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November 5, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

**Attn: CGB Room 3-B431**

**Re: Christ for the Crisis Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0258  
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 Christ for the Crisis ("CFTC") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Consumer Groups oppose the petition because

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<sup>1</sup> *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](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1601A1.pdf); *CFTC Petition for Exemption*, Case No. CGB-CC-0258, CG Docket No. 06-181 (January 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755288> ("*CFTC Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *CFTC Petition* was deficient because it did not verify that CFTC sought out additional sponsorship sources for captioning or that

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it does not sufficiently demonstrate that CFTC cannot afford to caption its programming.

Consumer Groups acknowledge CFTC's long-running ministry.<sup>2</sup> CFTC'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")<sup>3</sup> and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),<sup>4</sup> "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

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CFTC was financially unable to provide captioning. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0258, CG Docket No. 06-181 (April 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913440> ("CGB Letter"). CFTC then filed a supplement. *CFTC Supplement*, Case No. CGB-CC-0258, (May 16, 2012) (placed on ECFS on November 2, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022038709>.

<sup>2</sup> CFTC *Petition* at 2.

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

<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>7</sup> 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.<sup>8</sup> Where a petition fails to make either of those showings, it fails to demonstrate that providing

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<sup>5</sup> 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*”).

<sup>6</sup> *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.

<sup>7</sup> See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>8</sup> See *id.*

captions would be economically burdensome, and the Commission must dismiss the petition.<sup>9</sup>

### **I. CFTC'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.<sup>10</sup> 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 CFTC'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.<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

<sup>11</sup> *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.

<sup>12</sup> 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).

CFTC argues that captioning would cost as much as \$250 per program, but concedes that its distributor, WTVA, could provide closed captioning for as little as \$100 per half-hour program if CFTC provided transcripts of the program.<sup>13</sup> CFTC complains that it has no paid staff and that “hours of transcribing will have to be done by [CFTC].”<sup>14</sup> CFTC does not dispute, however, that it could transcribe its programming. Instead, CFTC argues that this rate would impose “a substantial financial burden.”<sup>15</sup>

#### **B. CFTC’s Financial Status**

CFTC does not present sufficient information about its financial status to demonstrate that it cannot afford captioning at a cost of \$100 per program. 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.<sup>16</sup>

CFTC first contends that captioning its programming at a cost of \$100 per program would increase the budget for broadcasting its program on WTVA by as much as 25%.<sup>17</sup> The specific budget for CFTC’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 overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”<sup>18</sup>

CFTC offers no explanation as to why incurring an additional \$100 per program would impose an untenable burden on its overall financial resources. Instead of

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<sup>13</sup> *CFTC Petition* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *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.

<sup>17</sup> *CFTC Petition* at 1.

<sup>18</sup> *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

providing annual financial statements, CFTC provides only a single monthly bank statement.<sup>19</sup> It is simply impossible to assess CFTC's financial status on the basis of a single month of information, much less to conclude that it cannot afford to caption its programming. CFTC also concedes in its supplemental filing that it took in a net profit of \$1,667 between October 2011 and April 2012.<sup>20</sup> – and provides no explanation for why that profit could not be dedicated to captioning some or all of CFTC's programming.

## **II. Conclusion**

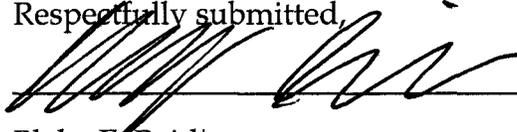
CFTC has not sufficiently demonstrated that it cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require CFTC to bring its programming into compliance with the closed captioning rules.

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<sup>19</sup> *CFTC Petition* at 1, 12-15.

<sup>20</sup> *CFTC Supplement* at 3

Respectfully submitted,



Blake E. Reid†

November 5, 2012

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† Counsel thanks Georgetown Law student Jessica Lee for assistance in preparing these comments.

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

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**National Association of the Deaf (NAD)**

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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*

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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:

Christ for the Crisis  
P.O. Box 6  
Fulton, MS 38843



Niko Perazich  
November 5, 2012