

January 19, 2006

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Federal Communications Commission  
Office of Secretary

VIA COURIER

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

In re: *Closed Captioning and Video Description of Video Programming –  
Implementation of Section 305 of the Telecommunications Act of 1996 – Video  
Programming Accessibility*

CGB-CC-0007 – Opposition of Telecommunications for the Deaf and Hard of  
Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing  
Consumer Advocacy Network, and Hearing Loss Association of America to the  
Petition for Exemption from Closed Captioning Requirements Filed by New  
Beginning Ministries

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America hereby submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the closed captioning requirements filed by New Beginning Ministries (“Petitioner”).

An original and two (2) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,

Paul O. Gagnier  
Troy F. Tanner

Their Counsel

Enclosure

Marlene H. Dortch, Secretary

January 19, 2006

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Mr. Claude L. Stout (TDI)

Mr. Kelby N. Brick, Esq. (NAD)

Ms. Cheryl Heppner (DHHCAN)

Ms. Brenda Battat (HLAA)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Closed Captioning and Video Description )  
of Video Programming )  
) CGB-CC-0007  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 -- )  
)  
Video Programming Accessibility )

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF  
HEARING, INC., NATIONAL ASSOCIATION OF THE DEAF, THE DEAF AND HARD  
OF HEARING CONSUMER ADVOCACY NETWORK, AND THE HEARING LOSS  
ASSOCIATION OF AMERICA TO  
THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS  
FILED BY NEW BEGINNING MINISTRIES**

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Dated: January 19, 2006

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**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED  
CAPTIONING REQUIREMENTS FILED BY NEW BEGINNING MINISTRIES**

**I. INTRODUCTION**

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America (together, "Commenters"), by their undersigned counsel, hereby submit their opposition to the petition for an exemption ("Petition") from the Commission's closed captioning requirements for the video program "In His Image," filed by New Beginning Ministries ("Petitioner"), the program's producer.

Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Established in 1880, the National Association of the Deaf ("NAD") is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans across a broad range of areas including education,

employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

The Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), established in 1993, serves as the national coalition of organizations<sup>1</sup> representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

The Hearing Loss Association of America (“HLAA”) is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through their website, [www.hearingloss.org](http://www.hearingloss.org), their award –winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

Commenters fully support the creation of programming to address the diversity of interests and views of the American public, including programs that derive their inspiration from

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<sup>1</sup>/ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

addressing religious and spiritual matters. Commenters respectfully submit, however, that the Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules or Petitioner's contention that compliance with the closed captioning requirements would impose an undue burden.<sup>2</sup> As set forth below, Petitioner has provided insufficient information to establish that the legal standard for granting the Petition has been met. Petitioner also has failed to establish that the program in question qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules. Commenters therefore respectfully oppose grant of the Petition.

## **II. THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION**

Section 713 of the Communications Act of 1934, as amended, generally requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.<sup>3</sup> The Commission has the authority to grant a petition for an exemption from the closed captioning requirements upon a showing that the requirements would impose an undue burden on the video programming provider or video owner.<sup>4</sup> Congress defined "undue burden" to mean "significant difficulty or expense."<sup>5</sup>

A petition seeking a waiver of the captioning rules must demonstrate that compliance would result in an undue burden within the meaning of Section 713(e) and Section 79.1(f) of the Commission's rules.<sup>6</sup> Section 713 requires the Commission to consider four factors when determining whether the closed captioning requirements will impose an undue burden: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of

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<sup>2/</sup> 47 U.S.C. § 613(e).

<sup>3/</sup> *Id.*

<sup>4/</sup> *Id.*

<sup>5/</sup> *Id.*

<sup>6/</sup> 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

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>7</sup>

Section 79.1(f) of the Commission's rules sets forth the Commission's procedures for seeking an exemption from the closed captioning requirements on the basis that compliance would impose an undue burden.<sup>8</sup> A petition for an exemption from the closed captioning requirements must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.<sup>9</sup> Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.<sup>10</sup> It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.<sup>11</sup>

**III. PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN**

Petitioner requests an exemption from the closed captioning requirements for its video program "In His Image," asserting that compliance would impose an undue burden on Petitioner.<sup>12</sup> In particular, the Petitioner argues that compliance would add unaffordable production costs and create production delays.<sup>13</sup> Petitioner asserts that such costs and delays would arise as a result of the need to outsource closed captioning to a third party.<sup>14</sup> As Commenters discuss below, the Petition offers insufficient evidence to demonstrate that compliance would impose an undue burden under the four statutory exemption factors. The

