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via hand delivery

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: CGB Room 3-B431

Re: **Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules**
CG Docket No. 06-181

CGB-CC-0001 Curtis Baptist Church	**CGB-CC-0024** Gerald Bryant TV, Inc.	**CGB-CC-0143** First Lutheran Church
CGB-CC-0144 Dawson Memorial Baptist Church	**CGB-CC-0287** Gray Publishing, Inc.	**CGB-CC-0303** First Baptist Church

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Cerebral Palsy and Deaf Organization (CPADO), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), NorCal Services for Deaf & Hard of Hearing (NAD), and Association of Late-Deafened Adults (ALDA), collectively, "Consumer Groups," respectfully submit this comment to the petitions of the above-referenced entities,

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collectively, "Petitioners," to exempt their programming from the Commission's closed captioning rules, which were put on notice on Dec. 26, 2013.[1]

We oppose the grant of waivers to five of the Petitioners – Curtis Baptist Church/*Curtis Baptist Church* ("Curtis"), First Lutheran Church/*Peace & Power* ("First Lutheran"), Dawson Memorial Church/*Dawson Memorial Baptist Church* ("Dawson"), Gray Publishing, Inc./*Exploring Alaska* ("Gray"), and First Baptist Church/*First Baptist Church* ("First Baptist") – because they fail to show that providing captioning would be economically burdensome. In contrast, we do not oppose a temporary, 12- to 18-month waiver for Gerald Bryant TV, Inc./*JBTV* ("JBTV"). Because this Petitioner, which produces a one-hour music show in Chicago, reported financial losses totaling more than $200,000 in 2011 and 2012, we believe that it has shown that captioning would be economically burdensome.

We urge the Commission to act promptly on the waiver petitions, most of which have been pending since 2005 or 2006. Because video programmers need not provide closed captioning while a waiver request is pending, these applicants have already had *de facto* waivers of up to eight years. Failure to act promptly would mean that community members who are deaf or hard of hearing are denied access to these programs. Prompt action on these requests will also provide useful guidance to future petitioners seeking exemptions from the Commission's closed captioning rules.

I. Procedural History

As detailed in the Appendix, five of the six Petitioners initially sought waivers in late 2005 or early 2006. These petitions were part of the nearly 600 waiver petitions filed October 2005 through August 2006, just before and after the date upon which the Commission rules required that 100% of new nonexempt programming be closed

[1] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (Dec. 26, 2013). Detailed information on the petitions is included in the attached Appendix.

captioned.[2] On September 11, 2006, the Consumer and Governmental Affairs Bureau ("CGB") issued an Order (Anglers 2006) exempting two petitioners from the FCC's closed captioning requirements, largely basing the decision on the nonprofit status of petitioners, the noncommercial character of the programming, and the possibility of curtailing other activities that may be vital to the petitioners' mission.[3] The Consumer Groups filed an application for Commission Review. While this was pending, the CGB granted another 301 petitions, 238 of which were never placed on public notice.[4]

In 2011, the full Commission reversed the Bureau's 2006 Order in its Anglers 2011 Order. In that order, the Commission also set out interim criteria for applying the "economically burdensome" standard.[5] After seeking additional comment, the Commission reaffirmed its interpretation.[6] The Angler's 2011 Order terminated the previous exceptions the bureau had granted, but gave the petitioners the opportunity to file new or supplemental petitions. From February 2012 through February 2013, CGB placed roughly 100 petitions of these petitions on public notice.[7] Consumer Groups opposed these Petitions on the grounds that Petitioners had failed to provide sufficient information as required by the standard. In response, CGB again requested

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[2] 47 C.F.R. § 79.1(b)(iv). *See 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,* Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd 14941, 14945 (Oct. 20, 2011) (*"Anglers 2011"*).

[3] *See Anglers for Christ Ministries, Inc,, New Beginnings Ministries, Video Programming Accessibility, Petitions for Exemption for Closed Captioning Requirements,* CBG-CC-0005 and CBG-CC-0007, Memorandum Opinion and Order, 21 FCC Rcd 10094 (*Anglers* 2006).

