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March 16, 2015
via electronic filing

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

Re: Opposition to Petition for Exemption from the Commission's Closed
Captioning Rules
CGB Dkt. No. 06-181

Christian Video Ministries, Inc.
CGB-CC-0235

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Cerebral Palsy and Deaf Organization (CPADO), National Association of the Deaf (NAD), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and American Association of the Deaf-Blind (AADB), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Christian Video Ministries, Inc. (CVM or

*Admitted to the Washington bar only;
DC bar membership pending. Practice supervised by members of the DC bar.

Petitioner) for exemption of its programming from the Federal Communications Commission's (Commission) closed captioning rules.

I. Background

"Drawing Men to Christ" is a 60-minute religious program in which Dr. Peter Ruckman illustrates his sermons with color chalk drawings as he speaks.¹ As of October 2013, "Drawing Men to Christ" was broadcast on fourteen cable stations and one satellite station.² CVM explains that it no longer produces new videos and only airs re-runs, but its petition does not indicate how many re-runs it continues to televise annually.³ About 10 years ago, in 2005, CVM sought a waiver of the Commission's closed captioning rules for "Drawing Men to Christ."⁴ Although the Consumer and Governmental Affairs Bureau (CGB or Bureau) initially granted CVM's 2005 Petition, the Commission reversed that decision six years later.⁵ The Bureau then gave CVM the opportunity to refile its 2005 Petition, which it did on December 28, 2011.⁶ In April 2012, September 2013, May 2014, and December 2014, the Bureau sought additional information from CVM.⁷ Although CVM responded to each request, it never fully provided the information sought by the Commission.⁸ The Bureau then placed the 2011 Petition on Public Notice for comment on February 12, 2015.⁹

¹ Letter from Janora Dunson, Secretary, Christian Video Ministries, Inc., to Office of the Secretary, FCC, 11-12 (Apr. 30, 2007).

² Letter from Janora Dunson, to Cheryl King, Disability Rights Office, CGB, (2 of 2) at 16 (Oct. 21, 2013) (2013 Supplement).

³ Letter from Janora Dunson, to E. Elaine Gardner, Disability Rights Office, CGB, (4 of 8) (July 10, 2014) (2014 Supplement).

⁴ Letter from Janora Dunson, to Office of the Secretary, FCC (Dec. 20, 2005) (2005 Petition).

⁵ See *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941 (2011) (*Anglers*).

⁶ Letter from Janora Dunson, to Office of the Secretary, FCC (Dec. 28, 2011) (2011 Petition).

⁷ Letter from Roger Holberg, Disability Rights Office, CGB, to Janora Dunson (Apr. 18, 2012); Letter from Cheryl J. King, to Janora Dunson (Sept. 27, 2013); Letter from E. Elaine Gardner, to Janora Dunson (May 30, 2014); Letter from E. Elaine Gardner, to Janora Dunson (Dec. 19, 2014).

⁸ Letter from Janora Dunson, to Roger Holberg (Apr. 30, 2012); 2013 Supplement; 2014 Supplement; Letter from Janora Dunson, to E. Elaine Gardner (Jan. 18, 2015) (2015 Supplement).

⁹ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-200 (Feb. 12, 2015).

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."¹⁰ 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.¹¹ The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner's current assets, current liabilities, revenues, expenses, and other documentation "from which its financial condition can be assessed."¹² The petitioner bears the burden to show that an exemption is warranted, as "[f]ailure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request."¹³

III. CVM's petition should be dismissed because it has repeatedly failed to meet its burden of proof under the economically burdensome standard.

CVM's petition should be dismissed because CVM has repeatedly failed to provide adequate explanation as to why the provision of closed captioning would be economically burdensome. It is CVM's responsibility to provide a full financial picture to the Commission with supporting evidence, and CVM has failed to meet this burden ever since it renewed its petition more than three years ago.¹⁴

There are serious problems with CVM's quoted captioning costs that make a determination under the economically burdensome standard impossible. According to recent quotes from CaptionLabs and Matson Multi Media, CVM states that it will incur

¹⁰ 47 U.S.C. § 613(d)(3). The Commission 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, 8834 ¶7 (2012).

¹¹ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014).

¹² *Id.* at ¶¶ 13-14; see also *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

¹³ *First Lutheran Church of Albert Lea*, 29 FCC Rcd at ¶5.

