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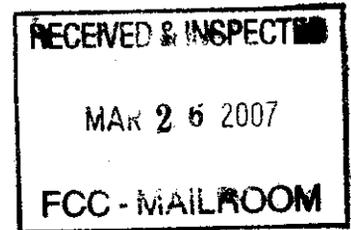
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March 23, 2007

REPLY TO PEQUOT LAKES OFFICE

Via Overnight Service & Facsimile

Ms. Marlene Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554



Re: CGB-CC-0385
Reply in Support of Petition for Exemption from Closed Captioning
World Softball League, Inc.

Dear Ms. Dortch:

In response to the Opposition filed on March 2, 2007 by the Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), National Association for the Deaf ("NAD"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Hearing Loss Association of America ("HLLA"), Association of Late-Deafened Adults, Inc. ("ALDA"), American Association of People with Disabilities ("AAPD"), and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH") (collectively, "Commenters"), World Softball League, Inc. submits this Reply In Support of its Petition for Exemption from Closed Captioning below:

INTRODUCTION

In April of 2002, a new Minnesota company was formed, and a dream realized to bring competitive softball to a new level. The World Softball League, Inc. (WSL) is an individually owned company that organizes elite level softball tournaments and championships throughout the United States. Currently, WSL employs its President/CEO, and two full-time employees. Much of the tournament event work is done through contractors. Beginning in 2003, the WSL began producing video programming for its major tournaments. It created 13 video episodes capturing the tournament events it organized for elite softball players around the United States.¹ Unfamiliar with the world of television or video programming, this endeavor proved to be more difficult than anticipated.

¹ As of 2005, Long Haul Productions, Inc. (LHP) took over the video programming for WSL.

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WSL first learned of the closed captioning requirements at the time that it began negotiating with various local television networks and cable companies for times to air these programs. WSL's video production team scrambled to keep up with the tournament event schedule, understand the closed captioning requirements, figure out what how much closed captioning would cost, and struggled to minimize its **start** up losses.

Upon determining that the costs of closed captioning were too expensive, on January 6, 2006, WSL filed its Petition for Exemption from Closed Captioning. Eventually, WSL wishes to provide closed captioning in its programming. However, **as** a start up company new to the television and video industry, it struggles to balance its financial condition with **the** costs, regulations and requirements that regulate television and video programming.

The Commenters assert that WSL's petition should be blankly denied due to WSL's failure to provide more complete and detailed evidence of the four statutory factors to determine whether the closed captioning requirements will impose an undue burden on the company. Specifically, the Commenters complain that WSL has failed to provide detailed financial records to ascertain the condition of its business **so** that the Federal Communications Commission (FCC) may consider the impact that a closed caption requirement would have on the operations of the company.

WSL disagrees with the Commenters claims for two reasons. First, WSL has provided the FCC with sufficient information to understand the WSL's situation, size and general financial picture. While not provided in the most formal format, **this** information complies with the spirit of the regulations. **In** other words, the information is sufficient for the FCC to determine the negative undue burden and impact that closed captioning will impose on WSL.

Second, WSL does **not** seek permanent exemption from closed captioning, but simply more time to establish itself, learn the industry, stabilize its financial condition, and seek sponsorship opportunities. Closed captioning will ultimately benefit WSL by helping it reach a larger audience. But forcing WSL to incorporate closed captioning before it is stable enough could **lead** to WSL's early demise, and defeat the purpose for 47 U.S.C. § 613(e) (hereinafter, "Section 713") in the first place.

I. The FCC has sufficient financial information to determine that WSL will be unduly burdened if the FCC forces WSL to provide closed captioning right now.

The FCC **has** sufficient financial information to determine that WSL would be unduly burdened if the FCC forces WSL to provide closed captioning right now. Congress' goal in enacting 47 U.S.C. § 613(e) (hereinafter, "Section 713") is to complete the process of making closed captioned video programming available so that viewers with hearing disabilities **are** afforded the same opportunities to understand and enjoy this programming **as** others in the public. Congress recognized that for certain programming **and** programming owners **the** associated expense of adding closed captioning to the programs may be cost prohibitive.

