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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: Opposition to Petition for Exemption from the Commission's Closed Captioning Rules
CGB Dkt. No. 06-181

Father Cedric Ministries
CGB-CC-0888

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 opposition to the petition of Father Cedric Ministries (FCM or Petitioner) to exempt its show "Live With Passion!" from closed captioning.

FCM's petition should be denied because it has failed to meet its burden and provide the Commission with all of its financial resources. Alternatively, the limited

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financial records FCM has provided show that captioning its broadcasts would not be economically burdensome. Additionally, although Consumer Groups appreciate that FCM is captioning new episodes, its solution to not caption old episodes that it rebroadcasts is inadequate. Because the majority of FCM's broadcasts feature old episodes, failing to caption them would deprive deaf and hard of hearing individuals of access to most of FCM's programming. This is particularly troublesome because FCM's program appears in some of the largest markets in the country, meaning that millions of individuals who are deaf or hard of hearing are denied access to its program.

I. Background

In 2009, three years after first airing its show, "Live With Passion," Father Cedric Ministries first submitted its application for a waiver to the Consumer and Governmental Affairs Bureau (the Bureau).[1] "Live With Passion" is a program featuring Father Cedric Pisegna, a Catholic priest and member of the Congregation of the Passion, Holy Cross Province (CP).[2] The show airs on 28 stations in media markets across the country, including major markets such as Chicago, Houston, and New York.[3] In June 2012, the Bureau requested supplemental information from FCM and later sought comment on the petition. Consumer Groups opposed the exemption on grounds that it did not provide enough information. The Bureau subsequently asked for more information three more times. In its most recent filing with the Bureau, FCM asks for an exemption for any rebroadcasts of all 157 previously aired episodes, though it promises it will caption all future episodes.[4] The Bureau again placed FCM's petition on Public Notice for comment on January 14, 2015.

II. Legal Standard

Under Section 713(d)(3) of the Communications Act, the FCC is allowed to grant exemptions from closed captioning requirements when it determines that the requirements are economically burdensome. Section 79.1(f) of the Commission's rules state that a video-programming provider may be granted a waiver to closed captioning requirements after a "finding that the closed captioning requirements will be

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[1] Letter from Father Cedric Pisegna to Office of the Secretary, FCC (May 5, 2009).
[2] Letter from Father Cedric Pisegna to Office of the Secretary, FCC (Oct. 25, 2013) (October 2013 Supplement).
[3] October 2013 Supplement at 18.
[4] October 2013 Supplement at 3. According to FCM's website, the programmer is currently captioning new episodes. *See* https://frcedric.org/default.aspx/MenuItemID/103/MenuGroup/Home.htm (last visited Feb. 12, 2015).

economically burdensome." To receive a waiver, a petitioner has the burden to show that captioning would involve "great difficulty and expense."[5] The Commission has said that "[f]ailure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request."[6]

When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission will assess the overall financial resources available to a petitioner. In the case of *First Lutheran Church of Albert Lea* (FLC) the Bureau cited FLC's profits over the previous two years and determined that, FLC's "Profits were sufficient to cover the cost to caption its program."[7] In its ruling, the Bureau determined that the show, which had an operating profit of $42,139, had more than enough money to cover the closed captioning cost of the show, which would be $8,883 for the first year of captioning. Because the Petitioner's entire organization had sufficient funds to afford captioning, it would not be economically burdensome to require captions.[8]

III. FCM has failed to meet the economically burdensome standard.

FCM has failed to meet the economically burdensome standard in two respects. First, FCM has failed to provide complete information about its financial resources. Second, even with the limited financial information FCM provided, captioning would not be economically burdensome. Thus, Consumer Groups ask that the Commission deny FCM's petition and require it to begin captioning its programming.

