

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Van Buren First Assembly of God
Petition for Exemption from the
Closed Captioning Requirements
CGB-CC-0045
CG Docket No. 06-181

MEMORANDUM OPINION AND ORDER

Adopted: July 21, 2015

Released: July 21, 2015

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by Van Buren First Assembly of God (Van Buren) for an exemption from the Federal Communications Commission's (FCC's or Commission's) closed captioning requirements for its program, Reach Out. Because we conclude that Van Buren has not demonstrated that its compliance with the Commission's closed captioning requirements for this program would be economically burdensome to it, we deny the Petition. In light of our action, Reach Out must be captioned no later than October 19, 2015, which is 90 days from the date of the release of this Order.

II. BACKGROUND

2. In 1996, Congress added section 713 to the Communications Act of 1934, as amended (Communications Act), establishing requirements for closed captioning of video programming to ensure access to such programming by people who are deaf or hard of hearing and directing the Commission to prescribe rules to carry out this mandate. In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998. The Commission's closed

1 Telecommunications Act of 1996, Pub. L. No. 104-104, § 305, 110 Stat. 56 (1996 Act) (codified at 47 U.S.C. § 613). As recognized by Congress, the goal in captioning video programming is "to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace." H.R. Rep. 104-458 (Conf. Rep.) at 183-184, 104th Cong., 2d Sess. (1996). "Video programming" means "programming by, or generally considered comparable to programming provided by a television broadcast station." 47 U.S.C. § 613(h)(2).

2 47 U.S.C. §§ 613(b)-(c).

3 See 47 C.F.R. § 79.1; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997) (Closed Captioning Report and Order); Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (Closed Captioning Reconsideration Order).

captioning rules currently require video programming distributors, absent an exemption, to caption 100 percent of all new English and Spanish language programming.⁴

3. Section 713(d)(3) of the Communications Act authorizes the Commission to grant individual exemptions from the television closed captioning requirements upon a showing that the requirements would be economically burdensome, defined as imposing on the petitioner a “significant difficulty or expense.”⁵ Any entity in the programming distribution chain, including the owner, provider, or distributor of the programming, may petition the Commission for such an exemption under section 79.1(f) of the Commission’s rules.⁶ When making its determination as to whether a petitioner has made the required showing, the Commission, in accordance with section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules, considers the following factors on a case-by-case basis: (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.⁷

⁴ 47 C.F.R. §§ 79.1(b)(1)(iv), (b)(3)(iv). A “video programming distributor” is defined as (1) any television broadcast station licensed by the Commission; (2) any multichannel video programming distributor (MVPD) as defined in section 76.1000(e); and (3) any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. 47 C.F.R. § 79.1(a)(11). The Commission’s rules also require closed captioning of 75% of a programming distributor’s pre-rule, nonexempt English and Spanish language programming that is distributed and exhibited on each channel during each calendar quarter. 47 C.F.R. §§ 79.1(b)(2)(ii), (b)(4)(ii). “Pre-rule” programming refers to analog video programming first published or exhibited before January 1, 1998, or digital video programming first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(6). Bilingual English-Spanish language programming is subject to the same closed captioning requirements for new and pre-rule programming. *See 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, 29 FCC Rcd 2221, 2288-89, ¶ 115 (2014).

⁵ *See* 47 U.S.C. §§ 613(d)(3),(e). *See also* 47 C.F.R. § 79.1(f)(2). As originally enacted in 1996, section 713 of the Communications Act authorized the Commission to grant individual closed captioning exemptions upon a showing that providing closed captioning would “result in an undue burden.” 1996 Act, § 305. Section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) replaced the term “undue burden” with the term “economically burdensome.” Pub. L. No. 111-260, § 202(c), 124 Stat. 2771, amending 47 U.S.C. § 613(d)(3). For purposes of evaluating individual exemptions, the Commission has determined that Congress intended the term “economically burdensome” to be synonymous with the term “undue burden” as defined by section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules. *See Interpretation of Economically Burdensome Standard, Amendment of Section 79.1(f) of the Commission’s Rules, Video Programming Accessibility*, CG Docket No. 11-175, Report and Order, 27 FCC Rcd 8831, 8834, ¶ 7 (2012) (*Economically Burdensome Standard Order*).

