Federal Communications Commission
Washington, D.C. 20554

February 29, 2012

Case Identifier: CGB-CC-1089

Diane McKoy
117 W. 79th Street
New York, NY 10024

Dear Ms. McKoy,

This is to advise you that the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission ("FCC") has reviewed your petition for exemption from the closed captioning rules. CGB has found that your petition is deficient because it does not contain the information needed for us to make a determination as to whether or not the FCC's closed captioning requirements would be economically burdensome for you. Accordingly, as we explain below, we hereby dismiss your petition without prejudice to re-filing and require you to begin captioning within 90 days of the date of this letter. If you still wish to receive an exemption from the closed captioning rules, you must submit a new petition with the following information:

1. Documentation of your financial status sufficient to demonstrate your inability to afford closed captioning – for example, profit and loss statements or bank statement information. (This should not just include the resources devoted to or the costs associated with the television program at issue);
2. Information about the costs associated with captioning the specific program(s) for which you are requesting an exemption. (**Please note: the Commission does not charge or require a closed captioning fee. The cost of captioning is to be determined solely by the programmer and a captioning entity or the program distributor.**);
3. Verification that you have sought closed captioning assistance (*e.g.*, funding, services) from your video programming distributor; also note the extent to which such assistance has been provided or rejected;
4. Verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for the program(s); and
5. Information on the type of your operation(s) and the impact that providing captions would have on your programming activities, for example, the extent to which your programming might not be shown if you are required to provide captions.

Your new petition should also contain a specific list of names of the program(s) for which an exemption is being sought and may describe other factors that you deem relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirement. Finally, your petition **must be accompanied by an affidavit** (*i.e.*, a written sworn statement made under oath) supporting your petition.

Below is some additional information to help you better understand how the FCC processes individual requests for captioning exemptions.

## THE PETITION PROCESS – What a Petition Must Contain

The FCC's process for handling closed captioning exemption petitions has multiple steps. CGB is responsible for reviewing and deciding the merits of these petitions.

When CGB receives a petition, it must first determine whether the petition contains sufficient information to be placed on public notice (*i.e.*, released to the public) so that the public can comment on its merits. CGB looks at whether the petition contains up-to-date evidence, supported by affidavit, to show that it would be economically burdensome to provide closed captioning for the specific programming for which an exemption is sought. Section 713(e) of the Communications Act and the FCC's rules at 47 C.F.R. § 79.1(f)(2) define "economically burdensome" as "significant difficulty or expense." In determining whether the provision of closed captions would cause significant difficulty or expense, these provisions require the FCC to consider the following four factors: (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.

We advise you to carefully review the FCC's recently adopted *Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking* in *Anglers for Christ Ministries, Inc.*, which can be found at http://transition.fcc.gov/cgb/dro/caption.html and corresponding FCC's rules (47 CFR § 79.1(f)(2)-(3)). These documents describe the requirements for obtaining an economically burdensome exemption in detail.

## THE PETITION PROCESS – What Happens When a Petition is Sufficient or Deficient

If CGB determines that the petition provides *sufficient* information upon which to make a determination of whether or not to grant a closed captioning exemption, it will place the petition on public notice in CG Docket No. 06-181 at http://fjallfoss.fcc.gov/ecfs/. Members of the public will then have 30 days to file comments on and/or oppositions to the petition, after which the petitioner will have 20 days to respond. At the end of this timeframe, CGB will review the petition, along with information provided in any comments and responses received, to determine whether providing captioning would be economically burdensome for the petitioner. While a petition is pending, the program at issue does not need to be captioned.

If, however, CGB determines that the petition and supporting documents do not provide sufficient information needed for the FCC to make a determination as to the merits of its petition, the petition will be considered *deficient* and CGB will not place the petition on public notice.

## YOUR PETITION

CGB has determined that the petition that you filed with the FCC on **February 2, 2011,** is deficient because it did not contain any documentary support for an exemption from the closed captioning rules and, therefore, it will not be placed on public notice. Accordingly, the FCC is hereby dismissing your petition, and you are required to begin providing closed captions for this programming by **May 29, 2012**. Note that this petition is dismissed without prejudice, which means you may file a new petition at any time containing the requested documentation.

If you decide to file a new petition, your petition, as well as any supporting documentation, including financial information, that you provide, will be available for public inspection. If your petition contains confidential information, you may request "confidential treatment," *i.e.*, that it not be shared with members of the public, pursuant to FCC rules. *See* 47 C.F.R. § 0.459. If you provide information for which you want "confidential treatment," you must also submit a second version of your petition with the confidential information redacted (this must be submitted *along with* your request for confidential treatment). The redacted version will be publicly disclosed. If your request for confidential treatment is granted, the "public version" of your petition must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that the public understands the basis for your exemption request and can comment on its merits.

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

Roger Holberg
Attorney, Disability Rights Office
Consumer and Governmental Affairs Bureau