Exhibit 1.

¹³ See 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2); *2011 Anglers Order*, ¶ 36.

¹⁴ *Implementation of Section 305 of the Telecommunications Act of 1996—Video Programming Accessibility*, 13 FCC Rcd 3272 (1997), ¶ 198.

Mambo has summarized its anticipated monthly closed captioning needs and the projected costs to fulfill those needs, and those figures are also included in Exhibit 1 to this Further Supplement. As set forth therein, Mambo's annual closed captioning costs, based on the four quotes referenced above, vary from a low of \$ REDACTED per year (for the Chilean firm) to more than \$ REDACTED per year for each of the other three providers.¹⁵ These projected closed captioning costs are significant and would clearly be economically burdensome to Mambo, because, as discussed below, Mambo continues to lose significant sums of money each year.

As it has done previously, Mambo recently solicited financial assistance for its closed captioning expenses by offering closed captioning "sponsorships" to its advertising clients. Although more than twenty such solicitations were made, none, to date, has ripened into an offer of financial support or other assistance to provide closed captioning; as a result, Mambo would bear all costs for closed captioning.

B. Further Supplemental Information Regarding the Effect of the Closed Captioning Requirements on Mambo's Operations

As demonstrated in the supplementary financial projections included as Exhibit 2 to this Supplement, Mambo projects continued significant losses over at least the next two years. While Mambo's losses are estimated to continue to decline, Mambo estimates a loss of nearly \$ REDACTED in 2011 and more than \$ REDACTED in 2012 and 2013. See Exhibit 2. Imposing *any* closed captioning costs on top of Mambo's already significant losses could result in the proverbial "straw" breaking the "camel's back"—Mambo's very existence and the

¹⁵ The fact that three firm quotes all came in at over \$ REDACTED each while only one firm, which is headquartered in South America, provided a quote that came in at two-thirds lower, suggests that the market for these services is in the neighborhood of \$ REDACTED .

continued distribution of its important program service could be threatened. What was observed in the Petition in 2007 and in the Supplement in 2009 remains true today:

Increasing the risk of Mambo being forced out of business would be contrary to the public interest in diverse and local programming because Mambo produces unique, and much-needed, Spanish-language programming, which includes important local, regional and international news programming, for the Miami DMA and its substantial Hispanic population.¹⁶

Mambo's Spanish-language programming, which consists of a variety of locally-oriented public affairs, news, and entertainment programming as well as Latin American news and entertainment programming, is unique in the Miami DMA and is not available through any other outlet in the Miami DMA. Current program offerings remain generally consistent with the type and nature of the programming described in the Petition.¹⁷

The costs associated with closed captioning are an undue economic burden for Mambo and would jeopardize Mambo's ability to continue to provide its unique Spanish language programming—the result would be the potential loss of programming for *all* viewers, which would clearly be contrary to the public interest.

C. Supplementary Information Regarding the Financial Resources of Mambo

Mambo will lose approximately \$ REDACTED in 2011.¹⁸ The Supplement had projected losses of nearly \$ REDACTED for 2011,¹⁹ which means that Mambo has continued

¹⁶ Petition at 4, quoted in Supplement at 4-5.

¹⁷ See Petition at 4-5 & Exh. C.

¹⁸ As noted in Exhibit 2, this revenue figure excludes depreciation, amortization interest income, financial income, and income taxes. All figures discussed herein also exclude those financial elements. See Exhibit 2.

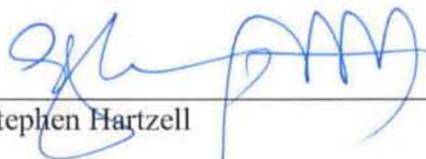
to wisely manage its production costs and financial health and that the closed captioning undue burden exemption under which Mambo has been operating has helped move Mambo towards financial stability. Nonetheless, as demonstrated in Exhibit 2, Mambo continues to project substantial losses for at least the next two years: \$ REDACTED in 2012 and \$ REDACTED in 2013. Closed captioning expenses would increase Mambo's formidable losses by a minimum of 16 percent in 2012 and as much as 63 percent in 2013, depending on the captioneer. Such increases to Mambo's already massive losses would be unwarranted and would unduly burden this Spanish-language programmer.

Conclusion

For the reasons set forth in the Petition and Supplement, as further supplemented by the information presented herein, Mambo respectfully requests a continued exemption from the closed captioning requirements pursuant to the undue burden standard.

Respectfully submitted,

MAMBO, LLC



Stephen Hartzell

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
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Its Attorneys

December 29, 2011

¹⁹ See Supplement at 6 & Exh. 2.