⁶ 47 C.F.R. § 79.1(f)(1). A “video programming provider” is defined as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.” 47 C.F.R. § 79.1(a)(3). *See also* n.4, *supra* (for definition of “video programming distributor”). A petitioner may seek an exemption for “a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider.” 47 C.F.R. § 79.1(f)(1).

⁷ 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2). A petitioner may also 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 has delegated the responsibility for evaluating and ruling on these petitions to the Consumer and Governmental Affairs Bureau. *Economically Burdensome Standard Order*, 27 FCC Rcd at 8834-35, ¶ 8.

4. The Commission has also determined that the following information and documentation must be submitted with closed captioning exemption petitions to enable its consideration of the above factors:

- documentation of the petitioner's financial status, including detailed information regarding finances and assets;
- verification that the petitioner has obtained information about the costs it would incur to provide closed captioning of the programming;
- verification that the petitioner has sought closed captioning assistance from its video programming distributor(s), noting the extent to which such assistance has been provided or rejected;
- verification as to whether the petitioner has sought additional sponsorships (other than from its video programming distributor(s)) or other sources of revenue for captioning; and
- a showing that the petitioner does not have the means to provide captioning for the programming.⁸

5. Each petition must contain a detailed, full showing of any facts or considerations relied upon, supported by affidavit.⁹ Failure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request.¹⁰ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.¹¹

6. Van Buren initially filed a petition for exemption dated December 15, 2005.¹² On December 22, 2005, the Consumer and Governmental Affairs Bureau (CGB or Bureau) informed Van Buren of the need to file additional information with respect to its pending petition.¹³ Although Van Buren did not respond, the Bureau granted the petition by letter order dated September 11, 2006, based on a previous Order that granted exemptions to two entities similarly situated to Van Buren.¹⁴ On November

⁸ *Anglers for Christ Ministries, Inc., et al.; 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, 14955-56, ¶ 28 & nn. 100-04 (2011) (*Anglers Reversal MO&O*). The Bureau has provided additional guidance for petitioners regarding these requirements in the document "Required Information to Provide in Filing a New Petition to be Exempt from the Closed Captioning Requirements," which is provided by the staff to captioning exemption petitioners and is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf (*Bureau Information Guidance*).

⁹ 47 C.F.R. § 79.1(f)(9). A petition for exemption may also be supported by an unsworn written statement signed by a declarant under penalty of perjury. 47 C.F.R. § 1.16.

¹⁰ *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28 (citing *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 13611, 13614, ¶ 12 (Cable Services Bureau, 2001) (*Wild Outdoors 2001*)).

¹¹ 47 U.S.C. § 613(d)(3); 47 C.F.R. § 79.1(f)(11).

¹² See Letter from Torin L. Johnson, Associate Pastor, to FCC (Dec. 15, 2005) (filed Dec. 19, 2005).

¹³ See Letter from Amelia Brown, Senior Attorney, Disability Rights Office, CGB, FCC, to Torin L. Johnson, Van Buren First Assembly of God (Dec. 22, 2005).

¹⁴ See Letter from Thomas E. Chandler, Chief, Disability Rights Office, CGB, FCC, to Torin L. Johnson, Van Buren First Assembly of God at 1 (Sept. 11, 2006) (citing *In the Matter of Anglers for Christ Ministries, Inc., New*

(continued....)

7, 2006, the Bureau issued a Public Notice that held in abeyance various letter orders granting exemptions, including the letter order that had granted an exemption to Van Buren, and invited comments on certain exemption petitions, including Van Buren's.¹⁵ In response, certain consumer organizations jointly filed an opposition to Van Buren's petition.¹⁶ In 2011, the Commission reversed Van Buren's grant of exemption.¹⁷ By letter dated October 25, 2011, the Bureau notified Van Buren of this reversal and explained that Van Buren would need to file a new exemption petition and supplement the record with up-to-date information, supported by affidavit, about its inability to provide closed captioning if it wished to receive a closed captioning exemption.¹⁸ Van Buren filed a new petition dated January 18, 2012 (hereinafter Petition).¹⁹ By letter dated April 18, 2012, the Bureau notified Van Buren of the need to file an affidavit with respect to its pending Petition.²⁰ Because the Bureau subsequently determined it would accept the declaration contained in Van Buren's Petition, on May 17, 2012, the Bureau again invited comment on the Petition.²¹ On June 15, 2012, various consumer groups jointly filed an opposition to the Petition,²² and on July 6, 2012, Van Buren filed a reply.²³ Subsequently, the Bureau determined that it required additional and updated information to enable it to determine whether the programming that was the subject of the Petition should be exempt from the Commission's closed captioning

