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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: Ghettothropic LLC Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-1222  
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 Ghettothropic LLC ("Ghettothropic") to exempt its program *The Other Side* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Consumer Groups

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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); *Ghettothropic Petition for Exemption*, Case No. CGB-CC-1222, CG Docket No. 06-181 (February 22, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021907485> ("*Ghettothropic Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Ghettothropic Petition* was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-

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oppose the petition because Ghettothropic has not sufficiently demonstrated that it has sought out the lowest price for captioning services or that it cannot afford closed captioning.

Consumer Groups acknowledge Ghettothropic's efforts to "connec[t] communities to each other in a seamless manner."<sup>2</sup> Ghettothropic'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

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1222, CG Docket No. 06-181 (April 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913533> ("CGB Letter"). Ghettothropic then filed two supplements. *Ghettothropic Supplement*, Case No. CGB-CC-1222 (July 19, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004006>; *Ghettothropic Supplement II*, Case No. CGB-CC-1222 (July 25, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022007589>.

<sup>2</sup> *Ghettothropic Supplement* at 17.

<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)).

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.<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. Ghettothropic'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 Ghettothropic'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).

Ghettothropic claims that captioning its programming would cost \$171 per half-hour episode, plus an additional \$50 per station per day for a total of \$271 per day, or \$70,460 per year.<sup>13</sup> Ghettothropic does not explain, however, what the additional \$50 charge entails and notes that the “additional annual cost of \$44,460” will cause bankruptcy, seeming to imply that the \$50 charge is not a captioning expense.<sup>14</sup>

Regardless, Ghettothropic does not explain the basis for its estimates, and provides no evidence that it contacted multiple captioning providers or attempted to negotiate a lower price for its repeat captioning needs. Accordingly, it is impossible for the Commission or the public to conclude that either \$44,460 or \$70,460 represents the most reasonable annual price for captioning Ghettothropic’s programming.

#### **B. Ghettothropic’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.<sup>15</sup> Ghettothropic asserts that it takes in a net profit of approximately \$50,000.<sup>16</sup> Even at the unsubstantiated estimate of \$44,460 per year, Ghettothropic appears to take in more than enough revenue to cover the cost of closed captioning.

## **II. Conclusion**

Ghettothropic has not sufficiently demonstrated that it has sought out the lowest price for captioning services or that it cannot afford closed captioning. Accordingly, we respectfully urge the Commission dismiss the petition and require Ghettothropic to bring *The Other Side* into compliance with the closed captioning rules.

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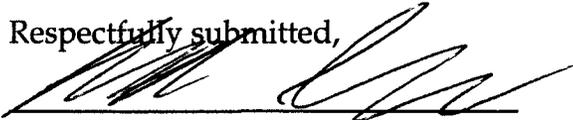
<sup>13</sup> *Ghettothropic Petition* at 1; *Ghettothropic Supplement* at 1.

<sup>14</sup> *Ghettothropic Supplement* at 1.

<sup>15</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>16</sup> *Ghettothropic Petition* at 1; *Ghettothropic Supplement* at 1.

Respectfully submitted,



Blake E. Reid†  
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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**National Association of the Deaf (NAD)**

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**Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)**

\_\_\_\_\_/s/\_\_\_\_\_  
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**Association of Late-Deafened Adults (ALDA)**

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**California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)**

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**Cerebral Palsy and Deaf Organization (CPADO)**

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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:

Ghettothropic LLC  
P.O. Box 303  
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Niko Perazich

November 26, 2012