



May 19, 2015

Via Electronic Mail
captioningexemption@fcc.gov

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-C438
445 12th Street, SW
Washington, DC 20554

***Re: Case Identifier CGB-CC-052: CG Docket No. 06-181, Reply to Opposition to
Petition for Waiver of Closed Captioning Rules***

***Riverbend Church
4214 N. Capital of Texas HWY
Austin, TX 78746***

To Whom It May Concern:

We hereby submit Riverbend's Reply to Opposition to Petition for Waiver of Closed Captioning Rules, Case Identifier CGB-CC-052.

As always, should you have any questions or require any additional information, please do not hesitate to contact me at your very earliest convenience.

Respectfully submitted,

A large, stylized handwritten signature in black ink is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David C. Courreges
For the Firm

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	§	
	§	
RIVERBEND CHURCH	§	Case Identifier CGB-CC-052
	§	CG Docket No. 06.181
Petition for Exemption from Closed Captioning	§	
Requirements Pursuant to Section 79.1(f) of	§	
Commission's Rules	§	

To: Office of the Secretary
ATTN: Disability Rights Office
Room 3-B431

**REPLY TO OPPOSITION TO
PETITION FOR WAIVER OF CLOSED CAPTIONING RULES**

Riverbend Church (“Riverbend”), by and through its attorney and pursuant to Section 79.1(f) of the Commission’s Rules, hereby respectfully submits its Reply to the Opposition to Petition for Exemption filed by the Institute for Public Representation (“Objector”), to Riverbend’s Petition for Waiver of Closed Captioning Rules (“Petition”).

Riverbend has requested a waiver of the Commission’s rules and policies requiring closed captioning for Riverbend’s weekly telecast of its church services (“Television Ministry”). The request is based on the economically burdensome nature of the requirement, an automatic exemption under Section 79.1(d)(8) of the Commission’s Rules, and Constitutional rights of free speech and a guarantee of religious freedom. **Riverbend hereby incorporates all previous filings and arguments in regard to the above-captioned matter, and reserves the right to further supplement this and all previous filings** as additional information comes to light necessary to fully satisfy the requests of the Commission, and/or protect the rights and interests of Riverbend Church and its membership.

With respect thereto, Riverbend Church offers the following:

I. Background

In a letter dated December 12, 2011, Peter Sleeper, Executive Pastor of Riverbend Church (“Pastor Sleeper”) did submit a renewal petition for an “Exemption to the Closed Captioning Rules.” On or about April 6, 2012, acting on a request by the Commission dated March 7, 2012, Pastor Sleeper submitted supplemental information. Exhibits included a copy of the December 12, 2011, letter from Pastor Sleeper, a good faith accounting of closed caption service solicitations, an Affidavit of Pastor Sleeper attesting that Riverbend has solicited the in-kind assistance of its video programming distributor, Consolidated Financial Statements for 2009 and 2010, and a letter to the congregation specifically requesting donations to continue the Television Ministry. Once available, Riverbend did submit additional financial information outlining Fiscal Year 2011 on its own volition. On or about October 5, 2012, the Commission issued a Request for Comment for Exemption from the Commission’s Closed Captioning Rules, of which Objector responded on or about November 5, 2012. On May 30 2014, the Commission sought additional information from Riverbend, of which Riverbend complied fully, and on February 12, 2015, the Commission again issued a Request for Comment.

On or about March 16, 2015, Objector did file a response to at least two Requests for Exemption and attempted service of said documents. However, attorney for Riverbed, David Courreges, was improperly served with “Consumer Groups’ Comment on Crosswalk Chapel,” attached hereto as Exhibit A. Upon learning of the mistake, searched for the appropriate filing online, which is attached hereto as Exhibit B. Riverbend did notify the Commission and Objector, and the Commission, upon a showing of good cause by Riverbend, did grant an extension to May 19, 2015, for Riverbend to reply under Section 79.1(f)(8) of the Commission’s rules.

II. Legal Standard

Riverbend concurs with legal standard set forth by the Objector, and as reflected by Section 713(d)(3) of the Communications Act of 1934, as amended. Moreover, Riverbend agrees with the following statement made by Objector in Exhibit A, Paragraph II, but excluded from Exhibit B: “An economically burdensome waiver is appropriate when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in the cancellation of its programming.”

III. Entitlement to Exemption Based on Economic Burden Standard

Despite Riverbend’s showing of significant economic losses, layoffs, and unsuccessful attempts to raise dedicated funds specifically for the Television Ministry, Objector continues to assert a failure on the part of Riverbend to show Economic Burden, and ignores basic principles of accounting in its advocacy by insisting on additional losses of a significant amount. As conceded by Objector, Riverbend as a whole showed net losses of \$1,350,485 in 2012 and \$332,316 in 2011. Objector again correctly points out that lowest quoted amount for closed captioning services received by Riverbend was \$13,975. As shown in its last update, which provided budget snapshot of the Riverbend Communications Department for the months of January 2014 through May 2014, the Television Ministry had already lost \$32,323, with a projected loss of \$77,575.20, not including closed captioning. Comporting with the closed captioning requirements, Riverbend’s total projected loss on its Television Ministry for the FY 2014 would have been \$91,550.20. It is difficult enough to justify the existence of any service that sees a net loss of \$77,575.20, but is even more difficult to justify the existence of a service that nets a near \$100,000 loss.