Exhibit 1

(Closed Captioning Quotes)



265 NE 24th St. Suite 401 • Miami, FL 33137 • T. 305 415 6200 F. 305 415 6201
12711 Ventura Blvd. Suite 217 • Studio City, CA 91604 • T. 818 306 5300 F. 305 415 6201
6ta Trans. Cuadra Creativa, Of. 6 y 7 Los Palos Grandes Caracas • T 286.91.46

SPANISH CLOSED CAPTIONING PROPOSAL

DATE: November 1, 2011
THE KITCHEN CONTACT: Carlos Contreras

CLIENT: MAMBO LLC

CONTACT: Nancy Bellido 305 776 1075

EMAIL: nbellido1962@yahoo.com

PROJECT DESCRIPTION: SPANISH CLOSED CAPTIONING -
OFF LINE AND REAL TIME

Various Programs:

TITLE: TBD

TOTAL RUNNING TIME: Varied

LANGUAGE (From/To) N. Spanish > N. Spanish

DESCRIPTION: ROLLUP CLOSED CAPTION

SERVICES INCLUDED IN PROPOSAL: Audio and Video Spot Quality Control of Masters;
Script Transcription and Proofreading; Spotting and
positioning of captions and encoding on CC sub
masters.

NOT INCLUDED IN PROPOSAL: Graphics, M&E Re-creation, tape stock

DIALOGUE SCRIPTS: Provided by client

TURNAROUND: [REDACTED] for off line material
Simultaneous for live captioning

DELIVERY FORMAT: Digibeta Closed Caption sub master on CC1

Continued next page

Confidential Pricing and terms of payment

PRICING:

ROLLUP SPANISH CLOSED CAPTIONING
LIVE SPANISH CLOSED CAPTIONING

\$ [] /min
\$ [] /hour

Rates subject to a volume of [] hours for post production cc and [] hours of live captions per month as per the original RFP

TERMS OF PAYMENT:

[] with order / [] on completion

Additional Charges, if applicable:

The quoted rates do not include any tape stock for captioned masters. The Kitchen to receive masters NTSC. Conversion from PAL to NTSC is an additional charge of \$ [] per minute.

Tax & shipping are additional charges.

Graphics: titles, logo, credits, inserts and the like will be priced separately depending upon requirements

Acceptance of Materials:

Client shall have [] days after receipt of materials to assess the quality thereof. Acceptance shall deem to occur [] days after receipt of material unless The Kitchen receives a written response indicating what changes are deemed necessary.

Notes:

Accepted: _____

Name

Date

Title

Company

PO#



Closed Captioning Rate Quote
MAMBO LLC
Attn: Nancy Bellido
Email: nbellido1962@yahoo.com

Today's Date: Monday, October 31, 2011
Project Type: Off Line Closed Captioning
Language: Spanish
Style: ROLL-UP
Total Running Time: 179 Hours of Pre-recorded Programming

PRE-RECORDED CLOSED CAPTIONING:

Roll-Up Closed Captioning only:

Includes Transcription

\$ [REDACTED] per minute

ENCODING ONLY:

Tape stock fee is not included

Beta: \$ [REDACTED] per minute

Digibeta: \$ [REDACTED] per minute.

Shipping charges:

Client is responsible for all shipping charges incurred.

Taxes:

No tax is charged for our services.

Information required to complete your order:

- Program masters should be clearly labeled, carefully packaged, and sent to the attention of Caption House.
- Contact Info: Please submit your contact information as well as instructions for shipping final project materials.
- Billing instructions: Please provide the contact name, address, phone, email, for the person/entity who will be responsible for payment. An invoice will be emailed subsequent to project completion.

To place an order, contact:

Paola Capeles
1776 SANS SOUCI BLVD.
North Miami, FL 33181
305-948-7300 EXT 205
paola@captionhouse.com
www.captionhouse.com

*Thank you for your interest in Caption House!
We look forward to serving you!*



CLOSED CAPTION RATE QUOTE

To: Nancy Bellido, Mambo LLC
From: Donna Horn, CaptionMax
Date: October 28, 2011

Thank you for requesting a closed captioning quote from CaptionMax. Based on your e-mail of 10/26/11, the rates below are based on a total of 93 hours of pre-recorded Spanish programming and 82 hours of live Spanish programming.

PRE-RECORDED CAPTIONS

1/2-Hour Programs

\$ [REDACTED]: Roll-Up Caption File
\$ [REDACTED]: Insertion of Captions into SD Master (includes tape stock)
\$ [REDACTED] TOTAL PER EPISODE

1-Hour Programs

\$ [REDACTED]: Roll-Up Caption File
\$ [REDACTED]: Insertion of Captions into SD Master (includes tape stock)
\$ [REDACTED] TOTAL PER EPISODE

LIVE CAPTIONS

1/2-Hour Programs (if not part of a larger block of time)

\$ [REDACTED] per program

1-Hour Programs

\$ [REDACTED] per program

Please note that these rates are guaranteed for 30 days.