To begin, the petition should be denied because FCM likely has additional financial resources that have not been presented to the Commission. The Commission has repeatedly held that when assessing whether captioning would be economically burdensome, the organization's entire finances must be considered, not just the resources it devotes to the programming.[9]

In its petition, FCM states that its programming is financially connected to the Congregation of the Passion, a ministry of priests, and that the show benefits the

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[5] 47 C.F.R. 79.1(f)(1)
[6] *First Lutheran* at ¶5.
[7] *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶15 (2014).
[8] *Id.* at ¶15.
[9] *See Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941, 14950, ¶ 17 (2011) (*Anglers Reversal MO&O*) ("In conducting an economically burdensome analysis, all of the petitioner's resources [should be] taken into consideration."); *First Lutheran Church of Albert Lea* at ¶14.

order.[10] The financial records FCM provided in its petition, however, are limited only to its programming budget and do not include the financial resources of the Congregation of the Passion.[11] If those figures were provided, they would likely reinforce Consumer Groups' belief that captioning Petitioner's programming would not be economically burdensome. Because FCM has failed to provide the financial records of the larger organization, it has failed to meet its burden under the relevant legal standard. The Commission should therefore deny the petition. At the very least, the Bureau should seek additional information from Petitioner regarding the Congregation of the Passion's financial resources before reaching a conclusion on whether captioning would be economically burdensome.

Alternatively, the Commission should deny FCM's petition because it has failed to show that captioning its program would be economically burdensome. Before discussing FCM's captioning expenses, Consumer Groups note that FCM's petition contains grossly overstated costs that reflect a fundamental misunderstanding of the Commission's captioning rules and the purpose of the economically burdensome waiver. FCM asserts that it will cost $376,445 to caption all 157 episodes, a cost that includes making 28 duplicate copies of each captioned episode that would be sent to the various stations broadcasting the program.[12]

There are several problems with FCM's quoted captioning costs. First, the number of episodes FCM would have to caption annually is much lower than 157, as the Commission's captioning rules only require Petitioner to caption those older episodes that are broadcast moving forward. Hence, because FCM is already captioning 14 new episodes each year, it would only need to add captions to the remaining 38 older episodes it re-airs. Using the quoted rate of $285 per episode, FCM's annual captioning costs therefore amount to $10,830.[13] In subsequent years, FCM's annual captioning costs will decline, as it would have to caption fewer older programs from its archives. Thus, as more of FCM's catalog is captioned, it will have to caption

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[10] October 2013 Supplement at 3; Letter from Father Cedric Pisegna to Office of the Secretary, FCC at 2 (June 15, 2012) (filed June 20, 2012).
[11] Letter from Father Cedric Pisegna to Office of the Secretary, FCC at 2 (Dec. 19, 2014) (December 2014 Supplement).
[12] December 2014 Supplement at 3.
[13] This total is derived from multiplying the $285 per episode rate by the 38 episodes that would require captions. Consumer Groups use the $285 figure as it was the lowest rate cited. Consumer groups note that the figure is still significantly higher than those cited in other proceedings. *See,* e.g., *First Lutheran Church of Albert Lea* at ¶8 (captioning cost of $105 per hour); October 2013 Supplement at 3.

fewer old episodes. Eventually, FCM's quoted costs for captioning its older episodes will disappear entirely.

The second problem with FCM's captioning costs is that it includes an estimated $331,700 in duplication and shipping costs without sufficient justification.[14] FCM does not explain why it would have to create 28 tape copies of each captioned program at a cost of $75 per episode and then pay shipping for each tape, rather than distributing the program electronically or by other means. For example, because many of the broadcast stations airing FCM's program are in major markets, they likely have the ability to receive electronic copies of the captioned episodes. The Bureau has previously rejected similar estimates by petitioners that fail to explain high production costs associated with their captioning estimates.[15] Because FCM has failed to justify its high distribution costs, the Commission should similarly reject FCM's estimate.

When FCM's actual annual captioning cost of $10,830 is compared to its financial resources, it has ample ability to pay for captioning. According to FCM's financial statements, FCM had $87,437.11 in cash in 2013 and $76,230.33 in 2012 with no liabilities in either year.[16] Thus, FCM could have paid for captioning both years and still had roughly $76,607.11 and $65,400.33 left over in 2013 and 2012, respectively.

