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March 16, 2012

via hand delivery

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

FILED/ACCEPTED

MAR 16 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: First Baptist Church Jonesboro's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0303
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of First Baptist Church of Jonesboro, Arkansas ("FBCJ") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹ Consumer Groups oppose the petition

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, First Baptist Church, Jonesboro, Case No. CGB-CC-0303, CG Docket No. 06-181 (March 1, 2012),*

http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0301/DA-12-322A1.pdf; *Petition for Exemption from Closed Captioning Requirement for First Baptist Church, Jonesboro, Case No. CGB-CC-0303, CG Docket No. 06-181 (Jan. 13, 2012),* <http://apps.fcc.gov/ecfs/document/view?id=7021755396> [hereinafter *FBCJ Petition*].

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because FBCJ does not include sufficient information to demonstrate the cost of captioning its programming. Moreover, the financial information provided by FBCJ indicates it may in fact be able to afford captioning.

Consumer Groups acknowledge FBCJ's efforts to "build a community of faith; connecting to God, growing together, all through Jesus Christ."² Nevertheless, the requested exemption would deny equal access to FBCJ's programming for the members of FBCJ's community who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits offered by video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),³ as added by the Telecommunications Act of 1996 Act ("1996 Act")⁴ and amended by section 202(c) of the Twenty-First Century Communication and Video Accessibility Act ("CVAA"),⁵ "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the

² FBCJ Petition, *supra* note 1, at 1.

³ Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

⁴ Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

⁵ Pub. L. 111-260, 124 Stat. 2751 (2010) (to be codified in scattered sections of 47 U.S.C.).

requirements . . . would be economically burdensome.” In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the “undue burden” standard in section 713(e) of the 1934 Act, pursuant to the Commission’s existing rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.⁸ Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.⁹

⁶ *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf. See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. *E.g.*, *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

⁷ See *Anglers 2011*, *supra* note 6.

⁸ See *id.*

⁹ See *id.*

I. FBCJ's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.¹⁰ Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A. The Costs of Captioning FBCJ's Programming

To successfully demonstrate that captioning would pose an undue burden in light of a petitioner's financial status, the petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹¹ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petitioner provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.¹² FBCJ, however, provides only a single quote for captioning its programming at \$120 per hour, or around \$6,000 annually.¹³ This single quote is

¹⁰ *See id.*

¹¹ *See The Wild Outdoors*, 16 FCC Rcd. 13,611, 13,613 ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹² *Compare, e.g., Outland Sports*, 16 FCC Rcd. at 13,607, ¶ 7 (2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *Wild Outdoors I*, 16 FCC Rcd. at 13,613, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

¹³ *FBCJ Petition*, *supra* note 1, at 2; Attachment 3.

insufficient to demonstrate that FBCJ has made the necessary effort to obtain the most reasonable price for captioning.

B. FBCJ's Financial Status

Even accepting that FBCJ's single price quote represents the most affordable price for captioning its programming, FBCJ has not demonstrated that it cannot afford pay for captioning. A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue burden on the petitioner's financial resources.¹⁴

FBCJ notes that closed captioning its programming would increase its programming budget by 12%.¹⁵ When evaluating the financial status of a petitioner, however, the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only the resources available for a specific program."¹⁶ FBCJ's 2011 financial statements show income of over \$2,049,323.88 and expenses of \$1,924,209.65, leaving a surplus of \$125,114.23 in 2011 – enough to pay for over 20 years of captioning at the quoted cost of \$6,000 annually.¹⁷

FBCJ also notes that it has substantial long-term debt obligations along with its operating costs.¹⁸ FBCJ, however, included an \$80,000 "debt service" line-item in its 2011 budget and still took in more than \$125,000 in excess revenue.¹⁹ Thus, it is unclear how FBCJ's debt obligations preclude it from providing captioning.

¹⁴ *E.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁵ *FBCJ Petition*, *supra* note 1, at 2.

¹⁶ *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,950, ¶ 17.

¹⁷ *FBCJ Petition*, *supra* note 1, at Attachment 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at Attachment 1.

FBCJ further contends that if it is required to spend money on captioning, “it will be required to implement savings in other areas which will result in elimination or reduction in existing ministries and programs.”²⁰ When evaluating the financial status of a petition, however, the Commission does not consider “the extent to which the provision of captioning would curtail other activities important to a petitioner’s mission.”²¹ Rather, the Commission “balance[s] the need for closed captioned programming against the potential for hindering *the production and distribution of programming.*”²² FBCJ presents no evidence that captioning would hinder the production of its programming.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.²³ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²⁴ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁵ FBC does not assert that it has sought funding for captions from its distributor or via other sources such as sponsorships.

²⁰ *Id.* at 2.

²¹ See *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

²² *Id.* (emphasis in original).

²³ See *id.* at 14,955-56, ¶ 28 (internal citations omitted).

²⁴ See, e.g., *Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

²⁵ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

III. FBCJ Does Not Qualify for the Local, Non-News Exemption

FBCJ also argues that its programming qualifies for the local, non-news exemption to the closed captioning rules.²⁶ The Commission has made clear that the categorical exemption under 47 C.F.R. § 79.1(d)(8) specifically requires that “locally produced and distributed non-news programming be produced by the *video programming distributor*, not programmers.”²⁷ FBCJ does not qualify for this exemption because it is not a video programming distributor.

IV. Alternative Means of Compliance

Finally, FBCJ notes that it currently offers “picture in picture” sign language interpretation of its programming “subject to volunteer availability.”²⁸ While Consumer Groups appreciate FBCJ’s effort to make its programming accessible to viewers that are deaf or hard of hearing, we are concerned that this measure is insufficient to provide equal accessibility to viewers who are deaf or hard of hearing—particularly given that its interpretive services are “subject to volunteer availability.” FBCJ provides no specific information about how much of its programming is actually interpreted.

V. Conclusion

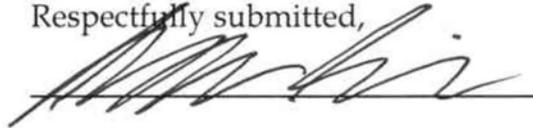
FBCJ’s petition does not include sufficient information for the cost of captioning. Moreover, the financial information provided by FBCJ shows that it likely has sufficient funds to be able to afford captioning. Consumer Groups therefore respectfully urge the Commission to dismiss the petition and require FBCJ to come into compliance with the closed captioning rules.

²⁶ *FBCJ Petition*, *supra* note 1, at 2.

²⁷ *See Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,950, ¶ 17 n. 63 (emphasis added).

²⁸ *FBCJ Petition*, *supra* note 1, at 2.

Respectfully submitted,



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March 16, 2012

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† Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

CERTIFICATION

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
March 16, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

First Baptist Church
701 South Main Street
Jonesboro, AR 72401



Niko Perazich
March 16, 2012