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Federal Communications Commission
Washington, D.C. 20554

October 29, 2013

David Andelman
P.O. Box 269
47 Harvard Avenue
Allston, MA 02134

Re: Case Identifier: CGB-CC-1315
CG Docket No. 06-181, Petition for Closed Captioning Exemption

Dear Mr. Andelman:

This is in reference to your two letters to the Commission concerning the captioning of your program, *Phantom Gourmet*, on television stations WPFO and WLWC. You state that WPFO cannot air your program with captions because the program is produced in High Definition (HD) whereas WPFO is a Standard Definition (SD) station that requires you to supply an SD tape of your program. While you state that you can and do caption your HD shows, you lack the capacity to caption an SD tape. With regard to WLWC, you state that the station is about to change its master control and closed caption system and that, accordingly, you will have to find a new captioning solution. You state that you intend to provide closed captioning but need time to test some new recording technology. Finally, you state that you qualify for an exemption from the closed captioning requirements pursuant to Sections 79.1(d)(11) and (12) of the FCC's rules (47 C.F.R. §§ 79.1(d)(11) and (12)). These rule sections exempt video programming providers from having to expend any money to caption any video programming if the expenditure for captioning would exceed 2 percent of the gross revenues received from their channel during the previous calendar year, and from having to caption any programming on channels that produced annual gross revenues of less than $3,000,000, respectively.

As an initial matter, it does not appear that you provide a channel of programming. Rather, it appears from your letters that you are the video programming provider of a single program – *Phantom Gourmet*. Because both Sections 79.1(d)(11) and (12) pertain to the amount spent on captioning by a channel or the gross annual revenues received by a channel of programming, it does not appear that either exemption applies to your operations. In any case, because these both are self-implementing exemptions, you do not need explicit approval from the FCC in order to use them as long as you meet the exemption criteria.

Additionally, Section 713 of the Communications Act of 1934, as amended (47 U.S.C. § 613) (the Act), generally requires all new broadcast video programming to be captioned. It provides that the FCC can exempt by regulation certain classes of program or by petition where the provider of video programming or program owner demonstrates in a petition that it would be "economically burdensome" to caption the program. *See* Section 713(d) of the Act. It does not provide for exemptions from the captioning for any other reasons. The Act provides that the factors to be considered in determining whether captioning would be economically burdensome are:

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.

You have not provided information that would enable the Commission to evaluate the four factors described above and to determine whether captioning would be economically burdensome for you. If you wish to obtain an economically burdensome exemption from captioning *Phantom Gourmet*, you should file a petition providing us with the information described below:

- Name of the programming for which an exemption is requested. Provide the specific name of each program for which you request an exemption. Petitions that request an exemption for an entire channel of video programming must identify the channel for which an exemption is requested.

- The nature and cost of the closed captions for the programming. Provide information about your organization's costs associated with closed captioning each specific program for which you are requesting an exemption, and your efforts to find companies that can provide captioning at a reasonable cost.

    - Include documentation for two or more recent quotes you received from closed captioning services to provide closed captioning specifically for each program. "Recent" means a quote you obtained within one year of the date of this letter.

    - For each of the quotes received, include an estimate of your annual cost to caption your program(s). For example, multiply the cost to caption each of your program episodes by the number of program episodes to be produced in one year.

    - In addition to providing the quotes described above, if you have considered buying equipment to produce the closed captioning yourself, provide information about the costs to purchase and maintain the equipment and for any costs associated with hiring personnel to operate the equipment for one year.

- Your financial resources.

    - Provide information about all income and all expenses for your organization, as follows:

        - Provide a statement of all income (cash receipts) and all expenses (cash disbursements) for the two most recent completed calendar or fiscal years. Cash receipts include money received from all sources for your entire organization, not just the video program(s). Cash disbursements include money paid for purchases, expenses, and settlement of obligations throughout the year for your entire organization, not just the video program(s). List, describe, and provide the dollar amount for each type of cash receipt and cash disbursement for the two most recent completed calendar or fiscal years. Cash receipts and cash disbursements may each be subtotaled. You must provide a total net dollar amount (sometimes called a surplus or deficit, or profit or loss) for all cash receipts and all cash disbursements.

- Provide audited financial statements or an accountant's compilation of financial statements for the two most recent completed calendar or fiscal years. If such statements are not available, provide complete federal income tax returns, including all attachments, for your organization for the two most recent completed calendar or fiscal years. If your organization is a sole proprietorship, provide personal tax returns for the two most recent completed calendar or fiscal years. Redact (black out) sensitive information, such as account numbers and social security numbers, before submitting personal tax returns or other documentation.