(...continued from previous page)

Beginning Ministries, Video Programming Accessibility Petitions for Exemption from Closed Captioning Requirements, Cases Nos. CGB-CC-0005 and CGB-CC-0007, Memorandum Opinion and Order, 21 FCC Rcd 10094 (CGB 2006).

¹⁵ *Consumer and Governmental Affairs Bureau Action Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 21 FCC Rcd 13142 (CGB 2006).

¹⁶ See CGB-CC-0045 – Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Van Buren First Assembly of God, filed by Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Hearing Loss Association of America (HLAA), Association of Late-Deafened Adults (ALDA), American Association of People with Disabilities (AAPD), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (Mar. 2, 2007).

¹⁷ *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 25. The Commission reversed this and other Bureau letter orders that had failed to analyze the individual circumstances of the petitioners under the “undue burden” criteria, as required under the Communications Act and the Commission's rules. *Id.*, 26 FCC Rcd at 14949, ¶ 26. As explained earlier, the economically burdensome criteria now used by the Commission to evaluate closed captioning exemption requests are identical to the undue burden criteria. See n.5, *supra*.

¹⁸ See Letter from Joel Gurin, Chief, CGB, FCC, to Van Buren First Assembly of God (Oct. 25, 2011). See also 47 C.F.R. § 79.1(f)(11); *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 16, n.60.

¹⁹ Van Buren First Assembly of God, Petition for Exemption Pursuant to Section 79.1(f) of the Commission's Rules, Petition for Waiver of Closed Captioning Rules, filed by Van Buren First Assembly of God (Jan. 18, 2012) (Petition).

²⁰ See Letter from Roger Holberg, Attorney, Disability Rights Office, CGB, FCC, to Fletcher, Health & Hildreth, P.L.C. (Apr. 18, 2012).

²¹ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CGB-CC-0045, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 5288 (CGB 2012).

²² See Re: Van Buren First Assembly of God's Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0045, CG Docket No. 06-181, filed by TDI, NAD, DHHCAN, ALDA, Communication Service for the Deaf, Inc. (CSD), and Cerebral Palsy and Deaf Organization (CPADO) (June 15, 2012).

²³ See Van Buren First Assembly of God, Petition for Exemption Pursuant to Section 79.1(f) of the Commission's Rules, Reply to Opposition to Petition for Waiver of Closed Captioning Rules, filed by Van Buren First Assembly of God (July 6, 2012) (July 2012 Reply).

obligations.²⁴ The Bureau sent letters requesting this information on September 27, 2013 and May 30, 2014, and in response, Van Buren twice supplemented its Petition.²⁵ The Bureau again placed the Petition on Public Notice for comment on January 14, 2015.²⁶ Again, several consumer groups jointly filed an opposition to the Petition.²⁷

III. DISCUSSION

7. Van Buren produces *Reach Out*, a half-hour program of a religious nature that is broadcast weekly by two stations.²⁸ Van Buren describes *Reach Out* as a show that is “noncommercial in nature” and features “singing by the church choir and sermons from [Van Buren’s] pastor.”²⁹ Van Buren reports that it has broadcast the program since 1987.³⁰ Van Buren maintains that requiring its program to comply with the Commission’s closed captioning requirements would be economically burdensome.³¹

8. Van Buren submitted four recent quotes to caption its program. The first quote, from Station KARK-TV (KARK), is for \$80 per show, or \$4,160 per year (*i.e.*, for 52 programs).³² The second quote, from Caption Labs, is for \$180 per show, or \$9,360 per year.³³ The third quote, from Dynamic Captioning, is for \$190 per show, or \$9,880 per year.³⁴ Finally, the fourth quote, from VITAC, is for

²⁴ See Letter from Cheryl J. King, Attorney, Disability Rights Office, CGB, FCC, to First Assembly of God – Van Buren (Sept. 27, 2013); Letter from E. Elaine Gardner Attorney, Disability Rights Office, CGB, FCC, to First Assembly of God – Van Buren (May 30, 2014).

