

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



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

**Attn: CGB Room 3-B431**

**Re: Thirteenth Street Baptist Church Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0454  
CG Docket No. 06-181**

FILED/ACCEPTED

SEP 10 2012

Federal Communications Commission  
Office of the Secretary

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 Thirteenth Street Baptist Church ("TSBC") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Consumer Groups oppose the

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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); *TSBC Petition for Exemption*, Case No. CGB-CC-0454, CG Docket No. 06-181 (December 15, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021752642> ("*TSBC Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *TSBC Petition* was deficient because it lacked "[d]ocumentation of [TSBC's] financial status sufficient to demonstrate [TSBC's] inability to afford closed captioning" or "[v]erification that [TSBC] sought closed captioning assistance (e.g., funding, services) from [its] video

petition because it fails to demonstrate that TSBC has sought out or obtained a reasonable price for captioning its programming, that it could not afford the cost of captioning if it done so, or that it has exhausted other possibilities for funding captioning.

Consumer Groups acknowledge TSBC's efforts to operate a weekly television ministry.<sup>2</sup> TSBC's requested exemption, however, would deny equal access to its 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")<sup>3</sup> and amended by section

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programming distributor," "the extent to which such assistance has been provided or rejected," and "that [TSBC] sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts [did] not successfully produc[e] assistance, [TSBC] do[es] not otherwise have the means to provide captioning for the program(s)." *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0454, CG Docket No. 06-181 (March 7, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021902657> ("CGB Letter"). TSBC then filed a supplement. *TSBC Supplement*, Case No. CGB-CC-0454 (March 30, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021919366>.

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

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

202(c) of the 21st Century Communication and Video Accessibility Act of 2010 (“CVAA”),<sup>4</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>5</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>6</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>7</sup> If a petitioner

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

<sup>5</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>6</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.

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

sufficiently demonstrates an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.<sup>8</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>9</sup>

### **I. TSBC'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.<sup>10</sup> 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. The Cost of Captioning TSBC's Programming**

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

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<sup>8</sup> See *id.*

<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.

of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.<sup>12</sup>

TSBC summarily asserts that captioning its programming through an unspecified “outside contractual service” would cost between \$1200 and \$1500 per month, or \$15,600 annually.<sup>13</sup> TSBC does not provide any evidence, however, that it has in fact sought out competitive price quotes from competing captioning providers in an effort to seek the most affordable price to caption its programming. Without further information, it is impossible to conclude that TSBC’s cost estimate is anything more than conjecture or speculation.

It is incumbent on petitioners to undertake serious, good faith efforts to seek out captioning price quotes in a legitimate attempt to caption their programming. In the rare case that a petitioner is unable to secure affordable captioning services, it must document its efforts with specific information sufficient to permit the Commission and the public to determine whether the pricing information received by the petitioner in fact represents a realistic assessment of the cost of captioning. TSBC’s petition contains nothing more than a conclusory, unsupported assertion of the price of captioning TSBC’s programming and accordingly must be dismissed.

#### **B. TSBC’s Financial Status**

A successful petition also 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

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<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> *TSBC Petition* at 1.

captioning would present an undue economic burden.<sup>14</sup> Even assuming for the sake of argument that TSBC's estimate of \$15,600 represented an accurate assessment of the cost of captioning its programming, it is unclear from TSBC's submitted financial information why TSBC could not afford to incur that cost.

TSBC insists that captioning would be unduly burdensome because it would increase the monthly production cost of TSBC's programming from between \$2400 and \$3000 to between \$3600 and \$4500.<sup>15</sup> But even if that were true, the specific budget for TSBC's programming 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."<sup>16</sup> That a petitioner would prefer not to allocate its available resources toward closed captioning does not establish, or even support, the proposition that it cannot afford to do so.

TSBC also notes that it is a tax-exempt non-profit entity.<sup>17</sup> But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."<sup>18</sup> The Commission has "specifically rejected requests by commenters to adopt a categorical exemption for all non-profit entities based solely on their non-profit status" and has "chose[n] instead to adopt revenue-based exemption standards that . . . focus on the economic strength of each [petitioner]."<sup>19</sup> An entity's non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

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<sup>14</sup> *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.