As provided in previous filings, Riverbend has already been forced to cut staff from the Television Ministry in order to keep it on the air. The addition of what would amount to another part time salary will most likely result in its cancellation. If Objector were to advocate the use of the

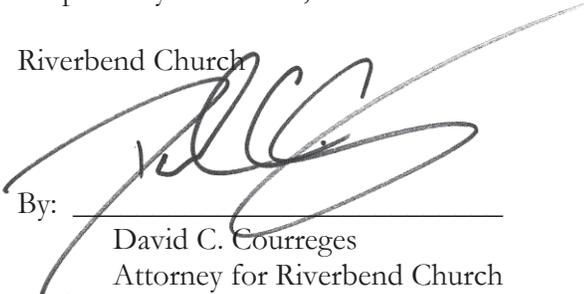
same standard for every application as it did in Exhibit A, where “[a]n economically burdensome waiver is appropriate when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in the cancellation of its programming,” Objector would not oppose Riverbend’s petition.

IV. Conclusion

Riverbend Church has sufficiently demonstrated an inability to afford closed captioning costs for its programming in addition to seeking additional funding and alternative means to closed captioning. Objector has offered no substantive evidence that Riverbend should not be granted an exemption under the Rules, and has applied a double standard when objecting to other petitions. In consideration of the above, as well the materials previously filed, the Federal Communications Commission should grant Riverbend’s Petition for Waiver of Closed Caption Requirements.

Respectfully Submitted,

Riverbend Church

By: 

David C. Courreges
Attorney for Riverbend Church

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Austin, TX 78701
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CERTIFICATE OF SERVICE

I, David C. Courreges, Attorney for Petitioner, do hereby certify that on May 19, 2015, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served electronically and by first class mail upon the followings:

Aaron Mackey
Institute for Public Representation
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adm232@law.georgetown.edu

On Behalf of:

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Cerebral Palsy and Deaf Organization
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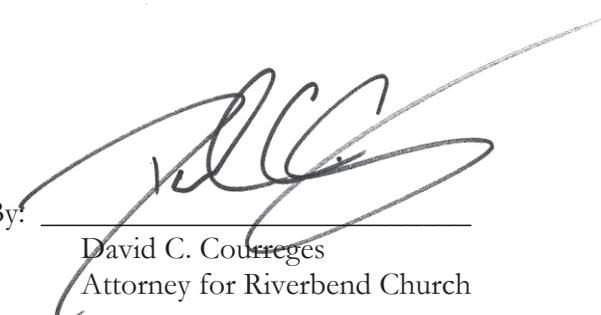
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By: 

David C. Courreges
Attorney for Riverbend Church

EXHIBIT A



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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: Comment on Petition for Exemption from the Commission's Closed
Captioning Rules
CGB Dkt. No. 06-181

Crosswalk Chapel
CGB-CC-1165

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 comment on the petition of Crosswalk Chapel (Crosswalk or Petitioner) for exemption of its programming 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

Crosswalk filed a petition by letter in November 2011, seeking a waiver of the Commission's closed captioning rules for the 30-minute-long worship program, "Crosswalk."¹ "Crosswalk" is broadcast weekly on ETVO, WAOE, and WQAD3 in Illinois.² On three occasions between March 2012 and May 2014, the Consumer and Governmental Affairs Bureau (CGB or Bureau) sought additional information from Crosswalk.³ In response, Crosswalk submitted additional information in four separate letters, with the most recent letter sent in June 2014.⁴ The Bureau then placed the petition on Public Notice for comment on February 12, 2015.⁵

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."⁶ The Commission considers several factors on a case-by-case basis when determining whether a petitioner has made the required showing under the economically burdensome standard.⁷ An economically burdensome waiver is appropriate when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in the cancellation of its programming.⁸

¹ Letter from Mark Bassen, Pastor, Crosswalk Chapel, to Office of the Secretary, FCC (Nov. 5, 2011).

² Letter from Mark Bassen, to Office of the Secretary, FCC (Oct. 25, 2013) (October 2013 Supplement).

³ Letter from Roger Holberg, Disability Rights Office, CGB, to Mark Bassen (Mar. 14, 2012); Letter from Roger Holberg, to Mark Bassen (Sept. 26, 2013); Letter from E. Elaine Gardner, Disability Rights Office, CGB, to Mark Bassen (May 30, 2014).

