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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: New Testament Church's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0537
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 New Testament Church ("NTC") 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 NTC fails to present a compelling case that captioning its programming would impose an undue economic burden.

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, New Testament Church, Case No. CGB-CC-0537, CG Docket No. 06-181 (Feb. 10, 2012),* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-12-182A1.pdf; *Petition for Exemption from Closed Captioning Requirement for New Testament Church, Case No. CGB-CC-0537, CG Docket No. 06-181 (Jan. 20, 2012),* <http://apps.fcc.gov/ecfs/document/view?id=7021857555> [hereinafter *NTC Petition*].

Consumer Groups acknowledge NTC's efforts to "meet a spiritual need in the community" by broadcasting its weekly service to "homebound members and . . . viewers who do not go to church regularly."² Nevertheless, the requested exemption would deny equal access to NTC's important programming for the members of its community that 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 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 *NTC 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. NTC’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 2011*, *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.

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 NTC provides quotes from two captioning companies and of a closed captioning system.¹⁰ At the lowest quote provided, the annual cost of captioning through a service would be \$4,524.¹¹ If NTC is able to secure a volunteer to transcribe the audio, the captioning system would cost \$1,600.¹²

In light of the quotes, however, NTC 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.¹³ NTC provides financial documents of its expenses and receipts, showing total expenses of \$181,357.98 and total receipts of \$185,128.02.¹⁴ This leaves a surplus of

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 *NTC Petition*, *supra* note 1, at 2; 8-9.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *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.

¹⁴ *NTC Petition*, *supra* note 1, at 4.

\$3,770.04 – enough to cover nearly all of NTC’s quoted cost of \$4,524 captioning service and more than enough to cover the \$1,600 cost of an in-house captioning system.¹⁵ And while NTC provides information about its expenses and receipts, it does not provide information about its available assets that could be leveraged to fund captioning.

NTC also notes that captioning their program would “nearly double [NTC’s] budget for television.”¹⁶ When evaluating the financial status of a petition, 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.”¹⁷ NTC’s overall budget appears sufficient to support the provision of captioning.

II. Conclusion

The financial information provided by NTC demonstrates that it likely has sufficient funds to caption its programming. Accordingly, Consumer Groups respectfully urge the Commission to dismiss the petition and require NTC to come into compliance with the closed captioning rules.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

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

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:

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Niko Perazich
March 9, 2012