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March 9, 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

Attn: CGB Room 3-B431

**Re: Unionville Missionary Baptist Church's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0197
CG Docket No. 06-181**

FILED/ACCEPTED

MAR - 9 2012

Federal Communications Commission
Office of the Secretary

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 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 Unionville Missionary Baptist Church ("UMBC") to exempt its programming from the Commission's closed captioning rules, 47 C.F. R. § 79.1 (2010).¹ Consumer

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Unionville Missionary Baptist Church*, Case No. CGB-CC-0197, CG Docket No. 06-181 (Feb. 10, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0210/DA-12-179A1.pdf; *Petition for Exemption from Closed Captioning Requirement for Unionville Missionary Baptist Church*, Case No. CGB-CC-0197, CG Docket No. 06-181 (Jan. 19, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021857574> [hereinafter *UMBC Petition*].

Groups oppose the petition because UMBC does not provide accurate information on the cost of captioning and does not demonstrate its inability to afford captioning.

Consumer Groups acknowledge UMBC's efforts to enable the homebound to "receiv[e] the word of God as though they were in the midst of those who are in attendance in the sanctuary."² Nevertheless, the requested exemption would deny equal access to UMBC's important programming for deaf and hard of hearing members of its community. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all members of the community who are deaf or hard of hearing can experience the important benefits of 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 1996 Act and amended by section 202(c) of the CVAA, "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 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

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

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

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).⁴

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁵ 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.⁶ 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.⁷

I. UMBC’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

⁴ *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, 14,961-62, ¶¶ 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*].

⁵ See *Anglers*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁶ See *id.*

⁷ See *id.*

of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.⁸ 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 UMBC'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.⁹ 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.¹⁰

Although UMBC provides quotes for the cost of captioning, the total costs cited reveal a serious overestimation. UMBC broadcasts its services "twice over five different channels."¹¹ UMBC calculates the cost of captioning by multiplying the cost per broadcast by ten. Captioning each broadcast, however, is a one time post-production

⁸ See *id.*

⁹ See *The Wild Outdoors*, 16 FCC Rcd. 13,611, 13,613 ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹⁰ 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). Consumer Groups agree with the Commission's suggestion in *Outland Sports* that a successful petitioner must include competitive rate quotes from at least three captioning providers.

¹¹ *UMBC Petition*, *supra* note 1 at 2.

expense. When UMBC broadcasts two weekly services on five channels, there is a single cost for captioning each service, regardless of how many times it is broadcast.

Accordingly, captioning UMBC's programming should cost only twice the amount of a single broadcast, not ten times as much. Thus, rather than the quoted annual captioning costs of \$156,000 and \$85,800, the actual costs are approximately \$31,200 and \$17,160, respectively.

B. UMBC's Financial Status

In light of the actual cost of captioning its programming, UMBC has not demonstrated that it is unable to afford doing so. 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.¹²

UMBC provides detailed financial documents of its income, expenses, and assets for 2011, showing total income of \$874,149.11, total expenses of \$924,798.68, and total assets of \$451,759.29.¹³ Despite UMBC's modest budget shortfall in 2011, it has significant assets that can be used to fund captioning, at least until UMBC can reallocate funds in its general budget. Moreover, the lowest estimate for captioning costs, \$17,160, amounts to only 2% of UMBC's overall budget.

UMBC also notes that "adding closed captioning would almost triple the cost" of the programming.¹⁴ However, when evaluating the financial status of a petition, the

¹² 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 4, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹³ *UMBC Petition*, *supra* note 1, at 37-38.

¹⁴ *Id.* at 4.

Commission “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”¹⁵

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, which UMBC has not, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.¹⁶ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,¹⁷ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.¹⁸

In lieu of showing an effort to obtain alternate sources of funding for captions, UMBC provides labor force and unemployment statistics for its membership in effort to demonstrate a general inability to give money to the church.¹⁹ While Consumer Groups are sympathetic to the economic hardship that faces UMBC’s community, this does not excuse UMBC of its obligation to endeavor seek captioning funding through alternate sources.

III. Conclusion

UMBC’s petition contains inaccurate information regarding its efforts to obtain reasonable captioning price and does not include sufficient information to show that it has sought financial assistance from outside sources. Moreover, the financial information provided by UMBC demonstrates that it has sufficient funds to be able to

¹⁵ *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,950, ¶ 17.

¹⁶ *See id.* at 14,955-56, ¶ 28 (internal citations omitted).

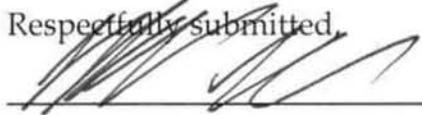
¹⁷ *See, e.g., Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), *cited with approval in Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

¹⁸ *See Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), *cited with approval in Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

¹⁹ *UMBC Petition*, *supra* note 1, at 28-36.

afford captioning. Consumer Groups therefore respectfully urge the Commission to dismiss the petition and require UMBC to come into compliance with the closed captioning rules.

Respectfully submitted,



Blake E. Reid, Esq.†

March 9, 2012

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Deaf and Hard of Hearing, Inc.*

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

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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 9, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 9, 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:

Unionville Missionary Baptist Church
3837 Houston Ave.
Macon, GA 31206

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich
March 9, 2012