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Federal Communications Commission
Washington, D.C. 20554

April 10, 2014

St. Paul United Methodist Church
Attn: Michael R. Waller
18 Saint Andrews Street
Abilene, TX 79606

Re: Case Identifier: CGB-CC-1293
Docket No. 06-181
Petition for Closed Captioning Exemption
Request for Clarification

Dear Mr. Waller:

By this letter, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) responds to the "Request of St. Paul United Methodist Church for Clarification of the Letter Order Dismissing Its Amended Petition" (Request for Clarification), dated February 24, 2014. For the reasons described below, the Bureau concludes that, based on the information provided by the Petitioner, Petitioner's program is not exempt under any of the self-implementing exemptions from the Commission's closed captioning rules. As further described below, the Bureau reverses the dismissal of the petition and grants Petitioner until May 12, 2014, which is 30 days from the date of this letter, to complete its petition for exemption based on economic burden. If the Petitioner timely submits all of the required information and documentation, the Bureau will place the petition on public notice for comments and/or opposition.

Background

In March 2013, St. Paul United Methodist Church (Petitioner) filed a petition with the Commission. The Petitioner explained that the television station that airs its program, KTXS, believes that the Petitioner's program is not exempt from the Commission's closed captioning rules and that the Petitioner must provide closed captioning for its program.[1] The Petitioner sought the following: (1) a confirmation that the Petitioner's program qualifies for an exemption under section 79.1(d)(8) of the Commission's closed captioning rules;[2] and (2) a determination that the Petitioner qualifies for an exemption under section 79.1(f) of the Commission's rules because providing closed captioning would be economically burdensome for the Petitioner.[3]

On October 1, 2013, the Bureau advised the Petitioner by letter that it does not appear that the exemption under section 79.1(d)(8) of the Commission's rules applies to the Petitioner because the Petitioner is not a "video programming distributor," as defined in the Commission's rules.[4] With respect

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[1] Petition at 2. Petitioner contracts with television station KTXS, an ABC affiliate, to produce a live broadcast of its Sunday morning worship services and its Christmas Eve service (53 programs annually), using a KTXS-provided transmission truck, cameras, and an operator, at a cost to Petitioner of $650.00 per program. Petition at 1-2.

[2] 47 C.F.R. § 79.1(d)(8).

[3] 47 C.F.R. § 79.1(f).

[4] 47 C.F.R. § 79.1(d)(8) (exempts "[p]rogramming 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") (emphasis added). *See also* 47 C.F.R. § 79.1(a)(2) (defining "video

to the Petitioner's request for an exemption based on economic burden under section 79.1(f) of the Commission's rules,[5] the Bureau's letter advised that, to consider the petition further, the Petitioner would need to provide supplemental information by October 31, 2013, or the petition would be dismissed. If the petition was dismissed, the Petitioner would be required to begin providing closed captioning for its program(s) within 90 days of the dismissal notice.

The Petitioner filed a timely response dated October 29, 2013, supplementing its petition for exemption based on economic burden (Petition Supplement). In addition, the Petitioner submitted an amended petition to request confirmation that the Petitioner qualified for an exemption under section 79.1(d)(12) or 79.1(f) of the Commission's closed captioning rules (Amended Petition).[6] The Petitioner also explained that KTXS has required the Petitioner to certify to KTXS that Petitioner's programming complies with or is exempt from the Commission's closed captioning requirements, and to indemnify KTXS from and against any related investigation, inquiry, or enforcement action by the Commission.[7]

The Bureau reviewed the supplemental information provided and determined that the Petitioner did not include some of the information requested. By letter dated February 7, 2014, the Commission dismissed the petition because the Petitioner "did not submit two documented, specific, and annualized quotes associated with the cost of captioning [its] program."

On February 11, 2014, by e-mail to the Commission, the Petitioner asserts that the requested quotes were submitted and notes that the Commission did not address the Petitioner's request for a determination that it is exempt under section 79.1(d)(12) of the Commission's rules. The Petitioner's Request for Clarification, filed soon thereafter, asks the Commission to "clarify its February 7, 2014 letter order to confirm that [the Petitioner] is self-exempt from the closed captioning requirements of section 79.1(d)."[8] The Petitioner mentions, specifically, the exemptions under sections 79.1(d)(11) and (12) of the Commission's rules.[9] The Petitioner also provides an explanation about the closed captioning costs it provided.[10] We address each of these matters below.

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programming distributor," in part, as "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor").

[5] 47 C.F.R. § 79.1(f) (establishes procedures for exemptions based on the economically burdensome standard). *See also* 47 C.F.R. § 79.1(d)(2) (exempts video programming or a video programming provider for which the captioning requirement has been waived following a Commission determination in accordance with the petition procedures specified in section 79.1(f)).

