

CGB-CE-0369

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of

CLOSED CAPTIONING et al. )  
 )  
Petition for Exemption and/or Waiver of the )  
Television Center of the Archdiocese of Miami )

RECEIVED

DEC 29 2005

Federal Communications Commission  
Office of Secretary

To: Secretary

Attn: Clay Pendarvis, Video Division, Media Bureau  
Room 2-A662

**PETITION FOR EXEMPTION AND/OR WAIVER**

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December 29, 2005

## **PETITION FOR EXEMPTION AND/OR WAIVER**

The Television Center of the Archdiocese of Miami (“TCAM”) respectfully submits this Petition for Exemption and/or Waiver from the FCC’s closed captioning rules, 47 CFR 79.1 et seq., for its half-hour, weekly Catholic Mass, currently broadcast each Sunday on Miami television station WPXM-TV (“Sunday Mass”). The Petition should be granted pursuant to 47 CFR 79.1(d)(8) and also because, inter alia, compliance with these rules would inflict an “undue burden” on TCAM and be contrary to the public interest.

The FCC’s rules expressly recognize that a “waiver” of the closed captioning requirement is appropriate in several instances. Specifically, the rules exempt any locally produced, non-news programming “with no repeat value.” See 47 CFR 79.1(d)(8). Unlike other “local religious programs” that the FCC occasionally has found not to qualify under this provision, TCAM’s weekly Sunday Mass is precisely the type of locally produced, non-news programming that qualifies for this exemption. The half-hour, weekly Sunday Mass on WPXM-TV, the only Catholic Mass produced and broadcast to the entire South Florida television audience, is taped each Friday at TCAM and aired within 48 hours (church guidelines require that every “taped” Mass contain topical sermons and specific scriptural readings and, thus, must be aired within a few days of taping).<sup>1</sup> A threshold problem for TCAM, therefore, is that the closed captioning process itself takes a week (see Appendix A) and most often would rob the Mass of its topicality, contrary to Church guidelines. That critical fact, coupled with the fact that the once-run Sunday Mass has “no repeat value,” establish TCAM’s entitlement to an exemption under Section 79.1(d)(8) of the Rules.

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<sup>1</sup> “Live” broadcasts are infinitely more expensive than taped broadcasts. See Appendix A.

Alternatively, however, the Rules also provide for an exemption for any television station's broadcast of programming that the FCC has determined to be "exempt," on the basis that the closed captioning requirement would place an "undue burden" on the programming producer. See 47 CFR 79.1(d). Moreover, the FCC rules provide specific procedures for program producers to petition the FCC for exemptions based on the "undue burden" standard. See 47 CFR 79.1 (f).

In this case, TCAM not only qualifies for an exemption under Section 79.1(d)(8), supra, but also fully meets the FCC requirements for an exemption based on "undue burden," because the imposition of the closed captioning requirement with regard to the Sunday Mass would present substantial difficulties and crippling expenses for TCAM. First, the TCAM reasonably estimates that the cost of closed captioning for each Sunday Mass would total at least \$300 per week, or about \$16,000 in 2006. See Appendix A (Statement of Mary Ross Agosta). That sum would represent about 16% of TCAM's projected total 2006 budget for the Sunday Mass AND all other TCAM video services to South Florida. Id.

Second, an additional \$16,000 expense for TCAM in 2006 would be crippling to TCAM and almost certainly will force the cancellation of the Sunday Mass on WPXM-TV. Id. Indeed, budget adjustments for the non-profit TCAM in recent years have left TCAM's other essential video programs so "lean" that further cuts in those critical efforts could not be made in order to "shift funds" for the closed captioning of the Sunday Mass. Id. [TCAM's other video programs include "The Archbishop's Charities and Development Appeal" (an annual video, shown in all 118 parishes, soliciting funds for the various organizations in the Miami community that receive funding annually from the

Archdiocese of Miami), “Portraits of Faith” (an award-winning magazine-style program shown on area cable systems that details the many social services available from the Archdiocese), etc. See Appendix A.]