¹⁴ *Id.*

a one-time cost of \$78,881.25 to caption 175 episodes. This total figure includes \$48,125.00 in captioning costs (\$275.00 per episode),¹⁵ \$24,106.25 in duplication costs (\$137.75 per episode),¹⁶ and \$6,650.00 in shipping costs (\$38.00 per episode).¹⁷

CVM's quoted total cost of captioning fails to meet the economically burdensome standard in at least three respects. First, the number of episodes CVM would have to caption annually is much lower than 175, as the Commission's captioning rules only require CVM to caption episodes that are broadcast moving forward.¹⁸ Hence, CVM is not required to provide closed captioning on previously recorded programs until they are re-broadcast.¹⁹ That means that CVM's captioning costs are likely to be much lower. But because CVM does not indicate how many episodes re-air each year, it is impossible to determine its actual annual captioning costs.

Second, CVM's captioning costs include estimated costs for duplication without sufficient justification. CVM does not explain why it must dub and create five master copies of each captioned program at a cost of \$137.75 per episode as opposed to making one master captioned copy that could then be duplicated. If CVM were to make a single master dubbed copy and then duplicate that tape, the costs are likely to be much lower.

Third, Consumer Groups do not believe that the costs of distributing a program are costs directly related to captioning as CVM claims.²⁰ Distribution costs are part of the programmers' larger budget, as CVM must distribute its programming regardless of whether or not it is required to provide closed captions. Therefore, CVM's shipping costs should not be included in the estimated cost of closed captioning.

Because CVM has not provided detailed information explaining its actual costs of captioning, Consumer Groups are unable to determine whether captioning would be economically burdensome. CVM has had multiple opportunities and several years to establish its claim but has consistently failed to meet its burden under the Commission's rules.²¹ Consumer Groups therefore respectfully ask the Commission to dismiss CVM's petition and require it to comply with the closed captioning rules.

¹⁵ 2015 Supplement at 3.

¹⁶ 2014 Supplement (3 of 8).

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 79.1.

¹⁹ See e.g., *Joy Ministries*, Dkt. No. 06-181, DA 15-286, ¶8 n.33 (Mar. 4, 2015).

²⁰ 2013 Supplement (1 of 2) at 1.

²¹ See *Consumer Groups Opposition to Christian Video Ministries, Inc. Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181, CGB-CC-0235 (Sept. 10, 2012)

IV. Alternatively, CVM should be granted an extremely short waiver.

Should the Commission not dismiss CVM's petition, Consumer Groups would not oppose granting CVM a very limited waiver to bring its programming into compliance with the closed captioning rules. Consumer Groups acknowledge that CVM has limited financial resources. Specifically, CVM had net income of \$5,976.00 in 2011 and net loss of \$3,696.00 in 2012.²² In addition, financial reports show that CVM had net current assets of \$11,039.00 in 2011 and \$8,417.00 in 2012.²³

CVM's limited financial resources mean that even if it provided accurate captioning costs, those lower figures may still pose an economic burden. Thus, a waiver of the captioning rules may be necessary. Consumer Groups emphasize, however, that any waiver should be extremely short, as it "is not designed to perpetually relieve a petitioner of its captioning obligation."²⁴ Further, CVM has had a *de facto* waiver of the Commission's rules since December 2005. The Commission should not allow CVM to continue to avoid its captioning obligations for anywhere close to that same time period. Consumer Groups therefore ask the Commission to limit any waiver granted to CVM to six to 12 months.

V. Conclusion

CVM has repeatedly failed to meet its burden of proof under the economically burdensome standard and has received a *de facto* waiver of the Commission's rules for almost ten years. The limited information provided by CVM makes it impossible to determine its annual captioning costs. Consumer Groups therefore ask the Commission to dismiss CVM's petition and require it to begin captioning its programming. Alternatively, the Commission should grant Petitioner an extremely limited waiver before it must comply with the Commission's closed captioning rules.

("CVM's petition and supplemental information provide no coherent estimate of the cost of captioning CVM's programming.")

²² 2013 Supplement (1 of 2) at 8.

²³ *Id.* at 17.

²⁴ *Anglers*, 26 FCC Rcd at 14953, ¶23.

Sincerely,

/s/

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Angela Campbell
Institute for Public Representation

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/s/

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CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 2015, 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.

Mrs. Jerry Dunson, Sec.
Christian Video Ministries, Inc.
P.O. Box 1466
San Antonio, TX 73295-1466

/s/

Niko Pezarich
Institute for Public Representation

March 16, 2015