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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

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: First United Methodist Church Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0239
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 First United Methodist Church ("FUMC") to exempt its program *Ten O'clock Worship Service* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹

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; *FUMC Petition for Exemption*, Case No. CGB-CC-0239, CG Docket No. 06-181 (January 16, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021857561> ("*FUMC Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *FUMC Petition* was deficient because it did not contain documentation of FUMC's financial

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Consumer Groups oppose the petition because it does not sufficiently demonstrate that FUMC sought out the most reasonable price to caption its programming, that FUMC cannot afford to captioning its programming or that FUMC has exhausted all alternative sources of funding.

Consumer Groups acknowledge FUMC's efforts to serve "people who are physically unable to attend church and many elderly and disabled people [an inappropriate colloquialism referring to people with disabilities]." ² FUMC'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

status, it did not verify that FUMC sought additional sponsorship sources, and it did not contain an affidavit attesting to the petition's truthfulness and accuracy. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0239, CG Docket No. 06-181 (April 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913462> ("CGB Letter"). FUMC then filed a supplement. *FUMC Supplement*, Case No. CGB-CC-0239 (May 17, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021922006>.

² *FUMC Supplement* at 2.

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

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. FUMC'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 FUMC'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

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

FUMC states that its video programming distributor is able to provide captioning services at \$16,000 per year, but it admits that it has found quotes for as low as \$11,960 per year plus an additional \$1,000-\$1,600 in start-up fees, although it does not explain what those start-up fees entail.¹³ In addition, FUMC does not indicate that it made any attempts to negotiate with the caption providers to seek out a more affordable rate. Without any such documentation, it is impossible for the Commission to conclude that FUMC has made the good faith effort necessary to determine the most reasonable price for captioning its programming.

B. FUMC's Financial Status

Even assuming that FUMC had submitted a reasonable assessment of the cost of captioning its program, FUMC 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.¹⁴

FUMC explains that the cost of captioning would add to FUMC's annual broadcasting cost of \$35,100 for airtime and \$18,200 for salaries, and that the increase in cost "would be an undue financial burden."¹⁵ The specific budget for FUMC'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

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 *FUMC Petition* at 1; *FUMC Supplement* at 2.

¹⁴ *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.

¹⁵ *FUMC Petition* at 1; *FUMC Supplement* at 2.

overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”¹⁶

FUMC also notes that it is a tax-exempt non-profit entity.¹⁷ But as the Commission has plainly stated, granting petitioners “favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent.”¹⁸ 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].”¹⁹ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

Despite FUMC’s non-profit status, FUMC’s financial performance information for 2008-2011 shows that FUMC consistently brings in nearly \$1 million in revenue annually.²⁰ Moreover, in 2011, FUMC budgeted \$999,989.12, an increase of \$55,770 over its income from the previous year.²¹ This fluctuation, which far exceeds even FUMC’s own inflated estimates for captioning its programming, indicates that FUMC can and does increase its budget to incorporate significant additional expenditures, but is simply unwilling to undertake the modest additional cost of captioning 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 alternative avenues for attaining assistance with captioning its programming.²² A petitioner must provide documentation showing that it has sought assistance from

¹⁶ *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

¹⁷ *FUMC Petition* at 1; *FUMC Supplement* at 2.

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

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

²⁰ *FUMC Supplement* at 3.

²¹ *Id.*

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

While FUMC indicates that it sought funding from its video programming distributor, it indicates that it sought financial assistance from its members for its television program more generally and not specifically for closed captioning.²⁵ Moreover, FUMC must demonstrate that it has exhausted all alternative avenues outside of the church, as well, even if petitioner normally “supports all of its ministries solely through contributions of its members.”²⁶ Without undertaking such efforts, the Commission and the public cannot reasonably determine that FUMC has exhausted all alternative avenues for funding captioning.

III. Conclusion

FUMC’s petition does not sufficiently demonstrate that FUMC sought out the most reasonable price to caption its programming, that FUMC cannot afford to captioning its programming or that FUMC has exhausted all alternative sources of funding. Accordingly, we respectfully urge the Commission to dismiss the petition and require *Ten O’Clock Worship Service* to come into compliance with the closed captioning rules.

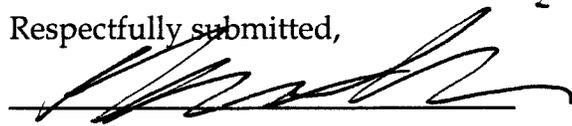
²³ See, e.g., *Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

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 *FUMC Supplement* at 6-8.

²⁶ *Id.* at 2.

Respectfully submitted,



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October 9, 2012

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† Counsel thanks Georgetown Law student Jessica Lee 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 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:

First United Methodist Church
903 East Fourth Street
Panama City, FL 32401



Niko Perazich
October 9, 2012