



# PUBLIC NOTICE

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## NOTICE OF NEW ELECTRONIC FILING PROCEDURES FOR TELEVISION CLOSED CAPTIONING EXEMPTION REQUESTS

### CG Docket Nos. 06-181 and 05-231

By this *Notice*, the Federal Communications Commission's (FCC's or Commission's) Consumer and Governmental Affairs Bureau (CGB or Bureau), by delegated authority, announces new electronic filing procedures for petitions for exemption from the Commission's closed captioning requirements for televised video programming.<sup>1</sup> On February 24, 2014, the Commission released the *Closed Captioning Quality Report and Order* requiring that all individual closed captioning exemption petitions; all comments and oppositions responsive to such petitions; and all replies to comments or oppositions be filed electronically.<sup>2</sup> These electronic filing procedures, established pursuant to the *Closed Captioning Quality Report and Order*, will take effect on April 30, 2014.<sup>3</sup> Prior to that date, all petitioners as well as parties filing comments and oppositions must continue to use paper filing procedures.

*Exemption Petitions.* The Commission's rules provide that a video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements for television programming.<sup>4</sup> A petition for exemption must provide sufficient evidence to demonstrate that compliance with the closed captioning requirements would be economically burdensome (*i.e.*, impose a "significant difficulty or expense"), as

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<sup>1</sup> *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 14-12, ¶ 113 and n.428 (released February 24, 2014) (*Closed Captioning Quality Report and Order*) (delegating to the Chief, CGB, authority to implement the transition to electronic filing and amending the Commission's rules on closed captioning quality standards to ensure full access to television programming for individuals who are deaf and hard of hearing).

<sup>2</sup> *Id.* See also 47 C.F.R. §§ 79.1(f)(4) (requiring electronic filing of petitions); 79.1(f)(7) (requiring electronic filing of comments or oppositions to petitions, and replies to comments or oppositions). See also 47 C.F.R. § 0.401(a)(1)(iii).

<sup>3</sup> The *Closed Captioning Quality Report and Order* was published in the Federal Register on March 31, 2014, and the rules regarding electronic filing of exemption petitions were ordered to take effect 30 days later. See *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, Final Rule, 79 FR 17911 (March 31, 2014). The Office of Management and Budget approval for the electronic filing of petitions for exemption is covered under OMB control number 3060-0761.

<sup>4</sup> 47 C.F.R. § 79.1(f)(1) and (2).

determined by the Commission.<sup>5</sup> The facts and information provided in a petition for exemption must be supported by an affidavit<sup>6</sup> and address the following four factors for the Commission’s consideration:

- The nature and cost of the closed captions for the programming;
- The impact on the operation of the provider or program owner;
- The financial resources of the provider or program owner; and
- The type of operations of the provider or program owner.<sup>7</sup>

As of April 30, 2014, all petitions for exemption from the television closed captioning rules (together with documentation supporting such petitions) must be filed electronically<sup>8</sup> by sending the petition via e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).<sup>9</sup> Upon receipt of a petition, the Commission will send an acknowledgement to the petitioner by e-mail. The Commission will also assign a case identifier number (for example, “CGB-CC-2345”) to the petition. This case identifier number and the reference to “CG Docket No. 06-181” must be included on all correspondence with the Commission regarding the petition, including any supplemental information to support the petition and subsequent pleadings in response to comments on or oppositions to the petition.

Once the petitioner provides the required information and documentation to the Commission, the petition will be placed on public notice, pursuant to the Commission’s rules, to permit interested parties to file comments on or oppositions to the petition.<sup>10</sup> The Commission will make the petition, as well as any supporting information and documentation provided, available for public inspection in the Commission’s Reference Information Center and through the Commission’s Electronic Comment Filing System (ECFS) at <http://apps.fcc.gov/ecfs/>.<sup>11</sup> As such, petitioners must redact (remove) social security numbers

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<sup>5</sup> 47 C.F.R. § 79.1(f)(2).

<sup>6</sup> 47 C.F.R. § 79.1(f)(9) (petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on).

<sup>7</sup> 47 C.F.R. § 79.1(f)(2). The petitioner also may present for the Commission’s consideration any other factors the petitioner deems relevant to the Commission’s final determination, including alternatives that might constitute a reasonable substitute for closed captioning. 47 C.F.R. § 79.1(f)(3). The Commission’s website contains a comprehensive list of information and supporting documentation needed to make the above showing at: <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements>. See also *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket Nos. 06-181 and 11-175, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-57, ¶¶ 28, 29 (2011). The Commission conducts a case-by-case review of each petition, and makes individual determinations on the extent to which providing captioning would be economically burdensome for each petitioner based on information provided in the petition, any supplemental information and documentation provided by the petitioner, and any comments or oppositions received. 47 C.F.R. § 79.1(f)(10). During the pendency of an economic burden determination, the video programming subject to the request for exemption is exempt from the captioning requirements. 47 C.F.R. § 79.1(f)(11).

<sup>8</sup> 47 C.F.R. § 79.1(f)(4).

<sup>9</sup> Petitions must be filed electronically by e-mail and may not be filed via ECFS. At this time, the Commission’s e-mail system does not accept attachments in the form of .ZIP files or file sizes larger than 13.3 megabytes. If a petitioner has concerns that its file size will exceed this limitation, it may contact Commission staff listed at the end of this *Notice*.

<sup>10</sup> 47 C.F.R. § 79.1(f)(5).

