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ANGLING FOR A FAIR STANDARD: A RECOMMENDATION FOR A NARROWLY TAILORED NON-PROFIT EXEMPTION TO THE CLOSED CAPTIONING REQUIREMENTS

JOSHUA PILA†

I. INTRODUCTION: THE FEDERAL COMMUNICATIONS COMMISSION'S ANGLERS ORDER¹

In late 2006, the Federal Communications Commission's ("FCC") Consumer and Government Affairs Bureau ("CGB")² issued the *Anglers Order*, providing a wholesale exemption for non-profit entities seeking to avoid the strictures of the FCC's closed captioning rules.³ Disability advocates and public interest organizations quickly condemned the decision.⁴ A consortium of public interest and disability advocacy groups filed an Application for Review of a Bureau Order criticizing the decision

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1. In the Matter of New Beginning Ministries and Anglers for Christ Ministries, Inc., Nos. CGB-CC-0005, CGB-CC-0007 (CBG Sept. 12, 2006) [hereinafter *Anglers Order*].

2. The CGB reports only to the FCC Chairman, and not the full Commission. The full Commission may, however, decide to review the *Order*.

3. *Anglers Order*, *supra* note 2 (*In the future, when considering an exemption petition filed by a non-profit organization that does not receive compensation from video programming distributors from the airing of its programming, and that, in the absence of an exemption, may terminate or substantially curtail its programming, or curtail other activities important to its mission, we will be inclined favorably to grant such a petition because . . . this confluence of factors strongly suggests that mandated closed captioning would pose an undue burden on such a petitioner.*) (emphasis added).

4. See AAPD News, Telecommunications Issues, <http://www.aapd-dc.org/News/telecomm/060915aapd.htm> (last visited Apr. 8, 2007); Benton Foundation, FCC Creates New Captioning Exemption, <http://www.benton.org/index.php?q=node/3442> (last visited Apr. 8, 2007); Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, More Ugly News on Captioning Exemptions, <http://www.nvrc.org/content.aspx?page=16515§ion=5> (last visited Apr. 8, 2007).

on administrative and communications law grounds.⁵ The group claimed that the decision violated the Administrative Procedures Act, contravened Public Notice requirements, and violated the 1996 Telecommunications Act “undue burden standard.”⁶ In response, the FCC put all of the pending exemption requests online for public notice and comment.⁷ The National Religious Broadcasters (“NRB”) quickly came to the support of the CGB.⁸

The CGB focused on the non-profit nature of the entities in deciding upon the exemption. Specifically, the *Anglers Order* noted that the entities, “are not producing their programming primarily for a commercial purpose; indeed, both of the organizations here are non-profit.”⁹ The *Anglers Order* also limited the specific presumption to “an exemption petition filed by a non-profit organization.”¹⁰

Following the FCC’s focus on non-profit policy, this paper proceeds by: 1) explaining the underlying captioning rules, 2) detailing the *Anglers Order*, 3) using the public notice information to provide information on what entities apply for closed caption exemptions, 4) criticizing the *Anglers Order* on non-profit law and policy grounds, and 5) recommending and analyzing an alternative administrative presumption that bears more consistency with non-profit law and policy.

This paper ignores the administrative questions and will not delve into the merits of individual exemption requests.¹¹ Additionally, this paper focuses on the non-profit perspective, and will not focus on communi-

5. Petitioners included: Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, National Association of the Deaf, Hearing Loss Association of America; Association of Late Deafened Adults, Inc., Telecommunications California Coalition of Agencies Serving the Deaf and Hard of Hearing, and the American Association of People with Disabilities.

6. Application for Review of *New Beginning Ministries*, Nos. CGB-CC-0005, CGB-CC-0007 (CBG filed Oct. 12, 2006), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526833 (last visited Apr. 8, 2007) [hereinafter Application for Review].

7. FCC, Public Notice, Consumer and Governmental Affairs Bureau Action Request for Exemption from Commission’s Closed Captioning Rules (November 7, 2006), available at <http://www.fcc.gov/da062287.pdf> (last visited Apr. 8, 2007).

8. Opposition to Application for Review of Bureau Order, In the Matter of Video Programming Accessibility, Nos. CGB-CC-0005, CGB-CC-0007 (CGB filed Oct. 30, 2006), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518539148 (last visited April 8, 2007) [hereinafter Opposition Application for Review].

9. *Anglers Order*, *supra* note 2, at 4.

10. *Id.*

11. See Letter from Kevin J. Martin, FCC Chairman, to Edward J. Markey, U.S. Representative, available at <http://markey.house.gov/docs/telecomm/Markey%20CC%20Response.pdf> (last visited Apr. 8, 2007) (for the FCC Chairman’s view on how the situation was resolved).

cations law or administrative law issues.¹²

II. A RECOMMENDATION FOR A NARROWLY-TAILORED FINANCIAL TEST AUTOMATICALLY EXEMPTING NON-PROFIT ORGANIZATIONS WITH LESS THAN \$25,000 IN ANNUAL REVENUE AND WHO RECEIVE NO FINANCIAL COMPENSATION FROM AIRING THE PROGRAM

The hundreds of closed captioning exempting requests submitted to the FCC would overburden the CGB if the Bureau must prepare a full undue burden analysis for each application.¹³ Since the FCC grants requestors a temporary waiver while the FCC analysis remains pending in any event,¹⁴ all interested parties benefit from a bright line rule.¹⁵

This paper recommends a non-profit exemption based on non-profit law and policy principles discussed in subsequent sections. The proposed automatic exemption would, upon application to the FCC, automatically remove the following entities from closed captioning requirements: 1) non-profit organizations, 2) with less than \$25,000 in annual revenues, and 3) who receive no financial compensation for the airing of the program from the distributor, program sponsors, or by direct solicitation from program viewers. Under this proposal, if the FCC denied an automatic exemption for failure to meet one of the factors, organizations could still apply for a full “undue burden” analysis.