[4] *Anglers* 2011, 26 FCC Rcd at 14,987.

[5] Anglers 2011, 26 FCC Rcd at 14,995, ¶28.

[6] *Interpretation of Economically Burdensome Standard,* 27 FCC Rcd 8831 (2012).

[7] *See, e.g., Request for Comment on Request for Exemption From Commission's Closed-Captioning Rules,* Dkt. 06-181 (July 19, 2012). *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules,* Dkt. 06-181 (Nov. 30, 2012).

supplemental information from Petitioners beginning in September 2013.[8] Petitioners submitted their supplements the following month.[9] The six petitioners addressed in this opposition were placed on public notice for comment on December 26, 2013.[10]

II. Legal Standard

Under 47 CFR §79.1(f), a video programming provider, producer or owner may petition for a full or partial exemption of closed captioning. The Commission may only grant an exception if the petitioner provides "sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term 'economically burdensome' means significant difficulty or expense." The Anglers 2011 Order explains what is necessary to make this showing:

> each petitioner must provide documentation of its financial status to demonstrate its inability to afford closed captioning. In addition, petitioners seeking an exemption should verify in their requests that they have obtained information about the costs they would incur to caption their programming, and that they have sought closed captioning assistance from their video programming distributors, as well as note the extent to which such assistance has been provided or rejected. Finally, each petitioner must indicate whether it has sought additional sponsorship sources or other sources of revenue for captioning and show that it does not have the means to provide captioning for its programming.[11]

The Order further puts applicants on notice that "[f]ailure to support an exemption request with adequate explanation and evidence to make these showings

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[8] *See, e.g., Letter from Consumer and Governmental Affairs Bureau to Curtis Baptist Church,* Case No. CGB-CC-0001, Dkt. 06-181 (Sept. 27, 2013).
[9] *See, e.g., Curtis Baptist Church's Supplement to Request for Exemption from the FCC's Closed Captioning Rules,* Case No. CGB-CC-0001, Dkt. 06-181 (Oct. 22, 2013).
[10] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules,* CG Docket No. 06-181 (Dec. 26, 2013).
[11] *Anglers 2011,* 26 FCC Rcd at 14955-56, ¶ 28 (footnotes omitted).

will result in dismissal of the request."[12] Even when an applicant makes the requisite showing, waivers are issued only for a limited period of time. The purpose of granting waivers under the economically burdensome standard is to allow a petitioner sufficient time to identify resources to caption its programming and comply with the law.[13]

III. Five Petitioners Fail to Meet the Economically Burdensome Standard.

Curtis, First Lutheran, Dawson, Gray, and First Baptist have failed to satisfy the statutory and regulatory requirements to demonstrate a financial burden. They have failed to document reasonable, bargained-for captioning costs and efforts to obtain sponsors to cover captioning costs. Moreover, when the Petitioners' claimed captioning costs are viewed in light of their entire operations, it is clear that captioning costs represent a minor, sometimes *de minimis*, cost increase. Because Petitioners are financially healthy and carry forward revenues each year, captioning would not be economically burdensome. Thus, their petitions must therefore be denied.

A. Curtis fails to meet the standard for a waiver.

Curtis has failed to meet the stringent requirements of the undue burden waiver because it provides no proof that it bargained for lower captioning costs or sought additional sponsorships. Moreover, its financial records show its captioning cost would only be 0.2% of its annual budget. Curtis should be able to provide closed captioning without incurring significant difficult or expenses, and thus, it fails to make the requisite showing for a waiver.

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[12] *Id.*

[13] *Anglers 2011*, 26 FCC Rcd at 14953 ("an exemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation") (internal quotations omitted).

1. Captioning Costs

Curtis fails to provide documentation that it bargained for a lower captioning rate before applying for a waiver. Before a petitioner can assert what its captioning costs would be, it must demonstrate that it obtained competitive rate quotes and associated correspondence from several established captioning providers.[14]

Although Curtis obtained quotes from multiple captioning providers, the mere solicitation of captioning quotes by itself is insufficient to meet Petitioners' burden because the quotes are unlikely to reflect Petitioners' actual costs resulting from negotiation.[15] Specifically, a caption provider offered to provide Curtis with live captioning that would cost $200 per hour, or less than half the $500 per hour Curtis cites as its captioning costs.[16] The provider's invitation to provide a low-cost alternative was an invitation to bargain for a lower rate, but Curtis provides no documentation indicating that it followed up on the offer.

