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November 26, 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: Berean Bible Study Association Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-1237  
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 Berean Bible Study Association ("Berean") to exempt its program *Grace Believers Bible Study* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup>

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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 26, 2012), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1729A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1729A1.pdf); *Berean Petition for Exemption*, Case No. CGB-CC-1237, CG Docket No. 06-181 (April 30, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021918736> ("*Berean Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Berean Petition* was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-1237, CG Docket No. 06-

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Consumer Groups oppose the petition because it does not sufficiently demonstrate that Berean cannot afford captioning.

Consumer Groups acknowledge Berean's efforts to air "[its] message of hope" while captioning some of its programming.<sup>2</sup> Berean's requested exemption, however, would discontinue 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 requirements . . . would be economically burdensome." In its July 20, 2012 Report and

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181 (August 8, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004499> ("CGB Letter"). Berean then filed a supplement. *Berean Supplement*, Case No. CGB-CC-1237 (September 10, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022032831>.

<sup>2</sup> *Berean Supplement* at 1; *Berean Petition* at 5.

<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)).

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. Berean'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 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>11</sup> Berean's income statement shows it had a surplus of more than \$10,000 in 2011<sup>12</sup>—more than enough to caption its programming at its quoted annual price of \$6,760. Because Berean offers no explanation of why it cannot use its surplus to cover the cost of captioning, Berean has not demonstrated that it cannot afford to caption its programming.

### **II. Berean's Eligibility for Categorical Exemption**

Berean claims that despite its substantial surplus, it is eligible for an exemption under 47 C.F.R. § 79.1(d)(11) because captioning its programming would be "in excess

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

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

<sup>11</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>12</sup> *Berean Supplement* at 2.

of 2 percent” of its 2011 donations.<sup>13</sup> At the outset, Berean misstates the two-percent exemption, which only exempts additional captioning expenditures in *excess* of two percent of revenue.<sup>14</sup> As the Commission has plainly explained, video programming producers that qualify for the exemption still must “devote a reasonable portion of their revenue stream [i.e., 2%] to closed captioning,” thereby “help[ing] to avoid an ‘all or nothing’ approach.”<sup>15</sup>

Moreover, Berean is plainly not eligible for the exemption in any case because it is not a video programming producer that offers a channel of programming. As the Consumer and Governmental Affairs Bureau notes, the two-percent exemption is only available on a “per channel basis, as opposed to applying to individual program providers.”<sup>16</sup> Berean offers no evidence that it is a video programming provider offering a channel of programming, and it cannot qualify for this categorical exemption.

### **III. Conclusion**

Berean has not sufficiently demonstrated that it cannot afford captioning. Accordingly, we respectfully urge the Commission to dismiss the petition and require Berean to bring *Grace Believers Bible Study* into compliance with the closed captioning rules.

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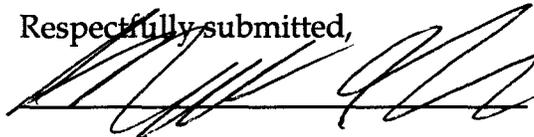
<sup>13</sup> *Berean Petition* at 5; *Berean Supplement* at 1.

<sup>14</sup> 47 C.F.R. § 79.1(d)(11).

<sup>15</sup> *Closed Captioning and Video Description of Video Programming*, 13 FCC Rcd. 3272, 3399, ¶ 295 (1997).

<sup>16</sup> *CGB Letter* at 1.

Respectfully submitted,



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November 26, 2012

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† 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/

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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*

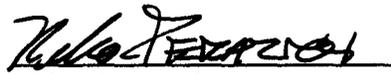
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Claude Stout  
November 26, 2012

**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:

Berean Bible Study Association  
204 Tower Drive  
Pensacola, FL 32534



Niko Perazich  
November 26, 2012