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Congress of the United States

House of Representatives

Washington, DC 20515-2107

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The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin:

I am writing with respect to a recent order granting two requests for exemptions for closed captioning requirements (Re: In the Matter of New Beginning Ministries and Anglers for Christ Ministries, Inc.; CGB-CC-0005, CGB-CC-0007; adopted September 12, 2006.) As you may know, I have a long history of fighting for closed captioning, including provisions added as part of the Telecommunications Act of 1996, and as prime House sponsor of successful legislation to include built-in decoder circuitry to provide closed captioning of aurally-delivered program material in 1991.

I write with concern about several aspects of this order as well as the process by which such matters are being addressed currently by the Commission. I want to emphasize that I address here neither the merits nor any demerits of the two particular exemptions referenced above. Rather, I wish to draw your attention to several process issues and implications of this order.

First, the order appears to open the door to many more exemptions. It states that the Commission will be “inclined favorably” to grant new exemption requests to organizations that do –

“not receive compensation from video programming distributors from the airing of [their] programs, and that in the absence of an exemption, may terminate or substantially curtail its programming, or curtail other activities important to its mission....” [emphasis added.]

Taken as a whole, the Commission’s action in this matter appears to have the effect of promulgating a change in its rules, specifically the creation of a new category of presumptive exemptions from closed captioning rules.

Moreover, I am unaware upon what evidence or basis the Commission can gauge whether closed captioning requirements will cause a particular licensee to “curtail other

activities important to its mission,” as the importance of the mission to the licensee can only be attested to by the licensee, and not the Commission. Secondly, there appears to be no qualifier to the second appearance of the word “curtail” for “other activities,” as contrasted with “*substantially* curtail its programming” in the previous clause. I am not sure if this is what the Commission intended, but this obviously would create a test so lax that conceivably any non-commercial educational licensee could qualify by stipulating that any curtailment of “other activities” warrants an exemption.

In addition, there are reports that in the last week the Commission has sent out dozens, and perhaps *hundreds*, of letters granting waivers to closed captioning obligations. I understand that these exemption requests were filed and considered without public notice and therefore interested parties did not have an adequate mechanism for addressing potential problems or any deficiencies in the requests. The Commission also apparently failed to provide any public notice about the reportedly large volume of approval letters that were granted and mailed out in the last week.

I also understand that several entities seeking exemptions were ultimately willing to comply with the closed captioning obligations and only sought temporary waivers. Nevertheless, the Commission apparently granted such entities permanent waivers. Historic efforts to reach the disabled community with new services and technologies often encounter situations where individual entities or market sectors face hurdles or burdens that may be temporary in nature and are therefore granted additional time to comply. To simply eliminate the obligation to serve the disabled community permanently in such situations, by administrative fiat, when a petitioner was only seeking a temporary waiver flies in the face of this history and national effort.

Mr. Chairman, the march of technology is inexorable, but the equitable distribution of that technology throughout society is not. Many of us have struggled for several years to extend the benefits of technology to the deaf and hard-of-hearing community. The closed captioning statute contains congressionally-approved waivers as well as a mechanism, the “undue burden” standard, by which the Commission may grant individual waivers to petitioners who provide evidence that they meet that standard.

If the Commission is inclined to change its interpretation of the “undue burden” standard and effectively create a new rule or a new class of presumptive waiver recipients, or if the Commission receives exemption requests and grants them, I trust you agree that, at the very least, such matters ought to be addressed in a fully transparent process. A more adequate administrative process would provide ample opportunity for those who have waited a decade for the benefits of provisions of the closed captioning statute to become effective to be informed of each exemption request, as well as to comment upon such requests so that the Commission may make informed decisions.

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I would be interested in any thoughts you may have about the recent decisions made by the Consumer and Governmental Affairs Bureau and any remedial actions you intend to take. In addition, please provide me with the number of exemption requests to closed captioning obligations that have been filed with the Commission and how many requests the Commission has granted thus far. Finally, please promptly post each waiver approval letter on the Commission's website so that the public may be informed about actions the Commission has taken.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is written in a cursive style with a large, stylized initial "E".

Edward J. Markey
Ranking Democrat
House Subcommittee on
Telecommunications and the Internet