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

October 9, 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

Attn: CGB Room 3-B431

FILED/ACCEPTED

OCT - 9 2012

Federal Communications Commission
Office of the Secretary

Re: **Grace Baptist Church Petition for Exemption from the Commission's Closed Captioning Rules**
Case No. CGB-CC-0743
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), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Grace Baptist Church ("Grace") to exempt its program *The Miracle of Grace* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.[1] Consumer Groups

[1] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (September 6, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0906/DA-12-1447A1.pdf; *Grace Petition for Exemption*, Case No. CGB-CC-0743, CG Docket No. 06-181 (January 6, 2012), http://apps.fcc.gov/ecfs/document/view?id=7021857185 ("*Grace Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Grace Petition* was deficient because it did not demonstrate Grace's financial inability to afford closed

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oppose the petition because it does not sufficiently demonstrate that Grace sought out the most reasonable price for its captioning or that it cannot afford captioning, and further suggests that Grace made no good faith effort to secure funding for captioning prior to seeking an exemption.

Consumer Groups acknowledge Grace's efforts to "provid[e] worship and Bible study opportunities for those who are unable to attend congregational worship each Sunday."[2] Grace'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")[3] and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010

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captioning or verify that Grace sought closed captioning assistance from its video programming distributor or from other sources of additional sponsorship. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0743, CG Docket No. 06-181 (July 3, 2012), http://apps.fcc.gov/ecfs/document/view?id=7021992341 ("*CGB Letter*"). Grace then filed a supplement. *Grace Supplement*, Case No. CGB-CC-0743 (July 31, 2012), http://apps.fcc.gov/ecfs/document/view?id=7022007588.

[2] *Grace 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 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

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[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.

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

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. Grace'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. The Cost of Captioning Grace'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.[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]

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[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.
[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

Grace asserts that it would cost $85 per week, or $4,420 per year, to caption its one-hour program.[13] Grace documents one other "ballpark" price quote of $100 per hour for live captioning,[14] but provides no evidence that it has attempted to negotiate a more affordable rate with any captioning vendor based on its repeat captioning needs.

B. Grace's Financial Status

Even assuming Grace had submitted a reasonable assessment of the cost of captioning its programming, Grace does not present 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]

Grace first notes that it is a tax-exempt non-profit entity.[16] But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."[17] 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]."[18] 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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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] *Grace Petition* at 1.

[14] *Grace Supplement* at 1, 3.

[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] *Grace Petition* at 1.

[17] *Anglers* 2011, 26 FCC Rcd. at 14, 951, ¶ 18.

[18] *Id.* at 14,950-51, ¶ 18 (citations omitted).

Grace submits only a partial financial statement from June 2012 for the fiscal year beginning in October 2011, which shows that it brought in more than $3.5 million in income and expected a total of more than **$4.7 million** by the end of the fiscal year.[19] While Grace did not submit even a full year of financial records to give a more complete picture of its financial status, it is wholly unclear why Grace cannot afford to incur the modest expense of captioning. Even Grace's quoted rate of $4,420 per year would represent less than *one one-hundredth of one percent* of Grace's budget. Without further explanation, Grace's contention that providing captioning would "put [its] television programming in jeopardy of being suspended or eliminated" appears to be little more than idle speculation.

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.[20] A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,[21] sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.[22]

Grace admits that it has not sought out sponsorships or other alternative avenues for funding captioning.[23] While Grace argues that "seeking sponsorship ... could imply

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[19] *Grace Supplement* at 2.
[20] *Anglers 2011,* 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).
[21] *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.
[22] *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.
[23] *Grace Supplement* at 2.

that our programming has a profit-motive," it provides no other evidence that suggests it has undertaken efforts of any kind to fund captioning of its programming.[24]

In fact, the provided e-mail correspondence between Grace and its video programming distributor, WTNZ Fox43 in Knoxville, TN, does not indicate that Grace asked WTNZ for assistance funding closed captioning, but merely that Grace asked for *assistance with filing its exemption petition.*[25] While Grace omits whatever portion of the correspondence initiated its conversation with WTNZ, WTNZ's response from Chief Engineer Tom Thielman begins "Here's some information from our corporate legal office that may assist you in re-applying for a closed caption waiver. Let me know if you have additional questions."[26]

The attached e-mail from Raycom Media Assistant General Counsel Christopher G. Tygh provides a "waiver request template that churches can use to seek an exemption from the closed captioning," suggesting that stations "may decline requests to close caption programming on behalf of churches and other organizations" and instead encourages them to use a "fill-in-the blank" form to request an exemption provided by an unidentified entity, "C&B."[27]

This correspondence does not suggest that Grace diligently undertook efforts to caption its programming and filed an exemption only as a last resort before exhausting all other possibilities. Rather, it suggests that Grace instead sought to avoid captioning its programming from the outset.

III. Conclusion

Grace's petition does not sufficiently demonstrate that Grace sought out the most reasonable price for its captioning or that it cannot afford captioning, and further

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[24] *See id.*
[25] *See id.* at 3.
[26] *Id.*
[27] *Id.*

suggests that Grace made no good faith effort to secure funding for captioning prior to seeking an exemption. Accordingly, we respectfully urge the Commission to dismiss the petition and bring *The Miracle of Grace* into compliance with the closed captioning rules.

Respectfully submitted,

Blake E. Reid†
October 9, 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 Jessica Lee 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/

Contact: 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

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

/s/

Contact: Sheri A. Farinha, Vice Chair • SFarinha@norcalcenter.org
4708 Roseville Rd, Ste. 111, North Highlands, CA 95670
916.349.7500

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

Claude L. Stout

Claude Stout
October 9, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on October 9, 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:

Grace Baptist Church
7171 Oak Ridge Highway
Knoxville, TN 37931

Niko Perazich
October 9, 2012