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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: World Changes Tabernacle's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0089
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 World Changes Tabernacle ("WCT") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010) ("Petition").¹ Consumer

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, World Changes Tabernacle, Case No. CGB-CC-0089, CG Docket No. 06-181 (Feb. 10, 2012),* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0210/DA-12-177A1.pdf; *Petition for Exemption from Closed Captioning Requirement for World Changes Tabernacle, Case No. CGB-CC-0089, CG Docket No. 06-181 (Jan. 23, 2012),* <http://apps.fcc.gov/ecfs/document/view?id=7021858069> [hereinafter *WCT Petition*].

Groups oppose the Petition because WCT has provided insufficient information to demonstrate that it cannot afford to caption its programming.

Consumer Groups acknowledge WCT's efforts to broadcast a message that "encourages, empowers, enlightens, and provoke it's viewers to achieve a positive lifestyle."² Nevertheless, the requested exemption would deny equal access to WCT's programming for 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 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 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 *WCT 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. WCT’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, 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.⁴ 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 possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

WCT has not provided enough information to demonstrate that it has insufficient funds to 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.⁹ While WCT's financial documents, showing annual income of \$219,194.27 and expenses of \$220,668.00, suggest that it operated at a slight loss, WCT provides no information about its available assets.¹⁰ These assets, which presumably covered WCT's shortfall, could also be leveraged to cover the cost of closed captioning.

WCT also notes that closed captioning its programming would increase the budget of the programming by 280%.¹¹ 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."¹²

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 5, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁰ *WCT Petition*, *supra* note 1, at 13.

¹¹ *Id.* at 2.

¹² *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,950, ¶ 17.

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.¹³ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,¹⁴ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.¹⁵ WCT states that it has sought assistance from its programming distributors without success, but provides no supporting documentation.¹⁶ WCT also asserts that it has solicited for closed captions “but ha[s] not received any positive confirmed answers.”¹⁷ Without supporting evidence, these assertions are inadequate to show that WCT has exhausted all alternative sources of funding for captions.

III. Conclusion

WCT’s petition does not include sufficient information to conclude that WCT cannot afford to caption its programming or that it has exhausted all available alternative options for providing captioning. Because the Petition fails to conclusively demonstrate that it would be unduly burdensome for WCT to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission give WCT 45 days either to comply with the closed captioning rules or to re-apply with sufficient information to allow the Commission and the public

¹³ See *id.* at 14,955-56, ¶ 28 (internal citations omitted)

¹⁴ 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 5, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

¹⁵ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

¹⁶ *WCT Petition*, *supra* note 1, at 3.

¹⁷ *Id.* at 2.

to determine whether WCT's request meets the legal standard for granting an exemption.

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.

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

 /s/

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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:

World Changes Tabernacle
1241 Alta Vista Dr.
Columbus, GA 31906

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

Niko Perazich
March 9, 2012