GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Angela J. Campbell
Brian Wolfman
Benton Senior Counselor
Andrew Jay Schwartzman
Staff Attorneys
Thomas M. Gremillion
Justin Gundlach
Anne W. King
Aaron Mackey*
Eric Null

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
Fax: 202-662-9634

March 12, 2014

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
via hand delivery

Re: Opposition to Petition for Exemption from the Commission's Closed Captioning Rules filed by First United Methodist Church, CG Docket No. 06-181, CGB-CC-1224

Dear Ms. Dortch,

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 Cerebral Palsy and Deaf Organization (CPADO), and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), collectively, "Consumer Groups," respectfully oppose the petition of First United Methodist Church ("First United") to exempt *Sunday Worship Services of First*

*Admitted to the California bar only.
Practice supervised by members of the DC bar.

United Methodist Church of Tupelo, from closed captioning requirements.[1] Consumer Groups oppose an exemption because First United's petition indicates that it can afford to caption its programming and First United failed to meet other requirements of the economically burdensome standard.

We urge the Commission to promptly deny this petition. First United has already had multiple opportunities to provide the information necessary to meet the standard. Moreover, First United has not had to provide captioning while its petition has been pending. The Commission should act quickly so that community members who are deaf or hard of hearing will have access to this program.

I. Background

First United, a religious organization with a consistent multimillion-dollar budget, airs a 30-minute Sunday Worship Service program each week. First United first submitted a petition for exemption from the Commission's closed-captioning rules in 2012.[2] Later that year, the Consumer and Government Affairs Bureau ("CGB") requested additional information from First United, but the organization withdrew its petition because its programming distributor had a categorical exemption from the Commission's captioning rules.[3] First United then renewed its petition on August 31,

---

[1] This petition was placed on public notice on February 10, 2014. *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules,* CG Docket No. 06-181 (Feb. 10, 2014) ("*2014 Public Notice*").

[2] *See First United Methodist Church's Petition for Exemption from Closed Captioning Requirements,* Case No. CGB-CC-1224, Dkt. 06-181 (Mar. 13, 2012).

[3] *See Letter from Consumer and Governmental Affairs Bureau to First United Methodist Church,* Case No. CGB-CC-1224, Dkt. 06-181 (June 27, 2012); *First United Methodist Church's Withdrawal of its Petition for Exemption from Closed Captioning Requirements,* Case

2012 when it began broadcasting its programming on another channel.[4] The CGB again informed First United that it would need to provide additional information for its petition to be considered.[5] First United responded, but was asked by the CGB to provide more information for a third time in September of 2013.[6] First United again responded, and its petition was placed on public notice for comment on Feb. 10, 2014.[7]

II. Legal Standard

Under 47 CFR §79.1(f), a video programming provider, producer or owner may petition for a full or partial exemption from closed captioning. The Commission may only grant an exception if the petitioner provides "sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term 'economically burdensome' means significant difficulty or expense." In determining whether a petitioner has met this standard, the Commission's core inquiry is whether a programmer can afford captioning or whether the added costs would jeopardize its ability to broadcast.[8] The FCC also requires a

---

No. CGB-CC-1224, Dkt. 06-181 (July 17, 2012) (noting that the distributor was covered under 47 C.F.R. § 79.1(d)(12), which exempts channels producing revenues under $3 million).

[4] *See First United Methodist Church's Renewal of its Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-1224, Dkt. 06-181 (Aug. 31, 2012).

[5] *See Letter from Consumer and Governmental Affairs Bureau to First United Methodist Church*, Case No. CGB-CC-1224, Dkt. 06-181 (Sept. 26, 2012)

[6] *See Letter from Consumer and Governmental Affairs Bureau to First United Methodist Church*, Case No. CGB-CC-1224, Dkt. 06-181 (Sept. 30, 2013).

[7] *See First United Methodist Church's Supplement to its Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-1224, Dkt. 06-181 (Oct. 23, 2013) ("*First United Supplement*"); *2014 Public Notice*.

[8] *See Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section*

petitioner to show that it has bargained for captioning and explored alternatives to paying for captions.[9] Failure to do so may result in dismissal of the waiver petition.[10] Even when an applicant makes the requisite showing, the Commission may only issue waivers for a limited time to allow a petitioner to identify additional financial resources and caption its programming.[11]

III. First United fails to meet the standard for a waiver.

First United has failed to meet the stringent requirements of the undue burden waiver because its financial records indicate that captioning costs would represent a minimal 0.4% increase in its annual budget. Furthermore, First United provides no evidence that it bargained for lower captioning costs or sought outside sponsorship for closed captioning as required under the economically burdensome standard.

