

February 27, 2006

RECEIVED

FEB 27 2006

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

Federal Communications Commission  
Office of Secretary

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-0089 – 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 World  
Changes Tabernacle

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 World Changes Tabernacle.

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

Marlene H. Dortch, Secretary  
February 27, 2006  
Page 2

Enclosure

cc: via e-mail:

Ms. Amelia Brown (CGAB)  
Ms. Traci Randolph (CGAB)  
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-0089
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 WORLD CHANGES TABERNACLE**

Claude L. Stout  
Executive Director  
Telecommunications For The Deaf &  
Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910  
(301) 589-3006 (TTY)

Paul O. Gagnier  
Troy F. Tanner  
Swidler Berlin LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Telephone)  
(202) 295-8478 (Facsimile)

Kelby N. Brick, Esq.  
Associate Executive Director  
National Association of the Deaf  
Law and Advocacy Center  
814 Thayer Avenue  
Silver Spring, MD 20910  
(301) 587-7730 (Voice and TTY)  
(301) 587-0234 (Facsimile)

Cheryl Heppner  
Vice Chair  
The Deaf and Hard of Hearing Consumer  
Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030  
(703) 352-9055 (Voice)  
(703) 352-9056 (TTY)  
(703) 352-9058 (Facsimile)

Brenda Battat  
Senior Director of Policy and Development  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814  
(301) 657-2248 (Voice)  
(301) 657-2249 (TTY)  
(301) 913-9413 (Facsimile)

Dated: February 27, 2006

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION .....	3
III.	PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN .....	4
	A. Exemption Criteria Under Section 79.1(f)(2) .....	5
	B. Exemption Criteria Under Section 79.1(d)(8) .....	9
IV.	CONCLUSION.....	10

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

In the Matter of	)	
	)	
Closed Captioning and Video Description of Video Programming	)	
	)	
Implementation of Section 305 of the Telecommunications Act of 1996 --	)	CGB-CC-0089
	)	
Video Programming Accessibility	)	

**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED  
CAPTIONING REQUIREMENTS FILED BY WORLD CHANGES TABERNACLE**

**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 weekly video programs "The Word Is On" and "The Final Word," filed by World Changes Tabernacle ("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.

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.

---

<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.

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* 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

---

<sup>2/</sup> 47 U.S.C. § 613(e).

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

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

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

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>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, asserting that compliance would impose an undue burden on Petitioner.<sup>12</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 Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

---

<sup>6/</sup> 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).  
<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.2.

Petitioner also argues that it qualifies for an exemption pursuant to Section 79.1(d)(8) of the Commission's rules, which pertains to locally produced programming.<sup>13</sup> Petitioner argues that 79.1(d)(8) applies because its program is aired "locally," has no repeat value, and contains non-news content of local interest.<sup>14</sup> However, Petitioner cannot qualify for the local programming exemption because it is not a "video programming distributor"<sup>15</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>16</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>17</sup>

---

<sup>13/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>14/</sup> Petition at p. 3.

<sup>15/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>16/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>17/</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 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).

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.<sup>18</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>19</sup>

Petitioner states that it considered two options to provide captioning: purchasing captioning software, and sending the program to an outside source for captioning.<sup>20</sup> According to Petitioner, captioning software and equipment would be too expensive and too difficult to learn.<sup>21</sup> Petitioner also states that third party captioning services, quoted at \$150 per week, would put the program at a "great disadvantage."<sup>22</sup> Commenters recognize that Petitioner has perused different means to obtain captioning, however, the rules require petitioner to seek "competitive pricing from multiple sources." Here, only one provider of captioning service was consulted. Petitioner must show that it consulted more than one captioning provider in order to ensure its stated prices are "competitive." 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 the church's "main" source of income is donations from donors.<sup>23</sup> Petitioner also provides an unofficial statement that its six month income from 1/01/05 – 06/30/05 totaled \$125,391.08, and that its

---

<sup>18/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility.*

13 FCC Rcd 3272, 3366 (1997).

<sup>19/</sup> *Outland Sports*, ¶ 7.

<sup>20/</sup> Petition at 2.

<sup>21/</sup> *Id.*

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

<sup>23/</sup> *Id.* at 2-3.

expenditures totaled \$122,279.58.<sup>24</sup> The information provided is not detailed enough to allow the Commission to make an informed decision. First, Petitioner states that donations are its “main” source of income, but does not specify if it has any other revenue streams. Petitioner must disclose all sources of income in order for the Commission to effectively gauge its resources. Second, by its own statement Petitioner had a six month surplus of \$3,112.50 which remains unaccounted for. Petitioner has not stated why these funds cannot be put towards captioning or captioning equipment. Lacking such information, it is impossible to tell whether Petitioner truly does not have the financial resources to meet captioning requirements.

