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December 19, 2014
via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
44512th Street, SW, Room TW-A325
Washington, DC 20554

Re: Opposition to Petition for Exemption from the Commission's Closed
Captioning Rules
CGB Dkt. No. 06-181

First Baptist of Fort Smith
CGB-CC-0203

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Association of Late-Deafened Adults (ALDA), and Deaf Seniors of America (DSA), collectively, "Consumer Groups," respectfully submit this opposition to the Petition of

*Admitted to the Washington bar only;
DC bar membership pending. Practice supervised by members of the DC bar.

First Baptist Church of Fort Smith, Arkansas (First Baptist) to exempt its programming from the Commission's closed captioning rules.¹

First Baptist's Petition should be denied because First Baptist has failed to show that captioning its program "Hope from Above" would be economically burdensome. As recent FCC precedent shows, captioning is not economically burdensome when a petitioner has excess profits over multiple years that would allow it to pay for captioning. These precedents apply here and dispose of First Baptist's Petition, as it has had ample profits that could easily cover its quoted captioning costs.

I. Background

First Baptist's program "Hope from Above" has had a *de facto* waiver of the captioning rules for almost nine years since the programmer first filed a petition with the Commission in 2006.² Although the Consumer and Governmental Affairs Bureau ("Bureau") initially granted First Baptist's Petition, the full Commission reversed that decision in 2011. The Bureau then gave First Baptist the opportunity to refile its Petition.³ First Baptist renewed its petition on January 20, 2012, which the Consumer Groups opposed because it lacked the necessary information. The Bureau sought additional information from First Baptist in September 2013.⁴ On January 13, 2014, in response to the Bureau's request, First Baptist supplemented its Petition with additional information

¹ *Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 14-1667 (Nov. 19, 2014) ("2014 Public Notice").

² "Hope from Above" is an hour-long Sunday worship service that is broadcast weekly on KFSM-TV, a CBS affiliate, in western Arkansas and eastern Oklahoma. *Petition for Exemption from Closed Captioning Requirements*, First Baptist Church of Fort Smith (Jan. 4, 2006).

³ See *Anglers for Christ Ministries, Inc.*, Dkt No. 06-181, 26 FCC Rcd 14941 (2011) ("Anglers 2011"); See Letter From Office of the Secretary, FCC to First Baptist -Fort Smith, Arkansas (Oct. 25, 2011).

⁴ Letter From Office of the Secretary, FCC to Greg Wooten, First Baptist Church, Fort Smith, Arkansas (Sept. 27, 2013).

regarding its financial resources and price quotes from closed captioning companies.⁵
The Bureau placed the Petition on Public Notice for comment on November 19, 2014.⁶

II. Legal Standard

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video-programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome."⁷ When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission considers the following factors on a case-by-case basis: (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.⁸ The Commission will look at a petitioner's assets, revenues, expenses, and other documentation "from which its financial condition can be assessed" that demonstrates that captioning would impose an undue economic burden.⁹

Recent FCC Orders – *First Lutheran Church of Albert Lea, First Baptist of Jonesboro,* and *Curtis Baptist Church* – have interpreted the economically standard and found that

⁵ Response to Request for Supplemental Information, First Baptist – Fort Smith, Arkansas, CG-Docket No. 06-181 (Jan. 13, 2014) ("January Supplement"); Response to Request for Supplemental Information, First Baptist – Fort Smith, Arkansas Dkt. No. 06-181 (June 25, 2014) ("June Supplement").

⁶ 2014 Public Notice.

⁷ 47 U.S.C. § 613(d)(3). 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 Bureau to continue to evaluate all exemption petitions using the "undue burden" standard pursuant to Rule 79.1(f)(2)-(3).

Interpretation of Economically Burdensome Standard, 27 FCC Rcd 8831, 8835, ¶7 (2012).

⁸ *First Baptist Church, Jonesboro Arkansas*, Order, Dkt. No. 06-181, DA 14-1542¶3 (Oct. 24, 2014).

⁹ *Id.* at ¶¶ 13-14.; see *Curtis Baptist Church*, Order, Dkt. No. 06-181, DA 14-1774, ¶14 (Dec. 5, 2014); *First Lutheran Church of Albert Lea*, Order, Dkt. No. 06-181, 29 FCC Rcd 9326, ¶¶14-15 (2014).

when petitioners have excess revenue and/or net assets that could cover their captioning costs, compliance with the Commission's captioning requirements would not impose an undue burden.¹⁰ In all three cases, each petitioner's financial resources showed that they had multiple years of net profits and net assets. When the Commission subtracted the petitioners' quoted captioning costs from their net profits and assets, the petitioners each had excess profits or assets.¹¹ Because the petitioners would still have operated with excess profits or assets even after accounting for their closed captioning costs, the FCC found that it would not be economically burdensome to provide captions.¹²

