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December 19, 2014  
*via electronic filing*

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

Re: Comments to Petition for Exemption from the Commission's Closed  
Captioning Rules (CG Docket No. 06-181)

**Cruise'n with E-Rider (Ray Slone)**  
CGB-CC-0448

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Association of Late-Deafened Adults (ALDA), and Deaf Seniors of America (DSA), collectively, "Consumer Groups," respectfully submit this comment to the Petition of

Cruise'n with E-Rider (Cruise'n) to exempt its programming from the Commission's closed captioning rules, which the agency placed on Public Notice on Nov. 19, 2014.<sup>1</sup>

Although Consumer Groups do not oppose Cruise'n's waiver request, they respectfully ask the Commission to limit any captioning exemption to 12 to 18 months. Because Cruise'n has been operating under a *de facto* waiver of the closed captioning rules for almost nine years, it has had ample time to find funding to pay for captioning. Further, a short waiver of less than two years would serve the intent of the economically burdensome waiver, which "is not designed to perpetually relieve a petitioner of its captioning obligation."<sup>2</sup>

### **I. Background**

Cruise'n has a half-hour program documenting car shows and drag racing that is aired on WRGT, a Fox affiliate in Dayton, Ohio. It first filed its Petition on February 23, 2006. Although the Consumer and Governmental Affairs Bureau ("Bureau") initially granted the Petition, the full Commission reversed that decision in 2011. The Bureau then gave Cruise'n an opportunity to refile, which it did on June 25, 2012. When the Bureau placed the Petition on Public Notice in October 2012, Consumer Groups opposed it, arguing that Cruise'n had failed to provide the required information. In response, the Bureau asked for additional information from Cruise'n on September 27, 2013. Cruise'n responded on October 21, 2013, though the Bureau found the initial response insufficient. The Bureau sent a second request for more information on May 30, 2014 and the Cruise'n responded on June 20 and 24, 2014. The Bureau placed the Petition on Public Notice on November 19, 2014. During the entire time Cruise'n's Petition has been pending, it has not been required to caption its programming.

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<sup>1</sup> *Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 14-1667 (Nov. 19, 2014).

<sup>2</sup> *Anglers for Christ Ministries, Inc.*, Order, Dkt. No. 06-181, 26 FCC Rcd 14941, 14953, ¶23 (2011).

## II. Legal Standard

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video-programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome."<sup>3</sup> When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission 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.<sup>4</sup> The Commission will look at a petitioner's assets, revenues, expenses, and other documentation "from which its financial condition can be assessed" that demonstrates that captioning would impose an undue economic burden.<sup>5</sup>

Recent FCC Orders — *Gerald Bryant TV, Inc.* and *Outdoorsmen Productions, LLC* — have interpreted the economically burdensome standard and found that when petitioners have net financial losses or liabilities over multiple years, the additional cost of captioning would be economically burdensome.<sup>6</sup> Accordingly, the FCC has granted those petitioners short, temporary exemptions of the closed captioning rules to give them time to identify resources and bring their programming into compliance.

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<sup>3</sup> 47 U.S.C. § 613(d)(3). The Commission has interpreted the term "economically burdensome" as being synonymous with the term "undue burden" as defined in Section 713(e) of the 1934 Act, and ordered the Bureau to continue to evaluate all exemption petitions using the "undue burden" standard pursuant to Rule 79.1(f)(2)-(3). *Interpretation of Economically Burdensome Standard*, 27 FCC Rcd 8831, 8835, ¶7 (2012).

<sup>4</sup> *First Baptist Church, Jonesboro Arkansas*, Dkt. No. 06-181, DA 14-1542, ¶3 (Oct. 24, 2014).

<sup>5</sup> *Id.* at ¶¶ 13-14.; see *Curtis Baptist Church*, Order, Dkt. No. 06-181, DA 14-1774 (Dec. 5, 2014) ¶ 14; *First Lutheran Church of Albert Lea*, Order, Dkt. No. 06-181, 29 FCC Rcd 9326, ¶¶14-15 (2014).

<sup>6</sup> *Gerald Bryant TV, Inc.*, Order, Dkt. 06-181, 29 FCC Rcd 9335 (2014); *Outdoorsmen Productions, LLC*, Order, Dkt. 06-181, DA 14-1646 (Nov. 13, 2014).

