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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: **MM Docket No. 95-176**
Closed Captioning and Video Description

Dear Ms. Salas:

Transmitted herewith on behalf of Grupo Televisa, S.A. are an original and eleven copies of its Opposition to the "Request for Reconsideration of the Captioning Mandates" imposed by the Commission's Report and Order in MM Docket No. 95-176 (FCC 97-279, released August 22, 1997), filed on October 15, 1997 by the National Association of the Deaf and the Consumer Action Network.

In connection with its representation of Grupo Televisa, S.A., a Mexican corporation, Leventhal, Senter & Lerman P.L.L.C. has registered as a foreign agent under the Foreign Agents Registration Act.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosure

Ms. Magalie R. Salas
11/26/97

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Ms. Magalie R. Salas
November 26, 1997
Page -2 -

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
 Closed Captioning and Video Description)
 of Video Programming)
)
 Implementation of Section 305 of the)
 Telecommunications Act of 1996)
)
 Video Programming Accessibility)

MM Docket No. 95-176

**OPPOSITION OF GRUPO TELEVISA, S.A.
 TO REQUEST FOR RECONSIDERATION OF THE CAPTIONING MANDATES**

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Its Attorneys

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**OPPOSITION OF GRUPO TELEVISA, S.A.
TO REQUEST FOR RECONSIDERATION OF THE CAPTIONING MANDATES**

Grupo Televisa, S.A. ("Televisa"), a Mexican corporation, by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the Request for Reconsideration of the Captioning Mandates in the above-captioned proceeding (the "Petition") filed on October 15, 1997 by the National Association of the Deaf and Consumer Action Network (the "Petitioners").¹ Petitioners object to the Commission's decision to exempt Spanish-language programming from its closed captioning requirements, and instead argue that a longer phase-in

¹ This Opposition responds to the FCC's November 5 Public Notice, Report No. 2237, which as published in the Federal Register on November 12, 1997 (62 Fed.Reg. 60712) established November 28, 1997 as the due date for Oppositions to Petitioners' filing.

period for captioning such programming than has been accorded other programming would be appropriate. For the reasons set forth below, the Petition should be denied.

ARGUMENT

Section 713 of the Communications Act of 1934, as amended (“Section 713”), authorizes the Commission to exempt from its general captioning requirements “programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming.” 47 U.S.C. § 613(d)(1). In its decision in this proceeding, the Commission noted that the statutory criteria contained in Section 713(e) for assessing whether an individual program owner or producer qualifies for an exemption under the “undue burden” test “provide useful guidance in considering more general class exemptions.” *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, MM Docket No. 95-176 (FCC 97-279, released August 22, 1997) (“*Report and Order*”), at ¶ 143. Section 713(e) defines “undue burden” as “significant difficulty or expense” and sets forth the following factors to be considered in making undue burden determinations: (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. 47 U.S.C. § 613(e). An analysis of these factors clearly demonstrates that an exemption for Spanish-language programming is entirely warranted.

As the Commission explained in the *Report and Order*, there are substantial practical impediments to imposing a mandatory captioning requirement on non-English language programming, including Spanish-language programming. The Commission first recognized that “the personnel and the facilities necessary to caption languages other than English are extremely limited” *Report and Order* at ¶ 147. With respect to non-English language programming produced outside of the United States, the Commission explained that:

. . . in many situations, additional logistical problems are presented due to the timing of the programming delivery process and the fact that the programming is produced primarily for markets outside of the United States, where there is no closed captioning obligation and, indeed, where there may be no technical system and standards for the distribution of such materials.

Id.

On the basis of these facts, the Commission correctly concluded that “it would be [economically burdensome] to impose general captioning obligations on non-English language programming that makes use of Latin-based alphabets[,]” including Spanish-language programming. *Id.* Petitioners have set forth no valid basis for altering this well-reasoned conclusion.