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<sup>7/</sup> *Id.*  
<sup>8/</sup> 47 C.F.R. § 79.1(f).  
<sup>9/</sup> *Id.* § 79.1(f)(2).  
<sup>10/</sup> *Id.* § 79.1(f)(9).  
<sup>11/</sup> *Id.* § 79.1(f)(3).  
<sup>12/</sup> Petition at p.1.  
<sup>13/</sup> *Id.*  
<sup>14/</sup> *Id.*

Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

Petitioner also notes that its broadcast is a locally produced and distributed non-news program with no repeat value, and the electronic news room technique of captioning is unavailable.<sup>15</sup> Aside from this bare assertion, Petitioner fails to offer the information necessary to establish that its program qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules, which pertains to certain locally produced non-news programs of local public interest.<sup>16</sup>

**A. Exemption Criteria Under Section 79.1(f)(2)**

As more fully discussed below, Commenters respectfully submit that the Petition is not supported by sufficient evidence to demonstrate that compliance with the closed captioning requirements would impose an undue burden upon Petitioner as required by the statutory factors set forth under Section 79.1(f)(2) of the Commission's rules.<sup>17</sup>

First factor: The nature and cost of the closed captions. In judging the sufficiency of information filed to support a claim that the cost of implementing closed captioning will impose an undue burden, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.<sup>18</sup>

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<sup>15/</sup> *Id.*

<sup>16/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>17/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>18/</sup> *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001) ("*Outland Sports*") (advising that entities seeking a waiver of the captioning requirements seek cost quotes from multiple sources and provide correspondence evidencing the quotes obtained, provide detailed financial information, and discuss whether any efforts were made to recoup the cost of

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.<sup>19</sup> Failure to provide the foregoing information and to establish that the Petitioner pursued other possible means of gaining captioning hinders the Commission's assessment of the impact of the cost of captioning on Petitioner.<sup>20</sup>

Petitioner states that it would have to send the programs to an outside source for captioning, and that funds are not available to cover the added production cost of approximately \$300 per weekly program episode.<sup>21</sup> However, Petitioner provided no documentation to support the assertion that adding a closed captioning feature to its programming will increase the per episode production costs by \$300. Further, Petitioner has not given any indication that efforts were made to seek competitive pricing from alternative captioning companies or, if it did, who those companies or individuals may be. In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources.

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program. Petitioner states that it has total annual income of \$60,000, and that annual expenditures associated with the program "In His Image" total \$39,000.<sup>22</sup> Petitioner, however, fails to provide any documentation to verify its claims regarding total income and production costs. Petitioner also fails to describe its general financial condition, and state whether it has other means to recoup the cost of captioning, such as through sponsorships or grants, or whether Petitioner solicited captioning assistance from the

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closed captioning). See also *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13611 (2001) (reviewing sufficiency of information provided with respect to the four factors).

<sup>19/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

<sup>20/</sup> *Outland Sports*, ¶ 7.

<sup>21/</sup> Petition at p.2.

distributors of its programming. As to the latter, the Commission recently determined that petitioners must make an effort to solicit such assistance and provide the distributor's response to its solicitation.<sup>23</sup> Without such detailed information, the Commission cannot gain an understanding of the overall resources of Petitioner or make accurate findings regarding the cost of closed captioning. As a result, the Petition provides insufficient information for the Commission to assess the impact of adding captioning upon Petitioner's resources. Petitioner has therefore failed to provide sufficient evidence to support a claim for exemption under the first factor.

Second factor: The impact on the operation of the provider or program owner. The Petition provides very little information to describe the impact captioning would have on Petitioner's operations. Petitioner claims that compliance with the closed captioning rules would require Petitioner to send the program to an outside source for captioning, which would "make production unaffordable," and force Petitioner to "cease broadcast operations."<sup>24</sup> However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. Petitioner fails to provide any additional information to explain what alternatives to meeting the Commission's closed captioning rules have been considered, including what sources for closed captioning were considered. Moreover, while Petitioner generally asserts that adding captioning would cause delay, Petitioner fails to explain what Petitioner's deadlines are, what time constraints Petitioner faces in meeting those deadlines, what the likely time delay would be for adding closed captioning, and what means might be employed to mitigate any delays. Given that such factual information has not been provided, Petitioner has not provided the Commission sufficient factual basis for assessing the impact of adding captioning upon Petitioner's

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<sup>22/</sup> *Id.*

<sup>23/</sup> See *Commonwealth Productions, Video Programming Accessibility, Petitioner for Waiver of Closed Captioning Requirements*, CSR 5992, Memorandum Opinion and Order, ¶ 3 (Mar. 26, 2004).

operations. As a result, the Petition provides the Commission with insufficient basis for considering whether Petitioner's request for exemption finds support under the second factor.

