

Institute for Public Representation
Georgetown Law
600 New Jersey Ave. NW
Washington, DC 20001
202.662.9535 (phone)
202.662.9634 (fax)



August 6, 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

AUG - 6 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Voice for Jesus Church's Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0302
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 Voice for Jesus Church ("VFJ") to exempt its program *The Way, The Truth, and the Life* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Voice for Jesus Church*, Case No. CGB-CC-0302 CG Docket No. 06-181 (July 5, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0705/DA-12-1081A1.pdf; *Petition for Waiver of Closed Captioning Rules*, Case No. CGB-CC-0302, CG Docket No. 06-181 (Jan. 11, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755438> ("*VFJ Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *VFJ Petition* was deficient because it did not include adequate documentation of the petitioner's financial status sufficient to demonstrate an actual inability to afford closed captioning, lacked verification that the petitioner had

0+2

Groups oppose the petition because it does not include sufficient information to explain why Voice for Jesus cannot afford to caption its programming and does not make a sufficient showing that VFJ has made efforts to obtain alternative sources of sponsorship or funding for the captioning.

Consumer Groups acknowledge VFJ's efforts to "minister to people world-wide by television."² VFJ's requested exemption, however, would deny equal access to VFJ's programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensure that all viewers can experience the important benefits of video programming on equal terms.

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 documentation that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

sought closed captioning assistance from its video programming distributor, and lacked verification that the petitioner sought additional sponsorship sources or other sources of funding. *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, Case No. CGB-CC-0302, CG Docket No. 06-181 (April 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913491> ("CGB Letter").* In response, VFJ filed two additional supplements to its original petition. *Supplement to Petition for Waiver of Closed Captioning Rules, Case No. CGB-CC-0302, CG Docket No. 06-181 (May 16, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021921979> ("VFJ Supplement");* *Supplement to Petition for Waiver of Closed Captioning Rules, Case No. CGB-CC-0302, CG Docket No. 06-181 (May 22, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021922010> ("VFJ Supplement II").*

² *VFJ Petition* at 2.

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 (“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 July 20, 2012 Report and Order, the Commission formally adopted the analysis set forth in its October 20, 2011 Interim Standard Order and Notice of Proposed Rulemaking.⁵ In doing so, the Commission interpreted the term “economically burdensome” as being synonymous with the term “undue burden” as defined in section 713(e) of the 1934 Act and ordered the Consumer and Governmental Affairs Bureau to continue to evaluate all exemption petitions using the “undue burden” standard pursuant to the Commission’s amended rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

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

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

⁵ The *Interim Standard Order* and the *NPRM* were part of a multi-part Commission decision. See *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC. Rcd. 14941 (Oct. 20, 2011) (“*Anglers 2011*”).

⁶ *Report and Order, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket No. 11-175, ¶ 8 (July 20, 2012) (“*Economically Burdensome Standard Order*”). 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 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ 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.⁸ Where a petition fails to make either of those showings, it fails to demonstrate that providing captions would be economically burdensome, and the Commission must dismiss the petition.⁹

I. VFJ'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.¹⁰ 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 be economically burdensome, a petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹¹ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a

⁷ See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ 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.

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.¹²

According to VFJ's original petition, the lowest price quote it obtained for captioning was \$150 per program, or \$7800 per year, with an additional \$1092 for "extra videotape stock" and "extra shipping expense," for a total of \$8892.¹³ VFJ documented this bid in the form of a single captioning services advertisement, but does not indicate that it made any attempts to seek out alternative offers or negotiate with the quote provider for a lower price, which caption providers are often willing to provide for customers with regular captioning needs.¹⁴ Without documentation of any alternate offers or negotiations, it is difficult to conclude that VFJ has made a concerted effort to determine the most reasonable price of captioning its programming.

B. VFJ's Financial Status

Even assuming that \$8892 represents a reasonable assessment of the annual cost of captioning VFJ's programming, VFJ has not presented sufficient information about its financial status to demonstrate that it cannot afford 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 economic burden.¹⁵

¹² 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).

