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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: Move of God Ministries Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0481
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 Move of God Ministries ("MOGM") to exempt its program *Unity* 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; *MOGM Petition for Exemption*, Case No. CGB-CC-0481, CG Docket No. 06-181 (November 30, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021755266> ("*MOGM Petition*"); Case No. CGB-CC-0481, CG Docket No. 06-181 (January 12, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755400> ("*MOGM Petition II*"). The Consumer and Governmental Affairs

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petition because it does not demonstrate that MOGM diligently sought out the most reasonable price for captioning services or that it cannot afford to caption its programming.

Consumer Groups acknowledge MOGM's efforts to "develop spiritual growth, business and health awareness."² MOGM'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

Bureau initially determined that the *MOGM Petition* was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0481 , CG Docket No. 06-181 (March 28, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021907402> ("*CGB Letter*"). MOGM then filed two supplements. *MOGM Supplement*, Case No. CGB-CC-0481 (April 10, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021913430>; *MOGM Supplement II*, Case No. CGB-CC-0481 (October 15, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022038710>

² *MOGM 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)).

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

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

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.*

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. MOGM'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 MOGM'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*

MOGM claims captioning its thirty-minute programming would increase the cost from \$125 per week to \$462 per week, but the only price quote presented, a generic advertisement from a closed captioning company, indicates prices as low as \$100 per thirty-minute episode.¹³ It is unclear, then, why MOGM believes that captioning will cost \$337 per episode. MOGM also provides no evidence that it attempted to actually contact multiple captioning providers or negotiate a lower rate for its routine captioning needs.

B. MOGM's Financial Status

MOGM does not present sufficient information about its financial status to demonstrate that it cannot afford captioning. 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.¹⁴

MOGM offers no explanation as to why incurring the cost of captioning would impose an untenable burden on its overall financial resources. MOGM summarily insists that it "can not afford to pay for closed captioning," but provides only several months of checking account statements to substantiate the claim.¹⁵ MOGM offers no explanation as to how its checking account relates to its overall financial status, and fails to provide a concise summary of its overall revenues, expenses, and assets.¹⁶ Without such information, it is impossible for the Commission or the public to assess MOGM's overall financial status, much less to conclude that MOGM cannot afford to caption its programming.

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 *MOGM Petition* at 1; *MOGM Petition II* at 2.

¹⁴ *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.

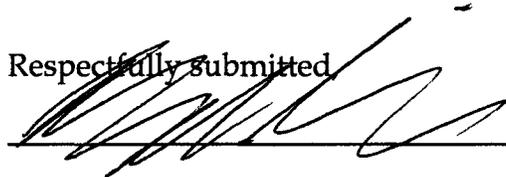
¹⁵ *MOGM Petition* at 3-20.

¹⁶ *Id.* at 3.

II. Conclusion

MOGM has not sufficiently demonstrated that it has diligently sought out the most reasonable price for captioning services or that it cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require MOGM to bring *Unity* into compliance with the closed captioning rules.

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.

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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 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:

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Niko Perazich
November 26, 2012