

February 21, 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

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FEB 21 2006

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-0068 – 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 Unitarian  
Universalist Church in Rockford, Illinois

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 Unitarian Universalist Church in Rockford, Illinois.

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

February 21, 2006

Page 2

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-0068
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 THE UNITARIAN UNIVERSALIST CHURCH IN ROCKFORD, ILLINOIS**

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 21, 2006

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	)	
Video Programming Accessibility	)	

**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED  
CAPTIONING REQUIREMENTS FILED BY  
THE UNITARIAN UNIVERSALIST CHURCH IN ROCKFORD, ILLINOIS**

**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 televised video program "FUSION," aired on a weekly basis filed by the Unitarian Universalist Church in Rockford, IL ("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

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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.

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 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

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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.*

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 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 weekly video program asserting that compliance would impose on an undue burden.<sup>12</sup> Petitioner currently broadcasts FUSION once a week, but alternates the format of the program roughly every other week.<sup>13</sup> Approximately half of the programs are produced in a sermon-style format,

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<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. 1.

<sup>13/</sup> *Id.* at p. 4.

with the alternating half produced in an interview-style format.<sup>14</sup> Petitioner already incorporates closed captioning into the sermon-style formatted programs, but insists that incorporating the feature into its interview-style formatted programs would create an “extraordinary burden.”<sup>15</sup> The Petitioner asserts that it explored incorporating a closed captioning feature into the interview-style formatted broadcasts, and that such a feature would “increase our cost by \$7,000 [per year] which is beyond our means.”<sup>16</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.

Petitioner also asserts that “the local, non-news exemption to the closed captioning rules also applies to FUSION.”<sup>17</sup> However, the exemption provided in Section 79.1(d)(8) for local programming applies only to video programming distributors as defined under Section 79.1(a)(2) of the Commission’s Rules.<sup>18</sup> Section 79.1(a)(2) requires a distributor to own or operate the transmission network or broadcasting facilities that actually deliver the programming into the residential home.<sup>19</sup> Petitioner, as a producer of programming, does not qualify for such an exemption.

**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

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at p. 1.

<sup>16</sup> *Id.*

<sup>17</sup> Petition at p. 2.

<sup>18</sup> 47 C.F.R. § 79.1(a)(2).

<sup>19</sup> *Id.*

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>20</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>21</sup>

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.<sup>22</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>23</sup>

Petitioner fails to demonstrate that it sought competitive pricing for captioning from multiple sources. Petitioner states that an "internet search has revealed that the cost of closed captioning is about \$300 per half hour."<sup>24</sup> Petitioner then provides printed copies of several

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<sup>20/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>21/</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).

<sup>22/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

<sup>23/</sup> *Outland Sports*, ¶ 7.

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

publicly accessible Internet web pages advertising closed captioning services.<sup>25</sup> However, Petitioner fails to provide a single quotation from a closed captioning provider who either examined FUSION's interview-style programming format, or was given detailed information from Petitioner regarding the programming, and then developed competitive pricing based on actual first hand knowledge of the program's length and technical intricacies. In fact, there is no evidence that Petitioner made actual contact with any provider of captioning services. In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources.

Petitioner fails to submit copies of correspondence evidencing the receipt of a range of quotes. As discussed above, Petitioner has not provided a single document verifying that it sought a competitive quotation for captioning services, let alone a range of quotations. Further, Petitioner does not discuss efforts to seek competitive quotations. Beyond providing printed copies of publicly accessible web pages discussing captioning costs, there is no evidence Petitioner sought a single quotation from a competitive provider of closed captioning services.<sup>26</sup>

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program, and the limited information that has been provided indicates that Petitioner has substantial resources. Petitioner provides a balance sheet for October and November of 2005.<sup>27</sup> Petitioner also provides an informal financial statement for FUSION's operations dating from 2000 through 2005.<sup>28</sup> However, instead of showing a lack of financial resources, these documents demonstrate that Petitioner is a well funded organization. Petitioner has been able to operate FUSION profitably over the last five (5) years, and currently has assets valued at in excess of \$3.3 million. There is no demonstration that closed captioning approximately twenty-five (25) half hour programs per year will create an

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<sup>25</sup>/ Petition at pp. 8-9.

