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March 16, 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

**Riverbend Church**  
CGB-CC-0520

Dear Ms. Dortch:

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

\*Admitted to the Washington bar only;  
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exemption of its programming from the Federal Communications Commission's (Commission) closed captioning rules.

## I. Background

Riverbend initially filed a petition on May 9, 2006, seeking a waiver of the Commission's closed captioning rules for the 30-minute-long religious program, "Riverbend Church Television Ministry."<sup>1</sup> "Riverbend Church Television Ministry" is broadcast weekly on KTBC FOX 7 in Austin, Texas.<sup>2</sup> Although the Consumer and Governmental Affairs Bureau (CGB or Bureau) initially granted Riverbend's 2006 Petition, the Commission reversed that decision five years later.<sup>3</sup> The Bureau then gave Riverbend the opportunity to refile its 2006 Petition, which it did on December 21, 2011.<sup>4</sup> The Bureau sought additional information from Riverbend on three separate occasions between March 2012 and May 2014.<sup>5</sup> Riverbend submitted a fourth supplement containing documentation of recent price quotes from closed captioning services in June 2014.<sup>6</sup> The Bureau then placed the Petition on Public Notice for comment on February 12, 2015.<sup>7</sup> For nearly a decade, Riverbend 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 be

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<sup>1</sup> Letter from Peter Sleeper, Executive Pastor, Riverbend Church, to Office of the Secretary, FCC (May 9, 2006) (2006 Petition).

<sup>2</sup> Letter from Peter Sleeper, to Office of the Secretary, FCC (Apr. 6, 2012) (April 2012 Supplement).

<sup>3</sup> See *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941 (2011).

<sup>4</sup> Letter from Peter Sleeper, to Office of the Secretary, FCC (Dec. 21, 2011) (2011 Petition).

<sup>5</sup> Letter from Roger Holberg, Disability Rights Office, CGB, to Peter Sleeper (Mar. 7, 2012); Letter from Cheryl J. King, Disability Rights Office, CGB, to David Courreges (Sept. 27, 2013); Letter from E. Elaine Gardner, Disability Rights Office, CGB, to David Courreges (May 30, 2014).

<sup>6</sup> April 2012 Supplement; Letter from David Courreges, Hay Compere, to Roger Holberg (Aug. 15, 2012); Letter from David Courreges, Courreges, PC, to Office of the Secretary, FCC (Nov. 25, 2013) (2013 Supplement); Letter from David Courreges, Courreges, PC, to Office of the Secretary, FCC (June 30, 2014) (2014 Supplement).

<sup>7</sup> *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-200 (Feb. 12, 2015).

“economically burdensome.”<sup>8</sup> 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.<sup>9</sup> 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.”<sup>10</sup>

### **III. Riverbend has failed to demonstrate that captioning “Riverbend Church Television Ministry” would be economically burdensome.**

Requiring Riverbend to caption its program would not be economically burdensome because it has significant assets to cover its modest captioning costs. Riverbend obtained two recent quotes to caption its program. One quote is from CaptionMax for \$370.00 per episode.<sup>11</sup> The second quote is from VITAC for \$200.00 per episode, plus an additional \$68.75 per episode for 24-48 hour turnaround service.<sup>12</sup> Based on the lower quote from VITAC of \$268.75 per episode with 24-48 hour turnaround service, Riverbend’s annual captioning costs would be \$13,975.00.

Riverbend’s captioning costs could easily be covered by its significant financial resources. Importantly, Riverbend’s losses in its television programming budget are irrelevant, as the Commission is concerned with Petitioner’s overall financial resources rather than money it allocates to a particular area.<sup>13</sup> Riverbend’s overall financial resources demonstrate that Petitioner can afford to caption its programming.

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<sup>8</sup> 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).

<sup>9</sup> *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014) (*First Baptist*).

<sup>10</sup> *Id.* at ¶¶ 13-14; see also *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

<sup>11</sup> 2014 Supplement at 5.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *First Baptist*, 27 FCC Rcd at 8834.