12. See Opposition of Telecommunicatons for the Deaf and Hard of Hearing, Inc. to Petition for Exemption from Closed Captioning Requirements Filed by Curtis Baptist Church, In the Matter of Video Programming Accessibility, No. CGB-CC-0001 (CGB filed Feb. 10, 2006), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518525769 (last visted Apr. 8, 2007) (Swidler Berlin, LLP filed comments to each exemption request listed in the Public Notice.) ; Letter from Bingham McCutchen, Counsel to TDI, to Marlene H. Dortch, Sec’y FCC, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909396 (last visited Apr. 8, 2007).

13. See 47 U.S.C. § 613(e) (2006); 47 C.F.R. § 79.1(f)(2) (2006); see also *Infra*, Part VIII.F (discussing the full undue burden analysis).

14. See FCC, Closed Captioning of Video Programming – General Information, http://www.fcc.gov/cgb/dro/general_cc_information.html (“Pursuant to the Commission’s rules, the programming that is the subject of the undue burden exemption petition is exempt while the petition is pending. There is no form for these petitions, and electronic and fax filing is not available;” Therefore, each station that filed an application for waiver of the FCC’s closed captioning rules since the Anglers Order has a temporary waiver.).

15. If an entity receives a temporary exemption while the application remains pending, opponents lack the opportunity to challenge the exemption before the FCC or the courts. By providing a final decision, the opponents can then challenge the exemption before the FCC or the courts.

III. THE CLOSED CAPTIONING RULES – CONGRESS REQUIRED CLOSED CAPTIONING IN THE 1996 TELECOMMUNICATIONS ACT, BUT INCLUDED AN UNDUE BURDEN EXEMPTION

Closed captioning consists of typed text to match audio outputs of television programming. Viewers will recognize closed captioning as the white scrolling text on a black background at the bottom of a television screen often found in bars, airports, or other public places. Captioning provides a vital service to hearing impaired individuals by allowing them access to television programming.¹⁶ Many senior citizens utilize close captioning and the trend will increase as the baby boomer generation ages. The FCC notes other uses for closed captioning as well, such as, “[f]or individuals whose native language is not English, English language captions improve comprehension and fluency. Captions also help improve literacy skills.”¹⁷

Congress required closed captioning for broadcast programs in the 1996 Telecommunications Act.¹⁸ The FCC codified Closed Captioning Rules at 47 C.F.R. § 79.1. An exemption from the closed captioning requirements usually requires meeting the undue burden test, which considers:

(1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.¹⁹

IV. THE *ANGLERS ORDER* – INSTEAD OF APPLYING THE FOUR-PART UNDUE BURDEN TEST, THE CGB GRANTED A BROAD PRESUMPTION FOR NON-PROFIT ENTITIES REQUESTING AN EXEMPTION FROM THE CLOSED CAPTIONING RULES

In September 2006, the FCC’s CGB created a presumption of eligibility for an exemption for a non-profit organization that “does not receive compensation from video programming distributors” if in the “absence of an exemption, [the station] may terminate or substantially curtail [the provider’s] programming, or curtail other activities impor-

16. See FCC, Closed Captioning, <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html> (last visited April 8, 2007) (for more information on closed captioning).

17. *Id.*

18. See 47 U.S.C. § 613 (2006).

19. 47 U.S.C. § 613(e) (2006); see 47 C.F.R. § 79.1(f)(2) (2006); but see FCC, Exemptions from Closed Captioning Rules, http://www.fcc.gov/cgb/dro/exemptions_from_cc_rules.html (last visited Apr. 8, 2007) (The “Self-Implementing Exemptions” prove irrelevant to this discussion.).

tant to its mission.”²⁰ Specifically, the CGB stated it would “be inclined favorably to grant such a petition because . . . this confluence of factors strongly suggests that mandated closed captioning would pose an undue burden on such a petitioner.”²¹

The *Anglers Order* listed several key factors in the above quote. First, the *Order*’s language applies only to non-profit organizations. Second, the entity may not receive compensation from the program distributor (i.e., the television station). The *Order*, however, fails to include compensation from other sources in the analysis. Third, the CGB would determine whether, in the absence of an exemption, the entity would curtail its programming or other activities important to its mission. The *Order* fails to discuss what activities qualify for this analysis. Finally, the *Order* grounds its new presumption in the undue burden law by stating that the confluence of factors would equal an undue burden determination as the result.

Congressman Edward Markey of Massachusetts labeled the presumption as “[a] test so lax that conceivably any non-commercial educational licensee could qualify.”²² The key concern of opponents and this paper focus on the fear that entities that currently provide closed captioning will cease to do so under the vague and amorphous *Anglers Order* test.²³ After discussing the landscape of closed captioning exemption requests, this paper will specifically critique the *Anglers Order* presumption on non-profit law and policy grounds and propose an alternative.

V. THE MAJORITY OF CLOSED CAPTIONING EXEMPTION REQUESTS COME FROM RELIGIOUS BROADCASTERS OR PROGRAMMERS AND FOR-PROFIT ENTITIES

Before criticizing the *Anglers Order*, this paper seeks to provide a snapshot of the current universe of closed captioning exemption *Orders*. Through analysis of the exemption requests placed online for public comment by the FCC after the controversy over the *Anglers Order*,²⁴ this

20. *Anglers Order*, *supra* note 2.

21. *Id.*

22. Letter from Edward J. Markey, U.S. Representative, to Kevin J. Martin, FCC Chairman, available at <http://markey.house.gov/docs/telecomm/Letter%20to%20FCC%20Chairman%20Re%20close%20captioning%20reqs.9.21.06.pdf> (last visited Apr. 8, 2007).

23. See Application for Review, *supra* note 7, at 18, Ex. D (“The larger concern is the precedence [sic] that will be set if exemptions are granted just because a non-profit states captioning costs will affect their mission. Every one of the companies we caption for could justify that they could provide additional services (mission essential) with the money that they could save from not captioning.”); Opposition to Application for Review, *supra* note 9, at 5 (noting that many religious non-profit broadcasters already comply with the captioning requirements).

24. Public Notice, *supra* note 8.

paper provides examples of the entities requesting closed captioning exemptions.

