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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: Opposition to National Asian American Coalition's Petition for
Exemption from the Commission's Closed Captioning Rules
CGB Docket No. 06-181

National Asian American Coalition
CGB-CC-1365

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 opposition to the petition for exemption from the Commission's closed captioning requirements filed by the National Asian American Coalition ("NAAC") for its television program "Owning a Piece of

* 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.

America.” NAAC is a financially stable organization with a multimillion dollar budget, and is looking to expand. Accordingly, its low captioning costs would not result in an economic burden. Consumer Groups urge the Bureau to deny the Petition and require that NAAC caption its programming within 90 days.

I. 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.”¹ 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.² A waiver is appropriate under this standard when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in an economic burden.³

II. Background

NAAC is a non-profit organization that aids Asian Americans in building small businesses and fighting foreclosures.⁴ The NAAC produces a weekly 58 minute television program entitled “Owning a Piece of America,” which provides advice to Asian Americans on finances, small business building, lifestyle and health education, and community and government relations.⁵ The program airs in five counties in California and is distributed by KXLA(TV) in Rancho Palos Verdes, California.⁶

NAAC submitted its petition for exemption from captioning on August 6, 2015 (the “Petition”).⁷ As the filing did not contain all of the required information, the Consumer and Governmental Affairs Bureau (the “Bureau”) requested supplemental information on September 1, 2015.⁸ On October 10, 2015, the NAAC responded with a

¹ 47 USC 613(d)(3).

² 47 USC 613(e).

³ *Id.*

⁴ *National Asian American Coalition Petition for Exemption*, Dkt. No. 06-181, pg. 9 (Aug. 6, 2015) [hereinafter *Petition*].

⁵ *Id.* at 1, 9.

⁶ *Id.* at 9.

⁷ *Petition*.

⁸ *Consumer and Governmental Affairs Bureau Request for Supplemental Information*, Dkt. No. 06-181 (Sep. 1, 2015).

supplement,⁹ 9 days after the deadline imposed by the Bureau.¹⁰ The Bureau placed the petition on Public Notice on February 2, 2016.¹¹

III. The Petition Should Be Denied

The Petition should be denied because requiring NAAC to caption its program would not be economically burdensome. NAAC's submissions demonstrate that this large-budget organization has the necessary funds to cover the modest cost of captioning its television program. Even if the Bureau were to determine that NAAC is suffering general financial hardship rendering it difficult to cover basic operating costs including provision of closed captions, it should nevertheless deny the Petition because captioning costs are not the *cause* of any financial hardship NAAC may be suffering.

A. NAAC can afford to caption its program

NAAC has failed to meet the economically burdensome standard because it has sufficient funds to cover the cost of captioning. NAAC's lowest annual captioning quote was from ESV Productions for \$9,048.¹² In 2013, NAAC could have paid for its modest captioning costs with its net current assets. The Bureau has consistently held that closed captioning does not impose an economic burden if a petitioner can provide closed captioning using net assets as long as the assets can also cover losses.¹³ In 2013, NAAC reported current assets of \$6,495,639 and current liabilities of \$6,272,500, for net

⁹ *NAAC Supplement*, Dkt. No. 06-181, pg. 1 (Oct. 10, 2015) [hereinafter *Supplement*].

¹⁰ *Consumer and Governmental Affairs Bureau Request for Supplemental Information*, Dkt. No. 06-181 (Sep. 1, 2015).

¹¹ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Dkt. No. 06-181 (Feb. 2, 2016).

¹² *Petition* at 1, 7-8. This quote is based on \$3 per minute, times 58 minutes per episode, times 52 episodes per year.

¹³ See, e.g., *Van Buren First Assembly of God*, Dkt. No. 06-181, DA 15-839, ¶ 16 (July 21, 2015) (“[T]hat a petitioner has experienced a net current loss does not in itself, merit a determination of economic burden.”), *Roman Catholic Diocese of Gaylord*, Dkt. No 06-181, DA 15-840, ¶ 19 (July 21, 2015) (no economic burden where petitioner experienced net loss in most recent reported year but had net current assets that could cover captioning costs), *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶14 (Feb. 3, 2015) (petition denied where Tupelo experienced total excess of expenses over revenue, but had current assets that would cover cost of captioning), *Dawson Memorial Baptist Church*, Dkt. No 06-181, DA 14-1872, ¶16 (Dec. 19, 2014) (no economic burden where petitioner experienced net loss in the two recently reported years, but had net current assets that could cover closed captioning costs).

current assets of \$223,139.¹⁴ Of these assets, \$576,711 was in cash. The net current assets could have covered its losses of \$81,351 and captioning cost of \$9,048 and still had \$132,740 left over, more than enough to also pay for captioning in 2014. Although NAAC experienced net total liabilities in 2014 of \$292,970, it still maintained \$275,635 in cash—an amount that would have covered the estimated cost of captioning many times over.¹⁵

