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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

Attn: CGB Room 3-B431

**Re: Victorious Ministries International Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0521
CG Docket No. 06-181**

FILED/ACCEPTED

OCT - 9 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), 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 Victorious Ministries International ("VMI") to exempt its programs *Inside Victory, Man Up & Conversations* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the petition because it does not sufficiently

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; *VMI Petition for Exemption*, Case No. CGB-CC-0521, CG Docket No. 06-181 (December 28, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021871823> ("*VMI Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *VMI Petition*

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demonstrate that VMI has sought out the most reasonable price for captioning its programming, that it cannot afford captioning, or that it has exhausted alternative avenues of funding captions.

Consumer Groups acknowledge VMI's efforts to "impac[t] the lives of many families."² VMI'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

was deficient because it did not contain documentation of VMI's financial status, information about the costs of captioning VMI's programming, verification that VMI sought closed captioning assistance from its video programming distributor or alternative sources of revenue for captioning, information on VMI's operations and the impact providing captions would have on VMI's programming activities, or an affidavit supporting the petition. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0521, CG Docket No. 06-181 (April 11, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021911459> ("CGB Letter"). VMI then filed a supplement. *VMI Supplement*, Case No. CGB-CC-0521 (June 14, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021991843>.

² *VMI Petition* at 1.

³ 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”),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

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.

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

I. VMI'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 VMI'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

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.

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

While VMI provides a quote suggesting that it could purchase captioning software for as little as \$5400, it insists that it would have to outsource captioning for its programming at a cost \$25,000 annually, then revises its estimate to \$175 per show, or \$36,000 for 4 weekly shows.¹³ VMI provides no information about the basis for either estimate, fails to explain why it would need to caption four shows when its petition lists only three, or indicate that it contacted multiple captioning companies to negotiate a discount for its repeat captioning needs. Without further explanation, it is impossible to conclude that VMI has diligently sought out the most reasonable price for captioning its programming, turning to the exemption process only as a last resort.

B. VMI'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 captioning would present an undue economic burden.¹⁴

VMI notes that it is a tax-exempt non-profit entity.¹⁵ But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."¹⁶ The Commission has "specifically rejected requests by commenters to adopt a categorical exemption for

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).

¹³ *VMI Petition* at 1, 4; *VMI 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 *VMI Petition* at 1.

¹⁶ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

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].”¹⁷ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

While VMI notes that its expenses exceed its income, VMI provides only six months of financial information, which provide an incomplete picture of VMI’s financial status.¹⁸ Moreover, VMI took in more than \$400,000 in revenue in the first six months of 2012, yet provides no explanation for why it cannot allocate a modest fraction of its budget to caption its programming and provides no historical financial information.¹⁹ VMI’s conclusory insistence that it cannot afford captioning is not supported by sufficient evidence for the Commission to conclude that providing captions will impose an undue economic burden.

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

¹⁷ *Id.* at 14,950-51, ¶ 18 (citations omitted).

¹⁸ *VMI Supplement* at 1, 5.

¹⁹ *VMI Supplement* at 1, 4.

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.

VMI first explains that its efforts in “seeking outside financial support have not been fruitful” but does not indicate what exactly those efforts were, who VMI contacted, and why they were unable to help.²³ It then contradicts this explanation in its supplemental filing, noting that “as a practice [VMI] does not solicit outside resources.”²⁴ Regardless, VMI presents no evidence that it has sought any alternative avenues for funding, much less exhausted them, before turning to the exemption process as a last resort.

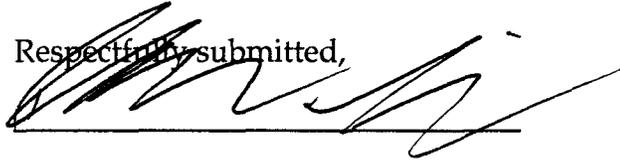
III. Conclusion

VMI’s petition does not sufficiently demonstrate that it has sought out the most reasonable price for captioning its programming, that it cannot afford captioning, or that it has exhausted alternative avenues of funding captions. Accordingly, we respectfully urge the Commission to dismiss the petition and require *Inside Victory, Man Up & Conversations* to come into compliance with the closed captioning rules.

²³ *VMI Petition* at 1.

²⁴ *VMI Supplement* at 2.

Respectfully submitted,



Blake E. Reid†
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:

Victorious Ministries International
4613 York Road
Baltimore, MD 21212



Niko Perazich
October 9, 2012