[6] 47 C.F.R. §§ 79.1(d), (f).

[7] *See* Amended Petition at 2-3. We note that video programming distributors, such as television station KTXS, are the entities obligated to comply with the Commission's closed captioning requirements. *See, e.g.*, 47 C.F.R. §§ 79.1(b), (c). *See also* n.4, *supra*. Furthermore, video programming distributors may rely on certifications from programming suppliers, such as the Petitioner, to demonstrate compliance with the Commission's closed captioning requirements. 47 C.F.R. § 79.1(g)(6). Petitioner included a copy of the "Closed Captioning Compliance Certification" requested by KTXS as Exhibit A to its Amended Petition.

[8] Request for Clarification at 4.

[9] Request for Clarification at 3.

[10] Request for Clarification at 2.

Discussion

1. Application of the Self-Implementing Exemptions to the Petitioner

The Commission's rules contain two types of exemptions: categorical exemptions that are "self-implementing";[11] and individual exemptions that may be granted upon petition to the Commission.[12] If a covered entity or a covered entity's video programming meets the criteria of a self-implementing exemption, it is automatically exempt from having to provide closed captioning for its programming and does not need to first request an exemption from the Commission.

In its petition, the Petitioner asserted that its program should be exempt from the closed captioning rules based on section 79.1(d)(8).[13] As noted above, the Bureau advised the Petitioner by letter dated October 1, 2013, that the Petitioner's program does not appear to be exempt under that provision because the Petitioner is not a "video programming distributor," as defined in the Commission's rules.

In its Amended Petition and Request for Clarification, the Petitioner asserts that it is exempt under section 79.1(d)(12), which states that "[n]o video programming provider shall be required to expend any money to caption any *channel* of video programming producing annual gross revenues of less than $3,000,000 during the previous calendar year . . .."[14] This exemption applies only to video programming providers operating a *channel* of video programming, which the Petitioner does not appear to be. In addition, in its Request for Clarification, the Petitioner mentions but does not assert the self-implementing exemption under section 79.1(d)(11), which states that "[n]o video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that *channel* during the previous calendar year."[15] This exemption applies only to video programming providers operating a *channel* of video programming, which the Petitioner does not appear to be. For these reasons, we conclude, based on the information provided by the Petitioner, that neither of the self-implementing exemptions contained in sections 79.1(d)(11) or (12) apply to the Petitioner. [16]

2. Closed Captioning Costs

When a covered entity or a covered entity's video programming does not meet the criteria of a self-implementing exemption, a video programming provider, producer, or owner may petition the Commission for an exemption under section 79.1(d)(2), in accordance with the process specified in section 79.1(f).[17] A petition for an exemption must be supported by sufficient evidence to demonstrate

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[11] 47 C.F.R. §§ 79.1(d)(1) and (3)-(13).

[12] 47 C.F.R. § 79.1(d)(2) and (f). *See also* n.5, *supra*.

[13] 47 C.F.R. § 79.1(d)(8).

[14] 47 C.F.R. § 79.1(d)(12) (emphasis added).

[15] 47 C.F.R. § 79.1(d)(11) (emphasis added).

[16] In addition, again based on the information provided by the Petitioner, it does not appear that Petitioner's programming is exempt under any of the remaining self- implementing exemptions contained in the Commission's rules. *See* 47 C.F.R. §§ 79.1(d)(1), (3)-(7), (9), (13), exempting, respectively, programming subject to contractual restrictions; programming other than English or Spanish; primarily textual programming; programming distributed in the late night hours; interstitials, promotional announcements and public service announcements under 10 minutes; Educational Broadband Service programming; programming on new networks; primarily non-vocal music programming; and locally produced educational programming).

[17] 47 C.F.R. §§ 79.1(d)(2), (f).

that compliance with the requirements to closed caption video programming would be economically burdensome, *i.e.,* would result in significant difficulty or expense for the petitioner.[18] Factors to be considered when determining whether the requirements for closed captioning are economically burdensome include, among other things, the nature and cost of the closed captions for the programming.[19]

Initially, in its March 2013 petition, the Petitioner stated that the cost for KTXS to provide closed captioning for its live program "will be $150.00 for each program, or approximately $7200.00 on a yearly basis."[20] The Bureau's October 1, 2013 letter requesting supplemental information specifically required the Petitioner to provide, with respect to information about the Petitioner's captioning costs, information about the Petitioner's "costs associated with closed captioning each specific program for which it requested an exemption, and [the Petitioner's] efforts to find companies that can provide captioning at a reasonable cost." To ensure that the Petitioner adequately demonstrated such costs, the letter further directed the Petitioner to provide the following:

- Include documentation for **two or more recent quotes you received from closed captioning services** to provide closed captioning specifically for each program.[21] "Recent" means a quote you obtained within one year of the date of [the Bureau's October 1, 2013] 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.