This analysis included a review of more than 600 closed caption exemption requests placed in an FCC Public Notice prior to August 2007 to determine: 1) the type of entity requesting exemption, and 2) the type of programming provided by the entity requesting exemption.²⁵ The FCC labeled each request as CGB-CC-0001 and further but occasionally skipped a case number.²⁶ The filings often proved inadequate to determine the type of entity or the type of programming, but general Internet research resolved most of these questions. The status of three entities and nine programming types remains unknown for lack of information.

The categories for entities include: Church, For-Profit, Secular Non-Profit, Individual, Governmental, or Unknown. The categories for programming types include: Religious, Entertainment, Infomercial, Public Affairs, Licensee-sponsored, and Unknown. Some of the categories may overlap, and the distinctions stem from inherently subjective judgment calls from bare assertions found within the (oft-brief) FCC's Electronic Comment Filing System ("ECFS") documents.

Before reviewing the results of the analysis, please note the following: 1) Many of the for-profits claimed the entity had financial difficulties and remained unprofitable; 2) some individuals might be profit-seeking and some avowed for-profit 'organizations' actually consist of a single person; 3) both for- and non-profit organizations produced religious, entertainment, and public affairs programming; and 4) the licensees often requested exemptions for multiple programs, some of which might be public affairs or non-revenue based, but the licensees themselves exist as for-profit organizations. The tables below summarize the results.²⁷

Churches comprised a majority of the requesting entities (52%). For-profit entities, although many claimed significant losses, provided the second largest number of closed captioning exemption requests (34%). Surprisingly, secular non-profits provided a mere 6% of the exemption requests. Religious programming also constituted the bulk of closed captioning requests (55%), with three times the amount of requests as the next closest programming type.

While few requestors provided financial information in their exemp-

25. The FCC continues to place these applications on Public Notice, and thus this data provides only a sample of all waiver applications filed since the *Anglers Order*.

26. This paper analyzes 666 entries available on the Commission's Electronic Comment Filing System ("ECFS") as of January 2007. ECFS provided no information for the following case numbers: 56, 122, 173, 187, 25, 310, 358, 363, 368, 409, 412, 451, 637. The Public Notice omitted the following case numbers, but these filings remained available on ECFS and are included in the tallies: 42, 90, 158, 178, 335, 438, 486, 634, 638, 678, and 680.

27. Copies of the underlying research for these tables are available from the author.

TABLE A

Type of Organization	Number	Percentage
Church	375	52%
For-Profit	245	34%
Other Non-Profit	42	6%
Individual	36	5%
Governmental	13	2%
Unknown	4	.6%
TOTAL:	715	

TABLE B

Type of Programming	Number	Percentage
Religious	393	55%
Entertainment	130	18%
Infomercial	105	15%
Public Affairs	56	8%
Licensee	21	3%
Unknown	10	1%
TOTAL:	715	

tion requests,²⁸ the analysis identified several entities with budget surpluses that could easily be applied to closed captioning expenses. The surpluses included funds of approximately \$50,000,²⁹ more than \$6 million,³⁰ and nearly \$650,000.³¹ Several of the organizations boasted multi-million dollar budgets, yet still requested an exemption from the closed captioning rules. For example, the Heritage Christian University claimed \$2.5 million in annual revenues,³² the Diocese of Lake Charles claimed total net assets of more than \$4 million,³³ the Whitesburg Bap-

28. This flaw alone should deny them an exemption under the "undue burden analysis" or the proposed automatic exemption.

29. CGB-CC-0090, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518524995 (last visited April 8, 2007).

30. CGB-CC-0492, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526707 (last visited April 8, 2007).

31. CGB-CC-0126, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518724441 (last visited April 8, 2007).

32. CGB-CC-0492, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526707 (last visited April 8, 2007).

33. CGB-CC-0275, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518525713 (last visited April 8, 2007).

tist Church listed year-to-date revenues of \$3.5 million,³⁴ and the Cornerstone Christian Church listed 2005 revenues at \$1.2 million.³⁵

VI. THE COST OF CLOSED CAPTIONING

The entities requesting an exemption claimed outsourcing closed captioning services costs between \$300 and \$600 per hour.³⁶ Aberdeen Captioning, a favorite of religious broadcasters, told the FCC that it could provide captioning for as little as \$120 per hour.³⁷ Some of these requestors noted that live or rushed (48 hour) service costs more, and captioning equipment can cost \$10,000 plus labor.³⁸ Given these figures, the maximum cost for a weekly 30-minute show would be \$15,600 per year. Again, this paper makes no determinations on the individual worth of specific captioning exemption requests under the undue burden standard.

VII. CRITICISMS OF THE ANGLERS ORDER

While other parties attack the *Anglers Order* on administrative law or communications law grounds, this paper criticizes the *Anglers Order* as failing to comprehend non-profit policy issues. Specifically, the *Anglers Order* fails to distinguish between different types of non-profits and different types of revenue streams.

This paper begins from the proposition that non-profit status legitimately fits within the closed captioning exemption framework. Commentators on an earlier FCC matter informed the FCC of provisions of a

34. CGB-CC-0059, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526995 (last visited April 8, 2007).

35. CGB-CC-0133, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526267 (last visited April 8, 2007).

36. Organizations claimed they received quotes for the following amounts: CGB-CC-0574 (\$470 per week), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909667 (last visited April 8, 2007); CGB-CC-0492 (\$346 per week), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526698 (last visited April 8, 2007); CGB-CC-0524 (\$300 per week), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526598 (last visited April 8, 2007); CGB-CC-0475 (\$600 per hour), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526902 (last visited April 8, 2007); CGB-CC-0369 (\$300 per week), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518525958 (last visited April 8, 2007); CGB-CC-0222 (\$100-\$300 per hour), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526148 (last visited April 8, 2007); CGB-CC-0083 (\$130 per week), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518524583 (last visited April 8, 2007).

37. Application for Review, *supra* note 7, at Exhibit D.

38. *Id.*; See generally CGB-CC-0590, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526752 (last visited April 8, 2007).