²⁵ See Van Buren First Assembly of God, Petition for Exemption Pursuant to Section 79.1(f) of the Commission’s Rules, Supplement to Petition for Waiver of Closed Captioning Rules, filed by Van Buren First Assembly of God (Nov. 4, 2013) (November 2013 Petition Supplement); Van Buren First Assembly of God, Petition for Exemption Pursuant to Section 79.1(f) of the Commission’s Rules, Further Supplement to Petition for Waiver of Closed Captioning Rules, filed by Van Buren First Assembly of God (June 27, 2014) (June 2014 Petition Supplement).

²⁶ *Request for Comment, Request for Exemption from Commission’s Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 30 FCC Rcd 176 (CGB 2015) (2015 Public Notice).

²⁷ See Re: Opposition to Petition for Exemption from the Commission’s Closed Captioning Rules, CGB Dkt. No. 06-181, Van Buren First Assembly of God, CGB-CC-0045, filed by TDI, NAD, CPADO, and Deaf Seniors of America (DSA) (collectively, Consumer Groups) (Consumer Groups Opposition).

²⁸ November 2013 Petition Supplement at 5; July 2012 Reply at 9.

²⁹ November 2013 Petition Supplement at 5; July 2012 Reply at 9.

³⁰ Petition at 2.

³¹ *Id.* at 1; July 2012 Reply at 10; November 2013 Petition Supplement at 7.

³² June 2014 Petition Supplement at 5-7. The June 2014 Petition Supplement includes an email from the Director of Sales for KARK quoting a price of \$60 per show for closed captioning. *Id.* at 6-7. Van Buren asserts that KARK will also charge a delivery fee of \$20 per show, for a total of \$80 per show for closed captioning. *Id.* at 5. The \$20 delivery fee is not reflected in the email from KARK, but we have nevertheless included it in our cost calculations for purposes of this exemption determination.

³³ *Id.* at 8-11. The quote provided by Caption Labs includes the cost for standard roll-up captions of \$145 per show and a delivery fee of \$35 per show, for a total of \$180. *Id.* at 10.

³⁴ *Id.* at 12-14. The Dynamic Captioning quote includes the cost for roll-up captions of \$170 per show. *Id.* at 13. Van Buren asserts that KARK will also charge a delivery fee of \$20 per show, for a total of \$190 per show for closed captioning. *Id.* at 5. The \$20 delivery fee is not reflected in the Dynamic Captioning quote. Again, however, we have nevertheless included this cost in our calculations for purposes of this exemption determination.

\$224 per show, or \$11,700 per year.³⁵ Van Buren also reports that it considered purchasing equipment to provide closed captioning in-house but, due to the related expenses, it did not pursue this option further.³⁶

9. With its Petition, as supplemented, Van Buren submitted a Statement of Activities for 2012 and 2011.³⁷ For 2012, Van Buren reports income of \$3,050,651, and, excluding depreciation expenses, Van Buren had expenses of \$3,172,309, resulting in an excess of expenses over revenue (net loss) of \$121,658.³⁸ For 2011, Van Buren reports income of \$1,795,054, and, excluding depreciation expenses, Van Buren had expenses of \$1,572,199, resulting in an excess of revenue over expenses (net profit) of \$222,855.³⁹

10. Van Buren also submitted a Statement of Financial Position for 2012 and 2011.⁴⁰ In this statement, Van Buren reports total current assets as of December 2012 of \$538,572 and total current liabilities of \$319,597, resulting in total net current assets of \$218,975.⁴¹ Van Buren reports total current assets as of December 2011 of \$403,634 and total current liabilities of \$182,859, resulting in total net current assets of \$220,775.⁴²

11. Van Buren further reports that it requested captioning assistance from its video programming distributor KARK.⁴³ In response, KARK offered to provide closed captioning for *Reach Out* at a cost of \$80 per show.⁴⁴ Van Buren further indicates that it has made appeals to its congregation and during the program to solicit “funds to support and defray the costs of [its] television ministry

³⁵ *Id.* at 15-17. The quote provided by VITAC includes the cost for roll-up captions of \$125 per show, plus the cost of encoded closed captions to DVD of \$100 per show, for a total of \$225 per show. *Id.* at 16. If the show is uploaded digitally after it is captioned, there are no shipping or delivery costs. *Id.*

³⁶ See November 2013 Petition Supplement at 5.