A. The cost of closed captioning only represents about 0.4% of First United's annual budget.

With a consistent annual budget of more than $2 million, First United's stated cost of providing closed captioning would not create an undue financial burden on the organization. Between 2010 and 2012, First United reported a budget of roughly $2.3

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, 14952, ¶ 20 (Oct. 20, 2011) ("*Anglers 2011*").

[9] *Anglers 2011* at 14955-56, ¶ 28 (footnotes omitted).

[10] *Id.*

[11] *Id.* at 14953 ("an exemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation") (internal quotations omitted).

million.[12] First United also reported an end-of-year cash surplus of $105,018 and $42,891 in 2011 and 2010, respectively.[13] Assuming Petitioner's annual closed captioning costs are $9,100, a figure that would likely be reduced through bargaining, captioning represents a mere 0.4% increase in budget. Moreover, First United's end-of-year surpluses in both 2010 and 2011 could each easily pay for years of captioning.

First United argues that it cannot assume further costs associated with its Sunday broadcast without cutting from other ministry activities.[14] But even if true, this fact does not justify a waiver under the economically burdensome standard.[15] Rather, the test under the economically burdensome standard is whether providing captioning would force a programmer to go off the air.[16] First United's argument in this regard must therefore be rejected.

B. First United fails to demonstrate that it bargained for competitive captioning rates.

First United's waiver request must also be rejected because it fails to show that the organization bargained for a more competitive captioning rate before petitioning for a

---

[12] *See First United Supplement*, Financial Statements for 2011 at 7, Financial Statements for 2012 at 7.
[13] *See First United Supplement*, Financial Statements for 2011 at 7.
[14] *First United Supplement* ("[W]e do not have the room in our budget to assume further costs associated with our live Sunday broadcast without cutting some other ministry area.").
[15] *Anglers 2011*, 26 FCC Rcd at 14952, ¶ 20.
[16] *Id.*

waiver. A petitioner must show that it has at least tried to negotiate for lower rates before asserting its captioning costs under the economically burdensome standard.[17]

Although First United did acquire two quotes for captioning service, the stated price of $9,100 per year is unlikely to reflect the actual price First United would pay after diligent bargaining. For instance, one captioning provider quoted First United with a range of $145-175 per hour for captioning service.[18] However, First United uses the higher number to estimate that captioning would cost $9,100 per year.[19] Nowhere in the petition does First United provide evidence that it followed up with this clear opportunity to bargain for the lower $145 rate. Furthermore, First United failed to pursue other bargaining options, such as requesting a non-profit rate, special rates for long-term service, or lower rates for a later broadcast of its programming.

C. First United fails to show that it exhausted all possible funding alternatives.

First United's petition must also be rejected because it failed to document that it exhausted all alternatives to pay for closed captioning. Before attaining a waiver, a petitioner must demonstrate that it has pursued alternative funding, including

---

[17] *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 13613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).
[18] *First United Supplement*, Email from Shannon Turner, WTVA Director of Creative Services to David Dillon, First United Church Administrator, Oct. 23, 2013.
[19] *Id.* at 2.

assistance from programming distributors, additional sponsorship, and other sources of revenue for closed captioning.[20]

First United has shown that it requested and was denied assistance from two sources—its programming distributor and the regional church office.[21] However, this is not sufficient to show that First United pursued all possible options for funding. Petitioner offers no evidence that it sought specific closed captioning sponsorship from an outside source such as a business or individual, or that the organization explored other funding options. Thus, First United also fails to show that it sought out funding alternatives as required by the Commission's standard.

IV. Conclusion

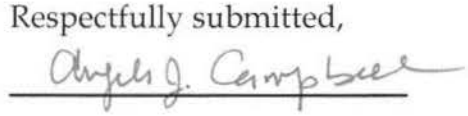
First United has not made the showing required by Rule 79.1(f) to permit the Commission to find that closed captions would be economically burdensome. Accordingly, we respectfully urge the Commission to dismiss this petition and require First United to bring its programming into compliance with the closed captioning rules. However, should the Commission grant these petitions, Consumer Groups stress that it should do so only on an extremely temporary basis, as First United has had ample time to present the appropriate financial information, and has thus far failed to do so.

---

[20] *Anglers 2011*, 26 FCC Rcd 14956, ¶ 28.

[21] *See First United Supplement*, at 3.

Respectfully submitted,



Aaron Mackey
Angela J. Campbell
Counsel to TDI

Lane Johnson
Georgetown Law Student

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
March 12, 2014

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 12, 2014, a copy of the Opposition to Petition for Exemption from the Commission's Closed Captioning Rules filed by First United Methodist Church, CG Docket No. 06-181, CGB-CC-1224 was served by first class U.S. mail, postage prepaid, upon the petitioner at the addresses listed below.

David Dillard
Church Administrator
First United Methodist Church of Tupelo
Tupelo, MS 38802

Niko Perazich
March 12, 2014