Santiago 31 de Octubre de 2011

Ms. Nancy Bellido
Manbo LLC

Estimada Nancy,

De acuerdo a la solicitud recibida estos son los valores de nuestra cotización:

	HORAS	\$/HORA	\$
Pre-Recorded	91.5	█	█
Pre-Recorded	8	█	█
Pre-Recorded	79.5	█	█
REAL TIME	30	█	█
REAL TIME	48	█	█
REAL TIME	4	█	█
TOTAL	261		█

Nosotros les ofrecemos los servicios de closed caption en tiempo real por un valor de \$ █ por hora de trabajo. El mínimo que cobramos es 30 minutos. En caso que se pase de la hora o media hora se cobra la media hora completa.

Para la post-producción proponemos lo siguiente, ustedes nos envía el audio o el video del programa cuando está terminado y nosotros hacemos la transcripción del audio y en el momento que el programa sale al aire nosotros insertamos el Closed caption línea por línea. De este modo no tienen que preocuparse de los formatos o de más equipos para hacerlos, ya que bastaría el encoder. Si quieren repetir el show, tendrían que grabarlo o nosotros insertarlos nuevamente. Este sistema es usado por otras estaciones de televisión a fin de reducir costos.

Nuestro precio para la post-producción es de \$ █ por hora.

Entendemos que ustedes adquirirán un encoder de acuerdo a las necesidades que tienen. Nuestra recomendación son las marcas EEG y EVERTZ. Junto con esto deberán tener un player y un recorder, este último para grabar el programa con los caption. Entre ellos se conecta el encoder al cual nosotros le enviamos los Closed caption.

Por favor no duden en contactarnos si tienen cualquier duda o consulta.

Atentamente,

A handwritten signature in black ink, appearing to read 'Máximo Cumsille', with a long horizontal flourish underneath.

Máximo Cumsille

Estimates of Closed Captioning Costs

The Kitchen, Dated November 1, 2011 (Pre-Recorded and Live)

	Hours Per Month	Hourly Rate	Cost
Pre-Recorded Programming	179	█	█
Live Programming	82	█	█
Yearly Total	2,148 Pre-Recorded / 984 Live		█

Caption House, Letter Dated October 31, 2011 (Roll-Up Pre-Recorded only)

	Hours Per Month	Hourly Rate	Cost
Pre-Recorded Programming	179	█	█
Live Programming	82	N/A	N/A
Yearly Total	2,148 Pre-Recorded		█

Caption Max, Letter Dated October 28, 2011 (Pre-Recorded and Live)

	Hours Per Month	Hourly Rate	Cost
Pre-Recorded Programming	179	█	█
Live Programming	82	█	█
Yearly Total	2,148 Pre-Recorded / 984 Live		█

Estena, Dated October 31, 2011 (Pre-Recorded and Live)

	Hours Per Month	Hourly Rate	Cost
Pre-Recorded Programming	179	█	█
Live Programming	82	█	█
Yearly Total	2,148 Pre-Recorded / 984 Live		█

Exhibit 2
(2011-2013 Profit and Loss Statement)

REDACTED

REDACTED

DECLARATION

I, Luis Calle, declare the following:

1. I am competent to make this declaration, and I am more than eighteen years of age. I am Vice President of Operations of Mambo, LLC, and I am a member of Mambo, LLC's Board of Supervising Managers. I have held these positions since 2006 when Mambo began producing and distributing programming in the Miami DMA.
2. I have reviewed the foregoing Further Supplement to December 31, 2007, Petition of Mambo, LLC for Closed Captioning Exemption (the "Supplement"), including all exhibits. All information and statements contained in the Supplement are true and correct to the best of my knowledge and belief.
3. The 2011-2013 Profit and Loss Statement submitted as Exhibit 2 to the Supplement was prepared by me or under my direction. The financial information contained therein represents sound and good faith budgetary projections based upon the best information reasonably available to Mambo, LLC. Assertions made in the Supplement about projected costs of closed captioning are accurate based on my reasonable understanding of relevant facts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 29, 2011.



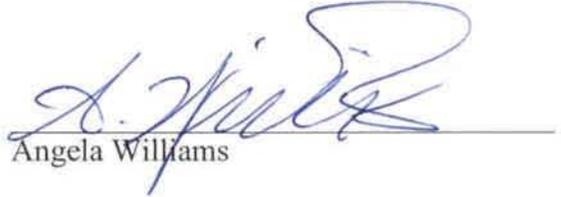
Luis Calle
Vice President of Operations
Mambo, LLC

Certificate of Service

The undersigned does hereby certify that I caused a copy of the foregoing **Further Supplement to December 31, 2007, Petition of Mambo, LLC for Closed Captioning Exemption** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

Telecommunications for the Deaf and Hard of Hearing, Inc.
Paul O. Gagnier
Danielle C. Burt
Kimberly A. Lacey
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20007

This the 30th day of December, 2011.


Angela Williams