Third, TCAM’s meager resources (2006 projected budget of only \$101,764) provide no cushion for a \$16,000 additional annual expense. Moreover, TCAM cannot look to the parent Archdiocese for additional funding. The Archdiocese has suffered over \$17 million in South Florida property losses from Hurricane damage in the last two years. Id. Indeed, because of the financial losses sustained by the Archdiocese in the last two years, TCAM’s annual budget increase for 2006 was limited to three percent (only \$3000). Furthermore, it should be noted that, unlike other “private” programming providers, the Archdiocese is a non-profit, charitable and educational entity that currently is experiencing significant operating losses from supporting inner-city schools in 118 parishes and from recovery efforts due to devastating Hurricanes in South Florida in the last two years; and TCAM generates no revenues of its own whatsoever. Id.<sup>2</sup>

Fourth, reasonable alternatives have been considered but none is financially viable. For example, to broadcast the Sunday Mass in sign language would require not only a second camera but also additional insertion equipment and the hiring of a technical employee to produce the sign language insertions in the programming. TCAM has only two FT employees and no technical person, no equipment for closed captioning and no other capacity to create closed captioning “in house.” Id.

Fifth, a balance of public interest factors also strongly weighs in favor of the FCC’s grant of an exemption to TCAM under the “undue burden” test. Without an exemption, the Sunday Mass most certainly will have to be cancelled. See Appendix A.

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<sup>2</sup> See also Alternate Request, infra.

Tens of thousands of homebound, elderly and disabled Catholics in South Florida would then be denied weekly access to their Church, to their religion, to their religious traditions and, effectively, would be denied the opportunity to practice their chosen religion via television.<sup>3</sup> Id. These disenfranchised Catholics would include large numbers of disabled, sick and frail elderly residents in the Miami DMA who cannot otherwise attend any weekly religious services and who are dependent upon this one televised Sunday Mass from TCAM to satisfy their spiritual needs. Id.<sup>4</sup>

Apart from the exemption provisions of Sections 79.1(f) of the Rules, TCAM alternatively seeks a waiver of the FCC's closed captioning rules, 47 CFR 79.1 et seq., on the basis that the FCC has held in analogous circumstances that non-profit entities are entitled to waivers of certain FCC regulations, especially those rules and regulations that impose financial obligations upon non-governmental entities. For example, non-profit organizations generally are exempt from the FCC's rules and policies involving the payment of annual regulatory fees. A denial of TCAM's request for waiver of the closed captioning rules, in these circumstances, would be an arbitrary and capricious departure from FCC precedent.

Finally, TCAM alternatively seeks a waiver of the FCC's closed captioning rules on the basis of the Church's unique position as a wholly eleemosynary institution that, among its services, produces religious TV services. The Archdiocese of Miami, and its TCAM, must be relied upon to balance the many financial needs of serving the people of South Florida, especially the poor and numerous immigrants from Latin America (needs

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<sup>3</sup> Indeed, the FCC's failure to grant an exemption to TCAM under the facts of this particular case may arguably be unconstitutional governmental involvement in religious matters.

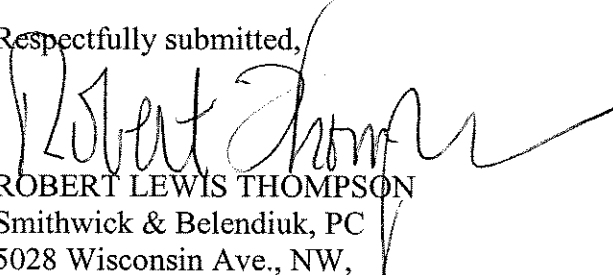
<sup>4</sup> Homebound viewers are invited at the end of each televised Sunday Mass to request a Missalette (prayer book) that eventually links the person to a parish priest who can later visit the individual at home and administer Holy Communion – all made possible ONLY by the televised Sunday Mass.

such as housing, schools, senior centers, legal assistance, food banks and even burial services). TCAM respectfully submits that forcing the Archdiocese to forego the provision of other social and charitable programs that serve the public interest in order to fund closed captioning would be an unjust intrusion into the Church's discretion to allocate its resources in the manner that, in its reasonable judgment, best serves the public in South Florida.<sup>5</sup>

### CONCLUSION

For the foregoing reasons, an exemption from the FCC's closed captioning requirements for this one weekly program – TCAM's 30-minute Sunday Mass -- is not only warranted but, clearly, such a result would best serve the public interest. Cf. WDLP Broadcasting Co. LLC, supra (exemption granted as in the public interest).

