

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the matter of)
BBC WORLDWIDE LIMITED)
)
Petition for Exemption of)
Closed Captioning Requirement)
)

CG-06-181

ACCEPTED/FILED

AUG 29 2013

To: The Commission

Federal Communications Commission
Office of the Secretary

**PETITION FOR EXEMPTION FROM
CLOSED CAPTIONING REQUIREMENT**

BBC Worldwide Limited ("BBCWL"), owner and operator of CBeebies, a Spanish-language television channel available on multichannel video program distributor ("MVPD") platforms which provides programming targeted to preschool-age children ("CBeebies" or the "Channel"), by its attorneys and pursuant to Section 79.1(f) of the Commission's rules, hereby submits this Petition for Exemption from Closed Captioning Requirement (the "Petition"). As demonstrated herein, grant of the Petition is warranted, because compliance with the closed captioning requirement would result in significant difficulty and expense for CBeebies, and thus

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would be economically burdensome¹ to the Channel while providing no countervailing benefit to preschool-age viewers.

I. Background.

CBeebies is a digital channel that carries children’s programming from the British Broadcasting Corporation (“BBC”), as well as children’s programming from other sources. CBeebies is designed for children ages six and under. The Channel’s unique programming consists of a mix of storytelling, animation, and live-action programming, designed to aid in the social, emotional and personal development of preschoolers.

BBCWL is the commercial arm of the BBC which distributes CBeebies throughout the world. CBeebies is dubbed into multiple languages, including the Spanish language for Latin American and U.S. Hispanic audiences. CBeebies was launched to U.S. Hispanic viewers in

¹ See 47 C.F.R. § 79.1(f)(2). The Commission’s rules formerly referenced an “undue burden” standard, but in accordance with the decision in *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941 (2011) (“*Anglers*”), the Commission proposed to “replace all current references to ‘undue burden’ in Section 79.1(f) of the rules with the term ‘economically burdensome’ to correspond with the new language reflected in the [Twenty-First Century Communications and Video Accessibility Act] and to make clear that petitioners seeking individual exemptions from the captioning rules must now show that providing captions on their programming would be ‘economically burdensome.’” *Id.* at 14962. The Commission then amended Section 79.1 of its rules to replace all references to “undue burden” with the term “economically burdensome.” See *Interpretation of Economically Burdensome Standard, Report and Order*, 27 FCC Rcd 8831 (2012). Except for the change in wording, the exemption standard remains the same: the Commission “interpret[s] the term ‘economically burdensome’ . . . as being synonymous with the term ‘undue burden.’” *Id.* at 8834.

November 2008.² The Channel provides 24-hour a day Spanish-language programming devoted 100% to preschoolers, defined as children ages six and under. CBeebies is currently available in the United States to subscribers of the basic Hispanic tier available through the DISH Network (DishLATINO) and to subscribers of a few smaller cable systems. Revenue generated by BBCWL's worldwide distribution of its programming assets is returned to the BBC to be reinvested in BBC programming and services.

II. CBeebies is Entitled to an Exemption Under the "Economically Burdensome" Standard.

Petitions seeking an exemption from the requirement to close caption video programming are evaluated under the "economically burdensome" standard, as defined by the following criteria:

- (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.³

² The Channel operated without closed captioning through November 2012 pursuant to the new network exemption for closed captioning. *See* 47 C.F.R. § 79.1(c)(9). On November 19, 2012, BBCWL submitted a Petition for Exemption from Closed Captioning Requirement (the "Initial Petition"). On February 22, 2013, in response to a January 23, 2013 letter from the FCC's Consumer and Governmental Affairs Bureau (the "Bureau"), BBCWL filed a Supplement to Petition for Exemption from Closed Captioning Requirement (the "Supplement"). The Supplement directly responded to the Bureau's letter, providing the exact materials and information requested by the Bureau. On July 19, 2013, the Bureau notified BBCWL that the Initial Petition had been dismissed due to alleged failure to submit the information requested in the Bureau's January 23, 2013 letter. Apparently, the Initial Petition was erroneously dismissed without consideration of the information and materials supplied in the Initial Petition and/or the Supplement. BBCWL is therefore filing this second Petition.

³ 47 C.F.R. § 79.1(f)(2); *see also Anglers* at 14955-56.

As the following information plainly demonstrates, requiring CBeebies to close caption its programming would clearly result in a “significant difficulty or expense”⁴ to the Channel. Thus, an exemption from the closed captioning requirements is warranted.

a. Nature and Cost of Closed Captioning.

