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November 5, 2012

via hand delivery

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

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Riverbend Church Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0520
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Riverbend Church ("Riverbend") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (October 5, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1601A1.pdf; *Riverbend Petition for Exemption*, Case No. CGB-CC-0520, CG Docket No. 06-181 (Dec. 21, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021752703> ("*Riverbend Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *Riverbend Petition* was deficient because it did not provide sufficient financial information to demonstrate

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petition because it does not sufficiently demonstrate that Riverbend cannot afford to caption its programming.

Consumer Groups acknowledge Riverbend's efforts to "connect to people in the community."² Riverbend's requested exemption, however, would deny equal access to its programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensuring that all viewers can experience the important benefits of video programming on equal terms.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific documentation that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"), as added by the Telecommunications Act of 1996 Act ("1996 Act")³ and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),⁴ "a provider of video programming or program owner may petition the

Riverbend's inability to afford closed captioning or verify that Riverbend sought closed captioning assistance either from its video programming distributor or from alternative sponsorship sources. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-0520, CG Docket No. 06-181 (March 7, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021902653> ("*CGB Letter*"). Riverbend then filed two supplements. *Riverbend Supplement*, Case No. CGB-CC-0520 (April 6, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021919365>; *Riverbend Supplement II*, Case No. CGB-CC-0520 (August 15, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022007587>.

² *Riverbend Petition* at 1.

³ Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

⁴ Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its July 20, 2012 Report and Order, the Commission formally adopted the analysis set forth in its October 20, 2011 Interim Standard Order and Notice of Proposed Rulemaking.⁵ In doing so, 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 Consumer and Governmental Affairs Bureau to continue to evaluate all exemption petitions using the “undue burden” standard pursuant to the Commission’s amended rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ If a petitioner sufficiently demonstrates an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.⁸ Where a

⁵ The *Interim Standard Order* and the *NPRM* were part of a multi-part Commission decision. See *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC. Rcd. 14941 (Oct. 20, 2011) (“*Anglers 2011*”).

⁶ *Report and Order, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket No. 11-175, ¶ 8 (July 20, 2012) (“*Economically Burdensome Standard Order*”). In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁸ See *id.*

petition fails to make either of those showings, it fails to demonstrate that providing captions would be economically burdensome, and the Commission must dismiss the petition.⁹

I. Riverbend's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.¹⁰ Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A. The Cost of Captioning Riverbend's Programming

To successfully demonstrate that captioning would be economically burdensome, a petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹¹ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petition provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.¹²

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *The Wild Outdoors*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹² Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *The Wild*

Riverbend asserts that captioning its programming would cost an average of \$340 per half-hour program, or \$17,680 per year.¹³ But in its list of captioning providers, Riverbend concedes that two companies actually charge \$8,580 or \$8,684 per year plus transcription costs.¹⁴ Riverbend does not explain why it cannot take advantage of these lower rates, nor does it indicate that it negotiated with any providers to negotiate a lower rate. While Riverbend complains that transcribing its program may require additional production time, it fails to elaborate on its conclusory assertion that captioning would “greatly infringe upon already narrow deadlines and “resul[t] in a program that is untimely.”¹⁵ It is unclear that Riverbend has sought out the most reasonable rate for captioning its programming when it has failed to satisfactorily explain why less expensive options are untenable.

B. Riverbend’s Financial Status

Even assuming Riverbend had submitted a reasonable assessment of the cost of captioning its programming, Riverbend has not presented sufficient information about its financial status to demonstrate that it cannot afford captioning. A successful petition requires, at a bare minimum, detailed information regarding the petitioner’s finances and assets, gross or net proceeds, and other documentation “from which its financial condition can be assessed” that demonstrates captioning would present an undue economic burden.¹⁶

Riverbend states that captioning would increase its annual broadcast budget by almost 19% per year, and that “this increase is not budgeted in 2012.”¹⁷ The specific

Outdoors, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner’s bald assertion of the cost to caption a program without supporting evidence).

¹³ *Riverbend Petition* at 1

¹⁴ *Riverbend Supplement* at 7.

¹⁵ *Id.* at 2.

¹⁶ E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁷ *Riverbend Petition* at 1.

budget for Riverbend's programming, however, is irrelevant to the Commission's determination. When evaluating the financial status of a petitioner, the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only the resources available for a specific program."¹⁸

Riverbend also notes that it is a tax-exempt non-profit entity.¹⁹ But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."²⁰ The Commission has "specifically rejected requests by commenters to adopt a categorical exemption for all non-profit entities based solely on their non-profit status" and has "chose[n] instead to adopt revenue-based exemption standards that . . . focus on the economic strength of each [petitioner]."²¹ An entity's non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

Despite its non-profit status, Riverbend ended 2011 with nearly fourteen million dollars in total net assets, including more than \$1.6 million in unrestricted cash and pledges due within one year.²² While Riverbend operated at a loss of approximately \$330,000 in 2011, its net assets increased by more than \$5.6 million in 2010.²³ Riverbend offers no explanation as to why it cannot leverage its substantial assets to cover the modest cost of closed captioning even though it is able to leverage them to cover the \$175,000 cost of airing its television show during the periods when it operates at a loss.²⁴

¹⁸ *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

¹⁹ *Riverbend Petition* at 2.

²⁰ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

²¹ *Id.* at 14,950-51, ¶ 18 (citations omitted).

²² *Riverbend Supplement II* at 6.

²³ *Id.* at 7-8.

²⁴ *See Riverbend Supplementat 2.*

II. The Locally Produced and Distributed Non-News, Non-Repeating Exemption for Video Programming Distributors

Riverbend “believes that the local, non-news exemption to the closed captioning rules also applies to [its programming].”²⁵ But as the CGB notes, the narrow exemption in Section 79.1(d)(8) of the Commission’s rules applies only to “[p]rogramming that is locally produced by [a] video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the “electronic news room” technique of captioning is unavailable.”²⁶ As CGB has repeatedly determined, entities like Riverbend are plainly not video programming distributors under the meaning of the Commission’s rules and cannot qualify for this exemption.²⁷

III. Other Factors

Finally, Riverbend states that it is willing to “actively solicit volunteers to interpret the program into sign-language on-air” as a substitute for providing closed captioning.²⁸ While Consumer Groups acknowledge Riverbend’s willingness to offer sign language translation of its programming, doing so is not an adequate substitute for offering closed captions in compliance with the FCC’s rules, which ensure that all members of the community, including those who do not understand sign language, can access programming on equal terms.

IV. Conclusion

Riverbend has not sufficiently demonstrated that it cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require Riverbend to bring its programming into compliance with the closed captioning rules.

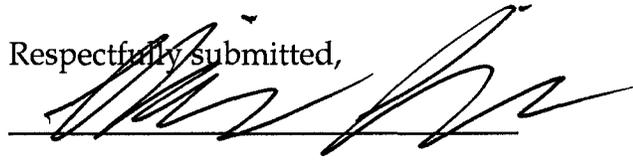
²⁵ *Riverbend Petition* at 2.

²⁶ *See CGB Letter* at 1.

²⁷ *See, e.g., id.*; *see also* 47 C.F.R. § 79.1(a)(2) (defining “video programming distributor”).

²⁸ *Riverbend Supplement* at 3.

Respectfully submitted,



Blake E. Reid†

November 5, 2012

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† Counsel thanks Georgetown Law student Jessica Lee for her assistance in preparing these comments.

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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 L. Stout

Claude Stout
November 5, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on November 5, 2012, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

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Niko Perazich
November 5, 2012