Respectfully submitted,



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Counsel for TCAM

December 29, 2005

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<sup>5</sup> Not only has neither TCAM nor the Archdiocese received a single complaint from any of the two million South Florida residents regarding the failure of the Sunday Mass to be closed captioned, the Archdiocese receives scores of letters throughout the year in unrestrained praise of its numerous, irreplaceable charitable programs. See Appendix B.

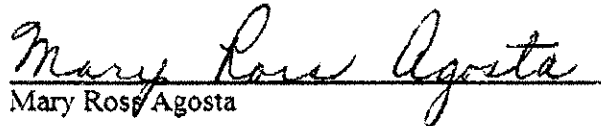
APPENDIX A

Sworn Statement of Mary Agosta

Mary Ross Agosta, being sworn, does swear under penalty of perjury that:

1. My name is Mary Ross Agosta, I am a resident of Florida, and I am the Director of Communications for the Archdiocese of Miami ("AOM").
2. I have read the foregoing "Petition for Exemption and/or Waiver," submitted on behalf of the Television Center of the Archdiocese of Miami ("TCAM"), which seeks an exemption and/or waiver from FCC rules that generally require the closed captioning of certain programs broadcast on television stations in the United States.
3. I hereby verify that all of the factual statements contained in the Petition are correct, including without limitation: (a) all statements regarding TCAM's locally produced, half hour Sunday Mass, which is broadcast on WPXM-TV, Miami, FL; and (b) matters pertaining to the AOM and the Catholic Church generally, including the inability of the AOM to provide any additional funds to TCAM for closed captioning services for the Sunday Mass, as well as the quoted costs and conditions of such services (see Attachment to this Appendix A).
4. Finally, I am compelled to affirm that, without an exemption from the closed captioning rules, TCAM likely will have to cancel production and broadcast of the Church's Sunday Mass on WPXM-TV.

Executed this 29<sup>th</sup> day of December, 2005.

  
\_\_\_\_\_  
Mary Ross Agosta



Attachment to

APPENDIX A



Miami, December 21st 2005

Archdiocese of Miami  
Attention: Teresa Martinez  
Miami, FL

**QUOTE**

Closed Captioning for the Deaf and Heard of hearing for:

30-minute show  
Style: Roll-up  
Format: Betacam SP  
Encoding: Yes  
Tape stock: included

**Price per show: \$282.00**

Turnaround: 5 business days

Note: Price doesn't include shipping.

Best Regards,

A handwritten signature in black ink, appearing to read 'Dario'.

Dario Fuenmayor  
All Captioning  
Director of Captioning and Subtitling Operations  
305-948.7300 ext. 202

APPENDIX B

(Letters from Sunday  
Mass Viewers)

The Archdiocese of Miami

Thank you for showing the Sunday Mass on TV!

December 15, 2005

It is a great comfort to me to be able to attend the mass, which I could not attend in person.

I thank you all for Mary and Bernard's witness.

Thank you for the Missalites - I do participate in the television Mass each Sunday and grateful to be able to do so.

