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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

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Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: First United Methodist Church Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0570
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 First United Methodist Church ("First United") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose

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; *First United Petition for Exemption*, Case No. CGB-CC-0570, CG Docket No. 06-181 (May 29, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021991781> ("*First United Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *First United Petition* was deficient because it did not verify that it sought closed captioning assistance from its

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the petition because it does not demonstrate that First United cannot afford to caption its programming or that it has exhausted all alternative avenues for captioning assistance.

Consumer Groups acknowledge First United's efforts to "provide those who are aged and homebound with an opportunity to experience Christian worship."² First United'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

video programming distributor. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0570, CG Docket No. 06-181 (August 8, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004514> ("CGB Letter"). First United then filed a supplement. *First United Supplement*, Case No. CGB-CC-0570 (August 23, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022022750>.

² *First United 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)).

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 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. First United'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 First United'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).

First United notes that captioning could cost up to \$350 per half-hour program with a two-week delay or necessitate hiring additional clerical help.¹³ First United concedes, however, that one vendor will caption its programming for as little as \$140 per program without any concerns over timeliness or having to hire additional help.

More troubling, however, is the correspondence from First United's pastor indicating that he solicited information regarding the cost of closed captioning only for the purpose of "get[ting] a bid to submit with the 'exemption request'."¹⁴ The Commission's rules require petitioners to engage in a good faith, deliberate effort to engage a closed captioning provider before turning to the exemption process only as a last resort. Pretextually soliciting closed captioning information solely for the purpose of seeking an exemption petition is insufficient to satisfy the high bar required of First United to demonstrate that it has diligently sought out the most reasonable price to caption its programming.

B. First United'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

First United notes that "the current balance in [its] TV Ministry fund will cover the cost of only one additional quarter."¹⁶ But the funding that First United chooses to dedicate specifically to its television programming is irrelevant to whether captioning its programming is economically burdensome. When evaluating the financial status of a petitioner, the Commission "take[s] into account the overall financial resources of the

¹³ *First United Petition* at 1-2.

¹⁴ *Id.* at 11.

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 *First United Petition* at 1.

provider or program owner," not "only the resources available for a specific program."¹⁷

While First United provides no income or expense statements, it had more than \$500,000 in total net assets on hand as of April 2012, including more than \$500,000 in cash on hand.¹⁸ First United offers no reasonable explanation as to why it can sustain its television ministry with those assets but cannot incur the modest additional cost of captioning.

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

As the CGB notes, First United's petition contains no verification that it has sought captioning assistance from its video programming distributor and that assistance has been rejected.²² We are unable to locate any such verification in First United's supplemental filing. It is therefore unclear that First United has adequately exhausted all alternative avenues for captioning its programming.

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

¹⁸ *First United Petition* at 7; *First United Supplement* at 18.

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.

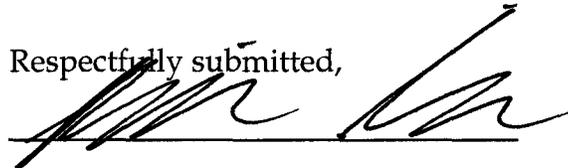
²¹ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

²² *CGB Letter* at 1.

III. Conclusion

First United has not sufficiently demonstrated that it cannot afford to caption its programming or that it has exhausted all alternative avenues for captioning assistance. Accordingly, we respectfully urge the Commission to dismiss the petition and require First United to bring its 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:

First United Methodist Church
512 North Main Street
High Point, NC 27260

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich
November 5, 2012