Televisa demonstrated in its earlier-filed comments that the burden of captioning Spanish-language video programming that is produced outside of the United States far outweighs the potential benefits to be derived from captioning such programming. Indeed, representatives of both the broadcast and captioning industries argued in favor of exempting all non-English language programming from captioning requirements. *See, e.g.*, Comments of CBS Inc. at 15;

Comments of Telemundo Group, Inc. at 8; Comments of Captivision at 6; Comments of KSLS, Inc. at 1.

Congress expressly recognized that, as a practical matter, it will often be more efficient and economical for program producers to caption video programming at the production stage.² In the United States, video programming owners, producers and providers have substantial experience with closed captioning and may rely on more than 100 private suppliers of captioning services to caption their video product. However, as the Commission correctly noted, foreign producers of non-English language programming are under no obligation to caption video programming, and therefore the technical equipment and standards necessary for the creation and transmission of such captions do not yet exist. *Report and Order* at ¶ 147. Consequently, foreign owners and producers of non-English language programming currently lack both the personnel and technical facilities to supply video programming in captioned form. *Id.* This is particularly true in Mexico, where there are currently no private suppliers of closed captioning services. In all likelihood, this is the case in other Spanish-speaking countries as well. Accordingly, if Spanish-language programming produced outside of the United States were required to contain captions, the owners and producers of such programming currently would be unable to do so.

The practical impossibility of captioning, at the production stage, Spanish-language programming produced outside of the United States, is exacerbated by the significant costs that owners and producers of such programming would incur if required to do so. In order to comply with a captioning requirement, Televisa, as well as other foreign owners and producers

² H.R. Report 104-204 (1995) (“House Report”) at 114.

of Spanish-language programming, would incur tremendous costs in purchasing the necessary captioning equipment, including computer hardware and software, encoding devices and other costly equipment, hiring and training a large number of professional captioners, and modifying their production and distribution schedules to accommodate the insertion of captions.

Moreover, Televisa currently has approximately 120,000 half-hours of television programming in its library available for licensing, while in 1996 alone, Televisa distributed its programming in 98 countries worldwide, produced more than 100,000 half-hours of television programming, and exported more than 100,000 hours of such programming. However, only a small portion of Televisa's programming is licensed to distributors in the United States: in 1996, program royalties paid to Televisa by its primary U.S. distribution outlet, the Univision Network, accounted for only about 2% of total Televisa sales. In addition, Univision exercises its call on Televisa's programming only after Televisa has released that programming uncaptioned in Mexico. Because no other country in the world currently requires video programming to be captioned, and because Univision represents such a small percentage of Televisa's total sales, no economic incentive exists for Televisa to caption its programming. If it were to do so, the considerable expenses associated with such captioning would have to be passed on exclusively to distributors of Televisa's programming in the United States.

Unlike the current situation in the U.S., it is very unlikely that these costs would be offset through grants or private contributions from the Mexican government, corporate advertisers, charities or foundations. As Televisa explained in its comments, the majority of television sets in Mexico are not equipped to receive closed captions and therefore could not display such captions even were they to be provided. This situation is unlikely to change in the

near future because television viewers in Mexico do not replace their television sets as frequently as do viewers in the United States. Comments of Televisa at 6. Thus, absolutely no incentive exists for any public or private entity to supply funds for the captioning of Spanish-language programming produced in Mexico.

Significantly, Petitioners do not dispute these facts. Instead, they suggest that U.S. distributors of Spanish-language programming, such as Univision and Telemundo, should “arrange contracts for captioning all shows brought to their stations from foreign countries.” Petition at 13-14. This argument fails for several reasons. As the Commission has recognized, existing personnel and facilities in the United States are currently inadequate to caption foreign language programming. *Report and Order* at ¶ 147. Petitioners speculate on the basis of comments filed by VITAC that captioning providers could begin to provide certain Spanish-language captioning services in a relatively short period of time (Petition at 13). Petitioners also rely on the comments of WGBH Educational Foundation, which stated that certain captioning agencies either employ or contract with non-English speaking captioners and that at least one Spanish-language program is presently captioned. *Id.* However, these assertions are amply rebutted both by Univision, and by one caption provider with experience in captioning Spanish-language programming. Captivision has concluded that captioning such programming is too labor-intensive to be cost-effective, Comments of Captivision at 6, while Univision, in opposition to the Petition, points out that imported programs are often not delivered until shortly before airtime, and scripts for these programs are unobtainable. Opposition of Univision Communications Inc. at 6 (Nov. 20, 1997).