May you have a very blessed Easter

Kathy Langray

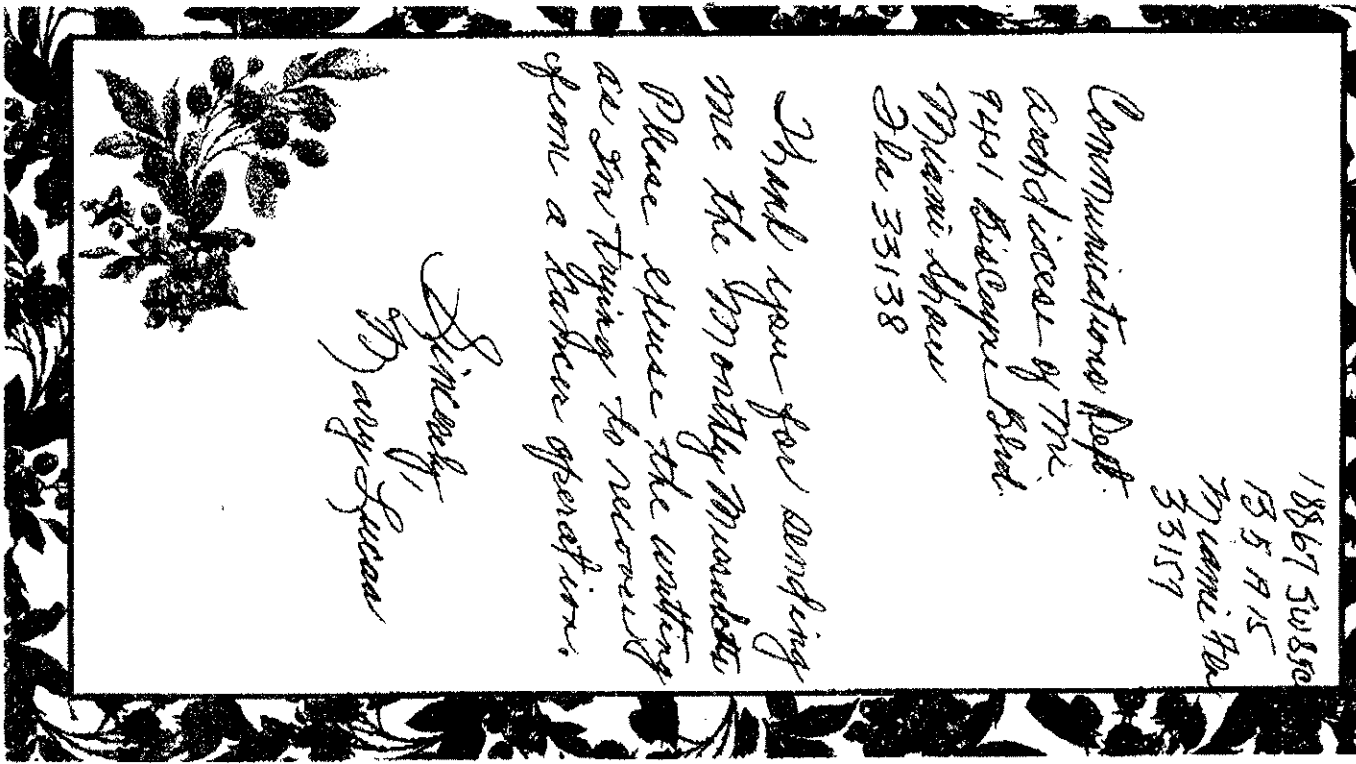
Dear Mary Ross Agosto,

We deeply appreciate sending us the missal since my husband Joe and I were unable to attend Mass on Sunday. He was very ill and has passed away on July 9. We would be grateful if you keep us in your prayers.

God bless you  
Grace M Spadafino

"Correction" letter





18867 50850  
 135 715  
 Miami Ave  
 33157

Communications Dept.  
 Archdiocese of Miami  
 9401 Biscayne Blvd.  
 Miami, Fla  
 Fla 33138

Thank you for sending me the monthly newsletters. Please advise the writing as you begin to recover from a hardware operation.

Sincerely,  
 Mary Susan

10-11-05

Dear Friends,

Please send me the materials

for following the mass.

Thank you for making

arrangements to do

disposal

through this great work!

God bless you all.

Johanna Hurt




Mrs. Johanna C. Hurt  
 1109 Seville Ave  
 Coral Gables, FL 33134-6330

3/13/05

Dear Friends,  
Please send me a  
missalette so I may better  
follow your lovely Sunday  
Mass. Thank you.

Respectfully,  
Eileen Quackenbush

 Eileen R. Quackenbush  
2307 Sea Island Dr.  
Fort Lauderdale, FL 33301-1574


Dear Mr. & Mrs. [unclear],  
April 10, 2005

For all the special things you do  
I thank you for the  
beautiful Mass at  
St. Clare of Assisi Church  
and Fr. Albano & the lovely  
service.  
Sincerely,  
Margaret M. Duffy

4/30/05

Dear Friends,  
Thank you for bringing  
a beautiful Mass into my home  
when I am unable to get to  
Church.

Respectfully,  
Eileen Quackenbush

 Eileen R. Quackenbush  
2307 Sea Island Dr.  
Fort Lauderdale, FL 33301-1574