<sup>15</sup> *TSBC Petition* at 1.

<sup>16</sup> *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

<sup>17</sup> *TSBC Petition* at 1.

<sup>18</sup> *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

<sup>19</sup> *Id.* at 14,950-51, ¶ 18 (citations omitted).

TSBC notes that it took in \$336,565.99 in “total receipts” against \$336,755.85 in “total disbursements” in 2011.<sup>20</sup> On that basis, TSBC appears insists that its budget is “already strained” and that the additional cost of providing captions would “potentially hinder production.”<sup>21</sup>

TSBC’s “total receipts” figure for 2011, however, includes more than \$25,000 transferred from an otherwise unmentioned “Savings II” account.<sup>22</sup> That \$25,000 represents more than 75% of the approximately \$31,200 cost of TSBC’s TV ministry.<sup>23</sup> TSBC also transferred \$15,000 from the same account in 2010.<sup>24</sup> While TSBC insists that it operates “solely on donations,” it is nevertheless leveraging apparently substantial assets to operate its TV ministry – but refusing to leverage those same unspecified assets, or its nearly \$14,000 in other available funds, to provide closed captioning.<sup>25</sup>

TSBC’s petition and supplemental filing present an incomplete picture of TSBC’s finances and do not describe the substantial assets that TSBC uses to fund its programming or explain why those same assets cannot be used to fund closed captioning. Petitioners cannot reasonably insist that they cannot afford to caption their programming simply because they refuse to allocate the same assets to fund captioning that they allocate to fund the programming itself. Without more information about TSBC’s available assets, it is impossible to conclude that TSBC in fact cannot afford to caption its programming.

## **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

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<sup>20</sup> *TSBC Supplement* at 2.

<sup>21</sup> *Id.* at 1

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *See id.* at 1.

<sup>24</sup> *TSBC Petition* at 2.

<sup>25</sup> *TSBC Supplement* at 2.

alternative avenues for attaining assistance with captioning its programming.<sup>26</sup> A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,<sup>27</sup> sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.<sup>28</sup>

As the Consumer and Governmental Affairs Bureau noted, TSBC's petition failed to include any evidence that TSBC had sought additional sponsorship sources or other sources of revenue for captioning.<sup>29</sup> Unfortunately, TSBC's supplemental filing confirms that TSBC has "never solicited donations from our viewers or asked for sponsors."<sup>30</sup> As the proverb goes, "where there's a will, there's a way" – and TSBC cannot reasonably assert that it has exhausted all alternative avenues to fund captioning when it refuses to pursue them.

### **III. Conclusion**

TSBC's petition fails to demonstrate that it has sought out or obtained a reasonable price for captioning its programming, that it could not afford the cost of captioning if it done so, or that it has exhausted other possibilities for funding captioning. Because TSBC has not demonstrated a good faith effort to caption its programming, much less a compelling case that it cannot afford to do so, we respectfully urge the Commission to dismiss the petition and require TSBC to come into compliance with the closed captioning rules.

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

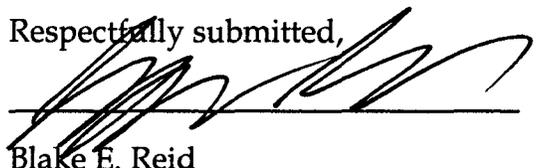
<sup>27</sup> See, e.g., *Engel's Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

<sup>28</sup> 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.

<sup>29</sup> *CGB Letter* at 1.

<sup>30</sup> *TSBC Supplement* at 1.

Respectfully submitted,



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Blake E. Reid

September 10, 2012

*Counsel to TDI*

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

**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@independence.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 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:

Thirteenth Street Baptist Church  
P.O. Box 1700  
Ashland, KY 41105-1700



Niko Perazich  
September 10, 2012