Although Riverbend reported net losses of \$1,350,485 in 2012<sup>14</sup> and a net loss of \$332,316 in 2011,<sup>15</sup> Petitioner has ample net current assets to cover those losses and the additional cost of captioning.<sup>16</sup> Riverbend reported net current assets of \$1,854,080.00 as of December 2012 and \$1,306,694.00 as of December 2011.<sup>17</sup> If Riverbend had paid \$13,975.00 per year to caption "Riverbend Church Television Ministry," it would still have had net current assets of \$1,840,105.00 as of December 2012 and \$1,292,719.00 as of December 2011, totals which could have covered its net losses. Riverbend's net current assets indicate that the provision of closed captioning would not be economically burdensome, even though it has suffered net annual losses.

The conclusion that captioning Riverbend's programming would not be economically burdensome is further supported by the Bureau's recent decision in *Joy Ministries*.<sup>18</sup> In that case, the Bureau concluded that closed captioning would not be economically burdensome because the petitioner's net income, together with its net current assets, was sufficient to cover the annual cost of captioning.<sup>19</sup> The same principle applies here. Riverbend's net income in 2012, together with its net current assets as of December 2012, was sufficient to cover the cost of closed captioning. Specifically, Riverbend could have provided closed captioning, covered its losses, and still retained \$489,647.00 of its net current assets. Therefore, closed captioning would not be economically burdensome for Riverbend.

Because requiring Riverbend to caption would not be economically burdensome, the Commission need not reach additional arguments raised by Petitioner. In any event, Consumer Groups respond to two additional arguments. First, Riverbend states that it is entitled to an automatic exemption from the closed captioning rules under Section 79.1(d)(8).<sup>20</sup> The exemption only applies when programming is produced by a video programming distributor (VPD).<sup>21</sup> Riverbend is not a VPD within the meaning of the Commission's rules and it cannot therefore qualify for the exemption.<sup>22</sup>

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<sup>14</sup> 2013 Supplement at 16.

<sup>15</sup> *Id.* at 17.

<sup>16</sup> Petitioner did, however, report net profits of \$5,660,284 in 2010. Letter from David Courreges, Hay Compere, to Office of the Secretary, FCC, (2 of 3) at 1 (Nov. 26, 2012).

<sup>17</sup> 2013 Supplement at 15.

<sup>18</sup> *Joy Ministries*, Dkt. No. 06-181, DA 15-286 (Mar. 4, 2015).

<sup>19</sup> *Id.* at ¶16.

<sup>20</sup> 2013 Supplement at 2.

<sup>21</sup> See, e.g., *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶6 n. 13 (2014); *Faith Center of Paducah*, Dkt. No. 06-181, DA 15-89, ¶6 n. 12 (Jan. 22, 2015).

<sup>22</sup> 47 C.F.R. § 79.1(a)(11).

Second, Riverbend claims that it is entitled to not caption its programming based on "a Constitutional guarantee of religious freedom and speech."<sup>23</sup> Although it's unclear what Riverbend's First Amendment theory is, its cursory argument should be rejected. Courts and the Commission have consistently found that requiring closed captioning does not violate the First Amendment's free speech clause.<sup>24</sup> Moreover, Riverbend has not shown how complying with the rules impermissibly burdens religious beliefs protected by the First Amendment.

#### IV. Conclusion

Riverbend has not shown that captioning "Riverbend Church Television Ministry" would be economically burdensome. Thus, Consumer Groups ask the Commission to deny Riverbend's petition and require it to caption its programming. If the Commission does conclude that Riverbend 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.

Sincerely,

/s/

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<sup>23</sup> 2013 Supplement at 2.

<sup>24</sup> See *MPAA v. FCC*, 309 F.3d 796, 798 (D.C. Cir. 2002); *Gottfried v. FCC*, 655 F.2d 297, 312 n.54 (D.C. Cir. 1981), *rev'd on unrelated grounds*, *Cnty. Television v. Gottfried*, 459 U.S. 498 (1983); see also *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket 11-154, 27 FCC Rcd 787, 803-04 ¶25 (2012).

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

/s/

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### CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 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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*Counsel for Riverbend Church*

/s/

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Niko Pezarich  
Institute for Public Representation

March 16, 2015