

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



November 26, 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: Joy Ministries Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0044
CG Docket No. 06-181**

FILED/ACCEPTED

NOV 26 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 Joy Ministries ("Joy") to exempt its program *Joy in the Morning* 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 26, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1729A1.pdf; *Joy Petition for Exemption*, Case No. CGB-CC-0044, CG Docket No. 06-181 (December 16, 2005), <http://apps.fcc.gov/ecfs/document/view?id=6518524264> ("*Joy Petition*"); *Joy Petition for Exemption*, Case No. CGB-CC-0044, CG Docket No. 06-181 (December 27, 2005), <http://apps.fcc.gov/ecfs/document/view?id=6518524266> ("*Joy Petition II*"). The Consumer and Governmental

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

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

Consumer Groups acknowledge Joy's efforts to "hel[p] hurting women in the inner city of Norfolk, Virginia."² Joy'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.

Affairs Bureau requested that Joy affirm or update its petition. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0044, CG Docket No. 06-181 (April 5, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021909058> ("CGB Letter"). Joy then filed a supplement. *Joy Supplement*, Case No. CGB-CC-0044 (May 23, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021923571>. The Bureau then concluded that the petition was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0044, CG Docket No. 06-181 (July 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004671> ("CGB Letter II"). Joy then filed two more supplements. *Joy Supplement II*, Case No. CGB-CC-0044 (July 31, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004050>. *Joy Supplement III*, Case No. CGB-CC-0044 (September 17, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022032323>.

² *Joy Petition* at 1.

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 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

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)).

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.

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

I. Joy'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 Joy'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

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

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.

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

Joy claims it will cost “at least” \$26,000 per year to caption its programming.¹³ But Joy provides no basis for this estimate, other than two outdated quotes in Joy’s original petition, obtained nearly seven years ago by Joy’s distribution company, estimating a cost between \$300 and \$360 per half-hour program.¹⁴ Joy provides no evidence that it reached out to multiple caption providers to obtain updated rates or attempted to negotiate a more affordable rate, nor does Joy explain how the outdated quotes yield an annual cost of \$26,000. Without more information, it is impossible to determine that \$26,000 represents the most reasonable cost of captioning Joy’s program or that Joy has engaged in the necessary effort to determine the most reasonable cost, turning to the exemption process only as a last resort.

B. Joy’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

Joy notes that it is a tax-exempt non-profit entity.¹⁶ But as the Commission has plainly stated, granting petitioners “favorable exemption treatment because of their

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).

¹³ *Joy Supplement II* at 1.

¹⁴ *Joy Petition II* at 2.

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 *Joy Supplement II* at 1.

non-profit status [is] inconsistent with . . . Commission precedent.”¹⁷ 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].”¹⁸ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

While Joy appears to have operated at a slight loss in 2010 and 2011, Joy brought in more than \$720,000 in revenue in 2011, a substantial increase over 2010.¹⁹ Joy offers no explanation as to why it can continue to incur the significant expense of operating its television ministry but cannot afford the modest additional expense of captioning. Joy also lists only “[u]nrestricted” revenue, leaving unclear whether Joy is able to fund its listed expenses using other unlisted revenue.²⁰

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.²¹ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²² sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²³ While Joy indicates that it unsuccessfully

¹⁷ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

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

¹⁹ *Joy Supplement II* at 4.

²⁰ *See id.*

²¹ *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²² *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.

²³ *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.

sought assistance from its video programming distributor and several captioning companies, it does not appear that Joy sought any assistance thorough sponsorships or other alternative means that may have assisted Joy in funding captioning.²⁴

III. Other Factors

Finally, Joy notes that it “type[s] out all scriptures on the full screen” and “make typed study notes of all the messages” for each of their programs upon request.²⁵ While Consumer Groups acknowledge Joy’s efforts to make its programming accessible, providing textual supplements is not an adequate substitute for closed captioning.

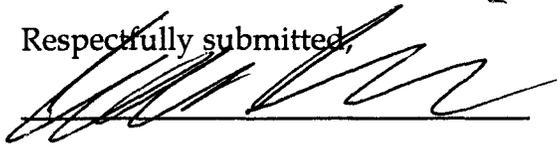
IV. Conclusion

Joy has not sufficiently demonstrated that it diligently sought out the lowest price of captioning services, that it cannot afford to caption its programming, or that it has exhausted all alternative avenues for captioning. Accordingly, we respectfully urge the Commission to dismiss the petition and require *Joy in the Morning* to come into compliance with the closed captioning rules.

²⁴ *Joy Supplement II* at 1; *Joy Supplement III* at 1.

²⁵ *Joy Supplement II* at 2.

Respectfully submitted,



Blake E. Reid†

November 26, 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 Hillary Hodsdon 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 26, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on November 26, 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:

Joy Ministries
P.O. Box 65036
Virginia Beach, VA 23467



Niko Perazich
November 26, 2012