### **III. Consumer Groups Do Not Oppose a Short Exemption for Cruise'n with E-Rider.**

Cruise'n with E-Rider's Petition demonstrates that although its captioning costs are modest, the organization has had multiple years of financial losses and liabilities that exceed its assets. As a result, Consumer Groups do not oppose a waiver of the closed captioning rules for 12 to 18 months to allow Cruise'n time to finance its captioning expenses and meet its captioning obligations.

According to quotes provided by Cruise'n, it would cost Cruise'n with E-Rider \$47.50 per episode, or roughly \$1,425 annually, to caption.<sup>7</sup> Cruise'n also provided an estimate on in-house captioning that would cost roughly \$5,753 annually, including the cost of hiring an employee to caption the program.<sup>8</sup>

Cruise'n's financial records show that it has suffered deficits over multiple years. According to Cruise'n's tax returns, it suffered losses of \$2,100 and \$3,595 in 2011 and 2012, respectively.<sup>9</sup> Also, Cruise'n had net liabilities of roughly \$17,900 in 2011 and \$20,400 in 2012.<sup>10</sup>

Given Cruise'n's losses and net liabilities over multiple years, the added captioning costs would likely "exacerbate [Petitioner's] financial losses and possibly lead to the termination of the program."<sup>11</sup> Thus, it is likely that requiring Cruise'n to caption its program immediately could result in the program going off the air.

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<sup>7</sup> Quote from US Captioning Company, Cruise'n with E-Rider Supplement, Ex. C at 2 (Oct. 21, 2013). Petitioner also received quotes from Video Captioning Corporation for \$235 per episode - \$5,875 annually - and Closed Caption Maker for \$125 per episode - \$3,125 annually. Cruise'n with E-Rider Second Supplement at 4-5 (June 24, 2014).

<sup>8</sup> The estimates include the cost of a new computer (\$2,252.99), captioning software (\$1,699) and paying an employee \$15 per hour for 120 hours to caption (\$1,800). Cruise'n with E-Rider Supplement, Exs. D at 2, 4-6; G at 1.

<sup>9</sup> Cruise'n with E-Rider Supplement, Ex. A at 3,7.

<sup>10</sup> *Id.* at Ex. E at 1-2.

<sup>11</sup> *Gerald Bryant TV, Inc.*, 29 FCC Rcd. at ¶13.

Consumer Groups acknowledge that Cruise'n sought captioning assistance from its local broadcaster and also sought sponsors for its captioning expenses from two different local businesses.<sup>12</sup> Nonetheless, Consumer Groups note that Cruise'n has been quite successful in obtaining sponsors and donations for other expenses associated with its programming.<sup>13</sup> Because captioning is merely one expense among many associated with producing a television program, and Cruise'n has demonstrated an ability to obtain donations to cover its programming costs, it should be able to cover its modest captioning expenses in the very near future.

Finally, Consumer Groups note that Cruise'n's waiver request has been pending since 2006 and that it has been on notice of its captioning obligations at least that long. Exemptions to the closed captioning requirements were not intended to perpetually relieve a programmer of its captioning obligations. Thus, even if Cruise'n does receive a waiver, it should begin planning to pay for captioning just as it would any other production expense.

#### **IV. Conclusion**

Consumer Groups do not oppose the Commission granting Cruise'n a short exemption from its captioning obligations for 12 to 18 months. Consumer Groups believe that a temporary waiver would give Cruise'n ample time to obtain additional funding, sponsors, or donations to cover its captioning expenses begin complying with the Commission's captioning rules. This is particularly true given that Cruise'n has not had to caption its programming in almost nine years.

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<sup>12</sup> Cruise'n with E-Rider Supplement at 2; Ex. B; Cruise'n with E-Rider Second Supplement at 2-3 (statements from Chris's Carb Shop and Cylinder Head and Block Service refusing to sponsor Petitioner's captioning expenses).

<sup>13</sup> See Petitioner's list of Sponsors and Expenses in 2011 and 2012. Cruise'n with E-Rider Supplement, Ex. A at 9-10.



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**CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on December 19, 2014, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Petitioner at the address listed below.

Ray Slone, Jr.  
Cruise'n with E-Rider  
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\_\_\_\_\_/s/\_\_\_\_\_  
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Niko Perazich

December 19, 2014