Finally, Petitioner’s efforts to obtain captioning assistance through alternative sources, such as through grants and sponsorships, or from a distributor, do not go far enough to meet the Commission’s standards. Petitioner states that it sought assistance from its distributor, who declined the request but referred it to Raycom, a captioning provider.<sup>25</sup> However, Petitioner offers no documentation to prove that such a request was made. Furthermore, Petitioner offers no evidence demonstrating that it sought to recoup the cost of captioning via grants or sponsorships. 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 states that obtaining captioning from an outside source would “put production of the broadcast at a great disadvantage.”<sup>26</sup> Petitioner supports this argument by stating that its bills consume most of its funds, and that the cost of captioning, at \$150.00,

---

24 / Petitioner Budget Statement.

25/ Petition at 3.

would more than double its production cost of \$16,419.00 per year.<sup>27</sup> However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. No information substantiating Petitioner's expenses is provided, and the Commission is left to guess at exactly what percentage of Petitioner's budget is spent on its program versus other expenditures. Further, Petitioner never explains where it spends its surplus income, which totaled more than \$3,000.00 in a six month period. Therefore, Petitioner has not provided the Commission a sufficient factual basis for assessing the impact of adding captioning upon Petitioner's operations. As a result, the Petition provides the Commission with an 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>28</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>29</sup> Here, Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the financial hardship associated with captioning. All the information the Commission is given regarding Petitioner's financial resources is a sworn statement of Petitioner's income and expenses for a six month period. Petitioner does not even provide the Commission with copies of the bills which

---

<sup>26/</sup> *Id.* at 2.

<sup>27/</sup> *Id.*

<sup>28/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>29/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility.*

ostensibly consume the majority of its budget. Finally, Petitioner does not state how it plans to spend the more than \$3,000.00 budget surplus accrued between January and July of 2005.

Without such information, the Commission has no idea how Petitioner's budget is allocated and whether budgeting adjustments are a viable option. In the absence of such detailed information regarding Petitioner's financial resources, 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 how the type of operation it runs provides a basis for a waiver. Petitioner's assertion that it is a Christian, "non-profit" organization is not a sufficient reason for the Commission to grant a waiver.<sup>30</sup> 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 argues that its video program is exempt from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules.<sup>31</sup> 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

---

13 FCC Rcd 3272, 3366 (1997) ("Report and Order").

<sup>30</sup> / Petition at 2.

<sup>31</sup> / *Id.* at 3.

unavailable.”<sup>32</sup> A video programming distributor is defined in Section 79.1(a)(2) as “any television broadcast station licensed by the Commission and any multi-channel video programming distributor as defined in Section 76.1000(e) of the rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.”<sup>33</sup> Commenters respectfully submit that Petitioner is not a video programming distributor as defined under Section 79.1(a)(2). The Petitioner is the producer of an individual video program, and not the owner or operator of a television station or cable network providing a transmission or network facility to distribute

#### **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.

[Rest of Page Left Intentionally Blank]

---

<sup>32/</sup> 47 C.F.R. § 79.1(d)(8).  
<sup>33/</sup> 47 C.F.R. § 79.1(a)(1).

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

Petition.

Respectfully submitted,

Claude L. Stout  
Executive Director  
Telecommunications For The Deaf &  
Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910  
(301) 589-3006 (TTY)

Kelby N. Brick, Esq.  
Associate Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
(301) 587-0234 (Facsimile)  
(301) 587-7730 (Voice and TTY)  
(301) 587-0234 (Facsimile)

Brenda Battat  
Senior Director of Policy and Development  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814  
(301) 657-2248 (Voice)  
(301) 657-2249 (TTY)  
(301) 913-9413 (Facsimile)

Dated: February 27, 2006



---

Paul O. Gagnier  
Troy F. Tanner  
Swidler Berlin LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Telephone)  
(202) 295-8478 (Facsimile)

Cheryl Heppner  
Vice Chair  
The Deaf and Hard of Hearing Consumer  
Advocacy Network  
3951 Pender Drive, Suite 130  
Fairfax, VA 22030  
(703) 352-9055 (Voice)  
(703) 352-9056 (TTY)  
(703) 352-9058 (Facsimile)

## CERTIFICATION

I, Claude L. Stout, Executive Director of Telecommunications for the Deaf and Hard of Hearing, Inc., and a joint commenter in the attached Opposition To The Petition For Exemption From Closed Captioning Requirements Filed By World Changes Church, File No. CGB-CC-0089 ("*Opposition*"), hereby certify that to the extent there are any facts or considerations not already in the public domain which have been relied on in this *Opposition*, these facts and considerations are true and accurate to the best of my knowledge.



---

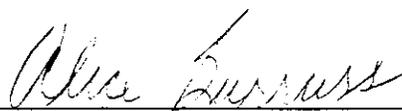
Claude L. Stout  
Executive Director

Date: February 24, 2006

## CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on February 27, 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 to the Petition for Exemption from Closed Captioning Requirements Filed by World Changes Tabernacle, as filed with the Federal Communications Commission in CGB-CC-00089, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Chandra Anderson  
Administrative Assistant  
World Changes Tabernacle  
P.O. Box 5264  
Columbus, GA 31906

  
\_\_\_\_\_