Just as with any other service, a prudent organization would diligently bargain and obtain the most affordable captioning provider to suit its specific needs. Without documentation that a petitioner has engaged in such negotiations, it is simply impossible to conclude that the petitioner has established the most reasonable price for captioning its programming and turned to the exemption process only as a last resort because it cannot afford that price. Curtis therefore fails to meet this requirement of the undue burden waiver.

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[14] *Compare, e.g., Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) *with The Wild Outdoors*, 16 FCC Rcd at 13613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

[15] *See Curtis Supplement* at 1.

[16] *See Curtis Supplement* Ex. 1 at 3 (describing an email quote from Caption Associates LLC of $200 per hour for live captioning, though Curtis states in its supplement that its captioning costs would be $500 per hour).

2. Alternatives for Captioning Assistance

Curtis also fails to demonstrate that it exhausted alternatives such as seeking sponsors to pay for its captioning expenses, falling short of the standard's requirements. To qualify for an exemption under the economically burdensome standard, a petitioner must demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.[17] A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,[18] sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.[19]

Consumer Groups acknowledge that Curtis sought captioning assistance from its local broadcast station.[20] That effort alone, however, is insufficient to demonstrate that Petitioners have exhausted all alternative avenues to caption their programming, as petitioners must also document their efforts to seek out sponsors specifically for closed captioning. Curtis' petition indicates a belief that it will be unsuccessful in recruiting sponsors.[21] Curtis cannot decline to seek sponsors for the cost of captioning and simultaneously establish that providing captioning would impose an undue economic burden. Put simply, Curtis' preference not to engage sponsors cannot relieve it of its obligation to comply with the Commission's closed captioning rules.

3. Curtis' captioning costs would be 0.2% of its annual budget.

Even if Curtis's efforts to negotiate caption rates and seek alternative sources of support were sufficient, it has not shown that it lacks the financial means to provide

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[17] *Anglers 2011*, 26 FCC Rcd at 14955-56, ¶ 28 (internal citations omitted).
[18] *See, e.g., Engel's Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd 6867, 6868, ¶ 3 (MB 2004), *cited with approval in Anglers 2011*, 26 FCC Rcd at 14956, ¶ 28 n.102.
[19] *See Outland Sports*, 16 FCC Rcd at 13607-08, ¶ 7, *cited with approval in Anglers 2011*, 26 FCC Rcd at 14956, ¶ 28 n.103.
[20] *See Curtis Supplement* at 2.
[21] *Id.* ("it is unlikely that we could find outside sponsorships").

closed captioning. Curtis evaluates its ability to afford captioning in comparison to the budget allocated for or expenses incurred by the specific programming at issue.[22] This showing is insufficient because the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only the resources available for a specific program."[23]

Moreover, when the Curtis' claimed captioning costs are viewed in light of its entire operations, Petitioner's captioning costs are miniscule in comparison to its budget. In 2012, Curtis had an annual budget of $15.2 million, and took in revenues in excess of liabilities in the amount of $437,000.[24] Assuming Petitioner's quoted annual captioning costs are $26,000, a figure that, as discussed above, is likely overstated, captioning represents 0.2% of its annual budget. Moreover, the quoted captioning cost would be roughly 6% of its annual excess revenues that it carries forward each year. There would therefore be no economic burden in requiring Curtis to caption its programming.

B. Petitioner First Lutheran's waiver must also be denied.

First Lutheran has also failed to meet its burden of demonstrating that captioning would be economically burdensome because. Much like Curtis, it fails to provide documentation that it bargained for captioning costs or exhausted alternative sources. Moreover, even if those standards were met, First Lutheran's finances demonstrate that captioning costs would constitute only 1% of its budget.