Conference Report that suggest non-profit status should be a relevant question in the undue burden determination.³⁹ Specifically, a footnote of a previous FCC decision noted: “when considering exemptions under paragraph (d)(1), the Commission shall consider several factors, including but not limited to: . . . (6) the non-profit status of the provider.”⁴⁰ The *Anglers Order* cited to other portions of the legislative history,⁴¹ but not this one. Had the *Anglers Order* cited this particular piece of legislative history, the non-profit status factor would carry greater weight. As discussed above, however, the CGB repeatedly referred to the non-profit status of the requestors and used non-profit status as the first prong of the *Anglers Order* presumption.

Assuming that non-profit status may legitimately serve in the undue burden analysis, several non-profit policy criticisms to the *Anglers Order* still exist. First, different non-profits possess different burdens and different budgets. Second, non-profit status alone fails to create economic hardship. Finally, the *Anglers Order* fails to recognize alternative revenue streams.

A. DIFFERENT BURDENS AND BUDGETS

As a threshold matter, different non-profit organizations have differing budgets and burdens. The undue burden analysis for a small church’s Sunday-morning worship television show would differ from an undue burden analysis for Georgetown University (or another large, well-funded non-profit organization). In the Application for Review, the disability advocates noted a lack of a tie between the *Anglers Order* presumption and financial hardship, but failed to note that non-profit status itself lacks the indicia of information to explain the burden on an entity. As discussed previously, several entities requesting an exemption had multi-million dollar annual budgets or large amounts of cash reserves in spite of, or maybe because of, non-profit status.

The *Anglers Order* fails to ask about the budgetary status of the exemption requestors, instead applying the vague analysis to non-profits as an entire category. Without requesting such information, the *Anglers Order* presumption fails to even take notice of the differences in budgetary situations of different types of non-profits.

39. Opposition to Application, *supra* note 9, at 7.

40. In the Matter of Closed Captioning and Video Description of Video Programming, Report and Order, 13 FCC Rcd 3272 (1997) (citing fn 306, Eternal World Television Network Reply Comments at 6 (citing Conf. Report 104-458, 104th Cong. 2d Sess. 183)).

41. *Anglers Order*, *supra* note 2, at n. 19, n. 26.

1. *No Economic Hardship*

The *Anglers Order* presumption assumes that a non-profit organization will be in financial hardship. Many examples will belie such an assumption.⁴² For example, many non-profit hospitals and educational institutions actively compete with similar for-profit institutions.⁴³ By divorcing the exemption analysis from true financial questions and relying on the 'non-profit' label, the CGB mischaracterizes the nature of the current U.S. non-profit sector.

Additionally, the *Anglers Order* "termination" or "curtail" language for a non-profit's activities could be read by the CGB to refer only to logistical or administrative burdens.⁴⁴ For example, missing deadlines for closed captioning would curtail an organization's activities without having any real effect on finances as Congress contemplated in the statute.⁴⁵ For those non-profits who indeed possess only shoestring budgets, an administrative burden could prove fatal. For the non-profits with large administrative staffs,⁴⁶ however, a bit of additional administrative burden may only become a minor administrative inconvenience.

2. *Other Revenue Streams*

The *Anglers Order* also limits financial considerations in the presumption only to "compensation from video programming distributors."⁴⁷ Another portion of the *Anglers Order* uses broader terms when it states, "[t]hese entities are non-profits that do not receive compensation for making their programming available."⁴⁸ The language of the actual presumption, however, focuses on compensation only from the video programming distributors, such as a television station, without referring to other possible revenue streams.

This limitation ignores several viable revenue streams that could conceivably make a television program a money-maker for a non-profit institution. Several alternative streams include: 1) sponsorships and advertising; 2) direct appeals to viewers; and 3) membership dues. Cer-

42. See Urban Institute, *Accumulations of Wealth by Nonprofits*, <http://www.urban.org/publications/311022.html> (last visited Apr. 8, 2007).

43. See, e.g., CGB-CC-0345, *available at* http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526588 (last visited April 8, 2007); see generally Jerold Schiff, *Competition Between For-Profit And Nonprofit Organizations In Commercial Markets*, *Annals of Public and Cooperative Economics* 62 (4), 619-640 (1991).

44. *Anglers Order*, *supra* note 2.

45. 47 U.S.C. § 613 (2006).

46. E.g., OHR Career Center, *Museum Careers*, <http://www.sihr.si.edu/museum.htm> (last visited April 8, 2007) (The Smithsonian Institution has a staff of more than 6,000 employees.).

47. *Anglers Order*, *supra* note 2, at 4.

48. *Anglers Order*, *supra* note 2, at 3.

tainly, other revenue streams could spring from the television programs, but this basic list of alternative streams shows the FCC misunderstands the nature of the non-profit sector.

The CGB's emphasis on compensation from programming distributors evinces that the CGB remains in the for-profit mindset of licensees purchasing commercial programming. It ignores (or chooses to rest its argument upon) the fact that non-profit entities lack the bargaining power of a Viacom or NBC Universal, and instead of selling their product, these non-profits must buy time to display their product to the masses. One could argue that the CGB assumes this reverse bargaining power as one of the elements of the undue hardship analysis because it adds to the cost of production (although the *Anglers Order* mentions nothing of that sort).

Even if the CGB recognized the difference in bargaining power that non-profits looking to air their material face, it failed to understand the alternative revenue streams that non-profits enjoy.⁴⁹ Unlike for-profit programmers, non-profit entities have the benefit of a tax exemption that allows sponsors, viewers, and members to provide tax-deductible contributions in lieu of distributor fees to the programmer.⁵⁰ While for-profit programs can also obtain non-tax-deductible revenue through sales (as shown by the high number of infomercials in the chart above) and sponsorships, the *Anglers Order*, by its terms, applies only to non-profits. Regulators should consider additional revenue streams in both the for-profit and non-profit contexts under the undue burden analysis. By limiting the consideration of compensation to the distributor, the *Anglers Order* ignores the extensive financial support for a program that can come via these tax-deductible avenues.