³⁷ See *id.* at 38 (“First Assembly of God – Van Buren, Statement of Activities, Year Ended December 31, 2012 (with summarized comparative totals for December 31, 2011)”). We note that Van Buren reports depreciation expenses in 2012 and 2011. Depreciation expenses represent the systemic and rational decrease in the future economic benefits of long term and fixed assets. Our analysis in determining whether providing closed captioning would be economically burdensome does not focus on long term assets. Instead, it focuses on current assets, current liabilities, working capital, and the operating cash flows of the organization. Accordingly, when considering Van Buren’s overall financial resources to determine if providing closed captioning would be economically burdensome, we do not consider depreciation expenses, and we have removed depreciation expenses from Van Buren’s 2012 and 2011 expenses for purposes of our analysis.

³⁸ *Id.* at 38. Van Buren’s 2012 expenses, excluding its depreciation expenses, are calculated as follows: “Total Expenses” of \$1,396,114 plus “Net Rental Activities” of \$2,272,197 minus “Depr. Expense” of \$496,002 = \$3,172,309.

³⁹ *Id.* at 38. Van Buren’s 2011 expenses, excluding its depreciation expenses, are calculated as follows: “Total Expenses” of \$1,337,020 plus “Net Rental Activities” of \$682,246 minus “Depr. Expense” of \$447,067 = \$1,572,199.

⁴⁰ See *id.* at 37 (“First Assembly of God – Van Buren, Statement of Financial Position, Year Ended December 31, 2012 (with summarized comparative totals for December 31, 2011)”).

⁴¹ *Id.* at 37. Van Buren’s total net current assets as of December 2012 are calculated as follows: \$538,572 (total current assets) minus \$319,597 (total current liabilities) = \$218,975.

⁴² *Id.* at 37. Van Buren’s total net current assets as of December 2011 are calculated as follows: \$403,634 (total current assets) minus \$182,859 (total current liabilities) = \$220,775.

⁴³ *Id.* at 5; June 2014 Petition Supplement at 5-7.

⁴⁴ November 2013 Petition Supplement at 5; June 2014 Petition Supplement at 5-7. See also ¶ 8, *supra*.

generally, which would include the costs of closed captioning, but with little success.”⁴⁵ In addition, Van Buren reports that its Pastor presented “the need for funding for closed captioning to the congregation,” but “no one has come forward to provide or offer to provide support for the closed captioning expenses.”⁴⁶ Van Buren asserts that, absent an exemption from the captioning requirements, it would have to discontinue its broadcast of *Reach Out*.⁴⁷ Van Buren states that, “while it recognized that closed captioning is an important priority, Van Buren is faced with other important priorities as well, and it cannot reallocate its resources infinitely,” such as by diverting “funds from helping poor and hungry people” in order to provide closed captioning.⁴⁸ Finally, Van Buren claims that “the additional burdens of closed captioning, in terms of both timing difficulties and monetary expenses, would push the program past the tipping point at which Van Buren would be forced to cease its broadcast, and the entire community would lose access to its message.”⁴⁹

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2015 *Public Notice*, contend first that Van Buren’s waiver request should be dismissed as moot, because more than three years have elapsed since Van Buren first requested a three-year waiver of the Commission’s closed captioning rules in its Petition, filed in January 2012.⁵⁰ Consumer Groups also argue that Van Buren failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds. First, Consumer Groups argue that Van Buren’s financial resources are adequate to cover the estimated \$4,160 annual cost of closed captioning.⁵¹ Consumer Groups acknowledge that Van Buren reports some losses, but argue that Van Buren nevertheless “has ample net current assets to cover its small captioning costs.”⁵² In this regard, Consumer Groups argue that Van Buren’s could have provided closed captioning in 2012 and 2011 at a cost of \$4,160 and still have had \$214,815 and \$216,615 in net current assets in each year, respectively, and that the Bureau has previously denied a captioning exemption petition where the petitioner had “reported net loss because the petitioner had ample net current assets.”⁵³ Accordingly, Consumer Groups claim, Van Buren has failed to demonstrate that providing closed captioning would be economically burdensome.