Commission rules require that 100% of nonexempt Spanish language programming be captioned.⁵ Thus, nearly all of the Channel’s programming is considered nonexempt, and closed captioning compliance could amount to an estimated first-year annual expense to CBeebies of over \$1 million, with ongoing annual expenses for new programming of approximately \$50,000.⁶ Section 79.1(d)(11) of the Commission’s rules, however, would allow CBeebies to limit closed captioning expenditures to 2% of gross channel revenues from the previous calendar year. Based on revenue generated from delivery of CBeebies to U.S. Hispanic households, CBeebies’ 2013 closed captioning costs would be limited to approximately \$27,000. Taking worldwide revenue for CBeebies into account, however, would require BBCWL to incur the more substantial amounts (in excess of \$1 million) discussed above. Obviously, such an additional expenditure would constitute a significant expense, and an economic burden, on the U.S. Hispanic operation of CBeebies.

⁴ 47 C.F.R. § 79.1(f)(2).

⁵ 47 C.F.R. § 79.2(b)(3)(iv).

⁶ These figures are based on captioning 15 hours per day of programming during the first year, at \$195 per hour for Spanish-language captioning services. The quote was provided to BBCWL management by a reputable captioning service. Archived programs which are in the Channel’s current library and in active circulation on the Channel will need to be captioned. In addition, approximately 250 hours of new programming will need to be captioned each year. Additional expenses will likely be incurred for new equipment, taping and for the provision of dedicated telephone lines.

Due to the strictures of British law and the policies of the BBC, to which BBCWL must conform, CBeebies is unable to seek sponsorship sources for captioning. In fact, CBeebies does not offer any sponsorship opportunities, including traditional “spot” advertising, in its feed to U.S. Hispanic audiences, rendering it impossible for CBeebies to seek commercially funded assistance for captioning.

BBCWL has sent correspondence to each of the MVPDs that carries CBeebies’ in the United States requesting closed captioning assistance. No MVPD has responded positively to this request. *See* Declaration of Mr. Alexander Torres, submitted herewith.

b. Effect on CBeebies’ Operations.

Requiring CBeebies to close caption programming could force the Latin America and U.S. Hispanic operations of the Channel into the unenviable position of potentially having to make program cuts and/or ceasing its 24-hour operation. Such expenditures could stymie any future attempt by CBeebies to deliver original Spanish-language programming to serve its preschool viewers in U.S. Hispanic households. Lastly, the Channel might need to consider reducing its already small staff.

As CBeebies is only now in its fifth year of delivering programming to U.S. Hispanic audiences, the Channel continues to face significant pressures making it difficult to grow its audience and revenue. The Channel would like to be in a position to pursue additional placements on other MVPDs. The addition of extensive costs for captioning could hamper these goals. The cessation or shrinking of CBeebies’ operations would eliminate or reduce availability

of a unique, and much needed, outlet that focuses on the needs of Spanish-speaking preschoolers in the United States.⁷

c. Financial Resources of the Channel.

Submitted herewith as Exhibit A is a Profit & Loss Statement for Fiscal Year 2012/2013 for CBeebies' Latin America & US Hispanic operations (the "P&L Statement").⁸ As demonstrated on the P&L Statement, the channel shows a [REDACTED] (before interest, taxes and exchange revaluations) of \$ [REDACTED] for Fiscal Year 2012/2013.

As previously noted, CBeebies generates very little revenue from its carriage on U.S. MVPDs, and is restricted by British law and BBC policy from seeking advertising and other sponsorship revenue. Clearly, CBeebies is not in a financial position that would allow it to expend many thousands of dollars for program captioning that, as discussed below, provides absolutely no benefit to preschool viewers. Again, it should be reiterated that revenue generated by CBeebies is returned to the BBC for reinvestment in BBC programming and services.

d. The Type of Operations of CBeebies.

As explained, CBeebies is a unique operation devoted to the programming needs of children ages six and under. CBeebies strives to provide top-quality programming to the U.S. Hispanic population.

CBeebies respectfully submits that two factors concerning its operations warrant special consideration. First, CBeebies' programming in the United States is targeted at a discreet, and

⁷ It should be noted that, while CBeebies is designed to appeal to native speakers of Spanish, CBeebies has received reports that parents of some English speaking children also utilize CBeebies to expose their young children to Spanish as a second language.

