Federal Communications Commission
Washington, D.C. 20554

August 9, 2012

Case Identifier: CGB-CC-1161

Richard Mendenhall
16104 Parkway Drive
Pflugerville, TX 78660

Dear Mr. Mendenhall:

By this letter, we are advising you of the current status of your above-referenced petition for exemption from the Federal Communications Commission's (FCC's) closed captioning rules. On April 18, 2012, the Consumer and Governmental Affairs Bureau (the Bureau) advised you by letter that, absent further action on your part by May 18, 2012, the petition would be dismissed on July 17, 2012. We did not receive the requested information or a new petition from you prior to that date. Accordingly, as stated in the Bureau's letter, your petition was dismissed without prejudice on July 17, 2012. Given that your petition was dismissed without prejudice, you may file a new petition for exemption at any time. In addition, the Bureau advised you that if your petition was dismissed, you were required to comply with the FCC's closed captioning rules by July 18, 2012. Thus, as of such date, broadcast of the program that was the subject of your petition must be closed caption unless and until such time as you again request an exemption from the FCC's captioning requirements.

For your convenience, we have enclosed additional information that may help you better understand how we process individual requests for captioning exemptions. 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.

Sincerely,

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

Enclosure

READ THIS IN ITS ENTIRETY!
IMPORTANT INFORMATION AND TIPS ON OBTAINING A CLOSED CAPTIONING EXEMPTION

In 1996, Congress passed a law requiring closed captioning on television programming. The Federal Communications Commission (FCC) implements this law, which requires closed captions on nearly all English and Spanish language programming. There are some instances where captioning is not required – *i.e.*, there are some exemptions from the captioning requirements. There are two types of exemptions: categorical and individual exemptions.

Categorical Exemptions:

The FCC's rules contain categorical exemptions from the captioning requirements. These exemptions are self-implementing. In other words, **if you are a programming provider that meets one of the following criteria, you are automatically exempt from having to caption your programming and** do not need to first request an exemption from the FCC. Here are the self-implementing exemptions:

- Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the electronic newsroom technique of captioning is unavailable (such as a homecoming parade)

- Channels that produce revenues under $3,000,000 per year; this applies only to the revenues of providers that caption an entire channel of video programming and **not** to the revenues from a single video program

- The program's primary language is not English or Spanish

- The program is primarily text programming

- Non-vocal musical programming (note that vocal music must be captioned if it is combined with non-vocal music in the same program)

- Locally produced educational programming for use in schools (although there may be requirements to caption that program under other disability laws)

- If the cost of captioning is in excess of 2% of a company's annual gross revenue from the previous calendar year **and** the company has already spent 2% of its previous year's gross revenue on captioning; this applies only where the revenues are received from a channel of video programming and does **not** apply to the revenues from a single video program

- "Interstitial" material including advertisements, promotional announcements, and public service announcements that are less than 10 minutes in duration

- Video programming on a new network for its first four years of operation

- Video programming transmitted by an Educational Broadband Service (formerly the Instructional Fixed Television Service) licensee

- Programming distributed to viewers between 2 a.m. and 6 a.m. local time, except where the channel consists of a service that is distributed and exhibited for viewing in more than a single time zone can be exempt from closed captioning for any continuous four-hour time period that the video programming distributor may select, commencing not earlier than 12 a.m. local time and ending not later than 7 a.m. local time in any location where the service is intended for viewing

- Video programming subject to a contract in effect prior to February 8, 1996, where captioning would constitute a breach of that contract. This does not apply to extensions or renewals of such contracts.

Individual Exemptions Based on Economic Burden:

Even if you do not meet one of the above criteria, you may still request an individual exemption from the closed captioning requirements if you can demonstrate to the FCC that providing captioning would be economically burdensome. The Communications Act defines "economically burdensome" as 'significant difficulty or expense." In order to demonstrate that it would be economically burdensome for you to provide captions, you must submit the following in your captioning exemption petition to the FCC:

- *Name of the programs or channels for which the exemption(s) are sought*
- *Documentation of your financial status* – For this factor, you must demonstrate your inability to afford captions. For example, you may include bank statement information showing profits/losses. It is critical for this information to (1) be as current as possible and (2) include the financial resources of your overall organization or entity, and not just the resources for the TV programming in question. **See TIPS #2 and #3**.
- *Captioning cost quotes* – For this factor, you should ascertain and submit the reasonable costs of captioning **your** program. Make sure that these are recent quotes and applicable to your programming. If you plan on buying equipment to do captioning on your own, you should also provide estimates that show how much it will cost you to provide the captioning services as well. **See TIP #4.**
- *Verification that you have sought assistance (e.g., funding, services) from your video programming distributor* – For this factor, state whether you have asked your distributor to help you provide captions, and whether this request was accepted or rejected. Your distributor is the TV broadcast station, cable provider, or satellite system that shows your program. **See TIP #5**.
- *Verification that you have sought additional sponsorships* (other than from your distributor) *or other sources of revenue* – For this factor, state your efforts to obtain such revenue, and whether these requests was accepted or rejected. If rejected, state whether you do not otherwise have the means to provide captioning. If you cannot solicit and/or accept such sponsorship, instead provide the reason why you are unable to do so. **See TIP #5.**

- *Information about the type of your operations and the impact that providing captions will have on your programming activities.* (For example, tell us whether you will be unable to show the program if you have to pay for captions.)
- *Any other factors you think are relevant to your exemption request, including alternatives that could be a reasonable substitute for captioning.*

IMPORTANT:

You must include with your petition either a signed affidavit (a written statement made under oath – e.g., affirmed by a notary – that the information is truthful and accurate) *or* your signature affirming that you attest to the truthfulness and accuracy of the statements made in your petition under penalty of perjury.