13. Second, Consumer Groups urge the Commission to reject Van Buren’s claim “that paying for closed captioning will divert funds from other ministries.”⁵⁴ Consumer Groups note that the

⁴⁵ June 2014 Petition Supplement at 3.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.* at 3.

⁴⁸ July 2012 Reply at 3.

⁴⁹ November 2013 Petition Supplement at 5. For example, Van Buren claims that the edited version of its program must be sent to the captioning agency at least a week in advance for captions to be added and that this process is “not possible”. *Id.* at 5-6. We reject this argument because the Petition, as supplemented, contains no evidence that Van Buren was requested to provide this amount of advance notice to any of the vendors from whom it obtained captioning estimates. In fact, Van Buren includes information from Caption Labs requesting only a 24-hour turnaround time. *Id.* at 20.

⁵⁰ Consumer Groups Opposition at 3.

⁵¹ *Id.* at 4.

⁵² *Id.* at 4.

⁵³ *Id.* at 4-5 (citing *First United Methodist Church of Tupelo; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-1224, CG Docket No. 06-181, Memorandum Opinion and Order, 30 FCC Rcd 1031 (CGB 2015) (*First United Methodist Church of Tupelo*)).

⁵⁴ *Id.* at 5.

Commission ‘has repeatedly rejected this type of argument, explaining that a petition must ‘focus on the impact that captioning will have on the petitioner’s programming activities . . . not on other activities or missions that are unrelated to that programming.’”⁵⁵ Thus, Consumer Groups conclude, Van Buren’s Petition should be denied.⁵⁶

14. *Determination.* After a careful review of the record, the Bureau finds that Van Buren has not demonstrated that the provision of closed captioning for its program would be economically burdensome.⁵⁷ As an initial matter, we reject Van Buren’s argument that we should limit our inquiry regarding its financial resources to considering only those funds that are “actually allocated to the television ministry.”⁵⁸ As the Commission previously has determined, when conducting an economically burdensome analysis, “all of the petitioners’ available resources” must be taken into consideration.⁵⁹ The Commission has rejected suggestions “to consider only the resources available for a specific program” in making the determination of whether the provision of closed captioning is economically burdensome.⁶⁰ Thus, we consider all of Van Buren’s available resources in determining whether providing closed captioning would be economically burdensome to it.

15. Van Buren also asserts that it has many priorities and “cannot reallocate its resources infinitely”⁶¹ and suggests that, if not granted a captioning exemption, it would have to divert funds from its other existing ministries and programs.⁶² We agree with Consumer Groups that this argument cannot justify a finding that providing closed captioning would be economically burdensome.⁶³ The Commission previously has explained that in making its determinations on captioning exemptions, it must consider the extent to which the provision of captioning will impact the petitioner’s programming activities, and not the extent to which it would “curtail other activities important to [a petitioner’s] mission.”⁶⁴ As the Commission previously stated, “applying such a factor would enable regulated parties to decide whether it is more important to comply with captioning requirements or to use their resources for other non-programming-related purposes.”⁶⁵

⁵⁵ *Id.* at 5 (quoting *First United Methodist Church of Tupelo*, 30 FCC Rcd at 1037, ¶ 15).

⁵⁶ *Id.*

⁵⁷ Although Van Buren initially requested a three-year exemption from the Commission’s closed captioning rules when it filed its Petition in 2012, *see* Petition at 4, Van Buren has not asked to withdraw its Petition. Because we deny the Petition on the merits, *see* ¶¶ 14-16, *infra*, we do not decide the question of whether Van Buren’s Petition is moot. *See* Consumer Groups Opposition at 3.

⁵⁸ July 2012 Reply at 3.

⁵⁹ *Anglers Reversal MO&O*, 26 FCC Rcd at 14950, ¶ 17 (explaining that consideration of a petitioner’s request for exemption must take into account “the overall financial resources of the provider or program owner”).

⁶⁰ *Id.*

⁶¹ July 2012 Reply at 2.