Consumer Groups acknowledge that First Lutheran received captioning quotes from multiple providers and sought assistance from its local broadcast station.[25] But

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[22] *See Curtis Supplement* at 1.
[23] *Anglers 2011*, 26 FCC Rcd at 14950, ¶ 17.
[24] Similarly, in 2011, Curtis had a budget of $14.8 million with profits of $318,000. *See Curtis Supplement* at Ex. 1 at 4, 9.
[25] *See First Lutheran Supplement* Ex. 1 at 2-8 (describing quotes from captioning providers but failing to disclose any follow-up by Petitioner); *Supplement* at 1.

First Lutheran fails to document that it attempted to bargain for lower captioning costs, making its petition deficient for reasons similar to Curtis' as described above. Also First Lutheran indicates that it will not seek sponsors to pay for captioning.[26] But First Lutheran's unwillingness to engage sponsors cannot be used to avoid its captioning obligations.

Even if First Lutheran had made an adequate showing as to captioning cost and efforts to obtain alternative sources of support, its finances indicate that it could amply afford to caption. First Lutheran evaluates its ability to afford captioning in comparison to the budget allocated for or expenses incurred by the specific program at issue.[27] But as described above with respect to Curtis, that argument is irrelevant because the undue burden standard requires an examination of a petitioner's overall finances.

First Lutheran's overall finances indicate that it had an annual budget of $804,000 in 2012 and $780,000 in 2011.[28] Assuming Petitioner's estimate that its annual captioning costs would be $6,456, the cost of captioning would represent just under 1% of its annual budget. Such a minimal expense cannot be considered economically burdensome as defined in Rule 79.1(f).

Finally, First Lutheran's request for a permanent exemption to the closed-captioning requirements must be rejected. It is important to note that First Lutheran has already been exempt from the captioning requirement for eight years. Although it filed its initial petition in 2005,[29] First Lutheran has not made any measurable progress toward captioning its programming in the intervening years, despite decreased

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[26] *See First Lutheran Supplement* at 4 ("it is our church policy to not solicit commercial sponsorships").
[27] *See Curtis Supplement* at 1; *First Lutheran Supplement* at 1;
[28] *See First Lutheran Supplement* Ex. 1 at 4.
[29] 47 C.F.R. § 79.1(f)(11) provides that a petitioner's programming shall be considered exempt from the closed-captioning rules during the pendency of its request. First Lutheran first petitioned for an exemption in November 2005. *See Exemption from Closed Captioning Undue Burden*, Dkt. 06-181, Case No. CGB-CC-0143 (Nov. 30, 2005).

captioning costs and changes in technology that allow programmers to more easily caption video. Moreover, the waivers are designed to be temporary, such that a permanent waiver would defeat the purpose of the rule. Thus, the Commission should promptly deny First Lutheran's petition for waiver.

C. Petitioner Dawson has failed to show an economic burden.

Dawson also fails to meet the stringent requirements of the economically burdensome standard because it did not document bargained-for captioning expenses or exhaust alternative avenues to caption its programming. But even accepting Dawson's cost estimates at face value, captioning would represent a mere 0.3% of its annual budget, suggesting that the organization can afford to caption without significant difficulty or expense.

Although Dawson received quotes from multiple captioning providers, its failure to document any bargaining falls short of the undue burden standard.[30] In particular, a captioning provider indicated that it would lower its quoted costs for Dawson from $400 to $350 if Dawson were willing to stagger its show by one week.[31] Dawson's supplement fails to indicate whether it followed up with the captioning provider to ask for a lower price or that it even considered the captioning provider's discount. Dawson's failure to seek the lower cost option or bargain is insufficient to demonstrate an undue burden.

Although Dawson did seek captioning assistance from its local broadcast station, its petition indicates that it did not solicit sponsors because it believes doing so would jeopardize its nonprofit status under the Internal Revenue Code.[32] This is not true, as

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[30] *See Dawson Supplement* at 2.
[31] *See Dawson Supplement* Ex. B.
[32] *See Dawson Supplement* at 3.

charitable solicitation regulation is primarily a matter of state law.[33] Regardless, state law governing nonprofit solicitations in Alabama — Dawson's home state — exempts religious organizations from even the minimal registration requirements other nonprofits must comply with before seeking donations.[34] In short, there is no law preventing Dawson from seeking sponsors to pay its captioning expenses.

