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December 14, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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:

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 supplemental response to the reply of Riverbend Church ("Riverbend")<sup>1</sup> to the Consumer Groups' opposition<sup>2</sup> to Riverbend's original petition to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>3</sup>

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<sup>1</sup> *Riverbend Reply*, Case No. CGB-CC-0520, CG Docket No. 06-181 (November 26, 2012).

<sup>2</sup> *Consumer Groups Opposition*, Case No. CGB-CC-0520, CG Docket No. 06-181 (November 5, 2012).

<sup>3</sup> *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](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/>

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Riverbend's reply addresses matters not raised in Consumer Groups' opposition and advances novel legal and factual arguments absent from Riverbend's original petition, including challenges to Consumer Groups' standing and the constitutionality of the Commission's captioning rules.<sup>4</sup> As the Commission recently noted, "the process for determining closed captioning exemptions on the basis of purported undue burden requires notice to the public in order to afford the public an opportunity to comment on whether grant of these petitions [is] in the public interest."<sup>5</sup> Because Riverbend's reply advances new bases upon which it argues it should be exempt from the Commission's closed captioning rules, the public must be afforded the opportunity to comment. In the interest of due process, fairness, and expediency, we request that the Commission accept the following responses to the new matters raised in Riverbend's reply.

**I. Consumer Groups have standing to comment on and oppose petitions for exemptions from the closed captioning rules.**

In its reply, Riverbend insists for the first time that Consumer Groups lack standing to comment on Riverbend's petition.<sup>6</sup> In particular, Riverbend apparently contends that parties must "establish interest by showing residency within the viewing

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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 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>.

<sup>4</sup> *Riverbend Reply* at 2-3, 6.

<sup>5</sup> *Anglers for Christ Ministries*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 27 & n.94 (Oct. 20, 2011) (citing 47 C.F.R. § 79.1(f)(5)) ("*Anglers Reversal Order*").

<sup>6</sup> *Riverbend Petition* at 2-3.

area of [a] broadcasting station, or by regularly viewing the station’s broadcast,” in order to comment on a petition for exemption from the Commission’s closed captioning rules under the Commission’s holding in *Applications of Maumee Valley Broadcasting, Inc.*<sup>7</sup>

Riverbend’s assertion, however, flatly misstates the holding of *Maumee Valley*, which imposes standing requirements on challenges to applications for broadcast license renewals, not exemptions from the closed captioning rules.<sup>8</sup> The standing requirements to raise broadcast license renewal challenges derives specifically from Section 309(d) of the Communications Act of 1934 (“1934 Act”), which requires license renewal challengers to demonstrate “party in interest status.”<sup>9</sup> Closed captioning exemptions, in contrast, are governed by Section 713(d)(3) of the 1934 Act, which contains no comparable requirement.<sup>10</sup>

As the Commission has made clear, any member of the public may comment on a petition for exemption from the closed captioning rules.<sup>11</sup> Section 79.1(f)(6) of the Commission’s rules permits “[a]ny interested person [to] file comments or oppositions to [a] petition” for exemption from the closed captioning rules.<sup>12</sup> The Commission has specifically explained that “the process for determining closed captioning exemptions on the basis of purported undue burden” must “afford *the public* an opportunity to comment on whether grant of . . . petitions [is] in the public interest.”<sup>13</sup>

The Commission has acknowledged for more than a decade that public interest groups, specifically including several of the Consumer Groups, have standing to

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<sup>7</sup> See *id.* (citing 12 FCC Rcd. 3487, 3488-3489).

<sup>8</sup> See 12 FCC Rcd. at 3487-88.

<sup>9</sup> See *id.* at 3487 (citing 47 U.S.C. 309(d)(1)).

<sup>10</sup> See 47 U.S.C. § 613(d)(3).

<sup>11</sup> See *Anglers Reversal Order*, 26 FCC Rcd. at 14,955, ¶ 27.

<sup>12</sup> 47 C.F.R. § 79.1(f)(6).

<sup>13</sup> See *Anglers Reversal Order*, 26 FCC Rcd. at 14,955, ¶ 27 (citing 47 C.F.R. § 79.1(f)(5)) (emphasis added).

comment on exemption petitions.<sup>14</sup> Indeed, Consumer Groups regularly advocate on behalf of deaf and hard of hearing viewers across the country to ensure that they are not denied equal access to video programming in contravention of Congress's intent in enacting the Telecommunications Act of 1996 ("1996 Act") and the Twenty-First Century Communications and Video Accessibility Act ("CVAA"). We urge the Commission to reject Riverbend's standing arguments accordingly.

