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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: Wildfire Global Church Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0142
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 Wildfire Global Church ("Wildfire") to exempt its programming 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; *Wildfire Petition for Exemption*, Case No. CGB-CC-0142, CG Docket No. 06-181 (November 18, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021749945> ("*Wildfire Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Wildfire Petition* was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-

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

Consumer Groups acknowledge Wildfire's efforts to "reach people who never go to church on Sunday morning."² Wildfire'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 Act], and the Commission may grant such petition upon a showing that the

0142, CG Docket No. 06-181 (August 8, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004520> ("CGB Letter"). Wildfire then filed a supplement. *Wildfire Supplement*, Case No. CGB-CC-0142 (August 23, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022022088>.

² *Wildfire Supplement* at 14.

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)).

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. Wildfire'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 Wildfire'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).

Wildfire provides only a single quote, apparently solicited by television broadcaster KXVA—Fox, estimating a cost of \$220 per show, with two shows per week.¹³ Wildfire provides no evidence that it contacted multiple caption providers and attempted to negotiate with them to find the lowest possible rates. Without this information, it is impossible to conclude that Wildfire sought out and determined the most reasonable cost for captioning its programming.

B. Wildfire’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.¹⁴

Wildfire notes that it is “not a commercial based broadcaster.”¹⁵ But as the Commission has plainly stated, granting petitioners “favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent.”¹⁶ 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].”¹⁷ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

Wildfire also notes that it currently pays its distributor \$150 per week to broadcast its programming and that the “the cost for closed captioning would more than double

¹³ *Wildfire Supplement* at PDF p.3 (marked as p.1).

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 *Wildfire Petition* at 1.

¹⁶ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

¹⁷ *Id.* at 14,950-51, ¶ 18 (citations omitted).

the [programming's] weekly cost."¹⁸ The specific budget for Wildfire's programming, however, is irrelevant to the Commission's determination. When evaluating the financial status of a petitioner, the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only the resources available for a specific program."¹⁹

Wildfire provides six months of bank statements, but does not explain what bearing they have on the church's financial status as a whole or whether they represent a complete picture of the church's revenues, assets, and expenses.²⁰ Wildfire's petition variously notes that it receives unspecified "tithes and offerings" and "extra funding outside of . . . necessities," but does not explain with specificity why that funding cannot be dedicated toward the modest cost of closed captioning.²¹ Wildfire also notes that its programming is at least partially funded by "the staff's other vocations outside of the church" and that some of its programming is provided by relatives of Wildfire's Overseer Henry Flint,²² but similarly does not explain why those sources of revenue are insufficient to support captioning. Without further information, it is impossible to conclude that Wildfire cannot afford to caption its programming.

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.²³ A petitioner must provide documentation showing that it has sought assistance from

¹⁸ *Wildfire Supplement* at 7.

¹⁹ *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

²⁰ *Wildfire Supplement* at 8-12.

²¹ *Wildfire Petition* at 1-2.

²² *Id.* at 1; *Wildfire Supplement* at 14.

²³ *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

other parties involved with the creation and distribution of its programming,²⁴ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁵

Though Wildfire claims its attempts to seek captioning assistance from its programming distributor and other additional sponsorship sources were unsuccessful, Wildfire provides no evidence of these efforts.²⁶ Accordingly, it is impossible for the Commission to determine that Wildfire has exhausted all alternative avenues of funding.

III. Categorical Exemptions

Wildfire believes that the local, non-news exemption to the closed captioning rules applies to its programming.²⁷ But as the CGB has repeatedly recognized, the narrow exemption in Section 79.1(d)(8) of the Commission's rules applies only to "[p]rogramming that is locally produced by [a] video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable." Entities like Wildfire are plainly not video programming distributors under the meaning of the Commission's rules and cannot qualify for this exemption.²⁸

Wildfire also believes that that it is eligible for the two percent exemption.²⁹ But the narrow exemption in Section 79.1(d)(11) of the Commission's rules only applies to video programming providers who expend money to caption entire channels of programming. Wildfire offers no indication that it is either a video programming

²⁴ 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.

²⁵ 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.

²⁶ *Wildfire Supplement* at 7.

²⁷ *Id.*

²⁸ See 47 C.F.R. § 79.1(a)(2) (defining "video programming distributor").

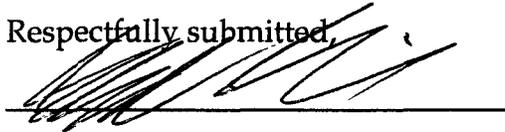
²⁹ *Wildfire Supplement* at 7.

provider or that it is responsible for captioning an entire channel of video.³⁰ Thus, Wildfire does not appear to qualify for this exemption.

IV. Conclusion

Wildfire's petition does not sufficiently demonstrate that Wildfire diligently sought out the lowest price for captioning services, that it cannot afford captioning, or that it has exhausted all alternative avenues of funding. Accordingly, we respectfully urge the Commission to dismiss the petition and require Wildfire to bring its programming into compliance with the closed captioning rules.

Respectfully submitted,



Blake E. Reid†
November 26, 2012

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³⁰ See *CGB Letter* at 1.

† Counsel thanks Georgetown Law student Hillary Hodsdon for her assistance in preparing these comments.

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:

Wildfire Global Church
3042 Primrose Circle
Abilene, TX 79606



Niko Perazich
November 26, 2012