<sup>26</sup>/ *Id.* at p. 6.

<sup>27</sup>/ *Id.* at pp. 10-11.

undue burden for Petitioner. In sum, Petitioner fails to provide sufficient information for the Commission to assess its financial resources, and what information that has been provided demonstrates that the Petitioner has ample resources to meet its legal requirement to incorporate closed captioning into its programming.

Further, Petitioner fails to 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 distributors of its programming. As to the latter, the Commission has determined that petitioners must make an effort to solicit such assistance and provide the distributor's response to its solicitation.<sup>29</sup> It should be noted that FUSION alternates every other week between a sermon format and an interview-style format, and Petitioner readily admits that its sermons have been "voluntarily closed captioned for some time."<sup>30</sup> While Petitioner then states that FUSION programs adhering to the sermon format are scripted, and the programs that contain interviews are not scripted, it never elaborates as to why the volunteer effort cannot be extended to closed caption the interviews.<sup>31</sup> In fact, Petitioner fails to explain whether the volunteer effort was even considered as an option for closed captioning the interview programs. Further, the Petition makes no reference to Petitioner seeking assistance from an outside source to help cover the costs associated with closed captioning. 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 no information indicating that compliance with closed captioning requirements will adversely impact Petitioner's operations. Petitioner claims that compliance with the closed

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<sup>28/</sup> Petition Attachment at pp. 3-9.

<sup>29/</sup> See *Commonwealth Productions, Video Programming Accessibility, Petitioner for Waiver of Closed Captioning Requirements*, CSR 5992, Memorandum Opinion and Order, ¶ 3 (Mar. 26, 2004).

<sup>30/</sup> Petition at p. 1.

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

captioning rules “would be an extraordinary burden.”<sup>32</sup> Petitioner also asserts that “the result [of incorporating closed captions] would be that we would have to cease producing the interview programs....”<sup>33</sup> However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. As discussed above, the limited financial documents that have been offered demonstrate that Petitioner has assets in excess of \$3.3 million, and compliance with closed captioning requirements will not have an adverse impact on Petitioner. Further, 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. As a result, the Petition fails to provide sufficient evidence to support a claim for exemption 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>34</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>35</sup> Here, Petitioner has failed to provide evidence demonstrating a burden, instead Petitioner offers evidence demonstrating that it has substantial financial resources that will allow compliance with closed requirements without imposing an undue burden.

Beyond Petitioner’s unsubstantiated assertion that compliance “would be an extraordinary burden,” Petitioner provides no information about how the incorporation of closed

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<sup>32/</sup> *Id.*

<sup>33/</sup> *Id.*

<sup>34/</sup> 47 C.F.R. § 79.1(f)(2).

captioning in its programming would impact its financial condition or programming budget.<sup>36</sup> Petitioner has substantial assets that exceed \$3.3 million. Even if the accuracy of Petitioner's unsubstantiated assertions regarding closed captioning costs are assumed for its twenty-five (25) annual interview-style formatted programs, the aggregate cost will total only \$7,000.<sup>37</sup> Petitioner offers no explanation for how such a nominal charge could impose an undue burden. Given Petitioner's substantial financial resources, and the lack of an argument or evidence establishing an undue burden, 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

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<sup>35/</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*. 13 FCC Red 3272, 3366 (1997) ("Report and Order").

<sup>36/</sup> Petition at p. 1.

unavailable.”<sup>38</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>39</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 programming. Thus, Petitioner does not qualify for the exemption set forth in 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>37/</sup> *Id.*

<sup>38/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>39/</sup> 47 C.F.R. § 79.1(a)(1).

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

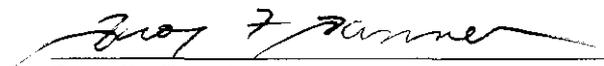
Respectfully submitted,

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 21, 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)

## CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on February 21, 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 the Unitarian Universalist Church in Rockford, IL, as filed with the Federal Communications Commission in CGB-CC-0068, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Rev. David R. Weissbard  
Senior Minister  
4848 Turner St  
Rockford, IL 61107

  
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