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February 13, 2015
via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

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

Van Buren First Assembly of God
CGB-CC-0045

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), and Deaf Seniors of America (DSA), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Van Buren First Assembly of God (Van Buren or Petitioner) to exempt its program, "Reach Out," from the Federal Communications Commission's (Commission) closed captioning rules.

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

I. Background

In 2005, Van Buren sought a waiver of the Commission's closed captioning rules for "Reach Out." "Reach Out" is a 30-minute-long religious program that is broadcast weekly on KHBS and KARK-TV in Arkansas.¹ Although the Consumer and Governmental Affairs Bureau (CGB or Bureau) initially granted Van Buren's 2005 Petition, the Commission reversed that decision six years later.² The Bureau then gave Van Buren the opportunity to refile its 2005 Petition, which it did on January 18, 2012.³ In its 2012 Petition, Van Buren requested a three-year waiver.⁴ In September 2013 and May 2014, the Bureau sought additional information from Van Buren.⁵ It was not until June, 27, 2014 that Van Buren completed its petition by submitting a second supplement containing additional information about its financial resources and documentation of recent price quotes from closed captioning services.⁶ The Bureau recently placed the 2012 Petition on Public Notice for comment on January 14, 2015.⁷ For nearly a decade, Van Buren has not been required to comply with the Commission's captioning rules.

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

¹ Letter from Torin L. Johnson, Associate Pastor, Van Buren First Assembly of God, to Office of the Secretary, FCC (Dec. 15, 2005) (2005 Petition).

² See *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941 (2011) (*Anglers Reversal MO&O*).

³ Letter from Joel Gurin, Chief, CGB, to Van Buren First Assembly of God (Oct. 25, 2011); Letter from Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., to Office of the Secretary, FCC (Jan. 18, 2012) (2012 Petition).

⁴ See 2012 Petition at 1.

⁵ Letter from Cheryl J. King, Disability Rights Office, CGB, to Ann Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C. (Sept. 27, 2013); Letter from E. Elaine Gardner, Disability Rights Office, CGB, to Ann Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C. (May 30, 2014).

⁶ Letter from Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., to Office of the Secretary, FCC (Nov. 4, 2013) (2013 Supplement); Letter from Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., to Office of the Secretary, FCC (June 27, 2014) (2014 Supplement).

⁷ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-55 (Jan. 14, 2015).

be “economically burdensome.”⁸ When determining whether a petition 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.⁹ The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner’s current assets, current liabilities, revenues, expenses, and other documentation “from which its financial condition can be assessed.”¹⁰

III. Discussion

A. **Van Buren’s request for a three-year exemption should be dismissed as moot because Van Buren has already received the equivalent of a three-year exemption.**

Van Buren’s petition should be dismissed because it has already received a *de facto* three-year waiver. More than three years ago, on January 18, 2012, Van Buren specified that it sought a three-year waiver¹¹ and since then Van Buren has not been required to caption “Reach Out.” Because the requested three-year waiver period elapsed on January 18, 2015, the Bureau need not provide any further relief. Thus, the Commission should dismiss Van Buren’s waiver request and require it to begin captioning.

B. **Van Buren has failed to demonstrate that captioning “Reach Out” would be economically burdensome.**

If the Commission interprets Van Buren’s petition as seeking a waiver beyond the three years previously requested, it should nonetheless deny it. As will be shown

⁸ 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, 8834 ¶7 (2012).

⁹ *First Baptist Church, Jonesboro, Arkansas*, Dkt. No. 06-181, DA 14-1542, ¶3 (Oct. 24, 2014).

