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October 15, 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 Life Issues Institute's Petition for Exemption from
the Commission's Closed Captioning Rules
CGB Docket No. 06-181

Life Issues Institute, Inc.
CGB-CC-1363

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Association of the Deaf-Blind (AADB), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, "Consumer Groups," submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the Commission's closed captioning requirements filed by Life Issues Institute, Inc. ("Life Issues") for its program "Facing Life Head-On."

* DC bar membership pending. Practice supervised by members of the DC bar.
** Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

Life Issues does not meet the statutory requirements necessary to support an exemption from the closed captioning rules. It has failed to demonstrate that compliance with the closed captioning requirements would be economically burdensome. Consumer Groups urge the Bureau to deny the petition and require Life Issues to caption its programming within 90 days.

I. 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." 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. 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."¹

II. Background

Life Issues Institute produces a program, entitled "*Facing Life Head-On*," that aims to educate the public on how to deal with life issues like "adoption, disabilities, abortion, cancer, stem cell treatments, medical technologies, and end-of-life care."² Life Issues produces 11 new episodes per year, which air on a variety of distributors' outlets, including Catholic TV, Telecare, Cornerstone Television, INSP Inspiration, WLMB TV-40, NRB/North Star, and KTBN.

Life Issues' has already filed two petitions for exemption, both of which were dismissed by the Bureau. Life Issues first sought an "economically burdensome" exemption from captioning for the program on November 3, 2006.³ The Bureau placed

¹ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶¶13-14 (2014); 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).

² *Life Issues Institute Petition for Exemption*, p. 1-2 (June 18, 2015).

³ *Facing Life Head On Petition for Exemption* (November 3, 2006).

the petition on public notice on January 26, 2007.⁴ TDI opposed this petition,⁵ but the Bureau took no action at the time. On April 18, 2012, the Bureau requested additional information from Life Issues, which then submitted a supplement on April 26, 2012. On September 26, the Bureau asked Life Issues to provide it with the necessary financial information and to confirm Life Issues' interest in pursuing an exemption by October 26, 2012. That request went unanswered. Accordingly, the Bureau dismissed the petition and ordered Life Issues to comply with FCC captioning rules by June 4, 2013.⁶ It does not appear from the record that Life Issues has captioned its program since this order.

On June 4, 2013, the date by which it was supposed to begin captioning, Life Issues filed another petition for exemption. On September 20, 2013, the Bureau again requested additional information concerning the organization's financial records. On January 10, 2014, Life Issues submitted a supplement that did not furnish all the information the Bureau requested. The Bureau dismissed the petition on February 12, 2014 for once again failing to provide the requested financial information. The Bureau reminded Life Issues that it must comply with the captioning rules⁷ and provide captioning within 90 days of the dismissal.⁸ Therefore, Life Issues should have started captioning its programming by May 13, 2014. There is no evidence in the record that Life Issues has captioned its program since this order. Life Issues filed the current petition for exemption on June 18, 2015 (the "Petition"), more than thirteen months after it was required to begin captioning.⁹ The Bureau placed the petition on Public Notice on September 15, 2015.¹⁰

III. Life Issues has not demonstrated that it would be economically burdensome to caption its programming.

Life Issues provided two captioning quotes. The lower quote would have allowed it to caption its programming for \$514 per episode.¹¹ This rate includes a

⁴ *Consumer and Governmental Affairs Bureau Public Notice* (January 26, 2007).

⁵ *TDI Opposition* (February 23, 2007).

⁶ *See Consumer and Governmental Affairs Bureau Dismissal*, p. 1 (March 6, 2013).

⁷ *See Consumer and Governmental Affairs Bureau Dismissal*, p. 1. (February 12, 2014).

⁸ *See CGB letter* at 4 (Sept. 30, 2013).

⁹ *Life Issues Institute Petition for Exemption* (June 18, 2015).

¹⁰ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, DA 15-1029, Dkt. 06-181 (September 15, 2015) (September Public Notice).

¹¹ *Life Issues Institute Petition for Exemption* at 1-3 (Part 1 of 8) (June 18, 2015).

captioning fee of \$240 per episode, plus total delivery fees of \$204 for delivery to three HD channels and \$70 for delivery to two SD channels.¹² With only 11 episodes per year, Life Issues would be able to caption "*Facing Life Head-On*" at an annual rate of \$5,654.¹³ Consumer Groups question whether delivery fees should be included in the cost of captioning. Because Life Issues would have to deliver the program regardless of whether the program was captioned, these figures may be artificially high.