III. First Baptist has Failed to Demonstrate that Captioning "Hope From Above" would be Economically Burdensome.

First Baptist's Petition should be denied because it has failed to show how captioning its programming would be economically burdensome, as it could provide captioning and still have excess revenue and assets. First Baptist's Petition is analogous to recent petitions the FCC denied in *First Lutheran Church of Albert Lea*, *First Baptist of Jonesboro*, and *Curtis Baptist Church*. In those cases, the petitioners had excess profits and/or assets that would cover their quoted captioning costs.¹³ Because First Baptist's excess profits and assets would cover its captioning costs, just as the FCC found in three cases above, compliance with the Commission's captioning rules would not be economically burdensome.¹⁴ First Baptist is financially healthy, having operated with net profits and assets in all years for which it provided information to the Commission. Thus First Baptist should be required to comply with the Commission's closed captioning requirements.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Curtis Baptist Church* at ¶¶13-14 (Dec. 5, 2014); *First Baptist Church, Jonesboro Arkansas* at ¶¶13-14; *First Lutheran Church of Albert Lea* at ¶¶14-15.

¹⁴ *Id.*

First Baptist's captioning costs would easily be covered by its excess profits and assets. According to First Baptist's petition, the three captioning quotes it obtained demonstrate that captioning "Hope from Above" would cost less than \$200 per week.¹⁵ Based on those quotes, First Baptist's annual captioning costs would be approximately \$5,304.¹⁶

First Baptist's financial statements show that it has been carrying forward profits of at least \$120,000 since 2011.¹⁷ According to First Baptist's supplemental information, it had net revenue of \$120,449 in 2013.¹⁸ In 2012, First Baptist's net revenue totaled \$508,812 while it reported \$336,191 in net revenue in 2011.¹⁹ First Baptist has also had net assets in 2011 and 2012 that far exceed its liabilities. In 2012, First Baptist reported available net assets of \$8,313,728.²⁰ In 2011, First Baptist's net assets totaled \$8,048,076.²¹

When First Baptist's captioning expenses are subtracted from its net profits and assets, petitioner would still have ample resources left over. For example, if First Baptist paid \$5,304 annually to caption "Hope from Above" in 2011, 2012, and 2013, it would still have had surplus revenues of \$330,887, \$503,508, and \$115,145 each year. Hence, First Baptist's annual profits are significantly greater than its quoted captioning costs. After subtracting its available net assets from its closed captioning costs, First Baptist would still have between \$8,308,424 and \$8,042,772 in net assets 2011 and 2012.

¹⁵ First Baptist's quote from VITAC for closed captioning estimated at a minimum \$7,800 annually (\$150 per 60 minute weekly program). June Supplement at 1. First Baptist's quote from Captionmax estimated at a minimum \$9,360 (\$180 per 60 minute weekly program) plus an additional \$5,200 for reformatting closed caption files for website use. *Id.* First Baptist's quote from Caption Associates, LLC (through local CBS affiliate) estimated annual captioning costs of \$5,304 (\$102 per 60 minute weekly program). *Id.*

¹⁶ The estimate is based off the lowest quote from Caption Associates, LLC. *Id.*

¹⁷ January Supplement at 4-5.

¹⁸ January Supplement at 4.

¹⁹ *Id.* at 5; Response to Request for Supplemental Information at 15, First Baptist - Fort Smith, Arkansas Dkt. No. 06-181 (May 14, 2012) (May 2012 Supplement).

²⁰ Report on Examination of Financial Statements, January Supplement at 3.

²¹ *Id.*

Because First Baptist's net profits and assets could easily cover the cost to caption "Hope from Above" and still leave the petitioner with excess revenue, captioning cannot be economically burdensome. First Baptist's financial records demonstrate that it has more than enough income and assets to support its other programs while still providing captioning. Thus, the Commission should deny the Petition.

Because First Baptist has failed to show that captioning would be economically burdensome, the Commission need not reach other arguments raised by Petitioner. Nonetheless, Consumer Groups respond to two of First Baptist's arguments that are incorrect. First, First Baptist claims that paying for captioning will divert funds from several other ministries.²² The Commission has repeatedly rejected this argument. Most recently in *Jonesboro*, the Bureau explained that a petition must "focus on the impact that captioning will have on the petitioner's programming activities . . . not other activities or missions that are unrelated to that programming."²³ Second, First Baptist claims that it has not engaged potential sponsors because it believes doing so would be improper.²⁴ Consumer Groups reiterate that a petitioner's preference not to engage sponsors cannot relieve it of its obligation to comply with the Commission's closed captioning rules. Petitioners should not be able to decline sponsorship for programming and simultaneously claim that captioning would be economically burdensome.

IV. Conclusion

First Baptist cannot show that captioning "Hope from Above" would be economically burdensome. Indeed, its financial resources indicate that it has ample profits and assets to cover captioning costs and still have ample reserves left over. Thus, Consumer Groups ask the Commission to deny First Baptist's Petition and require it to begin captioning its programming.

²² January Supplement at 3.

²³ *First Baptist Church, Jonesboro Arkansas* at ¶8.

²⁴ May 2012 Supplement at 3.

Respectfully submitted,

_____/s/
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December 19, 2014

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CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on December 19, 2014, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Petitioner at the address listed below.

Greg Wooten
Church Administrator
First Baptist Church of Fort Smith
Fort Smith, AR 72901

_____/s/_____
Niko Perazich

December 19, 2014