⁴ Letter from Mark Bassen, to Roger Holberg (Apr. 9, 2012); Letter from Mark Bassen, to Office of the Secretary, FCC (Mar. 3, 2013) (March 2013 Supplement); October 2013 Supplement; Letter from Mark Bassen, to Office of the Secretary, FCC (June 13, 2014).

⁵ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-200 (Feb. 12, 2015).

⁶ 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).

⁷ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014).

⁸ *See Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941, 14952 ¶20 (2011) (*Anglers*).

III. Consumer Groups do not oppose Crosswalk's waiver petition.

In light of Crosswalk's overall financial health, Consumer Groups do not oppose Crosswalk's petition. Crosswalk obtained three quotes to caption its program, one for \$228.00 per week from Computer Prompting & Captioning,⁹ one for \$475.00 per week from VITAC,¹⁰ and one for \$175.00 per week from CaptionMax.¹¹ Based on the lowest quote from CaptionMax, Crosswalk's annual captioning costs would be \$9,100.00.

Even with those low captioning costs, providing closed captioning for Crosswalk's programming is likely to be economically burdensome. According to Petitioner's financial statements, it had a net loss of \$145.00 in 2012 and net profits of only \$5,678.00 in 2013.¹² Additionally, Crosswalk reports that it only had net current assets of approximately \$5,400.00 as of October 2013.¹³ Therefore, Crosswalk's net income and net current assets are insufficient to cover the cost of closed captioning.

Consumer Groups only ask that any waiver be limited, as it "is not designed to perpetually relieve a petitioner of its captioning obligation."¹⁴ Further, 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/

Aaron Mackey
Angela Campbell
Institute for Public Representation

Counsel to TDI

Christopher Dioguardi
Georgetown Law Student

⁹ March 2013 Supplement at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 7.

¹² October 2013 Supplement at 8-9.

¹³ Crosswalk provides documentation that illustrates that it had a Herget Bank account with \$5,069.80 as of October 2013 and a Busy Bank account with \$391.74 as of August 2013. *Id.* at 3, 21, 31.

¹⁴ *Anglers*, 26 FCC Rcd at 14953, ¶23.

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.

Mark Bassen, Pastor
Crosswalk Chapel
1805 Oakwood Drive
Pekin, IL 61554

_____/s/_____
Niko Pezarich
Institute for Public Representation

March 16, 2015

EXHIBIT B



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

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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;
DC bar membership pending. Practice supervised by members of the DC bar.

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."¹ "Riverbend Church Television Ministry" is broadcast weekly on KTBC FOX 7 in Austin, Texas.² Although the Consumer and Governmental Affairs Bureau (CGB or Bureau) initially granted Riverbend's 2006 Petition, the Commission reversed that decision five years later.³ The Bureau then gave Riverbend the opportunity to refile its 2006 Petition, which it did on December 21, 2011.⁴ The Bureau sought additional information from Riverbend on three separate occasions between March 2012 and May 2014.⁵ Riverbend submitted a fourth supplement containing documentation of recent price quotes from closed captioning services in June 2014.⁶ The Bureau then placed the Petition on Public Notice for comment on February 12, 2015.⁷ 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

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

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

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

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

⁵ 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).

⁶ 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).

⁷ *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.”⁸ 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.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. 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.¹¹ The second quote is from VITAC for \$200.00 per episode, plus an additional \$68.75 per episode for 24-48 hour turnaround service.¹² 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.¹³ Riverbend’s overall financial resources demonstrate that Petitioner can afford to caption its programming.

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*, 29 FCC Rcd 12833, ¶3 (2014) (*First Baptist*).

¹⁰ *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).

¹¹ 2014 Supplement at 5.

¹² *Id.* at 7.

¹³ *First Baptist*, 27 FCC Rcd at 8834.

Although Riverbend reported net losses of \$1,350,485 in 2012¹⁴ and a net loss of \$332,316 in 2011,¹⁵ Petitioner has ample net current assets to cover those losses and the additional cost of captioning.¹⁶ Riverbend reported net current assets of \$1,854,080.00 as of December 2012 and \$1,306,694.00 as of December 2011.¹⁷ 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*.¹⁸ 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.¹⁹ 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).²⁰ The exemption only applies when programming is produced by a video programming distributor (VPD).²¹ Riverbend is not a VPD within the meaning of the Commission's rules and it cannot therefore qualify for the exemption.²²

¹⁴ 2013 Supplement at 16.

¹⁵ *Id.* at 17.

¹⁶ 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).

¹⁷ 2013 Supplement at 15.

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

¹⁹ *Id.* at ¶16.

²⁰ 2013 Supplement at 2.

²¹ 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).

²² 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."²³ 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.²⁴ 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/

Aaron Mackey
Angela Campbell
Institute for Public Representation

Counsel to TDI

Christopher Dioguardi
Georgetown Law Student

²³ 2013 Supplement at 2.

²⁴ 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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Austin, TX 78709-2648

Counsel for Riverbend Church

/s/

Niko Pezarich
Institute for Public Representation

March 16, 2015