## **II. The Commission's closed captioning rules do not violate the First Amendment.**

Riverbend's reply suggests for the first time that requiring it to caption its programming would violate the First Amendment.<sup>15</sup> More specifically, Riverbend argues that imposing a closed captioning requirement would "greatly restrict Riverbend's ability to present its telecast in a way that best fits its religious mission amounts [sic] unconstitutional restriction."<sup>16</sup>

While the precise nature of Riverbend's cursory argument is unclear, the First Amendment does not excuse Riverbend from complying with the closed captioning rules. Federal courts and the Commission and courts have consistently affirmed that captioning requirements are consistent with the First Amendment because they merely "present a verbatim translation of [a] program's spoken words" and do "not significantly interfere with program content."<sup>17</sup>

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<sup>14</sup> See, e.g., *Home Shopping Club L.P.*, 15 FCC Rcd. 10,790, 10,790, 10,792, ¶¶ 1, 6 (2000) (specifically acknowledging TDI's opposition to a petition from the closed captioning rules); see also *Anglers Reversal Order*, 26 FCC Rcd. at 14,946, 14,947, 14,949, ¶¶ 9, 12, 16 (granting an application for review by consumer organizations including TDI, NAD, DHHCAN, and the Hearing Loss Association of America).

<sup>15</sup> *Riverbend Reply* at 6.

<sup>16</sup> *Id.* (citing *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012)).

<sup>17</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, Cmty. Television v. Gottfried*, 459 U.S. 498 (1983); see also *Report and Order, 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).

To whatever extent that Riverbend argues that the captioning rules impermissibly burden its free exercise of religion, it must demonstrate that providing closed captioning to viewers who are deaf or hard of hearing somehow runs counter to the religious beliefs of Riverbend or its members. Riverbend impliedly disclaims this possibility, detailing efforts to provide sign language translations of its programming that, while insufficient to satisfy the requirements of the 1996 Act and the CVAA, indicate that Riverbend has no serious objection to communicating its message to viewers who are deaf or hard of hearing.<sup>18</sup>

Regardless, the Supreme Court has plainly recognized that “if prohibiting the exercise of religion . . . is not the object of [a law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.”<sup>19</sup> The Commission’s captioning rules are generally applicable to television video programming, and there is no evidence that the Commission has intentionally applied the rules to burden the free exercise of religion in Riverbend’s case or in any other, or that the rules have ever had such an effect. To the contrary, the plain and obvious goal and frequently realized effect of the Commission’s rules is to make video programming accessible to viewers who are deaf or hard of hearing.

### **III. Conclusion**

Riverbend’s flawed procedural and constitutional arguments cannot remedy Riverbend’s failure to establish that it cannot afford to caption its programming. Accordingly, we again respectfully urge the Commission to dismiss Riverbend’s

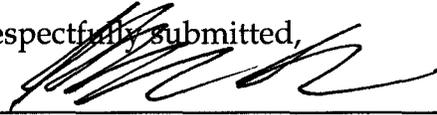
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<sup>18</sup> See *Riverbend Reply* at 4-5. We also clarify that sign language is not an effective substitute for closed captions in many situations because a substantial proportion of people who are deaf or hard of hearing do not understand sign language and rely on closed captioning—possibly as many as 90%. *E.g.*, Aberdeen Broadcast Services, *Sign Language Interpreter vs. Closed Captioning* (Oct. 7, 2008), <http://abercap.com/blog/2008/10/07/sign-language-interpreter-vs-closed-captioning/>.

<sup>19</sup> See, *e.g.*, *Employment Division, Oregon Department of Human Resources v. Smith*, 494 U.S. 872, 878 (1990).

petition and require Riverbend to bring its programming into compliance with the closed captioning rules.

Respectfully submitted,



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Blake E. Reid  
December 14, 2012

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          /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 L. Stout*

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Claude Stout  
December 14, 2012

**CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on December 14, 2012, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

Riverbend Church  
Hay Compere  
Attn: David C. Courreges  
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Niko Perazich  
December 14, 2012