⁸ BBCWL notes that the Fiscal Year 2011/12 profit and loss statement submitted with its Initial Petition covered three BBCWL channels, including CBeebies, that are distributed through BBC's Latin America and US Hispanic operations. At the time of submission of the Initial Petition, BBCWL did not have available a separate profit and loss statement for CBeebies.

unique, audience: children ages six and under who speak Spanish in their homes. Clearly, children of that age, regardless of language spoken, have little, if any, reading ability. Even those “older” children in the age group who may be able to read to some degree will be unable to follow the rapid text that is necessary to accurately transcribe on-screen dialogue. Thus, captioning programs that serve such a young audience “would not add significantly to the information that is already available visually.”⁹ Despite the generally laudable goals underpinning the Commission’s captioning requirements, this is obviously an instance where “the benefits of captioning will not offset the economic burden that would be imposed by a captioning requirement,”¹⁰ as there will be virtually no benefit provided by the captioning.

Second, at present, CBeebies U.S. programming is 100% supplied by a program feed originating in Mexico. Closed-captioning is not required in Mexico. Inserting captioning for the U.S.-only market may prove technically difficult, and potentially even more expensive than the estimates set forth in Section II(a) above. CBeebies would likely need to obtain captioning assistance from U.S.-based providers, and develop a way to route the captioned programs from the U.S. to Mexico, where they would be inserted only into the U.S.-bound program stream. While technically feasible, the long-distances and cross-border nature of the transaction could add significantly to the costs required for compliance.

⁹ *Closed Captioning of Video Programming, Report and Order*, 13 FCC Rcd 3272, 3343 (1997).

¹⁰ *Id.*

III. Conclusion.

For the reasons set forth herein, BBCWL submits that, in accordance with the “economically burdensome” standard of the Commission’s rules, CBeebies is entitled to an exemption from the closed captioning requirement.

Respectfully submitted,

BBC Worldwide Limited

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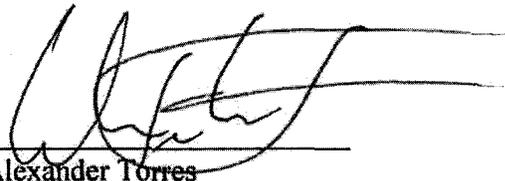
Its Attorneys

DECLARATION

I, Alexander Torres, declare the following:

1. I am Vice President, Business & Legal Affairs, at BBC Worldwide Latin America and US Hispanic.
2. I have reviewed the foregoing Petition for Closed Captioning Exemption of BBC Worldwide Limited ("BBCWL"), including the Profit & Loss Statement for Fiscal Year 2012/13 for CBeebies' Latin America & US Hispanic operations (the "Petition"). All information and statements contained in the Petition are true and correct to the best of my knowledge and belief.
3. BBCWL has sent correspondence to the multichannel video programming distributors that carry the CBeebies channel in the United States requesting closed captioning assistance, and no assistance has been provided.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 29, 2013.



Alexander Torres
Vice President, Business & Legal Affairs
BBC Worldwide Limited

Exhibit A

Profit & Loss Statement for Fiscal Year 2012/13 –

CBeebies' Latin America and U.S. Hispanic Operations

Profit Center	+ CBeeBies 2012/13 performance
	USD 000s
AFFILIATE SALES	██████████
ADVERTISING	██████████
OTHER INCOME	██████████
TOTAL SALES	██████████
COMMISSION & CARRIAGE/DISTRIBUTION	██████████
PROGRAMMING/PRODUCTION	██████████
TECH/DUPLICATION & MASTERING	██████████
CONTRIBUTORS	██████████
AMORTISATION	██████████
TOTAL STAFF COSTS	██████████
MARKETING & RESEARCH	██████████
VEHICLE COSTS	██████████
COMMUNICATIONS	██████████
OFFICE & IT	██████████
CONSULTANCY-LEGAL & PROF.	██████████
ACCOMMODATION & MAINTENANCE	██████████
MISCELLANEOUS	██████████
DEPRECIATION	██████████
LOCAL RECOVERIES OF COST TO OTHER DIVISIONS	██████████
TOTAL DEPARTMENT COSTS	██████████
PROFIT BEFORE INTEREST, TAX AND ERD	██████████
EXCHANGE RATE DIFFERENCES	██████████
PROFIT BEFORE INTEREST AND TAX	██████████