Even using Life Issues' annual captioning rate of \$5,654 per year, this cost would not be economically burdensome. Life Issues operated at a loss in 2014 and 2013. In 2014, Life Issues generated \$945,947 of revenue and \$1,192,165 in expenses, which resulted in a net loss of \$246,218.¹⁴ In 2013, it generated \$1,267,381 of revenue and \$1,286,248 in expenses, which resulted in a net loss of \$18,867.¹⁵

Despite these losses, Life Issues' net current assets are sufficient to cover both the cost of captioning and the organization's losses. Even in cases where an entity is operating at a loss, the Bureau has denied petitions for exemption where sufficient net current assets exist because these assets serve as evidence that providing closed captioning would not be economically burdensome.¹⁶ In 2014, Life Issues reported \$401,855 in current assets and only \$44,107 in current liabilities,¹⁷ resulting in \$357,748 in net current assets. In 2013, the organization reported \$648,473 in current assets and current liabilities of \$43,484,¹⁸ resulting in \$604,989 in net current assets. Even with the proposed annual captioning cost of \$5,654, Life Issues would still have had \$352,094 in

¹² *Id.* at 3.

¹³ *Id.* at 1, 3.

¹⁴ *Life Issues Institute Petition for Exemption* at 116 (Part 8 of 8) (June 18, 2015).

¹⁵ *Id.*; *Life Issues Institute Petition for Exemption* at 117 (Part 8 of 8) (June 18, 2015).

¹⁶ See, e.g., *Van Buren First Assembly of God*, Dkt. No. 06-181, DA 15-839, ¶ 16 (July 21, 2015) ("[T]hat a petitioner has experienced a net current loss does not in itself, merit a determination of economic burden."), *Roman Catholic Diocese of Gaylord*, Dkt. No 06-181, DA 15-840, ¶ 19 (July 21, 2015) (finding no economic burden where petitioner experienced net loss in most recent reported year but had net current assets that could cover captioning costs), *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶14 (Feb. 3, 2015) (denying petition where Tupelo experienced total excess of expenses over revenue, but had current assets that would cover cost of captioning), *Dawson Memorial Baptist Church*, Dkt. No 06-181, DA 14-1872, ¶16 (Dec. 19, 2014) (finding no economic burden where petitioner experienced net loss in the two recently reported years, but had net current assets that could cover closed captioning costs).

¹⁷ *Life Issues Institute Petition for Exemption* at 114 (Part 8 of 8) (June 18, 2015).

¹⁸ *Id.* at 115.

net current assets in 2014 and \$599,335 in net current assets in 2013. Those cash reserves would still allow Life Issues to cover the cost of their net loss and have money left over.

Life Issues indicates in its Petition that it sought assistance from its distributors and was "rejected."¹⁹ Consumer Groups note that programs distributed as widely as Life Issues should be able to pass along such a modest annual cost of captioning to its broadcasters. In this case, several of Life Issues' distributors are large networks that would likely have money in their budget to spare a combined \$5,654 per year for captioning costs. For example, one of Life Issues' broadcasters, Cornerstone Television, owns 44 full-power and 57 low-power affiliate stations. The organization grossed approximately \$6,328,240 in revenue in 2013 and had around \$5,895,883 in net assets.²⁰

It appears that Life Issues has managed to avoid captioning its programming for almost nine years – at times ignoring the Bureau's orders to caption. Life Issues waited until the last day to submit a new petition for exemption on June 4, 2013 after the Bureau's order to provide captioning by the same date. Additionally, it does not appear that Life Issues complied with the Bureau's mandate to caption by May 2014 and, instead, waited until over a year later to file the current petition. As such, the Petition should be dismissed and Life Issues should be required to finally caption its programming.

Moreover, Life Issues has not demonstrated that it would be economically burdensome to caption its programming. The organization's financial records show that it has sufficient funds to cover the cost of captioning. Although Life Issues has experienced yearly net losses, its net current assets would be able to cover the cost of captioning more than sixty times over. The Bureau should dismiss the Petition and require that Life Issues caption its programming within 90 days.

IV. Conclusion

For the reasons described above, Consumer Groups respectfully request that the Bureau dismiss the Petition. Life Issues should not be granted any more time to evade the Commission's captioning rules. Nonetheless, should the Bureau conclude that Life Issues has demonstrated that its financial situation makes captioning costs economically

¹⁹ *Life Issues Institute Petition for Exemption 1 (Part 1 of 8)* (June 18, 2015).

²⁰ See *Cornerstone Television*, Charity Navigator, <http://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=5119#.VhV LjWRViko>.

burdensome, Consumer Groups ask that the Bureau only approve an extremely limited exemption. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a petitioner may change, the Bureau should refrain from granting lengthy or open-ended exemptions.

Sincerely,

/s/

Drew Simshaw
Angela Campbell
Institute for Public Representation

Lindsay Buchanan
Georgetown Law Student

Counsel to TDI

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

/s/

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Consumer Groups' Opposition to Closed
Captioning Waiver Petition CC-1363
October 15, 2015
Page 7 of 9

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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 Stout
October 15, 2015

Consumer Groups' Opposition to Closed
Captioning Waiver Petition CC-1363
October 15, 2015
Page 9 of 9

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on October 15, 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 Petitioners at the address listed below.

Bradley Mattes, President & CEO
Life Issues Institute
1821 W. Galbraith Road
Cincinnati, OH 45239

/s/

Niko Perazich
Institute for Public Representation

October 15, 2015