⁶² *Id.* at 2.

⁶³ *See* ¶ 13, *supra*.

⁶⁴ *Anglers Reversal MO&O*, 26 FCC Rcd at 14951, ¶ 20.

⁶⁵ *Id.* at 14952, ¶ 21 (noting that such a factor is “impermissibly vague and inappropriate”); *see also Dawson Memorial Baptist Church; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0144, CG Docket No. 06-181, Memorandum Opinion and Order, 29 FCC Rcd 15509, 15517, ¶ 17 (CGB 2014) (rejecting the petitioner’s argument that providing closed captioning would be an economic burden because it would require the petitioner to forgo other activities in order to afford the cost of closed captioning); *First Baptist Church, Jonesboro, Arkansas; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0303, CG Docket No. 06-181, Memorandum Opinion and Order, 29 FCC Rcd 12833, 12840, ¶ 14 (CGB 2014) (same).

16. According to the information and documentation it has provided, Van Buren operated at an excess of revenue over expenses of \$222,855 in 2011 when depreciation expenses are excluded.⁶⁶ When we compare the costs for providing closed captioning submitted by Van Buren of \$4,160.00 annually⁶⁷ to its excess of revenues over expenses in 2011, we conclude that such revenue was sufficient to cover the cost of captioning Van Buren's program. Additionally, Van Buren had net current assets of \$220,775 as of December 31, 2011,⁶⁸ further supporting a finding that it had sufficient funding in 2011 to fund the captioning of its program in that year. For 2012, Van Buren reports an excess of expenses over revenue (net loss) of \$121,658 when depreciation expenses are excluded.⁶⁹ At the same time, however, it reports net current assets of \$218,975 as of December 31, 2012.⁷⁰ We agree with consumers that where net current assets are sufficient to cover captioning costs, the fact that a petitioner has experienced a net current loss does not in itself, merit a determination of economic burden. Given the financial resources available to Van Buren during both of the reported years, we conclude that that Van Buren has had adequate financial resources to enable it to afford the costs of captioning (\$4160) its television program.⁷¹ Thus, we do not find credible Van Buren's claimed inability to continue its program if it must provide closed captioning.⁷² Accordingly, we find that it would not be "economically burdensome" for Van Buren to caption its program within the meaning of the Communications Act and the Commission's rules.

IV. ORDERING CLAUSES

17. Accordingly, pursuant to section 713 of the Communications Act of 1934, as amended, and sections 0.141(f) and 79.1(f) of the Commission's rules,⁷³ IT IS ORDERED that the Petition filed by Van Buren, requesting an exemption from the Commission's closed captioning rules, IS DENIED.

18. IT IS FURTHER ORDERED that the programming that is the subject of its Petition must be captioned no later than October 20, 2015, which is 90 days from the date of the release of this Order.

⁶⁶ See ¶ 9, *supra*. For the reasons stated in n.37, *supra*, we conclude that it is appropriate to remove depreciation expenses when considering Van Buren's overall financial resources to determine if providing closed captioning would be economically burdensome. However, even if we were to consider Van Buren's depreciation expense in 2011 and 2012 and Van Buren's reported net losses of \$617,660 in 2012 and \$224,212 in 2011, our conclusion that closed captioning is not economically burdensome for Van Buren would remain the same based on the amount of Van Buren's net assets in 2012 and 2011.

⁶⁷ See ¶ 8, *supra*.

⁶⁸ See ¶ 10, *supra*.

⁶⁹ See ¶ 9, *supra*.

⁷⁰ See ¶ 10, *supra*.

⁷¹ See ¶¶ 9-10, *supra*.

⁷² See ¶ 11, *supra*.

⁷³ 47 U.S.C. § 613; 47 C.F.R. §§ 0.141(f), 79.1(f).

19. IT IS FURTHER ORDERED that Van Buren must inform the Commission of the date on which the programming is closed captioned in accordance with this Order and the Commission's rules by e-mail to captioningexemption@fcc.gov.⁷⁴ The e-mail attachment must reference Case Identifier CGB-CC-0045 and will be posted on the docket to be publicly available.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

⁷⁴ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, CG Docket Nos. 06-181 and 05-231, Public Notice, 29 FCC Rcd 3960 (CGB 2014).