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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: Gospel Broadcasting Network Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0799
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 Gospel Broadcasting Network ("GBN") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the petition because it does not sufficiently demonstrate that GBN has sought out the most

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; *GBN Petition for Exemption*, Case No. CGB-CC-0799, CG Docket No. 06-181 (June 15, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021978233> ("GBN Petition").

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reasonable price for captioning its programming, that GBN cannot afford captioning, or that GBN exhausted all alternative avenues for funding captioning.

Consumer Groups acknowledge GBN's efforts to follow "the command of Christ to 'Go into all the world, and preach the gospel to every creature.'"² GBN'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 ("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

² *GBN Petition* at 2.

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

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

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 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

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.

⁸ See *id.*

⁹ See *id.*

I. GBN'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 GBN'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

GBN states that it would cost \$116,125 to caption its programming for the first year, including \$93,600 to transcribe 15 hours of new programming per week at \$120/hour, one part-time employee at \$20,000 annually, and a one-time software

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 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).

upgrade of \$2,525, as well as an additional cost of \$188,900 to caption its “current, repeatable programming,” including \$155,640 to transcribe 1,297 hours of programming at \$120/hour and “employee costs” of \$33,260.¹³

There is no indication that GBN approached more than one captioning vendor to seek out the most reasonable rate possible, or that it attempted to negotiate a discounted rate, for its repeat captioning requirements. GBN also does not state whether all 1,297 hours of its existing programming in fact air regularly or are slated to air in the foreseeable future, or explain why it believes it will have to spend an additional \$53,260 on unidentified employee expenses. Without any such evidence, it is impossible to conclude that GBN has adequately sought out the most reasonable cost for captioning its programming.

B. GBN’s Financial Status

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

GBN 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 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

¹³ *GBN Petition* 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 *GBN Petition* at 3.

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

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.

GBN further concedes that it operated with substantial net surpluses totaling more than \$100,000 in 2010 and 2011, and that it saved more than \$150,000 in expenses in just the first quarter of 2012.¹⁸ GBN does not explain why it is unable to dedicate any of its substantial surplus funding or significant savings during 2012 toward captioning its programming.

GBN also notes that it operated at a substantial loss of more than \$800,000 from 2006 to 2009, yet GBN does not offer any information about the substantial assets that it apparently leveraged to continue operating during those years. Indeed, GBN lists more than \$1.4 million in current assets, including more than \$60,000 in current assets that presumably could be used 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 alternative avenues for attaining assistance with captioning its programming.¹⁹ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²⁰ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²¹

There is no indication that GBN has contacted the other parties involved with creating and distributing its programming, such as its video programming provider, for

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

¹⁸ *GBN Petition* at 9, 16.

¹⁹ *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²⁰ *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.

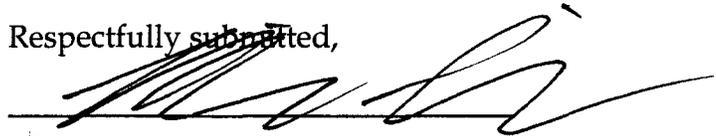
²¹ *See Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, *cited with approval in Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

assistance with captioning needs. Without such evidence, it is impossible for the Commission to conclude that GBN has exhausted all alternative avenues for funding captioning.

III. Conclusion

GBN's petition does not sufficiently demonstrate that GBN has sought out the most reasonable price for captioning its programming, that GBN cannot afford captioning, or that GBN exhausted all alternative avenues for funding captioning. Accordingly, we respectfully urge the Commission to dismiss the petition and require GBN to bring all of its programming into compliance with the closed captioning rules, or to grant GBN a limited extension only for its archival programs.

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:

Gospel Broadcasting Network
Drinker Biddle & Reath
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Niko Perazich
October 9, 2012