In response to the Bureau's request, the Petitioner stated that "neither St. Paul nor KTXS has the necessary equipment to provide closed captions for the St. Paul live telecasts."[22] In addition, the Petition Supplement provided the following documentation and information:

- A document from KTXS, dated October 23, 2013, which Petitioner characterized as a quote "for the purchase of encoding equipment at $7245.50 uninstalled, and alternatively to make available closed captioning service provided by the National Closed Captioning Institute ('NCI') at $120.00 per hour."[23] Specifically, the KTXS estimate is for a Link Electronics HDE-3000 HD Closed Caption Encoder ($6,906.00); a Link Electronics Modem Option for use with the PDP-886 SD-SDI Video Closed-Caption Encoder/Decoder ($219.50); and National Captioning Institute (NCI) closed captioning services for special programming at

[18] 47 C.F.R. § 79.1(f)(2).

[19] 47 C.F.R. § 79.1(f)(2)(i). *See also* 47 C.F.R. §§ 79.1(f)(2)(ii)-(iv) (other factors the Commission must consider when determining whether the requirements for closed captioning are economically burdensome).

[20] Petition at 2. Petitioner does not specify, but the kind of closed captioning required for Petitioner's program, which is broadcast live, appears to be "real-time" closed captioning, a technique that generates and adds captions to the program as it is being aired to the public.

[21] Emphasis added.

[22] Petition Supplement at 2.

[23] Petition Supplement at 2.

$120.00 per hour, prorated on the half-hour ($120.00).[24] Petitioner then multiplied this hourly rate by 53 programs to estimate that the annual cost for NCI to provide closed captioning services would be $6,360.00.[25]

- A document from Norris Audio-Video, dated April 9, 2012, which Petitioner characterized as a quote "for the sale and installation of encoder equipment by that supplier at $15,565.00."[26] The document is the second page of a two-page proposal for a total of $61,949.50, of which $15,695.00 is for closed captioning software and hardware, and $5,955.50 is for design, programming, and installation.[27]

- Petitioner stated that if it "purchased encoding equipment it would have to operate it with unpaid volunteers such as those who now operate its cameras, which . . . would be problematic at best and probably unsuccessful."[28]

The estimate provided by KTXS to the Petitioner documents one recent quote that Petitioner received, although indirectly, from NCI to provide closed captioning specifically for the Petitioner's program. The proposal from Norris Audio-Video, dated April 9, 2012, does not document a second quote (recent or otherwise) that Petitioner received from a closed captioning service to provide closed captioning specifically for the Petitioner's program. Therefore, and notwithstanding Petitioner's assertions to the contrary,[29] Petitioner did not satisfy the Bureau's requirement for documentation for two or more recent quotes Petitioner received from closed captioning services to provide closed captioning specifically for its program.

Petitioner also did not satisfy the Bureau's requirement to estimate the annual cost to caption Petitioner's program based on "each of the quotes received," because Petitioner provided documentation for and annualized the cost for closed captioning for only one quote (provided by KTXS for NCI closed captioning services).

In its Petition Supplement, Petitioner notes that it considered buying equipment to produce closed captioning for its program on its own (rather than purchase this from a captioning service), and provided a copy of the proposal from Norris Audio-Video that included information about the costs to purchase and install the equipment. However, Petitioner failed to provide information about the costs to maintain the equipment and any costs associated with hiring personnel to operate the equipment for one year. Moreover, it is not clear that Petitioner was ever in a position to utilize the equipment mentioned because,

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[24] Petition Supplement, Exhibit A.

[25] Petition Supplement at 2.

[26] Petition Supplement at 2 and Exhibit B.

[27] Petitioner later explained that this quote was "part of a proposal to replace all of St. Paul's television equipment." Request for Clarification at 2.

[28] Petition Supplement at 3.

[29] In its February 11, 2014, e-mail to the Commission, the Petitioner asserts that this information represents two quotes: (1) for the cost of equipment Petitioner would need buy to caption its program; and (2) "for both the cost of such equipment and for the provision of closed captioning by [NCI] through KTXS." Further, in its Request for Clarification, the Petitioner states that it provided "two estimates of the cost of closed captioning equipment, one from a third party purveyor of such equipment . . . ; and one as part of a proposal from KTXS which also included the [sic] an estimate of the cost of closed captioning services to be provided to KTXS by [NCI] at St. Paul's expense." Petition Supplement at 2.