VIII. THE VIRTUES OF THE PROPOSED AUTOMATIC EXEMPTION

The proposed automatic exemption meets the CGB's goal of easier administration, while remaining true to a realistic analysis of financial strength in the non-profit community. The proposed automatic exemption would apply to a: 1) non-profit entity, 2) who applies to the FCC for an exemption, 3) and can show less than \$25,000 in annual revenue, and 4) receives no financial compensation for the airing of the program from the distributor, sponsors, or direct solicitation from views. Any entity that fails to meet one of the proposed automatic exemption prongs is still entitled to a full undue burden analysis.

49. See e.g., Guiestar.org, True Sustainability: A New Model to Aid Nonprofits in Developing, <http://www.guiestar.org/DisplayArticle.do?articleId=795> (last visited Jan. 3, 2008).

50. 26 U.S.C. § 501(c) (2006).

A. NARROWED POOL OF AUTOMATIC EXEMPTIONS

Under this recommendation, the pool of automatic exemptions would certainly narrow. Organizations with multi-million dollar annual budgets would not qualify. The small church or non-profit would fit comfortably in this section, while a large organization that could legitimately afford closed captioning would be subjected to the more intrusive full undue burden analysis.

The proposed automatic exemption would be automatic, and not in legalese of a presumption. A presumption fails to meet the goals of easy administration because extra review would still be required for each application. Of course, opponents could challenge an automatic exemption before the full FCC or in court, as a completed governmental action (assuming they meet standing requirements).⁵¹ However, given the strong limitations on the proposed automatic exemption with a narrow pool of grantees, few opponents would endeavor to challenge a grant of the exemption given the high legal costs associated with such a challenge. If the FCC used a mere presumption as opposed to a final agency action, the delays in the review period would allow temporary exemptions to continue indefinitely.⁵² Under this proposal, both sides have the opportunity to make their arguments on a few completed agency actions that fit within the narrow pool.

Disability rights advocates would likely accept this compromise as including institutions that truly face an undue burden when closed captioning costs would be at least half of their annual revenues. The megachurches may oppose such limitations, but many smaller churches would comfortably fit within that limit. Non-profit institutions would also prefer the certainty of an automatic exemption as opposed to a presumption.

B. FILING REQUIREMENTS

The proposed automatic exemption would only apply after an entity requests it from the FCC. The request requirement will allow the FCC to maintain records of exempted organizations for detection, tracking, and enforcement purposes. The request requirement will discourage entities currently providing closed captioning from discontinuing captioning services in favor of the proposed automatic exemption because the request will become a matter of public record. If an entity could easily

51. 47 U.S.C. § 405 (2006); 5 U.S.C. § 706(2)(A) (2006).

52. See FCC, *Closed Captioning of Video Programming General Information*, http://www.fcc.gov/cgb/dro/general_cc_information.html (last updated Oct. 17, 2006) ("Pursuant to the Commission's rules, the programming that is the subject of the undue burden exemption petition is exempt while the petition is pending. There is no form for these petitions, and electronic and fax filing is not available.").

just cease captioning without a filing, less pressure would exist to maintain the captioning service.

If it accepts this (or a similar) recommendation, the FCC should provide a standard form online for entities to submit. This article includes a recommended form in Appendix A. The recommended form in Appendix A includes all of the necessary queries, but lacks the “look and feel” of an ordinary federal government form. Governmental entities should be able to redesign the style of the form, but maintain its substance. The completed forms should be posted online in the FCC’s ECFS database after receipt so that interested parties may monitor the exemptions.

C. EQUIVALENCE WITH FORM 990

Non-profit organizations with less than \$25,000 in annual revenues need not file a Form 990 with the Internal Revenue Service (“IRS”).⁵³ The proposed automatic exemption uses the \$25,000 standard in order to make organizations that must file a Form 990 easily identifiable by searching public and private databases. If a lower-level employee at the FCC finds a filed Form 990 indicating more than \$25,000 in revenues, the entity will no longer remain in consideration for the proposed automatic exemption. The entity could of course request a full undue burden review. Truly deserving non-profits will receive speedier processing and a more objective review using the Form 990 cutoff. Some entities not required to file a Form 990 may file one anyway, but a reviewer should easily be able to tell if the information on the form indicates revenues over \$25,000.

While churches also have an exemption from the Form 990 requirement, the \$25,000 cutoff serves as a prior federal judgment of what constitutes a burden on a small non-profit. The FCC has a stronger argument on fairness by using the decisions of other federal bodies to indicate what constitutes a true burden on a non-profit organization.

While the lack of financial information provided by most entities listed in the Public Notice avoids a comprehensive review of whether those applications would fail under the \$25,000 threshold, it can easily be assumed that many small non-profits operate at less than 25,000 in revenues per year.⁵⁴ In fact, an industry report showed hundreds of

53. See, IRS, *2006 Instructions for Form 990 and Form 990-EZ* 3-4, <http://www.irs.gov/pub/irs-pdf/i990-ez.pdf> (last visited April 8, 2007).

54. National Council of Nonprofit Associations, *The United States Nonprofit Sector*, http://www.ncna.org/uploads/documents/live/us_sector_report_2003.pdf (last visited Apr. 8, 2007) (“There were a total of 837,027 charitable nonprofits in the United States, excluding foundations and religious congregations. 288,150 charitable nonprofits had gross receipts of over \$25,000 in 2003 and filed IRS Form 990.”).

thousands of non-profits operate below this threshold.⁵⁵

The \$25,000 cutoff also assumes that even if an entity has \$24,999 in revenues, the closed captioning costs would equal around half of its entire budget. At such a huge proportion of the overall budget disbursements, the situation explains the congressional intent to create an undue burden exception. Congress provided both the tax exemption statute and the closed captioning exemption statute to foster the ideas and services that come from the non-profit sector. If a large proportion of the non-taxable revenues funds closed captioning instead of providing services or ideas, an undue burden becomes apparent.

D. OBJECTIVE FINANCIAL CRITERIA

To determine coverage of the automatic exemption, two objective financial factors are the \$25,000 limitation and the ban on other compensation from the distributor, sponsor, or direct solicitation. Under the *Anglers Order*, requestors could provide self-serving, vague, and inherently subjective statements about terminating or curtailing activities. The proposed automatic exemption focuses solely on objective, baseline criteria, and thereby removes from the analysis the effects of nebulous and invariably biased statements.

