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September 10, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

SEP 10 2012

Federal Communications Commission  
Office of the Secretary

**Attn: CGB Room 3-B431**

**Re: Christian Video Ministries, Inc. Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0235  
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 Christian Video Ministries, Inc. ("CVM") to exempt the "chalk-talk sermons" of Baptist preacher Dr. Peter S. Ruckman of Pensacola, Florida from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Because the petition contains an internally

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<sup>1</sup> *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (August 9, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0809/DA-12-1309A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0809/DA-12-1309A1.pdf); *CVM Petition for Exemption*, Case No. CGB-CC-0235, CG Docket No. 06-181 (December 28, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021871780> ("CVM Petition"). The Consumer and Governmental Affairs Bureau initially determined that the *CVM Petition* was deficient because it failed to include "[d]ocumentation of [CVM's] financial status

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contradictory and incomplete assessment of the cost of captioning CVM's programming that makes it impossible to evaluate whether captioning would impose an undue burden on CVM, Consumer Groups respectfully urge the Commission to dismiss the petition and give CVM leave to refile the petition with a more complete and consistent information.

Consumer Groups acknowledge CVM's efforts to "illustrat[e] [Dr. Ruckman's] Sunday evening sermon from the Word of God in colored chalk."<sup>2</sup> But while CVM insists that "the Gospel message is available in 'closed captioning' format for those who are really interested in God's Word," CVM's requested exemption would deny equal access to its "unusual and unique" programming to community members who are deaf or hard of hearing.<sup>3</sup> 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.

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sufficient to demonstrate [its] inability to afford closed captioning" and "[v]erification that [CVM] sought closed captioning assistance (e.g., funding, services) from [its] video programming distributor" or "the extent to which such assistance has been provided or rejected." *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0235, CG Docket No. 06-181, at 1 (April 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913464> ("CGB Letter"). CVM then filed a supplement. *CVM Supplement*, Case No. CGB-CC-0235 (April 30, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021918751>.

<sup>2</sup> *CVM Petition* at 1.

<sup>3</sup> *See id.*

Under section 713(d)(3) of the Communications Act of 1934 (“1934 Act”), as added by the Telecommunications Act of 1996 Act (“1996 Act”)<sup>4</sup> and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 (“CVAA”),<sup>5</sup> “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.<sup>6</sup> 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).<sup>7</sup>

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<sup>4</sup> Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

<sup>5</sup> Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

<sup>6</sup> 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*”).

<sup>7</sup> *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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

CVM’s petition and supplemental filing provide no coherent estimate of the cost of captioning CVM’s programming. CVM first insists in its petition that it would cost “in the neighborhood of” \$450,000 to caption its programming, then revises its estimate to “upwards of” \$420,000 plus “freight” costs.<sup>13</sup> It is entirely unclear how either estimate was calculated. CVM’s petition first asserts that there are “approximately 700 copies of

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<sup>8</sup> See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> 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.

<sup>12</sup> 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).

<sup>13</sup> CVM Petition at 1, 4.

[its programming] in circulation,” then that it has “700 edited tapes in two different formats that would require ‘closed captioning,’” then provides a list of approximately 100 specific sermons.<sup>14</sup> But CVM’s petition does not explain which of its programs are actually slated to air and require closed captioning, nor is it clear because it does not specify how frequently it generates new programming subject to the rules. Nor is it possible to extrapolate from CVM’s provided closed captioning price quotes, which run as low as \$200 for a one-hour program.<sup>15</sup> At that rate, captioning would cost CVM \$450,000 only if it had to caption 2,250 programs.

CVM’s supplemental filing makes the nature of CVM’s programming even less clear. In the filing, CVM first asserts that captioning “presently circulating taped programming” would cost “in excess [sic] of two hundred thousand dollars.”<sup>16</sup> Contrary to the \$200-per-show estimate attached to its earlier petition, CVM then asserts that captioning would cost “at least \$400 per tape” – and finally concludes that captioning would cost “between two and three hundred thousand dollars ( maybe more).”<sup>17</sup> CVM provides a list of 11 distributors of its programming, but again provides no indication of which of its programs are slated to air or at what frequency.<sup>18</sup>

Without further information, it is impossible to assess the precise cost of captioning CVM’s programming. Because CVM provides at least four distinct estimates that vary by hundreds of thousands of dollars and are made without reference to the quantity of programming actually slated for air, it appears likely that they represent little more than idle speculation. It is incumbent on petitioners to provide concrete, accurate, consistent statements of the cost of captioning their programming that can be evaluated on their own terms without resorting to guesswork.

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<sup>14</sup> *Id.* at 1, 4, 9-11

<sup>15</sup> *Id.* at 13.

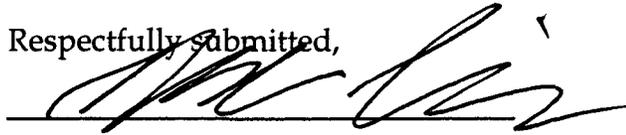
<sup>16</sup> *CVM Supplement* at 1.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 5.

CVM has failed to provide the Commission and the public with the necessary information to even begin evaluating whether it can afford the cost of caption its programming in light of its financial status. Accordingly, we respectfully urge the Commission to dismiss the petition and give CVM leave to refile the petition with a more complete and consistent information. If the Consumer and Governmental Affairs Bureau determines that CVM's current filings provided an accurate estimate of the cost of captioning its programming, we ask that the Bureau provide an explanation of the cost estimate, reinstate the petition on public notice with an explanation of the Bureau's understanding of the cost of captioning CVM's programming, and solicit further comment on the other aspects of CVM's petition pursuant to 47 C.F.R. § 79.1(f)(8).

Respectfully submitted,



Blake E. Reid  
September 10, 2012

*Counsel to TDI*

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

                  /s/                  

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**Association of Late-Deafened Adults (ALDA)**

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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 document, these facts and considerations are true and correct to the best of my knowledge.

*Claude L. Stout*

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Claude Stout  
September 10, 2012

**CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on September 10, 2012, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

Christian Video Ministries, Inc.  
P.O. Box 1466  
San Antonio, TX 78295



Niko Perazich  
September 10, 2012