Even if Dawson had bargained for lower costs or exhausted alternative avenues for assistance, its finances indicate that the organization can easily afford to caption its programming. Dawson had an annual budget of $8.33 million in 2012 with a budget carryover of $251,980.[35] Assuming Petitioner's annual captioning costs of $26,000, captioning represents only 0.3% of its annual budget. Moreover, the quoted captioning cost would be roughly 10% of its excess revenue carryover. Dawson can therefore easily afford to caption its programming.

Finally, Dawson requests that the FCC delay any captioning requirement until 2015 so that it has time to budget for the expense. Dawson's argument must be rejected because it has not had to caption its programming for eight years since filing its initial petition and it has not made any measurable progress toward providing captioning.[36] In other words, Dawson has had nearly a decade to budget for the minimal captioning expenses it will incur; it cannot now claim surprise that it would have to comply with FCC regulations should its petition be denied.

D. First Baptist's waiver petition should be denied.

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[33] *See Charitable Solicitations – State Requirements*, IRS, *available at* http://www.irs.gov/Charities-%26-Non-Profits/Charitable-Organizations/Charitable-Solicitation-State-Requirements.

[34] Ala. Code § 13A-9-71(f)(2).

[35] *See Dawson Supplement* Ex. A2.

[36] 47 C.F.R. § 79.1(f)(11). Dawson petitioned for an exemption in December 2005. *See Undue Burden Waiver*, Dkt. 06-181, Case No. CGB-CC-0144 (Dec. 12, 2005).

First Baptist has also fallen short of the stringent requirements of economically burdensome standard by failing to document bargained-for captioning costs or attempts to find sponsorships for its programming. Even if such documentation was present in First Baptist's petition, however, Petitioner's financial information demonstrates that captioning would be only 0.1% of its annual budget. Thus, requiring First Baptist has failed to show that captioning would impose significant difficulty or expense.

First Baptist did obtain quotes from multiple captioning providers, but similar to the Petitioners described above, it failed to document any effort to bargain for lower prices.[37] It is critical that Petitioners seek out and document several personalized, negotiated estimates to establish what it would actually cost to caption their programming.

Similarly, although First Baptist asked its local broadcast station for captioning assistance, Petitioner indicates that it has not sought out sponsors specifically for closed captioning either because it is unwilling to accept commercial sponsorship or does not believe that it will be successful in finding sponsors.[38] Clearly this is insufficient effort to justify a waiver.

Regardless, First Baptist's financial information indicates that it can easily afford to caption its programming. First Baptist has an annual budget of nearly $3 million in 2012 and 2011 with profits $31,886 and $125,144, respectively.[39] Using Petitioner's quoted annual captioning cost of $6,120, captioning represents 0.1% of its annual budget. Moreover, First Baptist's excess revenue carryover would more than cover its annual captioning costs for several years. In light of these facts, captioning First Baptist's programming would not impose an undue burden.

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[37] *First Baptist Supplement* at 1.
[38] *See First Baptist Supplement* at 2 ("we have not sought additional sponsorships").
[39] *See First Baptist Supplement* Ex. 1 at 3.

E. Petitioner Gray has failed to meet the standard's requirements.

Petitioner Gray's petition fails to meet the undue burden standard for reasons similar to the petitions described above, but also because it fails to provide the detailed financial information necessary under the standard. But even based on the limited information Gray provides, it is clear that the company is financially solvent and captioning would represent a modest expense.

Consumer Groups acknowledge that Gray obtained quotes from multiple captioning providers and also sought assistance from its local broadcast station.[40] But, similar to the other Petitioners described above, Gray's showing is insufficient because it fails to document any efforts to negotiate lower captioning costs. Additionally, Gray indicates that it has sought sponsorships but provides no documentation of these efforts.[41] Petitioners must describe and document their attempts to seek out sponsorships, as it is impossible for the Commission and the public to conclude that all alternative avenues have been exhausted without detailed information regarding a petitioner's efforts to do so.