Some may argue that the financial effect of closed captioning costs on the particular organization varies by the type of programming and media market, and therefore, that effect should be included in the review. That information would remain a part of the full undue burden analysis, but it has no place in an administratively simple automatic exemption. However, assuming that entities with revenues under \$25,000 face an undue burden, the FCC will certainly trade administrative simplicity for a full and lengthy review. Such a tradeoff underlies the entire purpose of a presumption or automatic exemption, and results in a smaller cost on the regulatory system than full-fledged review because of lower staff costs and processing time.

E. OTHER REVENUE STREAMS

Additionally, organizations that use the programming as a means to directly solicit donations would fall outside the automatic exemption.⁵⁶

55. Simple math leaves 548,877 secular non-profits with under \$25,000 in annual revenues in 2003. *Id.*

56. *See Red Lion Broad. Co. v. Fed. Commun. Commn.*, 395 U.S. 367 (1969) (The recommended automatic exemption assumes the organization makes a "direct solicitation." If the organization makes no solicitation in the programming, but receives a donation, the entity would still qualify for the exemption. A question of the First Amendment burdens on speech may arise by denying automatic exemptions to those non-profit organizations that directly solicit funds during their programming. Yet, the availability of the full undue bur-

The prong excluding organizations that directly solicit contributions will serve to remind organizations of their statutory obligation to provide closed captioning, and will allow organizations to specifically request money to defray closed captioning costs. Disability advocates will appreciate the fuller financial picture, while programmers will understand they cannot evade the closed captioning requirements by seeking their revenues through alternative routes.

F. FULL UNDUE BURDEN ANALYSIS

Despite all the arguments above, a key point remains: the full undue burden analysis will still be available to entities seeking a closed captioning exemption. Congress gave only programmers the ability to file for an undue burden exemption.⁵⁷ Essentially, the FCC would be furnishing organizations with an extra gift by lessening any administrative burdens necessary to satisfy the day-to-day demands of the FCC. No presumption or automatic exemption exists in the statute, and the FCC need not create one. The proposed automatic exemption retains the full statutory right to an undue burden analysis, and organizations that fail to meet the proposed standard will be in the same position as in the *Pre-Anglers Order* days.

IX. CRITICISMS OF THE PROPOSED AUTOMATIC EXEMPTION

The proposed automatic exemption will, of course, face criticism. Critics will argue the proposed automatic exemption is flawed because: 1) churches need not file a Form 990; 2) the \$25,000 threshold is too high; 3) the objective factors ignore logistical difficulties; 4) organizations could create shell 501(c)(3) organizations; and 5) the full undue burden analysis will be necessary far too often. This section attempts to diffuse some of the strongest claims against the proposal's acceptance, but with the understanding that in law and politics, perfection may be unachievable.

A. CHURCHES AND THE FORM 990

The inapplicability of the Form 990 requirements to churches provides the strongest attack on the proposed regime.⁵⁸ Without the re-

den analysis and the lower scrutiny given to broadcast speech likely overcomes those concerns.).

57. 47 U.S.C. § 613 (2006).

58. See Annual Exempt Organization Information Returns, <http://www.irs.gov/charities/charitable/article/0,,id=123308,00.html> (last visited Jan. 3, 2008) ("Every organization exempt from federal income tax under Internal Revenue Code section 501(a) must file an annual information return *except*: a church.").

quired forms, the easy database search exists only as an illusory promise. How will the FCC obtain this financial information otherwise?

Before offering a realistic solution to the inapplicability of a Form 990, one must consider the constitutional implications of requiring financial information from churches in order to obtain the closed captioning exemptions. The IRS removes the Form 990 requirement from churches (although it remains for other religious entities) to avoid government interference in religion.⁵⁹ The previous analysis of the entities included in the FCC Public Notice separates churches from other non-profit entities.

Well-settled law allows the FCC to apply its requirements to religious entities on the basis of content-neutral concerns without creating a "substantial burden" on free exercise.⁶⁰ Many churches, including several of the egregious examples listed in the introduction, volunteered their financial information to the FCC in the exemption filings.⁶¹ For organizations that refuse to provide their financial information voluntarily because of the public nature of FCC filings, the FCC already has an existing confidentiality option that accommodates this concern.⁶²

A realistic solution to the problem of a lack of Form 990 filings for churches involves a self-certification regime. The FCC rules already contain confidentiality protections that would extend to this proposed self-certification regime. The solution promulgates creating a place on the

59. See IRS, *Tax Guide for Churchs and Religious Organizations*, available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf> (last visited Apr. 8, 2007).

60. See *King's Garden, Inc. v. FCC*, 498 F.2d 51, 60 (D.C. Cir. 1974), cert. denied, 419 U.S. 996 (1974).

61. See e.g., CGB-CC-0492, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526707 (last visited: Apr. 8, 2007); see also CGB-CC-0275, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518525713 (last visited Apr. 8, 2007); CGB-CC-0059, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526995 (last visited Apr. 8, 2007); CGB-CC-0133, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526267 (last visited Apr. 8, 2007).

62. FCC, Exemptions to the Closed Captioning Requirements on the Basis of Undue Burden, http://www.fcc.gov/cgb/dro/caption_exemptions.html (last visited Apr. 9, 2007) ("Pursuant to Commission rules, the petition, as well as any supporting financial information provided, will be available for public inspection in the Commission's Reference Information Center. The Commission endeavors to make this available on its website, as well. As such, petitioners should redact social security numbers and employee identification numbers from their submissions. Petitioners requesting confidential treatment of any information contained in a petition must specifically request such treatment in writing. Please note, however, that the "public version" of the petition must contain sufficient documentation to support the petitioner's claim that closed captioning would pose an undue burden."); see Memo. from Charles R. Naftalin, Holand & Knight, LLP, to Marlene H. Dortch, Sec'y, FCC, ReelzChannel, LLC, Petition for Partial Closed Captioning Exemption Request that Financial Information Be Withheld from Public Inspection (Sept. 27, 2006), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518531794 (last visited Apr. 8, 2007) (submitting a confidentiality request).

proposed form where a non-profit could self-certify, under penalty of perjury, that while not required to file a Form 990, the non-profit revenues remain below the \$25,000 annual threshold. Self-certification presumes honesty in filling out the form, particularly from clergy members. Nevertheless, a broad variety of fraud or perjury charges are available against a person who falsifies information on this form. The FCC could either A) accept the self-certification as sufficient or B) put only the self-certification online and require the financial information in a confidential attachment. Either way, the church need not make its financial information public, and the FCC could be assured of more objective financial information than it currently receives in the *ad hoc* letters requesting closed captioning exemptions.

