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May 10, 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

MAY 10 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Crosswalk Chapel's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1165
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for 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 Crosswalk Chapel ("Crosswalk") to exempt its program *Crosswalk* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Crosswalk Chapel, Case No. CGB-CC-1165, CG Docket No. 06-181* (April 12, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0412/DA-12-579A1.pdf; *Petition for Exemption from Closed Captioning Requirement for Crosswalk Chapel, Case No. CGB-CC-1165, CG Docket No. 06-181* (Nov. 14, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021749943> [hereinafter *Crosswalk Petition*]. The Consumer and Governmental Affairs Bureau determined that Crosswalk's initial one-page petition was deficient and responded with a request for more information. *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, Case*

No

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petition because it does not include sufficient information to demonstrate that Crosswalk cannot afford to caption its programming.

Consumer Groups acknowledge Crosswalk's efforts to serve its community by helping "people . . . to find victory over many abuses that are causing problems with . . . individuals, marriages, [and] families."² Crosswalk's requested exemption, however, would deny equal access to Crosswalk's programming to community members 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"), as added by the Telecommunications Act of 1996 Act ("1996 Act")³ and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010

No. CGB-CC-1165, CG Docket No. 06-181 (March 14, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021902618> [hereinafter *CGB Letter*]. Crosswalk then filed a supplement to its initial petition. *Crosswalk Chapel Supplement*, Case No. CGB-CC-1165, CG Docket No. 06-181 (April 9, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021911293> [hereinafter *Crosswalk Supplement*].

² *Crosswalk Petition* at 1.

³ Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

“CVAA”),⁴ “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 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 an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.⁷ Where a petition fails to make either of the foregoing showings, it fails to demonstrate that

⁴ Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

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 [hereinafter *2011 ISO*]. 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*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *id.*

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

I. Crosswalk'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 possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A. Cost of Captioning

To successfully demonstrate that captioning would pose an undue burden in light of its financial status, a petitioner must also 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 petition 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*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹¹ Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *The Wild Outdoors*, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

In Crosswalk's initial petition, it asserts without documentation that its broadcast station would charge between \$400 and \$500 per week to caption its programming.¹² In its supplemental filing, it revises this estimate to \$300 per program – a monthly cost of \$1200 for four shows.¹³ To reach this figure, however, Crosswalk does not reference the most affordable of the three estimates it received, but inexplicably asserts an “average” cost apparently based on all three estimates.¹⁴

Averaging captioning costs from multiple providers is an inappropriate method to assess the cost of captioning. To caption its programming, Crosswalk need not incur any costs beyond those charged by the least expensive provider. Crosswalk includes a quote from CPC for \$195 per video; the quote also notes that CPC offers “special rates” for repeat programs, such as Crosswalk's.¹⁵ Crosswalk does not indicate whether it contacted CPC to find out the “special rate” applicable to its program, which presumably is even less than \$195 per video. Accordingly, the actual cost of captioning Crosswalk's programming is no more than \$780 per month, and presumably less.

B. Crosswalk's Financial Status

Crosswalk has not presented sufficient information about its financial status to demonstrate that it cannot afford to caption 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

¹² *Crosswalk Petition* at 1.

¹³ *Crosswalk Supplement* at 1, 8.

¹⁴ *See id.*

¹⁵ *See id.* at 9. The petition includes highlighting on the relevant portions of each rate quote; on the black and white version of the petition posted to the Commission's electronic filing system, the highlighting makes the rates unreadable. *See id.* at 9-11. We understand, however, that the relevant weekly rate quotes are \$195 from CPC, \$200 from Aberdeen Captioning, Inc., and \$450 from Custom Captions.

condition can be assessed” that demonstrates captioning would present an undue economic burden.¹⁶

Crosswalk provides deposit and withdrawal statements for four months from November 2011 through February 2012.¹⁷ Based on these statements, Crosswalk asserts that it has average monthly income of \$4453 and expenses of \$3686.¹⁸ This limited cross-section of Crosswalk’s finances does not provide sufficient data to assess its overall financial health. In the four months, Crosswalk’s monthly income ranges from \$2825 to \$6299, while its expenses range from \$2570 to \$5797; its net totals range from a net profit of \$3729 to a net loss of \$2972. This wide variance among few data points provides a poor basis upon which to calculate an average.

But even assuming that Crosswalk’s limited data provides an accurate picture of its financial health, it is unclear why Crosswalk cannot afford captioning. Based on its asserted monthly income and expenses, Crosswalk has a net monthly income of \$767¹⁹ – almost exactly the monthly cost of captioning its programming (\$780 or less).

Crosswalk nevertheless argues that its monthly income is needed to pay \$5000 for “[annual] insurance” and unspecified “regular maintenance and [repair]” costs for the “church and parsonage” and “auto.”²⁰ But those costs appear to be accounted for in Crosswalk’s monthly costs; its summary of monthly expenses includes specific line items for “Church, House, Auto Insurance” and “Utilities, Internet, Misc” – the latter of which presumably includes repairs.²¹ This apparent discrepancy emphasizes the need for Crosswalk to provide a straightforward statement of its annual finances with a comprehensive summary of its income and expenses.

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

¹⁷ *Supplemental Petition* at 4-7.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.* at 3.

Crosswalk's supplement presents a confusing and incomplete picture of its financial health that suggests, at most, that Crosswalk can in fact afford to caption its programming. Without more information, it is simply impossible to conclude that Crosswalk cannot afford 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 alternative avenues for attaining assistance with captioning its programming.²² A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²³ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁴

Crosswalk indicates that it has asked two local businesses to help fund captioning, but provides no documentation or correspondence relating to these efforts.²⁵ Moreover, Crosswalk does not respond to the Consumer and Governmental Affairs Bureau's request to "verif[y] that [it] has sought closed captioning assistance (e.g., funding, services) from [its] video programming distributor . . . [and] the extent to which such assistance has been provided or rejected."²⁶ Accordingly, Crosswalk has not shown that it has exhausted its options for receiving assistance in captioning its programming, even in the event that it is unable to caption the programming itself.

²² *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

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

²⁴ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

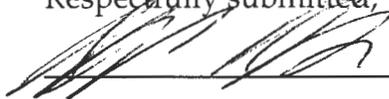
²⁵ See *Crosswalk Supplement* at 1.

²⁶ *CGB Letter* at 2.

III. Conclusion

Crosswalk's petition does not include sufficient information to demonstrate that Crosswalk cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require Crosswalk to comply with the closed captioning rules.

Respectfully submitted,



Blake E. Reid, Esq.†
May 10, 2012

*Counsel for Telecommunications for the
Deaf and Hard of Hearing, Inc.*

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† Counsel thanks Georgetown Law student clinician Allyn Ginns for her assistance in preparing these comments.

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 /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.

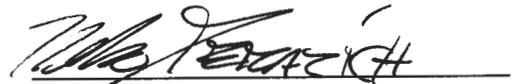
Claude L. Stout

Claude Stout
May 10, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on May 10, 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:

Crosswalk Chapel
P.O. Box 1624
Pekin, IL 61555

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

Niko Perazich
May 10, 2012