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February 13, 2015
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 Petition for Exemption from the Commission's Closed
Captioning Rules
CGB Dkt. No. 06-181

Kellogg Street Productions
CGB-CC-0413

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), and Deaf Seniors of America (DSA), collectively, "Consumer Groups," respectfully submit this comment on the petition of Kellogg Street Productions (KSP or Petitioner) to exempt its show "Mohawk Valley Living" from closed captioning.

Consumer Groups do not oppose Kellogg Street Production's request for a temporary waiver through the end of 2015 because it has demonstrated that captioning

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would be economically burdensome. Consumer Groups are writing to emphasize that should KSP resume programming, it must include captioning costs in its business plan to bring its programming into compliance with the Communications Act of 1934 (Communications Act).

I. Background

Kellogg Street Productions produces the show Mohawk Valley Living in Utica, New York.¹ Through 2014, it was a lifestyle show that discussed the people and small businesses of the region every Sunday morning on WFXV in Utica.² As of 2015, the show is airing monthly with plans for a final episode at the end of the calendar year.³

II. Legal Standard

Under Section 713(d)(3) of the Communications Act, the FCC is allowed to grant exemptions to closed captioning requirements when it determines that the requirements are economically burdensome. Section 79.1(f)(1) of the Commission's rules states that a video-programming provider may be granted a waiver to closed captioning requirements after a "finding that the closed captioning requirements will be economically burdensome." To receive a waiver, a petitioner needs to demonstrate that captioning would involve "great difficulty and expense."⁴

III. Consumer Groups do not oppose Kellogg Street Productions' petition for a limited waiver.

Kellogg Street Productions has demonstrated that captioning would be economically burdensome. In 2012, the show posted revenue of \$75,534 and a total profit of \$29,885.⁵ The show cited a captioning cost of \$9,750, based on a cost estimate of \$150 per episode for 61 episodes.⁶ As the producers draw no salary,⁷ such a decrease in profits would be economically burdensome. Moreover, because Mohawk has stated that it plans to cease production in 2015, Consumer Groups do not oppose a temporary waiver through the end of the year.

¹ Letter from Lance Whitney to Office of the Secretary, FCC (Oct. 24, 2013) (filed Oct. 28, 2013) (October 2013 Supplement).

² *Id.*

³ Letter from Lance Whitney to Office of the Secretary, FCC (Oct. 15, 2014).

⁴ 47 C.F.R. 79.1 (f)(1).

⁵ October 2013 Supplement at 17.

⁶ Letter from Lance Whitney to Office of the Secretary, FCC at 3 (June 29, 2014).

⁷ *Id.*

Consumer Groups note that should KSP resume production, it must provide closed captioning in any future programming. Rather than being an additional expense, captioning is a production cost similar to lighting or cameras. The Petitioner should therefore plan to incorporate captioning into its budget should it return to air. Because the Communications Act requires programmers to caption their programming, Mohawk should plan to comply with the law if it does return to the air.

IV. Conclusion

Consumer Groups do not oppose Kellogg Street Production's petition for a waiver through the end of 2015. Consumer Groups also remind Petitioner that should it return to air in the future, it should plan to caption in compliance with the Communications Act.

Sincerely,

/s/

Aaron Mackey
Angela Campbell
Thomas Ball
Georgetown Law Student
Institute for Public Representation

Counsel to TDI

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

/s/

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CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on February 13, 2015, 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 Petitioner at the address listed below.

Lance Whitney
Kellogg Street Productions
30 Kellogg Street
Clinton, NY 13323

/s/

Niko Pezarich
Institute for Public Representation

February 13, 2015