Petitioner asserted that "there are no local providers of closed captioning services,"[30] and that "it would have to operate [the equipment] with unpaid volunteers . . . which . . . would be problematic at best and probably unsuccessful."[31]

Finally, it appears that, in addition to closed captioning services, KTXS needs equipment in order for the Petitioner to provide closed captioning for its live program.[32] As such, Petitioner's closed captioning requirements may be relatively unique. Since this seems to be the case, the Bureau will grant Petitioner the opportunity to provide more comprehensive information than was requested in the Bureau's October 1, 2013 letter. This information may be necessary to accurately reflect all of Petitioner's costs associated with closed captioning its program, including its costs for the purchase, installation, and maintenance of necessary equipment. For these reasons, the Bureau reverses the dismissal of the petition and grants Petitioner until May 12, 2014, which is 30 days from the date of this letter, to complete its petition by providing this additional cost data. Specifically, Petitioner must provide the following information and documentation by that date:

- Documentation for one recent quote received by Petitioner from a closed captioning service for the costs of providing closed captioning services specifically for Petitioner's program. To be "recent," the quote must be dated no earlier than October 1, 2012 (one year prior to the Bureau's October 1, 2013 letter). This should be a quote for *services only;* do not include equipment costs in this quote. This one additional documented quote, along with the documentation Petitioner provided for the KTXS/NCI quote, will satisfy the Bureau's requirement for documentation of two or more recent quotes received from closed captioning services to provide closed captioning specifically for Petitioner's program.

- Petitioner also must provide an estimate of the annual cost to caption its program using this one additional documented quote. For example, as Petitioner did for its NCI quote, it should multiply the cost to caption one episode of its program by 53, the number of program episodes Petitioner produces in one year.

- *In addition*, if there are costs that Petitioner must incur related to the purchase, installation, and maintenance of equipment that KTXS needs in order to receive and pass through captions provided by a closed captioning service, such as NCI, for Petitioner's program,[33] Petitioner should describe and include such costs in its estimates of its annual cost to caption its program.[34]

- Finally, provide a signed affidavit or sworn declaration attesting to the truthfulness and accuracy of the information and representations contained in Petitioner's submission of this additional information and documentation related to the nature and costs of closed captioning Petitioner's program. 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

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[30] Request for Clarification at 2.

[31] Petition Supplement at 3.

[32] *See* Petition Supplement at 2 ("neither St. Paul nor KTXS has the necessary equipment to provide closed captions for the St. Paul live telecasts").

[33] For example, KTXS may need one or both pieces of equipment (the closed caption encoder and/or the modem option) that it included in its estimate dated October 23, 2013. *See* Petition Supplement, Exhibit A.

[34] To obtain and provide this information, Petitioner may need to consult with KTXS and equipment vendors.

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."[35]

Conclusion

For the reasons described above, the Bureau concludes that, based on the information provided by the Petitioner, its program is not exempt under any of the self-implementing exemptions from the Commission's closed captioning rules.

Further, the Bureau grants Petitioner until May 12, 2014, which is 30 days from the date of this letter, to complete its petition, as described above.[36]

If Petitioner does not timely submit the information and documentation described above, the Bureau will conclude that Petitioner has failed to support its exemption request with adequate explanation and evidence, and will dismiss the petition. In the event of such dismissal, Petitioner will be required to comply with the Commission's closed captioning requirements contained in Part 79 of the Commission's rules with regard to the programming that was the subject of its petition within 90 days of the date of the Bureau's notification that the petition has been dismissed.

If the Petitioner timely submits the information and documentation described above, the Bureau will place the 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 the petition, including the supplemental information provided in response to this letter, after which Petitioner will have 20 days to respond. At the end of this timeframe, the Bureau will review the petition, along with any comments and responses received, to determine whether Petitioner has demonstrated that providing closed captions would be economically burdensome. If the Bureau denies the petition, Petitioner will have 90 days from the date of the notification of the denial to comply with the Commission's closed captioning requirements contained in Part 79 of the Commission's rules with regard to the programming that was the subject of its petition.

If the Petitioner has questions pertaining to this letter, please contact the FCC's Disability Rights Office at captioningexemption@fcc.gov.

Gregory Hlibok
Chief, Disability Rights Office
Consumer and Governmental Affairs Bureau

[35] *See* 47 C.F.R. § 1.16.

[36] During the pendency of an economically burdensome determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements. 47 C.F.R. § 79.1(f)(11).