¹⁰ *Id.* at ¶¶ 13-14; see *Curtis Baptist Church*, Dkt. No. 06-181, DA 14-1774, ¶14 (Dec. 5, 2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

¹¹ 2012 Petition.

below, when Van Buren's "overall financial resources" are analyzed, captioning would not be economically burdensome.¹²

Van Buren's captioning costs are quite modest. Van Buren obtained four quotes to caption its program, ranging from \$80.00 per week to \$225.00 per week.¹³ Based on the lowest quote of \$80.00 per week from KARK-TV, Van Buren's annual captioning costs would be \$4,160.00.¹⁴

When Van Buren's captioning costs are compared to its financial resources, Petitioner could afford to caption its programming. Consumer Groups acknowledge that Van Buren reports net losses of \$224,212.00 in 2011¹⁵ and \$617,660.00 in 2012.¹⁶ Those losses alone should not determine whether captioning would be economically burdensome, however, because Van Buren has ample net current assets to cover its small captioning costs.

For example, Van Buren reported net current assets of \$220,775.00 in 2011 and \$218,975.00 in 2012.¹⁷ If Van Buren paid \$4,160.00 per year to caption "Reach Out," it would still have had net current assets of \$216,615.00 in 2011 and \$214,815.00 in 2012. Van Buren's net current assets in both years indicate that the provision of closed captioning would not be economically burdensome, despite its reports of net loss. Van Buren's financial statements define current assets as "cash and cash equivalents,"¹⁸ which suggests that Van Buren's net current assets are sufficiently liquid to cover the cost of captioning.¹⁹

The conclusion that captioning Van Buren's programming would not be economically burdensome is further supported by the Bureau's recent decision in *First*

¹² *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015).

¹³ 2014 Supplement at 5-17.

¹⁴ *Id.* at 5.

¹⁵ 2013 Supplement at 38.

¹⁶ *Id.*

¹⁷ *Id.* at 37 (reporting current assets of \$403,634.00 and current liabilities of \$182,859.00, resulting in \$220,775.00 in net current assets); *Id.* (reporting current assets of \$538,572.00 and current liabilities of \$319,597.00, resulting in net current assets of \$218,975.00).

¹⁸ *Id.*

¹⁹ *Id.* at 32, 40. Van Buren's argument that Consumer Groups have overlooked the illiquidity of many of its assets should be dismissed. Petitioner's records indicate that in 2011, it reserved more than \$300,000.00 in an operating account with Citizens Bank. In 2012, it reserved more than \$400,000.00 in that same operating account.

United Methodist Church of Tupelo.²⁰ In that case, the Bureau denied a petitioner's waiver request even though it reported net loss because the petitioner had ample net current assets. The Bureau found that based on a review of all of the petitioner's resources, requiring it to caption would not be economically burdensome, despite the petitioner's net loss in 2012.²¹ The same principle applies here; Van Buren's ample net current assets demonstrate that captioning would not be economically burdensome even though Van Buren reports annual losses.

Because Van Buren has failed to show that captioning would be economically burdensome, the Commission need not reach other arguments raised by Van Buren. Nonetheless, Consumer Groups respond to Van Buren's claim that paying for closed captioning will divert funds from other ministries. Van Buren asks, "[w]ould the Advocacy Groups have Van Buren divert funds from helping poor and hungry people to providing closed captioning?"²² The Commission has repeatedly rejected this type of argument, explaining 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

IV. Conclusion

As an initial matter, Van Buren's petition should be dismissed because it has already received a three-year waiver. Alternatively, Van Buren has not shown that captioning "Reach Out" would be economically burdensome. Indeed, its financial resources indicate that it has ample net current assets to cover captioning costs. Thus, Consumer Groups ask the Commission to deny Van Buren's petition and require it to caption its programming. If the Commission does conclude that Van Buren has demonstrated that its financial situation makes captioning costs economically burdensome, Consumer Groups ask that the Commission only approve an extremely limited exemption. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a petitioner may change, the Commission should refrain from granting lengthy or open-ended exemptions.

²⁰ *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154 (Feb. 3, 2015).

²¹ *Id.* at ¶14.

²² Letter from Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., to Office of the Secretary, FCC at 2-3 (July 6, 2012).

²³ See e.g. *First United Methodist Church of Tupelo* at ¶15 (citing *Anglers Reversal MO&O*, 26 FCC Rcd at 14951-52, ¶20).

Sincerely,

/s/

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/s/

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CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on February 13, 2015, 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.

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/s/

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February 13, 2015