Federal Communications Commission
Washington, D.C. 20554

April 5, 2012 Case Identifier: CGB-CC-0918

New Energy Advertising
4 Galleria
Rancho Santa Margarita, CA 92688

Re: Need to File Updated Information on Your Pending Petition for a Closed Captioning Exemption

Dear New Energy Advertising,

This is in reference to the petition for a closed captioning exemption that you previously filed with the Federal Communications Commission (FCC). Your programming has been exempt from the FCC's closed captioning rules since you filed your petition.[1] For the reasons set out below, if you wish to continue to request a closed captioning exemption for your program, you must either (1) affirm in writing that the information provided in your previously submitted petition is still accurate and up-to-date, or (2) update your pending petition with the information indicated below, supported by a signed affidavit (*i.e.* a written sworn statement made under oath). You must submit this information by July 5, 2012, which is 90 days of the release date of the enclosed *Public Notice*. If the FCC receives your updated information within the 90-day time period, the programming for which you seek an exemption shall continue to be exempt from the closed captioning requirements while the FCC reviews the completed petition. If you no longer require a closed captioning exemption, you may instead notify the FCC that you wish to withdraw your pending petition.

If we do not receive a response to this letter by July 5, 2012 either affirming the accuracy of the information in your pending petition or supplementing the information to bring your petition up to date, we will dismiss your pending petition without prejudice on July 5, 2012, and you will be required to begin providing closed captions for your programming on July 6, 2012.

The *Public Notice* enclosed with this letter provides background information on why you need to file updated information on your pending petition. As noted, your petition falls into a group of petitions that have not yet been decided by the FCC. The FCC's Consumer and Governmental Affairs Bureau (Bureau) is now ready to resolve your claim for an exemption from the closed captioning rules using the standards contained in a new FCC ruling called the *Anglers Reversal MO&O*.[2] However, we realize that considerable time has passed since your petition was first filed, and that various circumstances including, but not limited to, your financial status and the cost of captioning your program(s), may have changed. Accordingly, you need to either affirm that your pending petition still contains current and accurate documentation to support a claim that providing closed captions would be economically burdensome (would result in a "significant difficulty or

[1] Programming that is the subject of a pending petition is exempt from the FCC's closed captioning rules while the petition is pending. 47 C.F.R. § 79.1(f)(11).
[2] *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd 14941 at 14960, ¶¶30-37 (2011) (*Anglers Reversal MO&O*).

expense") *or* update your petition to provide this information. In order to make this showing, your petition must include:

- 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(s) at issue);
- information about the costs of captioning your specific program(s);
- verification that you have sought closed captioning assistance (*e.g.*, funding, services) from your video programming distributor and note the extent to which such assistance has been provided or rejected;
- verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and show that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for your programming; and
- 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 it is required to provide captions.[3]

In your response to this letter, please include the Case Identifier listed at the top of this letter and a specific list of names of the program(s) for which you are seeking an exemption. You also may describe other factors that you deem relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for compliance with the closed captioning requirements. Note that it is your responsibility to determine exactly what documentation and evidence is needed to make the above showing in your particular case, and what form your petition will take. The FCC does not provide a form for this purpose.

Please see the enclosed instructions for how to send your response to the FCC. Once we receive your updated information, we will consider the following four criteria in deciding whether the provision of closed captioning will result in an economic burden for you: (1) the nature and cost of the closed captions for your programming; (2) the impact on your operation; (3) your financial resources; and (4) the type of your operations. *Failure to support your exemption request with adequate explanation and evidence to make a showing,* ***supported by affidavit****, that providing captioning would be economically burdensome for you will result in dismissal of your request.*

Your petition, as well as any supporting financial information provided, 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. Along with your request for confidential treatment, you must also submit a second version of your petition with the confidential information redacted. 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. Your petition must include this documentation so that the public understands the basis for your exemption request and can comment on its merits.

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[3] For more information about the type of information that is needed for a closed captioning exemption, we advise you to carefully review the *Anglers Reversal MO&O (available at* http://transition.fcc.gov/cgb/dro/caption.html) and corresponding Commission rules, 47 C.F.R.
§ 79.1(f)(2)-(3).

If the Bureau determines that your petition provides sufficient information upon which to make a determination of whether or not to grant a closed captioning exemption, your petition will be placed on public notice in CG Docket No. 06-181 at http://apps.fcc.gov/ecfs/. Members of the public will then have 30 days to file comments on and/or oppositions to your petition, after which you will have 20 days to respond. At the end of this timeframe, the Bureau will review your petition, along with information provided in any comments and responses received, to determine the extent that providing captioning would be economically burdensome for you. If the Bureau denies your request for an exemption, you will have 90 days from the date of the denial to begin captioning.

As mentioned above, if you do not wish to continue to request a closed captioning exemption, you may notify the FCC that you wish to withdraw your pending petition. Failure to submit a response to this letter, as detailed above, will result in dismissal of your petition without prejudice on July 5, 2012 and you will have to begin captioning on July 6, 2012.

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

Kris Anne Monteith
Acting Chief, Consumer and Governmental Affairs Bureau

Enclosure