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TIPS FOR FILING CAPTIONING EXEMPTIONS PETITIONS BASED ON ECONOMIC BURDEN:

TIP #1: Definitions

Q. What are the definitions of "video programming provider" and "video programming distributor"?

A. A "video programming provider" is any video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television networks and the owners of such programming. Typically, this will include the petitioner if it is the party producing the programming. A "video programming distributor" is any television broadcast station licensed by the FCC and any multi-channel video programming distributor and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. Typically, this is the television station, cable channel, or satellite provider that shows delivers the petitioner's programming to the public and is licensed by the Commission.

TIP #2: Provide documentation of your overall financial status.

Q. If the profit on my programming is less than the cost of captioning that programming, am I automatically entitled to a captioning exemption?

A. No. The FCC does not compare the cost of producing a program with the amount of money you make from that program to determine whether a petitioner should receive a captioning exemption. In other words, the FCC does not consider the costs of and resources devoted to or from the specific program. Rather, the FCC looks at the extent to which your organization or company can afford the cost of captioning, and therefore looks at the overall revenues of your company or organization.

TIP #3: Include up-to-date documentation about your financial status.

Q. What financial information must be provided?

A. Current FCC rules do not specify what financial information must be provided. It should, however, include documentation such as a profit and loss statement, a bank record, or something of that nature. Most importantly, it should be as recent as possible. Finally, you should remove sensitive information such as account numbers, social security numbers, etc. before submitting it and should never submit copies of cancelled checks.

TIP #4: Provide captioning costs for the program for which you are seeking an exemption.

Q: What captioning costs must be provided?

A.: You must provide information about the reasonable and costs of captioning for your program, not just the costs of captioning any programs.

TIP #5: Affirm, under penalty of perjury, that you have sought captioning assistance.

Q. What to I have to do to "verify" that I have sought assistance from my video program distributor and additional sponsorship sources?

A. All you have to do is tell us that you sought assistance from your video program distributor and other possible sources of support for captioning. You do not have to provide letters demonstrating that you have done so, although you may if you wish. You are encouraged to also provide information on the results of your solicitations. If your organization is precluded from seeking outside assistance, you should explain the reason for this. Also, remember that all statements you make in your petition must be affirmed as truthful and accurate under penalty of perjury (either by affidavit or signature).

TIP #6: You may request confidential treatment of your information, but must publicly disclose enough for others to comment on your petition.

Q. How can I obtain confidentiality regarding information I submit?

A. Because of the public nature of FCC proceedings, 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 (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 (removed). This second version must be submitted *along with* your request for confidential treatment. The redacted version (i.e., the version that does not contain the confidential information) 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.

TIP #7: While your petition is pending, you are exempt from the closed captioning rules.

Q. Once I file a petition, do I have to caption my program?

A. Under the FCC's rules, once you have filed a petition seeking an economically burdensome exemption from our captioning requirements, the programming is exempt from the captioning requirements unless and until the petition is dismissed or denied. However, remember that once you have received a notice from the FCC seeking additional information on your petition, you have only 30 days from the date of that notice to deliver all of the necessary information to the FCC. After that, if your petition is still not complete, it will be dismissed and you will have 90 days from the date of the FCC's notice (seeking additional information) to begin captioning. We understand that at times, video programming distributors request programming to be captioned even while a petition is pending. If your distributor makes this request, this is an issue between you and you video programming distributor.

TIP #8: When your petition contains all the necessary information, the FCC will release it to the public (put it on "public notice") to get feedback on its merits.

Q: What happens to my petition after I provide all the information requested by the FCC?

A: After you provide all the information that the FCC believes is necessary to make a determination of whether or not to grant a closed captioning exemption, the FCC will release your petition to the public (put it on "public notice.") At that point, the FCC will add it to the closed captioning exemption docket: "CG Docket No. 06-181" and you and others will be able to find it on the FCC's website at **http://fjallfoss.fcc.gov/ecfs/**. Members of the public will then have 30 days to file comments on or oppositions to your petition. You will then have 20 days to respond to those comments. At the end of that time, the FCC will review your petition, along with the comments and responses received, to determine the extent that providing captioning would be economically burdensome for you. The FCC will then either grant or deny your petition. If the FCC denies your request for an exemption, you will have 90 days from the date of the denial to begin captioning.

TIP #9: Be sure to mail or transmit your document in sufficient time to meet filing deadlines.

Q: When does the FCC consider a petition or response to a letter seeking additional information to have been filed?

A.: The FCC considers a document to have been filed when it is received by the Commission, not when it is mailed or postmarked. The actual date of when a document is filed with the Commission is indicated by an FCC date-stamp on the face of the document. When submitting a document to the FCC that is subject to a filing deadline, be sure to allow enough time for it to be transported to and arrive at the FCC by the deadline.