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October 31, 2007

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

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-0738 – Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Ultimate Outdoor Adventures, LLP

Dear Ms. Dortch:

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 ("HLAA"), 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") submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the Commission's closed captioning requirements filed by Ultimate Outdoor Adventures, LLP for its program "Ultimate Outdoor Adventures TV" (the "Petition").

The following is a summary of pertinent program, financial, and other information provided in the Petition:

> Petitioner produces a weekly, 30-minute hunting and fishing program October through March. Petitioner's owner handles all production arrangements and indicates he cannot handle measures necessary for obtaining closed captioning. Petitioner indicates that its program's average revenues are $38,000 per year and that it would cost more than 25% of its annual revenue to caption the program. Petitioner claims that the cost of adding closed captioning would "amount to extreme, time-consuming burdens" that might result in program cancellation. Petitioner's 2006 tax return indicates that its gross revenue was $35,814 and its net loss was $19,171. Although Petitioner's filing includes an affidavit, the filing provides no indication that Petitioner sought competitive pricing from multiple sources or sought to recoup the cost of closed captioning.

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Commenters believe that the Petitioner has provided information that suggests that compliance with the closed captioning requirements would impose an undue burden under the Commission's existing waiver standards.[1] Commenters recommend that the Petitioner be given a temporary exemption of two (2) years to comply with the closed captioning rules.

I. The Legal Standard for Granting a Petition for Exemption

Section 713 of the Communications Act of 1934, as amended (the "Act"), requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.[2] 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.[3] Congress defined "undue burden" to mean "significant difficulty or expense."[4]

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.[5] 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

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[1] Although Commenters believe that the Petitioner may meet the undue burden standard set forth in 47 U.S.C. § 613(e) and 47 C.F.R. § 79.1(f), the Commission may not properly rely on the *Anglers Exemption Order* to determine whether Petitioner's request meets the undue burden standard. *In the Matter of Anglers for Christ Ministries, Inc.; New Beginning Ministries; Video Programming Accessibility; Petitions for Exemption from Closed Captioning Requirements*, Memorandum Opinion and Order, DA 06-1802 (2006) ("*Anglers Exemption Order*"). The *Anglers Exemption Order* is not a final order and the new standard fails to incorporate an "economically burdensome" or an "undue burden" standard as mandated by 47 U.S.C. § 613(e). *See* Application for Review of Bureau Order, Docket No. 06-181, CGB-CC-0005, CGB-CC-0007 (filed October 12, 2006).

[2] 47 U.S.C. § 613(e).

[3] *Id.*

[4] *Id.*

[5] 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

the provider or program owner; and (4) the type of operations of the provider or program owner.[6]

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 on the programmer.[7] 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.[8] Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.[9] It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.[10]

In the 2006 *Anglers Exemption Order*, the Consumer & Governmental Affairs Bureau ("CGB") improperly created a new standard that ignored the "undue burden" analysis required by the Act, the Commission's rules, and Commission precedent. Instead, the CGB stated that any non-profit organization may be granted a waiver from the closed captioning rules if the organization does not receive compensation for airing its programming and if it may terminate or substantially curtail its programming or other activities important to its mission if it is required to caption its programming.[11] The Commission may not properly rely on the *Anglers Exemption Order* to determine whether Petitioner's request meets the undue burden standard. Commenters have sought review of the *Anglers Exemption Order* by the Commission and, accordingly, the *Anglers Exemption Order* is not final.[12] Moreover, the standard announced by the CGB in the *Anglers Exemption Order* was inappropriate because it failed to incorporate an "economically burdensome" or an "undue burden" standard as mandated by the Act and fails to require Petitioner to demonstrate the four factors listed above.

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[6] *Id.*

[7] 47 C.F.R. § 79.1(f).

[8] 47 C.F.R. § 79.1(f)(2).

[9] 47 C.F.R. § 79.1(f)(9).

[10] 47 C.F.R. § 79.1(f)(3).

[11] *In the Matter of Anglers for Christ Ministries, Inc.; New Beginning Ministries; Video Programming Accessibility; Petitions for Exemption from Closed Captioning Requirements,* Memorandum Opinion and Order, DA 06-1802 (2006) ("*Anglers Exemption Order*").

[12] *See* Application for Review of Bureau Order, Docket No. 06-181, CGB-CC-0005, CGB-CC-0007 (filed October 12, 2006).

II. Conclusion

Commenters agree that the Petitioner has provided information that suggests that compliance with the closed captioning requirements would in fact impose an undue burden under the Commission's existing waiver standards. As such, Commenters recommend that the Petitioner be given a temporary exemption of two (2) years to comply with the closed captioning rules.

In addition, Commenters respectfully request that the Commission accept the attached certification that the facts and considerations in this filing are true and correct and waive the requirement to provide an affidavit for a responsive pleading.[13]

Respectfully submitted,

_____/ s /_____

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[13] 47 C.F.R. §79.1(f)(9).

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CERTIFICATION

I, Rosaline Crawford, Director, NAD Law and Advocacy Center, hereby certify that to the extent three are any facts or considerations not already in the public domain which have been relied on in the attached Opposition to the Petition for Exemption from Closed Captioning Requirements, these facts and considerations are true and accurate to the best of my knowledge.

Rosaline Crawford

Date: October 31, 2007

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CERTIFICATE OF SERVICE

I, Danielle Burt, do hereby certify that, on October 31, 2007, a copy of the foregoing Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Ultimate Outdoor Adventures, LLP, as filed with the Federal Communications Commission in CGB-CC-0738, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

John Arman, Owner
Ultimate Outdoor Adventures LLP
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/s/
Danielle Burt