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March 3, 2016
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 The Marvin Show's Petition for Exemption from the
Commission's Closed Captioning Rules
CGB Docket No. 06-181

The Marvin Show, LLC
CGB-CC-1366

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), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Association of the Deaf-Blind (AADB), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, "Consumer Groups," submit for filing in the above-captioned proceeding their comment on the petition for exemption from the Commission's closed captioning requirements filed by The Marvin Show, LLC ("Marvin Show"), for its 30 minute cooking show. In light of Marvin Show's

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

** Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

current limited financial resources, Consumer Groups do not oppose the Commission granting a short waiver of the closed captioning rules.

I. Background

Marvin Show is owned, produced, and hosted by Marvin Latimer. The 30 minute cooking show airs weekly on WPDE-TV in Florence, South Carolina and also online on YouTube and Tuff TV.¹

Marvin Show submitted its petition for exemption from captioning on August 12, 2015 (the "Petition").² The Consumer and Governmental Affairs Bureau (the "Bureau") requested supplemental information on September 1, 2015,³ which it subsequently retracted.⁴ The Bureau placed the Petition on Public Notice on February 2, 2016.⁵

II. Legal Standard

Under Section 613(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 A waiver is appropriate under this standard when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in the cancellation of its programming.⁸

¹ *The Marvin Show Petition for Exemption*, Dkt. No. 06-181, pg. 1 (Aug. 12, 2015) [hereinafter *Petition*]. See also themarvinshow.com, *About* (last accessed Mar. 1, 2016), <http://www.themarvinshow.com/#!/facebook/cfpl>.

² *Petition*.

³ *Consumer and Governmental Affairs Bureau Request for Supplemental Information*, Dkt. No. 06-181 (Sep. 1, 2015).

⁴ *Confirmation of Retraction of Bureau's Request for Supplemental Information*, Dkt. No. 06-181 (Sep. 2, 2015).

⁵ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Dkt. No. 06-181 (Feb. 2, 2016).

⁶ 47 USC 613(d)(3).

⁷ 47 USC 613(e).

⁸ First Baptist Church, Jonesboro, Arkansas, 29 FCC Rcd 12833.

III. Application to the Case at Hand

Consumer Groups do not oppose granting a short waiver based on Marvin Show's Petition, which demonstrates that it would currently be economically burdensome for Marvin Show to pay for captioning.

Marvin Show appears to consistently operate at a net loss. Mr. Latimer's individual tax returns indicate that Marvin Show's net losses were \$14,762 in 2014⁹ and \$18,170 in 2013.¹⁰ Marvin Show's liabilities also far exceed its cash assets. In 2015, Marvin Show had \$1,886 in cash, compared to \$14,239 in total current liabilities¹¹; in 2014 it had \$389 in cash, compared to \$13,235 in total current liabilities¹²; and in 2013 it had \$689 in cash, compared to \$10,878 in current liabilities.¹³

Marvin Show appropriately sought aid from its network, ABC 15 WPDE, to pay for captioning. Although the station told Marvin Show it could not supply free captioning, the station offered a discounted price of \$3,900 per year.¹⁴ This discounted price for captioning is relatively low by market standards. Nevertheless, with consistent net losses and net current liabilities, Consumer Groups acknowledge that even a modest \$3,900 a year in captioning costs would currently be economically burdensome for a low-budget sole proprietorship consistently operating at a loss such as the Marvin Show.

However, because Marvin Show's captioning costs are so low, any exemption that is granted should be brief. This is because even a relatively minor shift in the financial profile of the show's production could render Marvin Show's modest captioning costs no longer burdensome.

⁹ *Petition*. at 2, 19. The tax return indicates a gross profit of \$3,190 compared to \$16,286 of total expenses. *Id.* at 22.

¹⁰ *Id.* at 2, 61. The tax return indicates a gross profit of \$3,327 compared to \$19,604 of total expenses. *Id.* at 64.

¹¹ *Id.* at 15.

¹² *Id.* at 16.

¹³ *Id.* at 17.

¹⁴ *Id.* at 2, 4, 6, 12.

IV. Marvin Show's Petition Raises Unanswered Questions that Should Be Addressed in Any Future Petition

Regardless of the outcome in the instant proceeding, Consumer Groups urge the Commission to demand greater clarity from Mr. Latimer on any future petitions on several key issues. Specifically, greater clarity is needed on any expenses that Marvin Show incurs for advertising the program itself (i.e. advertising *of* the show), as well as on any income it receives for possible embedded advertising (i.e. advertising *on* the show).