B. THE \$25,000 THRESHOLD IS TOO HIGH

Some might argue that an organization with less than the \$25,000 cap may still be able to afford closed captioning, and thus, should not benefit from an automatic exemption. For example, an organization: 1) made up entirely of volunteers; 2) with no office space; and 3) a \$500 per 30-minute monthly show production cost, would only require \$6,000 for the show, and approximately \$3,600 for the captioning.⁶³ A non-profit with annual revenues of \$10,000 would be exempt under the proposed automatic exemption, even though the organization in fact has the means to afford closed captioning.

On the other hand, non-profit status means the government has already decided to impart some favored treatment to these small entities, which is especially pertinent to entities with less than \$25,000 in annual revenues. An organization with such low revenues would perhaps be able to hire a full-time staff member or rent office space. Along with the additional thousands of dollars in expenses for closed captioning, it would almost certainly prove to be an undue burden under a full analysis.

To overcome this problem, this paper recommends internal FCC review as well as judicial review of final actions by the FCC. The significant legal expenses and uncertainty in challenging a request for an exemption ensures that organizations with meager revenues will rarely contest automatic exemptions. Likewise, advocacy groups will allocate scarce resources to more contentious undue burden proceedings. To further strengthen the automatic exemption process, the FCC should use stringent standing or procedural requirements to ensure that each automatic exemption succeeds without a challenge.

63. This calculation uses the high end estimate of \$300.00 per half hour for captioning.

C. OBJECTIVE FINANCIAL FACTORS IGNORE LOGISTICS

Supporters of the *Anglers Order* will argue that the full undue burden analysis extends beyond mere financial concerns to reach logistical questions as well. Since the proposed automatic exemption focuses on financial considerations, critics may argue that it ignores important logistical burdens that Congress sought to address in the undue burden analysis.

Specifically, critics will point to “the impact on the operation of the provider or program owner;” and “the type of operations of the provider or program owner,” as specifically distinct from financial questions about the “nature and cost” of closed captioning and the “financial resources” of the employer.⁶⁴ This criticism focuses upon the statutory differentiation between two factors on financial concerns and two separate factors on logistical concerns. Such criticism mischaracterizes the purpose and implementation of the proposed automatic exemption. The proposed automatic exemption supplements, but will not replace, the full undue burden analysis. The logistical questions will arise in the full undue burden analysis for those exemptions challenged after final agency action or those not granted an automatic exemption.

Additionally, the \$25,000 cap includes an assumption of heavy burdens for small entities. In such a small entity, which is likely without full-time staff or adequate office space, any strain on volunteer time will likely pose a logistical or administrative burden. If a strong entity could survive below the \$25,000 cap through volunteer labor and a headquarters located in an individual’s home, it would likely receive the exemption anyway under an undue burden review. Under such an exemption, the closed captioning requirements will force the small entities, with minimal financial resources, to bear administrative burdens on volunteer time and already thin support for FCC filings, legal fees, and uncertainty.

Those requesting an exemption often claim burdens because of the time-sensitive nature of their programming and the lag time involved in captioning.⁶⁵ The full undue burden analysis for challenged automatic exemptions or organizations that fail to meet the proposed automatic exemption includes this lag time burden. The proposed automatic exemption makes no explicit mention of this particular burden. The argument about lag time boils down to a financial argument. Almost all captioning

64. 47 U.S.C. § 613 (2006).

65. See CGB-CC-0524, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526598 (last visited Sept. 25, 2007) (providing a single example of the oft-cited refrain on lag time).

outsourcing organizations can provide live or overnight service,⁶⁶ but this service costs more.⁶⁷ For any organization that claims a time delay burden, the underlying claim remains a financial question because they essentially argue that the more timely option proves too expensive. This paper adds the time lag time question as part of the financial questions directly addressed by the automatic exemptions. More expensive live or overnight captioning will presumptively prove too expensive for an organization with less than \$25,000 in annual revenues.

D. SHELL 501(C)(3) ORGANIZATIONS

It may seem that a large non-profit could easily evade the narrowly tailored automatic exemption by setting up a shell 501(c)(3) organization with less than \$25,000 in annual revenues, but the requirements of Form 990 make such evasion difficult. Specifically, Line 80a of Form 990 requires disclosure of related entities.⁶⁸ A question in the standard form for requesting a closed captioning exemption would resolve this concern.⁶⁹ The proposed question asks: “Is the requesting organization listed in Line 80a of any other entity’s Form 990 or is the requesting organization related to any organization with more than \$25,000 in annual revenues not required to file a Form 990?”

The entity claiming to fall within the exception likely will not file a Form 990, unless the organization files voluntarily. Therefore, a question regarding the requestors’ Form 990 would prove inconclusive. At the same time, the larger, related organization may fit within another one of the Form 990 exceptions, notably the church exception. To resolve such a problem, the proposed automatic exemption form’s question asks for any related organizations with annual revenues of over \$25,000. The question avoids the use of the word “church” to sidestep any complaints of unconstitutionally targeting religious organizations for favored or unfavorable treatment.

Because the proposed automatic exemption form requires self-certification, organizations will hopefully not lie when answering the question. If organizations do so, a remedy for fraud will be available.⁷⁰ The addition of a question on related entities on the standard form will re-

66. See Captioning Web, <http://www.captions.org/searchall.cfm> (last visited Sept. 23, 2007) (giving information on the hundreds of closed captioning outsourcing providers and the different services these entities provide).

67. Line21, Pricing, <http://www.line21.tv/Pricing.htm> (last visited Jan. 3, 2008) (for example, charging a \$200 overnight charge).

