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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: Norm Prouty's Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1157
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 Norm Prouty to exempt his program *The Norm Prouty Real Estate Show* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Norm Prouty Real Estate Show*, Case No. CGB-CC-1157, 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-1157, CG Docket No. 06-181 (Oct. 25, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021748879> ("*Prouty Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Prouty Petition* was deficient because it did not include a documentation of the petitioners financial status, verification that the petitioner sought closed captioning assistance, and verification that the petitioner

072

the petition because it does not include sufficient information to determine Mr. Prouty's ability to afford captioning for his programming.

Consumer Groups acknowledge Mr. Prouty's efforts to permit community members to "preview area homes in a convenient manner."² Mr. Prouty's requested exemption, however, would deny equal access to his programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensuring 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.

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

sought additional sponsorship sources. *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, Case No. CGB-CC-1188, CG Docket No. 06-181 (April 4, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021911433> ("CGB Letter").* In response, Mr. Prouty supplemented his original petition. *Supplement to Petition for Waiver of Closed Captioning Rules, Case No. CGB-CC-1157, CG Docket No. 06-181 (May 11, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021922240> ("Prouty Supplement").*

² *Prouty Supplement* at 3.

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)).

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

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

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.

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

⁸ See *id.*

captions would be economically burdensome, and the Commission must dismiss the petition.⁹

I. Mr. Prouty'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 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

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.

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).

Mr. Prouty states that he has “looked into the cost of closed captioning multiple times” and that he has been quoted prices ranging from \$250-500 per week.¹³ It is important, however, that Mr. Prouty verify his attempts to discern the most reasonable price for captioning services by providing documentation of the quotes he has obtained, and demonstrate an effort to negotiate a lower price for captioning based on the repeat nature of his captioning needs, which caption providers are often willing to provide. Mr. Prouty also suggests his need to turn around closed captions quickly.¹⁴ Quick turnaround, however, is a common accommodation made by caption providers, particularly for repeat customers, and we urge Mr. Prouty to document attempts to seek out a captioning provider that can accommodate his needs.

B. Mr. Prouty’s Financial Status

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

Mr. Prouty asserts that the cost of captioning “would more than triple the cost of the program, making it economically unfeasible.”¹⁶ The specific budget for Mr. Prouty’s programming, however, does not play into the Commission’s determination of economic burden. If the Commission considered specific programming budgets, video programmers could choose not to provide captioning even if they could afford to do so simply by making the budget for a program just small enough to exclude the cost of captioning. In light of this problem, when the Commission evaluates the financial status

¹³ *Prouty Supplement* at 2.

¹⁴ *Id.*

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.

¹⁶ *Prouty Petition* at 1.

of a petitioner, it “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”¹⁷

To establish his business’s overall financial resources, Mr. Prouty provides his personal tax return for 2011.¹⁸ It is unclear, however, whether Mr. Prouty’s business is funded in its entirety by Mr. Prouty’s personal finances, or if there is a separate business entity, such as Prudential, referenced on the envelopes of Mr. Prouty’s petition and supplement, whose financial affairs are relevant to the determination of economic burden. It is difficult to make such a determination without further information about the nature and arrangement of Mr. Prouty’s business and more detailed financial information about the business, such as the detailed revenue and expense statements generally required of petitioners.

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.¹⁹ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²⁰ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²¹

Mr. Prouty claims that he regularly seeks out additional contributions to cover the cost of captioning but that these requests have not been fruitful, save for one sponsor.²²

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

¹⁸ *Prouty Supplement* at 3.

¹⁹ *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²⁰ 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.

²¹ 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.

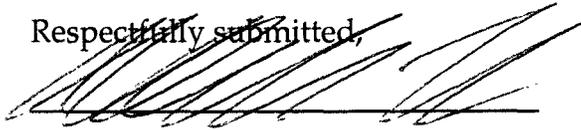
²² *Prouty Supplement* at 2.

It is important, however, for Mr. Prouty to provide documentation of these efforts, as well as an indication of whether his distributor, WFVX, is willing to provide assistance in captioning his program.

III. Conclusion

Unfortunately, Mr. Prouty's petition and supplement do not provide the Commission and the public with sufficient information to determine whether he can afford captioning services for his programming. Accordingly, we respectfully urge the Commission to dismiss Mr. Prouty's petition without prejudice and to provide Mr. Prouty leave to seek out and provide more detailed information about his business's finances, the cost of captioning his program, and his efforts to obtain alternative funding for captioning.

Respectfully submitted,



Blake E. Reid, Esq.†

August 6, 2012

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

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.

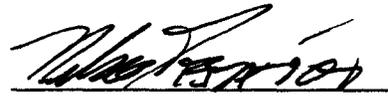
Claude L. Stout

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:

The Norm Prouty Real Estate Show
57 Mayo Rd.
Hampden, ME 04444



Niko Perazich
August 6, 2012