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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

FILED/ACCEPTED

MAR -9 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: First Lutheran Church of Albert Lea, Minnesota
Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0143
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 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 Lutheran Church of Albert Lea, Minnesota ("FLCAL") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, First Lutheran Church of Albert Lea, Case No. CGB-CC-0143, CG Docket No. 06-181 (Feb. 10, 2012), http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-12-180A1.pdf; Petition for Exemption from Closed Captioning Requirement for First Lutheran Church, Case No. CGB-CC-0143, CG Docket No. 06-181 (Jan. 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755279> [hereinafter *FLCAL Petition*].*

Consumer Groups oppose the petition because it does not demonstrate that FLCAL cannot afford to caption its programming.

Consumer Groups acknowledge the efforts of FLCAL to broadcast its program *Peace & Power* to its homebound viewers.² This constituency, however, is one that may distinctly benefit from the inclusion of closed captions. The requested exemption would deny equal access to FLCAL's programming to members of its 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 members of the community who are deaf or hard of hearing can experience the important benefits offered by such 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 *FLCAL 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)).

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. FLCAL’s Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner’s financial status and verification that the petitioner has diligently sought out

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, 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*].

⁵ See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁶ See *id.*

⁷ See *id.*

and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.⁸ Both showings are essential to enable the Commission and the public to verify 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 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 economic burden.⁹ When evaluating the financial status of a petition, 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."¹⁰

Although FLCAL's average programming budget for the past five years is approximately \$50,000, FLCAL's financial statements show that its total income in 2011 was over \$800,000 with a net profit of over \$10,000.¹¹ FLCAL indicates that closed captioning would cost only about \$8,500 annually.¹² There is no reason to expect that FLCAL cannot reallocate its profits to cover the cost of captioning.

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

⁸ *See id.*

⁹ *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.

¹⁰ *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,950, ¶ 17.

¹¹ *FLCAL Petition*, *supra* note 1, at 10, 21.

¹² *Id.* at 1-2.

alternative avenues for attaining assistance with captioning its programming.¹³ FLCAL presents no information suggesting that it has sought financial assistance from its distributor. Its petition also contains no indication that FLCAL has solicited sponsorships or other sources of revenue to cover the cost of captioning its program.

III. Permanent Exemptions are Inappropriate

We also note that FLCAL's request for a permanent exemption is inappropriate. The Commission has already stated that "[e]xemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation."¹⁴ We do not believe any exemption is appropriate for FLCAL's programming, but should the Commission disagree, we strongly urge that any exemption be time-limited so that FLCAL will phase in captioning of its programming.

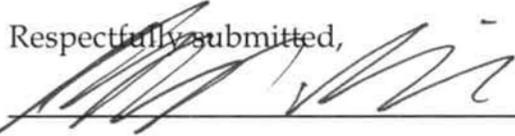
IV. Conclusion

FLCAL fails to conclusively demonstrate that it cannot afford to caption its programming or that it has exhausted all available alternatives for providing captions. Because the petition fails to establish that it would be unduly burdensome for FLCAL to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission to dismiss the petition.

¹³ See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

¹⁴ *Id.* at 14,953, ¶ 23 (internal quotations omitted).

Respectfully submitted,



Blake E. Reid, Esq.†

March 9, 2012

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

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

_____/s/_____

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Association of Late-Deafened Adults (ALDA)

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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 comment, 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:

First Lutheran Church
301 West Clark
Albert Lea, MN 56007



Niko Perazich
March 9, 2012