NAAC's submissions, along with other publically available information, demonstrate that NAAC is a stable, expanding organization that would not experience an economic burden solely because of \$9,048 in annual captioning costs. For instance, NAAC maintains a Washington, DC regulatory and congressional liaison office and six other offices in California,¹⁶ and is planning to open kiosks in selected stores of Island Pacific Supermarket.¹⁷ Additionally, NAAC stated in 2013 that it plans on bolstering its government affairs department, while continuing the growth of its Project Rebound and other programs.¹⁸

B. NAAC has no cognizable claim that any financial hardship it suffers stems from the modest cost of captioning

Even if the Bureau were to determine that NAAC's purported financial decline presents the organization with difficulties covering the costs of operation, including captioning its television program, the Petition should be denied because captioning costs are not the *cause* of any such financial hardship. Under the economic burdensome standard, a requested captioning exemption may not be granted to a petitioner that has merely demonstrated that it is currently experiencing general financial hardship; rather,

¹⁴ *Supplement* at 6.

¹⁵ *Petition* at 15.

¹⁶ NAAC.org, *About Us* (last accessed Feb. 29, 2016), <http://www.naac.org/about-us/>. NAAC has offices in Washington DC and in the following cities in California: Milpitas, San Francisco, San Diego, San Joaquin Valley, Contra Costa county, and Solano county.

¹⁷ See NAAC.org, *Contact* (last accessed Feb. 29, 2016), <http://owningapieceofamerica.com/contact/>; see also Agnes Constante, *OneWest Bank to offer Filipinos financial assistance*, Asian Journal (Jan. 2, 2015), <http://asianjournal.com/news/onewest-bank-to-offer-filipinos-financial-assistance/>.

¹⁸ *NAAC Additional Supplement to Request for Finding of Eligibility*, Before the Insurance Commissioner of the State of California, In the Matter of: Mercury Casualty Company Application No. 13-716, File No. PA-2013-00004 (Mar. 12, 2013), <http://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/NAAC-Additional-Supplement-to-Request-for-Finding-of-Eligibility.pdf>.

to succeed on its request, a petitioner must demonstrate that an undue hardship stems from the cost of captioning itself. The question set forth by the statute is “whether the closed captions necessary to comply with the requirements . . . *would result in* an undue economic burden.”¹⁹ Exemptions may be granted when “compliance with . . . closed captioning requirements would pose a significant financial or technical burden” on the organization.²⁰ NAAC’s low captioning costs could in no way be characterized as “significant” compared to its multimillion-dollar annual budget, and are certainly not going to “result in” an undue economic burden.

This is because despite its yearly net losses, NAAC’s projected captioning costs would represent only a fraction of a percent of its very large budget. In 2014 NAAC brought in \$12,057,514 and spent \$12,778,124.²¹ In 2013 it brought in \$2,191,120 and spent \$2,273,192.²² The estimated captioning cost of \$9,048 therefore would have represented just 0.07% of NAAC’s 2014 expenses. In 2013, it would have represented 0.4% of NAAC’s expenses.

Any cost that represents 0.07% of a total budget cannot possibly be considered the cause of an undue economic burden. A household with a \$100,000 budget is not subjected to an economic burden as the result of one \$70 trip to the grocery store or a \$5.83 monthly bill. While such an expense might be a minor inconvenience, it is not a “significant financial . . . burden” that affects the household’s day-to-day purchases or its ability to remain financially stable from year to year. Just as a household would adjust accordingly to such a relatively small expense, NAAC could pay for captioning with a small, almost undetectable, adjustment to its massive \$12 million budget.

Even if NAAC chooses not to adjust its budget to pay for captioning, its petition demonstrates that the organization is highly capable of soliciting and receiving contributions in amounts far exceeding the cost of captioning.²³ For example, in its 2013 taxes, NAAC reported a sum total of nearly \$1 million in cash contributions from 26 different sources, 20 of which gave \$10,000 or greater.²⁴ Applying just one of these donations to captioning, or securing one additional donation specifically for captioning, could cover the cost. At the very least, such contributions indicate that NAAC has the

¹⁹ 47 U.S. Code § 613(e) (emphasis added).

²⁰ 1997 Report and Order, Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176 at ¶ 199.

²¹ *Petition* at 16.

²² *Supplement* at 7.

²³ *Petition* at 84-85.

²⁴ *Id.*

organizational capacity to solicit and secure an additional \$9,048 to account for the modest cost necessary to ensure its programming is made accessible to persons with hearing disabilities.

IV. Conclusion

For the reasons described above, Consumer Groups respectfully request that the Bureau deny the Petition. However, in the event that the Bureau grants the Petition because it nevertheless finds that providing captioning would be economically burdensome, the Bureau should refrain from granting a lengthy or open-ended exemption. Captioning costs that are economically burdensome today may not be economically burdensome in the near future, due to 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.

Sincerely,

/s/

Drew Simshaw
Laura Moy
Institute for Public Representation

Counsel to TDI

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Georgetown Law Student

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

/s/

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National Association of the Deaf (NAD)

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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.

Faith Bautista
President and CEO
National Asian American Coalition
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Daly City, CA 24015

/s/

Niko Perazich
Institute for Public Representation

March 3, 2016