Additionally, FCM's reported profits of $11,256 in 2013 could also have covered its annual captioning costs with money left over. Although FCM reported a small loss of $1,523.46 in 2012, FCM had ample cash assets to cover the loss along with the cost of captioning. Indeed, the Bureau has recently denied economically burdensome waivers by petitioners that suffered much greater revenue losses in a single year.[17] Because FCM has cash assets that could cover the cost of captioning with additional funds remaining, this petition is similar to the one the Bureau denied in *First United Methodist Church of Tupelo*. In that case, the petitioner's ample assets helped persuade the Bureau that captioning was not economically burdensome.[18] Thus, the Bureau should similarly deny FCM's petition because requiring FCM to caption would not be economically burdensome.

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[14] December 2014 Supplement at 3.
[15] *See Gray Publishing, Inc.*, Dkt. No. 06-181, DA 15-92, ¶8 n. 31 (Jan. 22, 2015). The Bureau calculated the cost by multiplying the cost per episode by the number of episodes, not including the cost of shipping.
[16] Letter from Father Cedric Pisegna to Office of the Secretary, FCC at 5 (July 29, 2014).
[17] *See First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶9 (Feb. 3, 2015) (petitioner posted a net loss of $60,601 in 2011).
[18] *First United Methodist Church of Tupelo* at ¶14.

Alternatively, even assuming that FCM's distribution costs are accurate – a fact Consumer Groups dispute – those costs could also be covered by Petitioner's assets. According to FCM, it needs to make 28 copies of every newly captioned show, costing it $75 per copy.[19] If FCM began captioning 38 old shows annually, it would need to purchase 1,064 copies for a total cost of $79,800.[20] That total is still less than the cash assets of $87,437.11 FCM reported in 2013. Even if FCM had to mail taped copies of its newly captioned programming to every broadcaster, it would still not be economically burdensome.

Consumer Groups note that regardless of the outcome of FCM's petition, moving forward it will eventually need to caption all episodes of its program that are broadcast. Although Consumer Groups appreciate FCM's efforts to caption new episodes, its petition argues that it should receive a permanent exemption for all 157 of its previously aired episodes that re-air.[21] The economically burdensome waiver cannot permanently exempt any programmer from the Commission's closed captioning rules. Indeed, the Commission has stated that these waivers are "not designed to perpetually relieve a petitioner of its captioning obligations."[22] Thus, the Commission cannot give FCM what it seeks.

Finally, Petitioner's view that its proposal to caption only new episodes is a "good faith" effort to solve the problem is not a solution for the millions of deaf and hard of hearing individuals living in New York, Chicago, Houston, and the other markets in which FCM's programming airs.[23] Because only 14 episodes a year are currently captioned, nearly three quarters of FCM's programs aired annually remain inaccessible. The ability of individuals who are deaf and hard of hearing to access television programming is a civil right. FCM's solution does not remedy the lack of access, nor does it comply with the Communications Act, which requires television programming to be captioned. Accordingly, if the Bureau does grant FCM a waiver, it should be limited and require Petitioner to eventually caption all of its programming.

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[19] December 2014 Supplement at 3.
[20] The total is the result of multiplying 38 episodes by 28 copies at a rate of $75 per copy.
[21] October 2013 Supplement at 3 ("FCPM is requesting an exemption from the closed captioning requirements for all episodes of this program that were aired prior to 2013, and which continue to air on thirty (30) television stations.").
[22] *Anglers Reversal MO&O* at ¶23 (internal quotations omitted).
[23] *See* https://frcedric.org/default.aspx/MenuItemID/125/MenuGroup/Home.htm (last visited Feb. 12, 2015).

IV. Conclusion

Petitioner's waiver request should be denied. FCM has not provided complete information about its financial resources, failing to meet its burden for a waiver. Second, even with the limited information provided by FCM, captioning would not be economically burdensome. Thus, Consumer Groups ask that the Commission deny FCM's petition and require it to begin captioning its programming.

Sincerely,

/s/

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Counsel to TDI

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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.

Father Cedric Pisegna, C.P.
Fr. Cedric Ministries
The Passionists of Holy Cross Province
430 Bunker Hill Road
Houston, TX, 77024

/s/
Niko Perazich

February 13, 2015