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November 5, 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: Jesus Inside Prison Ministry, Inc. Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1185
CG Docket No. 06-181**

FILED/ACCEPTED

NOV -5 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 Jesus Inside Prison Ministry, Inc. ("JIPM") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (October 5, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1601A1.pdf; *JIPM Petition for Exemption*, Case No. CGB-CC-1185, CG Docket No. 06-181 (January 12, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021858064> ("*JIPM Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *JIPM Petition* was deficient because it did not sufficiently document JIPM's inability to afford closed captioning. *Letter from the*

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petition because it does not sufficiently demonstrate that JIPM has diligently sought out the most reasonable price for captioning its programming, that it cannot afford to caption its programming, or that it has exhausted all alternative avenues for captioning.

Consumer Groups acknowledge JIPM's efforts to "inspir[e] individuals who have been incarcerated as well as those who have been released."² JIPM'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

Consumer and Governmental Affairs Bureau, Case No. CGB-CC-1185, CG Docket No. 06-181 (June 27, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021992377> ("CGB Letter"). JIPM then filed a supplement. *JIPM Supplement*, Case No. CGB-CC-1185 (July 26, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022007590>.

² *JIPM Petition* at 1.

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)).

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 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

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.*

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

I. JIPM'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 JIPM'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

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 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).

JIPM asserts that it would cost \$250 per week, or \$13,000 per year, to caption its thirty-minute program.¹³ JIPM also claims it would cost \$5,000-\$8,000 to purchase in-house captioning equipment.¹⁴ JIPM, however, provides no evidence that it actually contacted any closed captioning providers to substantiate these estimates. Rather, it appears that JIPM simply relied on the assertion of its video programming distributor and did not attempt to negotiate with multiple captioning providers to seek out an affordable rate for its routine captioning needs.¹⁵ Without evidence of such efforts or any information about the basis of JIPM's estimates, such as price quotes or correspondence with captioning providers, it is impossible for the Commission to conclude that JIPM's proffered costs represent the most reasonable rate for captioning its programming.

JIPM also claims that the time needed to caption its programming would make meeting WHMB's air date deadlines impossible.¹⁶ JIPM, however, does not elaborate on its basis for this assertion or explain why it is uniquely unable to caption its program on a timely basis when the vast majority of television programming, including live programming, is captioned in a sufficiently expeditious fashion. Without further explanation, it is impossible for the Commission to conclude that JIPM has diligently sought out the lowest price for captioning its programming before turning to the exemption petition process as a last resort.

B. JIPM'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

¹³ *JIPM Petition* at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 1.

“from which its financial condition can be assessed” that demonstrates captioning would present an undue economic burden.¹⁷

JIPM notes that it is a tax-exempt non-profit entity.¹⁸ But as the Commission has plainly stated, granting petitioners “favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent.”¹⁹ 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].”²⁰ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

Despite its non-profit status, JIPM had an annual surplus of \$117,715 in 2011.²¹ Therefore, JIPM could afford to caption its programming, even at its unsubstantiated estimate of \$13,000 annually, for nearly a decade. JIPM offers no explanation as to why it could not caption its programming using its surplus.

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 other parties involved with the creation and distribution of its programming,²³ sought

¹⁷ *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.

¹⁸ *JIPM Petition* at 1.

¹⁹ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

²⁰ *Id.* at 14,950-51, ¶ 18 (citations omitted).

²¹ *JIPM Supplement* at 3.

²² *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

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.

sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁴

While JIPM claims it has attempted “to solicit sponsorships to pay for the cost of closed captioning,”²⁵ it has not provided any evidence documenting these efforts. Furthermore, it is unclear whether JIPM actually asked its video programming distributor for assistance. JIPM notes that WHMB does not provide captioning and is “unlikely to do so in the foreseeable future because of the additional time, staff, and cost that would be required.”²⁶ But WHMB’s letter shows that JIPM only submitted a “request for LeSEA broadcasting to research the process and cost associated with closed captioning [its] television programming that currently airs on WHMB-TV,” not a request for assistance in covering the cost of captioning.²⁷ JIPM’s unsubstantiated claims that it sought sponsorships or other assistance for funding closed captioning are insufficient to demonstrate that JIPM has exhausted all alternative avenues of funding.

III. Conclusion

JIPM’s petition does not sufficiently demonstrate that JIPM sought out the lowest price for captioning services, that it cannot afford captioning, or that it has exhausted all alternative avenues of funding. Accordingly, we respectfully urge the Commission to dismiss the petition and require JIPM to bring its programming into compliance with the closed captioning rules.

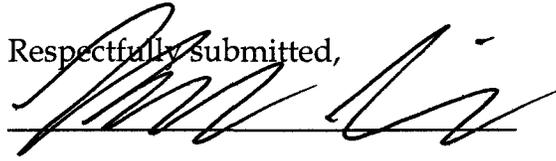
²⁴ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

²⁵ *JIPM Petition* at 1.

²⁶ *Id.* at 1-2.

²⁷ *Id.* at 2.

Respectfully submitted,



Blake E. Reid†

November 5, 2012

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† Counsel thanks Georgetown Law students Hillary Hodsdon and Jessica Lee for their assistance in preparing these comments.

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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
November 5, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on November 5, 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:

Jesus Inside Prison Ministry, Inc.
P.O. Box 88489
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Niko Perazich
November 5, 2012