



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 06-181; DA 12-514]

Notice of Need to File Updated Information for Some Closed Captioning Exemption Petitions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau) alerts certain entities that filed petitions for exemption from the Commission's closed captioning rules prior to the passage of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), of the need to either (1) affirm that the information provided in their previously submitted petition is still accurate and up-to-date, (2) update previously submitted petitions with the information indicated below, or (3) withdraw their previously submitted petitions. The intended action is to ensure that information provided in each petition is current and accurate.

DATES: Effective [INSERT DATE UPON PUBLICATION IN THE FEDERAL REGISTER], Petitions subject to document DA 12-514 will be dismissed on July 5, 2012, without prejudice to filing a new petition for exemption, if not affirmed, updated, or withdrawn as set forth in document DA 12-514.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, Consumer and Governmental Affairs Bureau, at (202) 418-0569 (voice), (202) 418-0537 (TTY); e-mail: Traci.Randolph@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, document DA 12-514, released April 2, 2012, in CG Docket No. 06-181. The full text of document DA 12-514 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 12-514 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its Web site: <http://www.bcpiweb.com>, or by calling (202) 488-5300. Document DA 12-514 and the Appendix listing Unresolved Petitions for

Individual Closed Captioning Exemptions can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements>.

SYNOPSIS

From October 2005 through August 2006, the Commission received approximately 600 petitions for individual closed captioning exemptions under section 713(d)(3) of the Act. In 2006, the Commission's Consumer and Governmental Affairs Bureau (Bureau) granted two of these petitions in the Anglers Order, 21 FCC Rcd 10094, and during the weeks that followed, granted an additional 303 petitions in reliance on the reasoning of the Anglers Order. In 2006, the Commission received an Application for Review that challenged the exemptions granted in and those that relied on the Anglers Order. On October 20, 2011, the FCC granted the Application for Review, and in the Anglers Reversal MO&O, published at 76 FR 67376, November 1, 2011; 76 FR 67377, November 1, 2011; and at 76 FR 67397, November 1, 2011, reversed these exemptions. The Anglers Reversal MO&O also set forth guidance on the information and documentation that closed captioning petitions should contain, along with standards that the Bureau should use to determine when a closed captioning exemption is warranted.

At issue in document DA 12-514 are the unresolved petitions for exemption that are not subject to the Anglers Reversal MO&O, and that were filed before passage of the CVAA. Although some of these petitions were previously placed on public notice, no decision to grant or to deny was ever made regarding these petitions. The Bureau is now ready to apply the standards restored by the Anglers Reversal MO&O to resolve the claims for an exemption by these petitioners. However, the Bureau realizes that considerable time has passed since many of these petitions were first filed, and that various circumstances including, but not limited to, the financial status of the petitioners and the cost of captioning, may have changed.

Accordingly, in order to ensure that information provided in each petition is current and accurate, the Bureau requires each petitioner whose petition is listed in document DA 12-514 to do one of the following by July 5, 2012: (1) file an affirmation with the FCC that its previously submitted petition and supporting information is accurate and up-to-date; (2) file updated information in accordance with the

factors listed below to support its claim that captioning its program(s) would be economically burdensome; or (3) withdraw its previously submitted petition.

Any petitioner listed in document DA 12-514 that does not take one of the steps listed above by **July 5, 2012**, will have its pending petition dismissed without prejudice on **July 5, 2012**. A petitioner that is interested in continuing to request a closed captioning exemption for its programming must include up-to-date evidence, supported by affidavit, demonstrating that it would be economically burdensome to provide closed captioning on the specific programming for which an exemption is sought. Specifically, each petition should contain current and detailed documentation, in accordance with the original factors outlined in section 713(e) of the Act and § 79.1(f) of Commission's rules, to support a claim that providing closed captions would be economically burdensome (would result in a "significant difficulty or expense") 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.

In order to make the above showing that providing captioning would be economically burdensome, each petitioner must:

- provide documentation of its financial status sufficient to demonstrate its inability to afford closed captioning – for example, profit and loss statements or bank statement information. (This documentation should not just include the resources devoted to or the costs associated with the television program(s) at issue);
- provide information about the costs of captioning the specific program for which the exemption is sought;
- verify that it has sought closed captioning assistance (e.g., funding, services) from its video programming distributor and note the extent to which such assistance has been provided or rejected;

- verify that it has sought additional sponsorship sources or other sources of revenue for captioning, and show that, even if these efforts have not successfully produced assistance, it does not otherwise have the means to provide captioning for its programming; and
- provide information on the type of its operation(s) and the impact that providing captions would have on its programming activities, for example, the extent to which its programming might not be shown if it is required to provide captions.

In addition, each petitioner may describe other factors that it deems relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirements. Each petition should also contain a specific list of names of the program(s) for which the petitioner is seeking an exemption. Finally, as noted above, each petition must be supported by an affidavit. Failure to support an exemption request with adequate explanation and evidence to make these showings, supported by an affidavit, will result in dismissal of the request.

Each updated petition that provides sufficient information will be placed on public notice to allow the public to comment on the merits of the petition. After giving the public an opportunity to submit comments, the Bureau will conduct an individual review of each petition to determine the extent to which providing captioning would be economically burdensome for the petitioner, based on information provided in the petition and any comments received, and will issue an order either granting or denying the petition.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss,
Deputy Chief, Consumer and Governmental Affairs Bureau.

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