Petitioner Gray fails to provide sufficiently detailed information about its finances and assets as required under the economically burdensome standard. Petitioners seeking to establish that captioning would impose an economic burden must include detailed information regarding the petitioner's finances and assets, revenues, expenses, and other documentation "from which its financial condition can be assessed."[42] Rather than provide traditional accounting balance sheets with its waiver, Petitioner Gray provides only its annual tax returns for 2011 and 2012. The tax returns fail to provide the FCC and the public with sufficient information about Petitioners' assets, revenues,

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[40] *See Gray Supplement* at 1.

[41] *Id.* (stating that Gray has sought additional sponsorships but failing to provide any documentation of these efforts).

[42] *See, e.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd 10031, 10032, ¶ 3 (MB 2005), *cited with approval in Anglers 2011*, 26 FCC Rcd at 14956, ¶ 28 n.100.

expenses, and alternative sources of funding. In short, the FCC and the public simply do not have enough information to know whether Gray would qualify for a waiver.

Although Petitioner Gray has not provided enough information to determine its overall financial health, its tax returns indicate that it should be able to afford to pay for captioning. In particular, Gray's 2012 tax return indicates gross revenues of $88,000 and a profit distribution of $27,284.[43] Gray's gross revenue and profit distribution are significantly more than Gray's quoted annual captioning cost of $15,600 and also indicate that Gray is financially solvent. Because Gray has provided insufficient information and has already had ample opportunity to supplement its financial showing, the Commission should promptly deny the waiver.[44]

IV. Consumer Groups Do Not Oppose a Limited Waiver for JBTV.

Despite Consumer Groups' belief that closed captioning is just a cost of doing business like paying the electric bills for lighting a studio, and that all video programming should be captioned, they do not oppose granting JBTV a limited, 12- to 18-month waiver because unlike the above applicants, its supplement shows that its television programming and broader activities operate at a significant loss.

JBTV's supplement indicates that its costs are rising at the same time its revenue is declining, creating a loss of more than $200,000 between 2011 and 2012.[45] In particular, JBTV's net loss in 2011 was nearly $65,000 with an additional loss in 2012 amounting to about $141,000.[46] Petitioner indicates that the losses have been covered through loans,

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[43] *See Gray Supplement* Ex. 1 at 1, 5.

[44] The FCC asked Gray to provide additional information about its finances after Consumer Groups raised similar arguments when Gray's petition was previously put on public notice.. *See Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules*, Dkt. No. 06-181, at 8 (filed Jan. 14, 2013) (describing how Gray had failed to provide "concise statements of their financial information, such as annual revenues and expenses and available assets").

[45] *See JBTV Supplement* at 3.

[46] *Id.* Ex. 1 at 4, 6.

though the source of the loans is unclear.[47] In the face of more than $200,000 in losses, Petitioner estimates annual captioning costs at roughly $50,000.[48] Petitioner indicates that it has sought assistance from the two channels that distribute its program and that both have declined to provide help.[49] Further, JBTV has obtained sponsorship for its programming, though it indicates that it is insufficient to cover its losses or pay for captioning.[50] Also, JBTV indicates that it has outstanding debts to both its attorneys and accountants.[51] Of the six petitions subject to comment in the FCC's recent public notice, JBTV is the only programmer to demonstrate a substantial, multi-year loss for its entire operations.

In light of JBTV's documented financial stress, Consumer Groups do not oppose a temporary waiver of the captioning rules to allow JBTV to obtain a more solid financial footing and caption its programming. Importantly, the waiver should have a firm expiration date, as "an exemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation."[52] The principle of limiting JBTV's waiver is further reinforced by the fact that JBTV has been operating under a *de facto* waiver since it first petitioned the FCC in 2005, meaning it has known

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[47] JBTV indicates that its sole proprietor, Gerald Bryant, financed the loans from his personal funds. *See JBTV Supplement* at 4. Petitioner indicates that Bryant's personal funds are derived from a small inheritance, though it's not clear if the loan to JBTV comes directly from Bryant's inheritance or if the inheritance was collateral for a business loan.