68. IRS, Return of Organization Exempt From Income Tax: Form 990, available at <http://www.irs.gov/pub/irs-pdf/f990.pdf> (last visited Sept. 25, 2007).

69. See *Infra* Appendix A.

70. 47 C.F.R. § 1.17(2003).

solve the problem of shell 501(c)(3) organizations created to sidestep the 1996 Telecommunications Act and FCC closed captioning rules.

E. TOO MANY FULL UNDUE BURDEN ANALYSES REQUIRED

The final criticism discussed in this paper focuses on the narrow pool of organizations entitled to the proposed automatic exemption. Some may argue the reverse and say that the pool remains too narrow and the CGB must still undertake too many full undue burden analyses under the proposed automatic exemption. This paper recognizes the need for administrative simplicity in promulgating the proposed automatic exemption. The administrative simplicity comes via: (1) objective financial criteria; (2) easier database searches; (3) a standardized form; and (4) the very existence of an automatic exemption itself.

At the same time, administrative simplicity and administrative burdens do not appear in Congress' codification of the undue burden analysis. None of the analysis' prongs asks how difficult it will be for the FCC to retrieve or analyze the information, and the burden clearly rests on the entity requesting the exemption. After all, the closed captioning requirements stand as the rule, and the argument revolves around exemptions from that rule. Critics who claim the proposed automatic exemption will still require too many full undue burden analyses ignore the reality that Congress decided that entities should provide closed captioning, EXCEPT in limited circumstances.

Providing the automatic exemption lowers the administrative burden, and this paper accepts the need to lower the burden. By no means should administrative convenience and simplicity overcome the Congressional and the full Commission's intent to require entities to provide closed captioning as a means of providing access to culture, information, and integration for individuals with disabilities. If the FCC must undertake full analyses, then it must undertake full undue burden analyses. The statute calls for such full undue burden analyses, and the individuals who rely on closed captioning deserve either the full analysis or a strong, narrowly tailored set of circumstances that justify automatic granting of closed captioning requests. Those individuals deserve the protection that the 1996 Communications Act affords them, and not a watered-down lack of compliance in the name of administrative convenience.

X. CONCLUSION – THE FCC SHOULD REPLACE THE OVERBROAD *ANGLERS ORDER* PRESUMPTION WITH A NARROWLY-TAILORED FINANCIAL TEST

This paper recommends a narrow exemption from the non-profit requirements for applications filed by non-profits with less than \$25,000 in

annual revenues, and that receive no financial compensation from the program's distributors and sponsors or via direct solicitation in the program(s) described in the waiver application. The virtues of the proposed automatic exemption outweigh the criticisms.

This paper began by discussing the closed captioning rules and the landscape of the exemption requests. An analysis of the FCC's Public Notice on closed captioning exemption requests found the majority of requesting entities and programming to have religious affiliations.

This paper criticizes the *Anglers Order* on non-profit policy grounds because: 1) different non-profits have different burdens; 2) non-profit status alone fails to create economic hardship; and 3) non-profits have a variety of related revenue streams beyond funding from distributors. The proposed automatic exemption attempts to overcome these criticisms.

The proposed automatic exemption faces some predictable criticisms. First, churches need not file a Form 990, potentially thwarting the use of the Form 990 in the proposed automatic exemption. The recommendations rebut this criticism by providing a self-certification option in the standardized form.⁷¹ Second, critics could argue the \$25,000 threshold is too high. Yet, the practical realities of such low funds support an assertion that such an organization would bear an undue burden. Third, some might claim the objective factors ignore logistical difficulties. Much like the second rebuttal, the recommended standard includes assumptions about logistical difficulties for small organizations. Fourth, this paper rebuts the argument that organizations could establish shell 501(c)(3) organizations by creating a standardized question relating to Form 990's Line 80a. Finally, some critics may argue too many situations will require the full undue burden analysis when using the proposed automatic exemption. This paper refers to the underlying congressional policy to require closed captioning and the lack of a statutory administrative burden defense to rebut the final criticism.

Even if some of the criticisms prove valid, the recommended automatic exemption bears many positive attributes. The proposed automatic exemption: 1) appropriately narrows the grantee pool; 2) requires a detailed filing; 3) mirrors the Form 990 limits; 4) utilizes objective financial criteria; 5) includes other revenues in the calculations; and 6) leaves the full undue burden analysis unaffected.

71. *Infra* Appendix A.

APPENDIX A – RECOMMENDED STANDARDIZED FORM

Form XXX for Automatic Exemption from the Commission’s Closed Captioning Rules

*Fields Marked with * are to Qualify for the Automatic Exemption. All Non-Qualified Applications Will Be Referred for a Full Undue Burden Analysis under 47 U.S.C. § 613(e); see also 47 C.F.R. § 79.1(f)(2).*

* Entity Name: _____

* Entity Status: _____ Non-Profit (under 26 U.S.C. 501) or _____ Individual or For-Profit

IRS 501(c)(3) Registration Number (If Available): _____

Compensation – For Non-Profit Entities ONLY

I hereby certify that the entity receives no compensation from the program distributor, sponsors, or through direct solicitations to viewers.

Signature: _____

Revenue – For Non-Profit Entities ONLY

* Previous Year’s Annual Revenue: \$ _____

**** Attach the entity’s Form 990 filing or self-certify to the statement below.***

If not providing a Form 990 – “I hereby certify under the penalty of perjury that the entity above received less than \$25,000.00 in revenues in the last fiscal year.” Signature: _____

* Is the requesting organization listed in Line 80a of any other entity’s Form 990 or is the requesting organization related to any organization with more than \$25,000.00 in annual revenues not required to file a Form 990?

Revenue – For-Profit and Individual Entities ONLY

**** Attach the entity’s or individual’s financial statements for the past fiscal year.***

Confidentiality - OPTIONAL

I hereby request that the FCC maintain the confidentiality of financial information submitted with this application. I understand the completed application will become public record, and the public records will only list whether annual revenues exceed \$25,000.00 or fall below \$25,000.00.

Optional Signature: _____

I hereby warrant that all answers included in this form are true to the best of my knowledge. Initials: _____