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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

FILED/ACCEPTED

NOV -5 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Voices of Freedom, Inc. Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0819
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 Voices of Freedom, Inc. ("VOF") 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; *VOF Petition for Exemption*, Case No. CGB-CC-0819, CG Docket No. 06-181 (January 11, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021857175> ("*VOF Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *VOF Petition* was deficient because it did not provide financial documents demonstrating VOF's inability to afford closed

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petition because it does not demonstrate that VOF has sought out the most reasonable price for captioning services or that VOF, which appears to be a mere programming arm of a church that funds and controls VOF's operations, cannot afford to caption its programming.

Consumer Groups acknowledge VOF's efforts to produce a weekly broadcast. VOF'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")² and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),³ "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934

captioning and it did not verify that it sought closed captioning assistance from its video programming distributor or from alternative sources of sponsorship. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0819, CG Docket No. 06-181 (April 4, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021911338> ("*CGB Letter*"). VOF then filed a supplement. *VOF Supplement*, Case No. CGB-CC-0819 (April 12, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021918858>.

² Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

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

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.⁴ 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).⁵

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁶ 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.⁷ Where a petition fails to make either of those showings, it fails to demonstrate that providing

⁴ 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*”).

⁵ *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.

⁶ See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *id.*

captions would be economically burdensome, and the Commission must dismiss the petition.⁸

I. VOF'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.⁹ 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 VOF'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.¹⁰ 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.¹¹

⁸ See *id.*

⁹ See *id.*

¹⁰ 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.

¹¹ 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).

VOF claims captioning its programming would cost \$200 per half-hour program, or \$10,400 per year.¹² There is no evidence, however, that VOF attempted to negotiate a lower rate from either one of the captioning providers contacted. Accordingly, it is impossible to conclude that VOF made the necessary effort to determine the most reasonable price for captioning its programming

B. VOF'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.¹³

VOF notes that it is a tax-exempt non-profit entity.¹⁴ But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."¹⁵ 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]."¹⁶ An entity's non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

Moreover, it appears that VOF's petition lacks a complete statement of VOF's financial status because VOF is simply a self-incorporated branch of the Freedom Baptist Church ("FBC"), whose current financial information is not included in this petition. VOF's petition notes that "[w]e do have a petition pending," referencing

¹² *VOF Supplement* at 3.

¹³ *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.

¹⁴ *See VOF Petition* at 12.

¹⁵ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

¹⁶ *Id.* at 14,950-51, ¶ 18 (citations omitted).

another petition bearing the same case number as VOF's and that VOF concedes was filed by FBC.¹⁷ VOF admits that it "was incorporated just for the television operation," and Pastor John Hill of Freedom Baptist Church is also the CEO of Voice of Freedom TV Ministry.¹⁸ A contract with News Channel 12, one of VOF's video programming distributors, specifically reserves time for "paid programming for Freedom Baptist Church," and is signed by Pastor Hill as an "Authorized Church Representative."¹⁹ Another contract with LeSEA Broadcasting detailing time slots through September 2012, more than nine months after VOF filed its petition, lists FBC as the contracting party.²⁰ VOF's tax information even notes that it even receives substantial funding from FBC.²¹

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."²² FBC cannot avoid this rule simply by sequestering the resources it provides for its programming in a separate entity and refusing to provide the entity with sufficient funds to caption its programming. If FBC believes that providing captioning would impose an undue economic burden, it must demonstrate that it cannot afford to caption VOF's programming by satisfying the high standard required by the Commission's rules, the 1996 Act, and the CVAA.

II. Conclusion

VOF and FBC have not sufficiently demonstrated that they sought out the most reasonable price for captioning services or that they cannot afford to caption the

¹⁷ *VOF Petition* at 3 (citing *Petition of Freedom Baptist Church*, Case No. CGB-CC-0819, CG Docket No. 06-181 (July 7, 2008), <http://apps.fcc.gov/ecfs/document/view?id=6520034343>).

¹⁸ *VOF Supplement* at at 4, 6.

¹⁹ *VOF Petition* at 7.

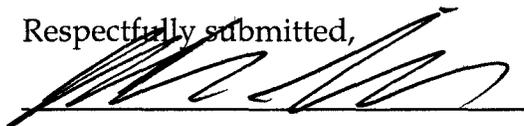
²⁰ *Id.* at 9.

²¹ *VOF Supplement* at 28.

²² *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

programming at issue. Accordingly, we respectfully urge the Commission to dismiss the petition and require FBC and VOF to bring the programming into compliance with the closed captioning rules.

Respectfully submitted,



Blake E. Reid†
November 5, 2012

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† Counsel thanks Georgetown Law student Jessica Lee for her 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:

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Niko Perazich
November 5, 2012