First, there is a discrepancy in Marvin Show's reporting of incurred expenses due to advertising. Marvin Show states in the Petition that it spends around \$50 per week to advertise the show, which would amount to \$2,600 annually.¹⁵ In Marvin Show's taxes, however, advertising was shown to cost \$11,601 in 2014¹⁶ and \$12,486 in 2013.¹⁷ Consumer Groups urge the Bureau to demand candor from petitioners regarding their expenses, which play a central role in determining whether and how economically burdensome captioning might be, and relatedly whether and for how long an exemption should be granted.

Second, it is unclear who the show's actual sponsors are, and how much revenue Marvin Show generates from advertising during the program. Marvin Show's Petition states that its sole sponsor is McIver Graham Law, which pays Marvin Show \$44.75 per week for advertising.¹⁸ The Petition states that McIver has been behind on payments to Marvin Show for two months,¹⁹ amounting to owing Marvin Show approximately \$358. In several episodes, however, Marvin Show promotes other businesses and products such as Shelley's Seafood²⁰ and Ed's Hobby Shop.²¹ Marvin Show even states in text during its announcement for a commercial break, "Please support us and purchase products offered during the show,"²² implying that if a viewer were to purchase a product offered on the show, then Marvin Show would receive compensation from

¹⁵ *Id.* at 13 (referring to "advertising") and at 1 (referring to "commercial promotion").

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 64.

¹⁸ *Petition* at 1.

¹⁹ *Id.* at 12.

²⁰ The Marvin Show Marvin Latimer, '*the marvin show live crabs youtube.*' at 1:58, <https://www.youtube.com/watch?v=PcRqYMvK-TM>.

²¹ The Marvin Show Marvin Latimer, '*Ed's Hobby Shop 704 main street Myrtle Beach SC*', <https://www.youtube.com/watch?v=sZP2rrP8Mj4>.

²² '*the marvin show live crabs youtube.*' at 3:08.

product sponsors. It is unclear how much revenue, if any, the Marvin Show actually received from product promotion and sponsorship. Consumer Groups urge the Bureau to demand candor from petitioners regarding the characterization of their revenue, which plays a central role in determining whether and for how long an exemption should be granted.

In addition, it is unclear whether Marvin Show sought out additional sponsorship specifically for captioning. It appears that Marvin Show interpreted the FCC's rules to require that it seek advertising sponsors generally, rather than specifically for closed captioning costs.²³ But seeking sponsors for advertising generally does not satisfy the waiver exemption rules.²⁴ Rather, the FCC requires that petitioners verify that they sought additional sponsorship or other sources of revenue "specifically for the provision of closed captioning."²⁵ Marvin Show has not indicated that it solicited sponsorship specifically for closed captioning costs, and has thus not fulfilled its obligation to do so.

Even if these issues were resolved with respect to the Marvin Show Petition, Consumer Groups acknowledge that the Marvin Show would still likely have demonstrated a probable economic burden justifying a cabined exemption. The Marvin Show, as a small sole proprietor business operating at a loss, does not currently appear to have enough resources to cover captioning expenses.

V. Conclusion

Consumer Groups therefore do not oppose the FCC granting a temporary waiver to Marvin Show. Any waiver, however, should be limited to six months or one year in light of the program's low captioning costs and because the economically burdensome waiver process "is not designed to perpetually relieve a petitioner of its captioning obligation."²⁶ Moreover, 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. A short waiver will give Marvin Show time to identify financial resources

²³ *Petition* at 1 (stating "I solicit sponsors to run ads during the broadcast") and at 12 (stating "The sponsor I have now is already 2 mnths late... McIver Graham law owes for advertising").

²⁴ FCC, *Required Information and Documentation to Provide in Filing a New Petition to be Exempt from the Television Closed Captioning Requirements*, pg. 3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf.

²⁵ *Id.*

²⁶ Anglers, 26 FCC Rcd at 14953, ¶23.

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to bring its programming into compliance with the Commission's closed captioning rules.

Sincerely,

/s/

Drew Simshaw
Laura Moy
Institute for Public Representation

Counsel to TDI

Carolina Alonso
Georgetown Law Student

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

/s/

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CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.



Claude Stout
March 3, 2016

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 3, 2016, 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 Petitioners at the address listed below.

Marvin L. Latimer
Executive Producer
The Marvin Show, LLC
4925 Woodview Lane
Myrtle Beach, SC 29575

/s/

Niko Perazich
Institute for Public Representation

March 3, 2016