- Provide information about the current assets and current liabilities of your overall organization, as follows:

  - Provide a statement of all current assets and current liabilities of the overall organization as of the last day of the two most recent completed calendar or fiscal years. List, describe, and provide the dollar amount for each type of current asset and current liability so listed. This requirement may be satisfied by providing complete balance sheets as of the last days of the two most recent completed calendar or fiscal years.

    - Current assets are any asset (or resource) as of the last day of the calendar or fiscal year that can be converted into cash within the following year.
      - Examples of current assets for an individual or sole proprietor: cash; checking accounts; savings accounts; investment accounts including money market accounts; certificates of deposit and bonds that will mature within one year; stocks; and trust/endowment account amounts available for that year.
      - Examples of current assets for a corporation: cash; accounts receivable; inventory; marketable securities; and prepaid expenses.

    - Current liabilities are obligations (or debts) as of the last day of the calendar or fiscal year that must be paid within the following year.
      - Examples of current liabilities for an individual or sole proprietor: any loans (principal and interest) and mortgage payments (principal, interest, taxes, and insurance) due to be paid within one year; the balance of any credit cards as of the last day of the year; and unpaid bills as of the last day of the year (utility bills, and medical bills).
      - Examples of current liabilities for a corporation: accounts payable; accrued liabilities; notes payable; current portion of long-term debt; and taxes payable.

- Video programing distributor assistance. Verify that you have sought assistance (such as funding or services) from your video programming distributor(s). A distributor is any TV broadcast station, cable provider, or satellite system that shows your program(s). State whether you have asked your distributor(s) to help you provide

captions, whether this request was accepted or rejected, and, if accepted, describe the assistance that each distributor has offered to provide.

- Additional sponsorships. Verify that you have sought additional sponsorships (other than from your program distributor) or other sources of revenue. State your efforts to obtain such revenue, and whether these requests were accepted or rejected. If rejected, state whether you do not otherwise have the means to provide captioning. If accepted, describe the assistance that each sponsor has offered to provide. If your organization is precluded from seeking outside assistance or you cannot solicit and/or accept such sponsorships, provide the reason why you are unable to do so.

- Affidavit or declaration. Your submission must contain a detailed, full showing, supported by a signed affidavit or sworn declaration attesting to the truthfulness and accuracy of the information and representations contained in your submission. An affidavit is a written statement made under oath, before an official who is authorized to administer oaths, such as a notary public or county clerk. A declaration is a written statement made under penalty of perjury, such as "I declare under penalty of perjury that the information contained in this submission is true and correct." (*See* 47 C.F.R. § 1.16.) The "California All-Purpose Acknowledgement" included with your petition did meet this requirement.

You may also provide other information that you deem relevant to our determination of your exemption request pertaining to the impact that captioning will have on your program or programming activities and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming.

Because of the public nature of FCC proceedings, your submission, as well as any supporting financial or other information provided, will be available for inspection by the general public. If your submission contains some specific information that you would like not to be made routinely available for public inspection, you may request its "confidential treatment, pursuant to FCC rules. (*See* 47 C.F.R. § 0.459.). If you seek such treatment, you must identify the *specific* information which you would not like to be made available to the general public and provide the basis for your request, for example, that the information is proprietary financial information, contains a trade secret, or is legally privileged. Also describe how disclosing the information to the general public may cause you substantial competitive harm. You must also submit a second version of your submission with the confidential information redacted (removed or blacked out). 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 disclosed publicly. If your request for confidential treatment is granted, the "public version" of your submission must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that members of the public have notice of the basis for your exemption request and can comment on its merits.

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, we will place your Petition on public notice under 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 your Petition, including the supplemental information you have provided in response to this letter, after which you will have 20 days to respond. At the end of this timeframe, the Bureau will review your Petition, along with any

comments and responses received, to determine whether you have demonstrated that providing closed captions would be economically burdensome. If Bureau denies your Petition, you will have ninety (90) days from the date of your notification of the denial to begin captioning.

If you have questions pertaining to this letter or the information and materials requested herein, please contact the FCC's Disability Rights Office at captioningexemption@fcc.gov.

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

Instructions for Filing a Closed Captioning Exemption Petition

You must send the FCC an original and two (2) copies of the Petition for a closed captioning exemption. Filings must be delivered by hand or messenger service, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For delivery by hand or messenger service, U.S. Postal Service mail, including express mail, priority mail, and first class mail, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-C438
445 12th Street, SW
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-C438
9300 East Hampton Drive
Capitol Heights, MD 20743

Electronic filing and faxes of supplements to petitions will not be accepted at this time.

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your supplement has been received. **You must include your case identifier number, which is located at the top of this letter, and Docket No. 06-181, in all correspondence with the FCC regarding your petition.**