¹³ *VFJ Petition* at 3.

¹⁴ *See id.* at 6

¹⁵ 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.

VFJ appears to assert that the \$8892 yearly expense of captioning its programming would be economically burdensome because it would exceed the budget allocated for programming.¹⁶ The specific budget for VFJ's programming, however, is irrelevant to the Commission's determination. When evaluating the financial status of a petitioner, 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

VFJ also provides overall income and expense statements for 2011 and the first three months of 2012.¹⁸ These statements show that, in 2011, VFJ had yearly revenue of \$710,717, and the incomplete records provided for 2012 indicate that VFJ's income through March was \$137,176.¹⁹ While the statements demonstrate that VFJ operated at a loss during both of these periods—\$86,672 in 2011 and \$6121.81 in the first 3 months of 2012²⁰—it does not necessarily follow that VFJ cannot afford to caption its programming. More specifically, VFJ is able to spend over \$66,000 annually to air its programming without captioning²¹—nearly the entirety of its annual operating deficit in 2011—and provides no explanation for why the modest cost of providing closed captioning would cause the deficit to become untenable.

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

¹⁶ *VFJ Petition* at 2, 4.

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

¹⁸ *VFJ Supplement* at 3-7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *VFJ Petition* at 4.

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

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

VFJ claims that it has sought assistance from its programming distributor and that this request has been denied.²⁵ VFJ has also asserted that it is unable to obtain outside sponsorship for captioning because its distributor does not permit “commercializ[ed]” programming.²⁶ But the inability to offer commercials does not preclude the possibility of obtaining sponsorships or other assistance. In order to satisfactorily demonstrate that it has exhausted alternative avenues, VFJ must verify that it has, at the very least, attempted to seek out possible sponsors rather than declining at the outset to do so.

III. Conclusion

VFJ’s petition does not include sufficient information to demonstrate that the church cannot afford to caption its programming, and it also does not demonstrate that VFJ has taken the necessary steps to seek out alternative sources of funding. Accordingly, we respectfully urge the Commission to dismiss the petition and require VFJ’s programming to come into compliance with the closed captioning rules.

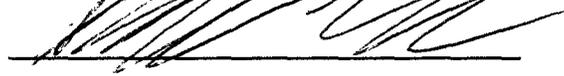
²³ See, e.g., *Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

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 VFJ Supplement II at 1.

²⁶ VFJ Supplement at 2.

Respectfully submitted,



Blake E. Reid, Esq.†

August 6, 2012

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

Institute for Public Representation

Georgetown Law

600 New Jersey Ave. NW

Washington, DC 20001

202.662.9545

blake.reid@law.georgetown.edu

cc: Roger Holberg, Consumer &

Governmental Affairs Bureau

Traci Randolph, Consumer &

Governmental Affairs Bureau

† Counsel thanks Georgetown Law student Chris Poile for her assistance in preparing these comments.

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

 /s/

Claude Stout, Executive Director • cstout@TDIforAccess.org
Contact: Jim House, Director of Public Relations • jhouse@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org

National Association of the Deaf (NAD)

 /s/

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Shane Feldman, Chief Operating Officer • shane.feldman@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

 /s/

Cheryl Heppner, Vice Chair • CHEppner@nvrc.org
3951 Pender Drive, Suite 130, Fairfax, VA 22030

Association of Late-Deafened Adults (ALDA)

 /s/

Contact: Brenda Estes, President • bestes@endependence.org
8038 Macintosh Lane, Rockford, IL 61107

Cerebral Palsy and Deaf Organization (CPADO)

 /s/

Contact: Mark Hill, President • deafhill@gmail.com
1219 NE 6th Street #219, Gresham, OR 97030
503.468.1219

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
August 6, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on August 6, 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:

Voice for Jesus
5931 NW 173 Drive, Unit 8
Hialeah, FL 33015



Niko Perazich
August 6, 2012