Notwithstanding Petitioners' generalized assertions to the contrary, the current lack of qualified foreign language captioners necessarily translates into higher captioning costs for foreign language programming (including Spanish-language programming) than for English-language programming, a point the Commission has itself recognized.³ Because only the United States currently has a captioning requirement, the added cost of captioning these programs cannot be passed on to all distributors of such programming, but only to those distributors exhibiting in the United States. However, because Spanish-language programming distributed in this country targets a significantly smaller market than comparable English-language programming, domestic distributors of foreign language programming frequently lack the financial resources necessary to pay for these costly captions. As a result, the additional costs associated with captioning such programming will represent a much larger percentage of overall production costs than is the case with English-language programming.

These cost considerations are particularly relevant to program providers like Univision, which distributes nearly twice as much video programming as ABC, CBS or NBC. *Comments of Univision Communications, Inc.* at 13. Rather than incur these substantial captioning costs, Univision and other U.S. distributors of Spanish-language programming will likely have no choice but to eliminate from their programming schedules those Spanish-language programs for which the cost of captioning would represent an uneconomical expenditure in light

³ *Video Programming Accessibility, Report*, MM Docket No. 95-176 (FCC 96-318, released July 29, 1996) at ¶ 80.

of expected revenues, thereby reducing the diversity of Spanish-language programming in the United States.⁴ This is a result that Congress emphatically did not intend.⁵

Petitioners also argue that current and projected estimates of the Spanish-speaking population in the United States do not justify an exemption for Spanish-language programming. Petition at 12. The relevant issue, however, is not the overall Spanish-speaking population, but whether the percentage of that population that would benefit from the provision of closed captioned Spanish-language programming is sufficient to justify both the expense of providing captioned programming, and the related risk that mandatory captioning will reduce the diversity of Spanish-language programming in this country. As Televisa previously pointed out, it is estimated that only 0.75 percent of the U.S. population consists of Spanish-speaking persons with a hearing disability, while only 0.08 percent are persons with such a disability who speak only Spanish. Comments of Televisa at 8. Although Televisa is sympathetic to the needs of the hearing disabled in the Spanish-speaking community, the costs associated with mandatory captioning of Spanish-language programming far outweigh the potential benefits of such captioning.

Given the practical, logistical and economic impediments to captioning Spanish-language programming at this time, and the fact that such a requirement would in all likelihood reduce the diversity of Spanish-language programming in the United States, mandatory captioning

⁴ Petitioners also claim that in its comments, Univision did not even seek an exemption for all Spanish-language programming. However, as the Commission is aware, in subsequent permissible *ex parte* communications to Commission Staff, Univision indeed argued exclusively in favor of such an exemption.

⁵ House Report at 114.

of such programming is not the appropriate solution. Similarly, there is no basis for assuming that these impediments can be resolved during the course of a longer phase-in period for captioning such programming, as Petitioners suggest. Instead, the Commission has appropriately decided to allow market forces to determine when and to what degree Spanish-language programming should be captioned. When demand for captioned Spanish-language programming is sufficient to make captioning economically and practically feasible, domestic distributors of Spanish-language programming will respond by captioning that programming. Any other course of action will distort the Spanish-language programming market and thereby reduce the diversity of such programming available to the American public.

CONCLUSION

For the reasons stated herein, the Commission should not require Spanish-language programming to be captioned pursuant to any preestablished timetable, and instead should allow market forces to accomplish that goal. Accordingly, the instant Request for Reconsideration of the Captioning Mandates should be denied.

Respectfully submitted,

GRUPO TELEVISA, S.A.

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