[48] *JBTV Supplement* at 2. Consumer Groups believe these captioning costs are likely overstated and do not reflect the actual costs JBTV would have to pay. *See* Section III.A.1, *supra*. However, even smaller captioning costs would still represent an additional expense on top of JBTV's multi-year loss.

[49] *Id.* at 1.

[50] *Id.* at 2-3.

[51] *Id.* at 3.

[52] *Anglers 2011*, 26 FCC Rcd at 14953 (internal quotations omitted)

about its captioning obligations and should begin to budget for compliance with the FCC's captioning requirements accordingly.[53]

V. Conclusion

Petitioners Curtis, First Lutheran, Dawson, Gray, and First Baptist have not made the showing required by Rule 79.1(f) to permit the Commission to find that closed captions would be economically burdensome. Accordingly, we respectfully urge the Commission to dismiss the petitions and require the Petitioners to bring their programming into compliance with the closed captioning rules.

Respectfully submitted,

Angela J. Campbell

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January 27, 2014

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[53] Consumer Groups could not find JBTV's original petition on the FCC's online docket, but a supplemental filing by JBTV in 2006 indicates that it first filed its petition in December 2005. *See JBTV Supplement*, Dkt. 06-181, Case No. CGB-CC-0024 (March 7, 2006).

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

/s/

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CC:
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Karen Peltz Strauss, Consumer and Governmental Affairs Bureau

CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
April 1, 2013

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on January 27, 2014, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioners at the addresses listed below.

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Augusta, GA 30901

Robinson Curley and Clayton P.C.
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Dawson Memorial Baptist Church
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Gray Publishing, Inc.
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First Baptist Church
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Niko Perazich
January 27, 2014

Appendix

Case No.	CGB-CC-0001
Petitioner	Curtis Baptist Church
Short Name	Curtis
Program Name	*Curtis Baptist Church*
Mailing Address	1326 Broad St. Augusta, GA 30901
Case Documents	Oct. 5, 2005 – Curtis seeks exemption from closed captioning for weekly church service broadcasts Dec. 22, 2005 – CGB requests additional financial information form Curtis Jan. 3, 2006 - Curtis supplements petition with additional financial and programming information Feb. 10, 2006 – Consumer Groups oppose Curtis's petition Apr. 10, 2006 – Curtis supplements petition with addition information about closed captioning costs Sept. 11, 2006 – CGB grants Curtis's exemption request, citing the Anglers 2006 precedent Oct. 25, 2011 – CGB informs Curtis that the organization's exemption has been reversed, following the Anglers 2011 decision, and instructs Curtis to file a new petition if they wish to continue to seek exemption Jan. 9, 2012 – Curtis seeks exemption from closed captioning for weekly church service broadcasts Mar. 16, 2012 – Consumer Groups oppose Curtis's petition Sept. 27, 2013 – CGB requests additional information from Curtis concerning finances, sponsorship, programming details, and closed captioning costs

	Oct. 22, 2013 – Curtis supplements petition with additional information about finances, sponsorship, programming details, and closed captioning costs

Case No.	CGB-CC-0024
Petitioner	Gerald Bryant TV
Short Name	JBTV
Program Name	*JBTV*
Mailing Address	Robinson Curley and Clayton P.C. 300 South Wacker Drive Suite 1700 Chicago, IL 60606
Case Documents	Dec. 30, 2005 – JBTV seeks exemption from closed captioning for weekly music broadcasts Mar. 7, 2006 – JBTV supplements petition with addition information about closed captioning costs, financial resources, and efforts to provide closed captioning Apr. 5, 2012 – CGB requests that JBTV update its pending petition if the organization wishes to continue to seek exemption June 26, 2012 – JBTV supplements petition with additional information about finances, sponsorship, efforts to provide captioning, and closed captioning costs Sept. 26, 2013 – CGB requests additional information from Curtis concerning finances, sponsorship, programming details, and closed captioning costs Oct. 24, 2013 – JBTV supplements petition with additional information from Curtis concerning finances, sponsorship, programming details, and closed captioning costs