Third factor: the financial resources of the provider or program owner. Commission Rule 79.1(f)(2) provides that a petition for exemption "must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden."<sup>25</sup> Additionally, in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner – and not merely the cost of captioning in relation to a particular program.<sup>26</sup> Here, Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the high costs of captioning and vague statements concerning production costs and income.

Beyond Petitioner's unsubstantiated assertion that it has annual income of \$60,000, and that annual expenditures for "In His Image" total approximately \$39,000, Petitioner provides no information about its financial condition or programming budget.<sup>27</sup> Commenters note that "In His Image" is broadcast nationwide on a weekly basis over the Sky Angel satellite network, and on a weekly basis to a large geographic area within the state of Florida via the Christian Television Network ("CTN") cable channel.<sup>28</sup> No information is provided in the Petition about these sources of revenue beyond a vague reference to a \$750 charge associated with CTN's broadcast.<sup>29</sup> Information regarding revenue derived from the nationwide satellite and regional cable distribution of "In His Image" is relevant to considering Petitioner's request for exemption

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<sup>24/</sup> Petition at p. 1.

<sup>25/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>26/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997) ("Report and Order").

<sup>27/</sup> Petition at p. 2.

<sup>28/</sup> See <http://www.newbeginningministries.com/tv.html> (which provides a schedule for New Beginning Ministries' televised programming).

<sup>29/</sup> Petition at p. 2.

in the context of the overall budget and revenues of Petitioner. Such information would enhance the Commission's understanding of the resources available to support captioning of "In His Image." In the absence of such detailed information regarding Petitioner's financial resources, however, the Petition fails to find support under the third factor.

Fourth factor: The type of operation of the provider or program owner. Petitioner provides insufficient information regarding the type of operations that it runs. In order for the Commission to determine whether the Petition is supported under the fourth factor, Petitioner should have provided detailed information regarding its operations and explained why or how complying with the closed captioning requirements would result in significant difficulty for Petitioner because of the type of operations involved. Petitioner fails to explain why the nature and/or specific attributes of its operations provides a basis to exempt it from the captioning rules. Lacking such information, the Petition fails to demonstrate that an exemption is warranted under the fourth factor.

**B. Exemption Criteria Under Section 79.1(d)(8)**

Petitioner claims that its video program is exempt from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules. In Section 79.1(d)(8), the Commission exempted from the captioning requirements video programming "that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable." The Commission established this category in recognition of the real possibility that the captioning requirement could result in sufficient economic burden such that certain types of locally produced and distributed non-news programs with no repeat value would not be televised at all. The Commission emphasized, however, that this "narrowly focused exemption" will "apply only to a limited number of truly local materials, including, for example,

local parades, local high school and other nonprofessional sports, live unscripted local talk shows, and community theatre productions . . . The programming in question would have to be locally created and not networked outside of the local service area.”<sup>30</sup>

Petitioner asserts that its video program is a locally produced and distributed non-news program, and the “electronic news room” technique of captioning is unavailable. While these may be factors in evaluating whether Petitioner qualifies for an exemption from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission’s Rules, Petitioner provides insufficient information to qualify for an exemption from the closed captioning rules on this basis. Petitioner offers no information to establish that its program is “truly local” in nature other than its bare assertion. Petitioner’s Internet website states that “In His Image” is carried on the Christian Television Network in Eastern and Western Florida.<sup>31</sup> Further, “In His Image” also airs weekly on the Sky Angel satellite network which broadcasts nationwide from a geostationary satellite positioned at 61.5 degrees West longitude.<sup>32</sup> Therefore, Petitioner’s programming appears to have a national audience, not just a local one. As a consequence, the Commission has no basis for finding that Petitioner’s program qualifies for an exemption from the captioning requirements under Section 79.1(d)(8).

#### **IV. CONCLUSION**

For those reasons, Petitioner’s request for exemption from the closed captioning requirements is not supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

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<sup>30/</sup> Report and Order, at 3342.

<sup>31/</sup> See <http://www.newbeginningministries.com/tv.html>.

<sup>32/</sup> See <http://www.skyangel.com/About/Faq.asp?IdS=0027F0-9341110&x=002|004&~=#6>.

WHEREFORE, for the foregoing reasons, Commenters respectfully oppose grant of the  
Petition.

Respectfully submitted,

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Dated: January 19, 2006

  
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## CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on January 19, 2006, a copy of the foregoing Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America People to the Petition for Exemption from Closed Captioning Requirements Filed by New Beginnings Ministries, as filed with the Federal Communications Commission in CGB-CC-0007, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Pastor Mary Lou Houllis  
New Beginning Ministries  
4004 Bonita Road  
Holiday, Florida 34691

A handwritten signature in cursive script that reads "Alice Burruss". The signature is written in black ink and is positioned above a horizontal line.