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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: First United Methodist Church Lufkin's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0318
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 First United Methodist Church, Lufkin, TX ("FUMC Lufkin") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹ Consumer Groups oppose the petition because FUMC Lufkin can in fact afford

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, First United Methodist Church, Lufkin, TX, Case No. CGB-CC-0318, CG Docket No. 06-181 (Feb. 8, 2012),*

http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0208/DA-12-166A1.pdf; *Petition for Exemption from Closed Captioning Requirement for First United Methodist Church, Lufkin, TX, Case No. CGB-CC-0318, CG Docket No. 06-181 (Jan. 20, 2012),* <http://apps.fcc.gov/ecfs/document/view?id=7021756212> [hereinafter *FUMC Lufkin Petition*].

captioning and does not provide sufficient information about its cost estimates to warrant an exemption.

Consumer Groups acknowledge FUMC Lufkin's efforts to "provide[] a quality uplifting church service to those who are homebound, unable to make it to church, or those who simply perusing [sic] Sunday morning programming."² Nevertheless, the requested exemption would deny equal access to FUMC Lufkin'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 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. In fact, FUMC Lufkin has identified "the elderly and homebound segment of the television market" as a part of its community that its programming is designed to benefit.³ This constituency is one that may distinctly benefit from the inclusion of closed captions.

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"),⁴ as added by the 1996 Act and amended by section 202(c) of the CVAA, "a provider of

² *FUMC Lufkin Petition*, *supra* note 1, at 1.

³ *Id.* at 4.

⁴ Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

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 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).⁵

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁶ 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.⁷ Where a petition fails to make either of the foregoing showings, it fails

⁵ *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*].

⁶ See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *id.*

to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.⁸

I. FUMC Lufkin'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.⁹ 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 FUMC Lufkin'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.¹⁰ 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.¹¹

⁸ See *id.*

⁹ See *id.*

¹⁰ See *The Wild Outdoors*, 16 FCC Rcd. 13,611, 13,613 ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹¹ 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

FUMC Lufkin quotes an estimated cost of captioning at \$15,000 per year.¹² FUMC Lufkin merely asserts that it requested pricing information and received quotes from captioning companies, without providing any correspondence or other documentation to substantiate its estimates.¹³ These summary assertions, without more, make it impossible for the Commission to determine whether FUMC Lufkin has in fact made efforts to seek out the most reasonable captioning price.

B. FUMC Lufkin's Financial Status

Even accepting the unsupported estimated cost, FUMC Lufkin has not demonstrated 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.¹⁴

FUMC Lufkin asserts that captioning its programming would be unduly burdensome because it budgets only \$18,000 for programming.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 FUMC Lufkin's 2011 budget shows actual receipts totaling \$1,626,413.92 and actual expenses totaling \$1,522,940.90¹⁷ – a surplus of

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.

¹² *FUMC Lufkin Petition*, *supra* note 1, at 2.

¹³ *See id.*

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

¹⁵ *FUMC Lufkin Petition*, *supra* note 1, at 2.

¹⁶ *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,950, ¶ 17.

¹⁷ *FUMC Lufkin Petition*, *supra* note 1, at 10-13.

\$103,473.02—enough to pay for over six years of captioning at the quoted captioning rates.¹⁸

FUMC Lufkin also claims that additional costs from captioning “would reduce crucial funding for other ministries within [the] church.”¹⁹ In analyzing whether captioning creates an undue burden, however, Commission does not consider “the extent to which the provision of captioning would curtail other activities important to a petitioner’s mission.”²⁰ Rather, the Commission “balance[s] the need for closed captioned programming against the potential for hindering *the production and distribution of programming*.”²¹ FUMC Lufkin provides no evidence that absorbing the nominal cost of captioning out via its excess revenues would hinder the production or distribution of its programming.

Finally, FUMC Lufkin points to evidence of its non-profit status as justification for its requested exemption.²² Though a petitioner’s non-profit status may weigh on its financial resources, the Commission does not “grant [petitioners] favorable exemption treatment because of their non-profit status.”²³ In this case, FUMC Lufkin’s financial records demonstrate that it can indeed afford closed captioning despite its non-profit status.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, which FUMC Lufkin has not, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 3.

²⁰ See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

²¹ *Id.* (emphasis in original).

²² *FUMC Lufkin Petition*, *supra* note 1, at 7-9.

²³ *Anglers 2011*, *supra* note 5, at 14,951, ¶ 18.

captioning its programming.²⁴ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²⁵ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁶ FUMC Lufkin merely asserts that it “sought help from [its] station provider” and “ha[s] not been able to find any sponsorship source to finance the cost of captioning,” but provides no evidence to substantiate its claims.²⁷

III. Conclusion

FUMC Lufkin’s petition does not include sufficient information to substantiate its efforts to obtain reasonable captioning estimates or obtain financial assistance from outside sources. Moreover, the financial information provided by FUMC Lufkin demonstrates that it has sufficient funds to afford captioning. Consumer Groups therefore respectfully urge the Commission to dismiss the petition and require FUMC Lufkin to come into compliance with the closed captioning rules.

²⁴ See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²⁵ 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.

²⁶ 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.

²⁷ *FUMC Lufkin Petition*, *supra* note 1, at 2.

Respectfully submitted,


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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.

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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:

First United Methodist Church
805 E. Denman Ave.
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Niko Perazich
March 9, 2012