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Therefore, in **an** effort to balance providing closed captioning with the potential for burdening the small programming provider or owner, Section 713(d)(1) permits the FCC to exempt certain programs or classes of programs from closed captioning. Under this provision, the FCC is "instructed to consider: (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."²

That being said, *the* FCC intends for this petition process to be "sufficiently flexible to accommodate a wide variety of circumstances . . . [a process] that allows [the FCC] to consider any factors relevant to a petitioner's situation and provides parties significant leeway with respect to the information that can be submitted to demonstrate how the statutory factors . . . are met."³ In addition, the regulations encourage the Petitioner to present any other factors that **are** relevant to the FCC's final determination, including any alternatives that might constitute a reasonable substitute for the closed captioning requirements.

WSL's petition provides that to add closed captioning costs would add another **\$825** to the production costs for each episode it produces amounting to a more than 20% increase in cost. For a start **up** company generating roughly only \$600,000 in revenue, and an overall loss of \$470,000, adding **an** additional \$10,750 in production costs would hurt WSL, and hinder its **growth** at this early stage **of** its existence.

The FCC itself recognizes the difficulties new businesses face. In fact, the regulations provide **new channel networks** **an** outright exemption for the first four (4) years of operation, as well **as** for those generating less than \$3,000,000 in **annual** gross revenue, and thereafter provides a cap on providing closed captioning in excess of 2% of gross revenues. However, and despite the fact that most closed captioning happens at the time of production, no similar exemptions for small **start up program producers or owners** are included in the regulations.

WSL's current size and operations are incapable of handling its production schedule if it had to incorporate closed captioning into the production process. Unlike other programming, WSL's schedule is dictated by the tournament schedule. Currently, two LHP employees handle producing and editing all of the video footage and production. The turn around time between shooting the video footage of a tournament and producing a video program is only about five workdays. Adding

² *Implementation of Section 305 of the Telecommunication Act of 1996- Video Programming Accessibility, Report and Order*, 13 FCC Red 3272,3342 (1997); 47 C.F.R. § 79.1(f)

³ 13 FCC Red 3272 at 3362

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closed captioning would require sending the finished video program to a third entity to transcribe the audio and insert it into the video. This process would add one to two days and WSL would miss its broadcasting deadline.

In addition, given WSL's infancy relative to the sports broadcasting world, **networks** have little incentive to absorb the closed captioning costs for such a new and unestablished program. Consequently, finding immediate sponsorship for the costs is unfeasible.

Therefore, based upon the information provided in its petition along with the arguments and information provided above, the FCC has sufficient information to determine weigh WSL's situation, and should grant WSL's petition for exemption.

II. Alternatively, WSL Requests that the FCC Grant it a Partial Exemption.

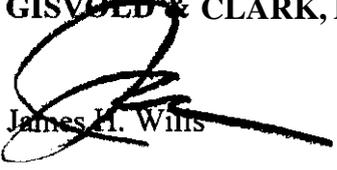
WSL does **not** seek permanent exemption from closed captioning, but simply more time to establish itself in the industry, forge relationships, stabilize its financial condition, and seek sponsorship opportunities.

Closed captioning will ultimately benefit WSL by helping it reach a larger audience. But forcing WSL to reach this audience through closed captioning before it establishes more stability could lead to its early demise, and defeat the purpose **for** Section 713 in the first place.

Therefore, in an effort to balance its business needs with Congress' ultimate goal of complete closed captioning, WSL respectfully requests that the FCC grant a partial exemption to WSL for at *least* a period of one (1) year from the date of its decision on WSL's **petition**.⁴

Respectfully submitted,

**KALINA, WILLS,
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James H. Wills

JHW/ajj/mh

⁴ See e.g. *In the matter of: The Wild Outdoors* Petition for Waiver of Closed Captioning Requirements, 16 F.C.C.R. 13611, 13614 (the size of operations and limited staff, and impact of additional costs **was** sufficient to grant petitioner a partial exemption for one (1) year.)

CERTIFICATE OF SERVICE

I, Mary Hartin, do hereby certify that, on March 23, 2007, a copy of the foregoing Reply in Support of Petition for Exemption from Closed Captioning by World Softball League, Inc. in CGB-CC-0385, was served by first class U.S. mail, postage prepaid, upon the following:

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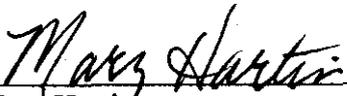
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