

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



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

FILED/ACCEPTED

NOV -5 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Treasures From the Heart Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1241
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 Treasures From the Heart ("TFTH") to exempt its program *Treasures From the Heart with Forshia Ross* 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 (October 5, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1601A1.pdf; *TFTH Petition for Exemption*, Case No. CGB-CC-1241, CG Docket No. 06-181 (June 5, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021923567> ("*TFTH Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *TFTH Petition* was deficient because it did not sufficiently document TFTH's financial inability to afford closed captioning, verify

No. of Copies rec'd 0+2
List ABCDE

Consumer Groups oppose the petition because it does not sufficiently demonstrate that TFFH has sought out the lowest price for captioning services or include sufficient information to conclude that TFFH cannot afford to caption its programming.

Consumer Groups acknowledge TFFH's efforts "to reach out to the community with hope" and its ongoing efforts to include closed captions with its current programming.² TFFH's requested exemption, however, would deny equal access to its future 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

that TFFH sought closed captioning assistance from its video programming distributor, or explain what impact a captioning requirement would have on its programming. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-1241, CG Docket No. 06-181 (July 3, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021992339> ("*CGB Letter*"). TFFH then filed a supplement. *TFFH Supplement*, Case No. CGB-CC-1241 (July 25, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022007718>.

² *TFFH 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

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. TFTH'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 TFTH'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

TFTH estimates that captioning would cost approximately \$250 per half-hour program, based on its previous use of a captioning vendor.¹³ TFTH does not, however, document any efforts to negotiate a lower price with its vendor based on its routine needs or to seek out other captioning service providers that might be able to serve TFTH's needs at a lower cost.¹⁴

B. TFTH'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.¹⁵ While TFTH provides several months of bank statements, it does not provide a concise statement of its assets and annual expenses and revenues, nor does it explain the basis for its conclusory assertion that it "simply cannot afford the extra cost of closed captioning."¹⁶ It notes that TFTH "maintains the ministry financially, due to income from speaking engagements, special events, selling of our ministry products and unexpected offerings," but does not provide details of that income or explain precisely how it is insufficient to cover the cost of captioning.

II. Conclusion

TFTH has not sufficiently demonstrated that it sought out the lowest price for captioning services or provided sufficient information to demonstrate that it cannot afford to caption future programming. Accordingly, we respectfully urge 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 *TFTH Petition* at 1.

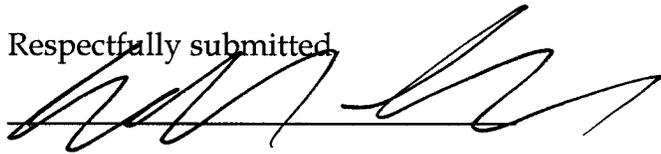
¹⁴ *Id.*

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 *TFTH Supplement* at Enclosure 7.

Commission to give TFFH leave to either explain why its financial status prevents it from captioning its programming or bring its future programming into compliance with the closed captioning rules. Should the Commission determine that a partial exemption is warranted, we urge the Commission to ensure that TFFH continues to caption at least some of its future programming, and to limit any exemption to no longer than one year to ensure that TFFH invests in a more permanent captioning solution.

Respectfully submitted,



Blake E. Reid†

November 5, 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/_____

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, Suite 2, 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.

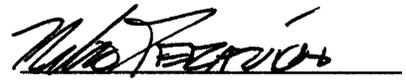
Claude L. Stout

Claude Stout
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:

Treasures From the Heart
P.O. Box 717
Glendale, RI 02826



Niko Perazich
November 5, 2012