<sup>11</sup> Because petitions and any supporting information and documentation provided by e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov) will be uploaded to ECFS, petitioners must follow the ECFS document format

(including portions such as the last four digits), employee identification numbers, bank account and routing numbers, and any other sensitive information from their submissions that petitioners do not wish to have publicly available. The Commission will not redact sensitive information from petitioners' submissions and may reject petitions containing unredacted sensitive information.

*Confidential Treatment.* A petitioner may request confidential treatment of any information contained in a petition.<sup>12</sup> A petitioner seeking such treatment for any information in a petition must submit via e-mail to [captionexemption@fcc.gov](mailto:captionexemption@fcc.gov), a written request for confidential treatment and two versions of the petition: (1) a confidential version that contains the full information regarding the petition; and (2) a public version that redacts any confidential information. The public version of the petition and its supporting documentation, however, must contain sufficient information to support the petitioner's claim that closed captioning would be economically burdensome. If the public version of the petition fails to contain sufficient information, the petition cannot be further processed and may be dismissed.

*Comments and Oppositions.* Comments on and oppositions to the petition are due within 30 days from the date of the public notice.<sup>13</sup> As of April 30, 2014, all comments and oppositions must be electronically filed by e-mail to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov), reference "CG Docket No. 06-181," and contain the petition's case identifier number.<sup>14</sup> Persons who file comments on or oppositions to the petition must include a certification that the petitioner was served by delivering or mailing a copy to the last known address of the petitioner, its attorney, or its agent, or by sending a copy to the e-mail address last provided by the petitioner, its attorney, or its agent.<sup>15</sup>

Documents containing comments on or oppositions to a petition may also be filed electronically via ECFS at <http://apps.fcc.gov/ecfs/upload/begin?filedFrom=E>.<sup>16</sup> However, note that **any comments or oppositions that are filed via ECFS must also be e-mailed to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).** Comments or oppositions filed via ECFS must include "06-181" as the "Proceeding Number" on the ECFS form. In addition, individuals must enter the four-digit case identifier number (e.g., "2345") as the "File Number" on the ECFS form. If an individual wishes to file an identical set of comments or oppositions via ECFS on multiple petitions that have been assigned more than one case identifier number, the comments or oppositions must be filed separately for each petition/case identifier number. In this case, a different case identifier number will have to be entered as the "File Number" for each separate filing (e.g., "2345" entered as the File Number for the first filing and "2346" entered as the File Number for the second filing and so on, even if the comments or oppositions being filed are identical to the first filing). Multiple case identifier numbers may not be entered as one "File Number."

*Replies.* Any reply filed by a petitioner to the comments or oppositions in the record is due 20 days after the comment deadline.<sup>17</sup> As of April 30, 2014, all replies must be electronically filed by e-mail

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guidelines available at <http://apps.fcc.gov/ecfs/userManual/upload/documents.jsp> when submitting petitions and any supporting information and documentation via e-mail.

<sup>12</sup> See 47 C.F.R. § 0.459.

<sup>13</sup> 47 C.F.R. § 79.1(f)(6).

<sup>14</sup> As noted above, the petition will be assigned a case identifier number when the petition is filed, for example, "CGB-CC-2345."

<sup>15</sup> 47 C.F.R. § 79.1(f)(7).

<sup>16</sup> The "ECFS Express" form at <http://apps.fcc.gov/ecfs/upload/begin?procName=&filedFrom=X> cannot be used for the filing of comments or oppositions.

<sup>17</sup> 47 C.F.R. § 79.1(f)(6).

to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov), reference “CG Docket No. 06-181” and contain the petition’s case identifier number.<sup>18</sup> Replies to comments or oppositions must include a certification that the commenting or opposing party was served by delivering or mailing a copy to the last known address of the party, its attorney, or its agent, or by sending a copy to the e-mail address last provided by the party, its attorney, or its agent.<sup>19</sup>

Documents containing replies to comments on or oppositions to a petition may also be filed electronically via ECFS at <http://apps.fcc.gov/ecfs/upload/begin?filedFrom=E>. Again, however, **replies filed via ECFS also must be e-mailed to [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov)**. Replies filed via ECFS must include “06-181” as the “Proceeding Number” and the four-digit case identifier number (e.g., “2345”) as the “File Number” in this proceeding.<sup>20</sup> If an individual wishes to file an identical set of replies via ECFS on multiple petitions that have been assigned more than one case identifier number, the replies must be filed separately for each petition/case identifier number. In this case, a different case identifier number will have to be entered as the “File Number” for each separate filing (e.g., “2345” entered as the File Number for the first filing and “2346” entered as the File Number for the second filing and so on, even if the replies being filed are identical to the first filing). Multiple case identifier numbers may not be entered as one “File Number.”

*Accessible Formats:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements>.

*For Further Information Contact:* Caitlin Vogus, Consumer and Governmental Affairs Bureau, Disability Rights Office, 202-418-1264, [Caitlin.Vogus@fcc.gov](mailto:Caitlin.Vogus@fcc.gov); or Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau, Disability Rights Office, 202-510-9446, [Suzanne.Singleton@fcc.gov](mailto:Suzanne.Singleton@fcc.gov); or e-mail [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).

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<sup>18</sup> As noted above, the petition will be assigned a case identifier number when the petition is filed, for example, “CGB-CC-2345.”

<sup>19</sup> 47 C.F.R. § 79.1(f)(7).

<sup>20</sup> The “ECFS Express” form at <http://apps.fcc.gov/ecfs/upload/begin?procName=&filedFrom=X> cannot be used for this purpose.