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March 16, 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

Catholic Television Network of Youngstown
CGB-CC-0529

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Cerebral Palsy and Deaf Organization (CPADO), National Association of the Deaf (NAD), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and American Association of the Deaf-Blind (AADB), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Catholic Television Network of Youngstown (CTNY or Petitioner) for exemption of its programming from the Federal Communications Commission's (Commission) closed captioning rules.

*Admitted to the Washington bar only;
DC bar membership pending. Practice supervised by members of the DC bar.

I. Background

CTNY initially filed a petition by letter on May 1, 2006, seeking a waiver of the Commission's closed captioning rules for the 30-minute-long worship program, "The Mass for Shut-Ins."¹ "The Mass for Shut-Ins" is broadcast every Sunday on the NBC affiliate WFMJ TV-21 in Youngstown, Ohio.² Although the Consumer and Governmental Affairs Bureau (CGB or Bureau) initially granted CTNY's 2006 Petition, the Commission reversed that decision five years later.³ The Bureau then gave CTNY the opportunity to refile its 2006 Petition, which it did on January 17, 2012.⁴ The Bureau sought additional information from CTNY in September 2013 and May 2014.⁵ In response, CTNY submitted supplemental information in October 2013 and June 2014.⁶ The Bureau then placed the 2012 Petition on Public Notice for comment on February 12, 2015.⁷

II. Legal Standard

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome."⁸ When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission considers the following factors on a case-by-case basis: (1) the nature and cost of the

¹ Letter from Robert Gavalier, General Manager, Catholic Television Network of Youngstown, to Office of the Secretary, FCC (May 18, 2006) (2006 Petition).

² *Id.* at 1.

³ See *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941 (2011).

⁴ Letter from Robert Gavalier, General Manager, Catholic Television Network of Youngstown, to Office of the Secretary, FCC (Jan. 17, 2012) (2012 Petition).

⁵ Letter from Cheryl J. King, Disability Rights Office, CGB, to Robert Gavalier (Sept. 27, 2013); Letter from E. Elaine Gardner, Disability Rights Office, CGB, to Robert Gavalier (May 30, 2014).

⁶ Letter from Robert Gavalier to Office of the Secretary, FCC (Oct. 25, 2013) (2013 Supplement); Letter from Robert Gavalier to Office of the Secretary, FCC (June 5, 2014).

⁷ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-200 (Feb. 12, 2015).

⁸ 47 U.S.C. § 613(d)(3). 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 Bureau to continue to evaluate all exemption petitions using the "undue burden" standard pursuant to Rule 79.1(f)(2)-(3). *Interpretation of Economically Burdensome Standard*, 27 FCC Rcd 8831, 8834 ¶7 (2012).

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.⁹ The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner's current assets, current liabilities, revenues, expenses, and other documentation "from which its financial condition can be assessed."¹⁰

III. CTNY has failed to demonstrate that captioning "The Mass for Shut-Ins" would be economically burdensome.

Requiring CTNY to caption its programming would not be economically burdensome. First, a review of the two captioning quotes CTNY received demonstrates that it would not cost much to caption "The Mass for Shut-Ins." One quote from CaptionLabs estimated costs of \$197 per episode,¹¹ plus shipping. The second quote from Universal Media Service offered to caption for \$200 per episode, plus shipping costs.¹² CTNY states that "the cost of closed captioning and overnight shipping for each Sunday Mass would total approximately \$290 per week," or \$16,900 annually.¹³

It is unclear how CTNY arrives at the totals, however, because it provides no explanation for the additional shipping fees. Instead, CTNY includes a list of quoted shipping rates from UPS that range from \$78.20 for next-day morning delivery to \$8.57 for ground shipping.¹⁴ Given this ambiguity, Consumer Groups believe that CTNY's actual captioning and shipping costs are much lower, likely closer to \$11,000.¹⁵

In any event, even assuming that CTNY's captioning costs are \$16,900, that total would not make captioning "The Mass for Shut-Ins" economically burdensome because Petitioner has the resources to afford captioning. Although CTNY provided a piecemeal picture of its total financial resources, the records show that it has ample resources to cover the program's captioning costs.

⁹ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014).

¹⁰ *Id.* at ¶¶ 13-14; *see also First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

¹¹ \$145 per episode for captioning plus \$52 for digital delivery to WFMJ. 2013 Supplement at 10-12.

¹² *Id.* at 13.

¹³ *Id.* at 1.

¹⁴ *Id.* at 11-12.

¹⁵ Based on the lower quote from CaptionLabs of \$197.00 per episode, plus the lowest shipping estimate of \$8.57, CTNY's annual captioning costs would be \$10,689.64.

The financial reports provided by CTNY indicate that Petitioner has sufficient revenue in various accounts and ample net current assets to cover its captioning costs. Consumer Groups acknowledge that CTNY reported that its central service operations suffered a net loss of \$1,073,434.00 in 2012.¹⁶ A year earlier, the center service operations reported a net profit of \$85,826.00, which could have easily covered its annual cost of captioning for both years.¹⁷

Consumer Groups note, however, that the central service operations budget does not appear to capture all the revenue CTNY had in those years, much less its net current assets that could be used to pay for captioning. For example, the included financial reports indicate that CTNY has a "Bishop's Reserve Operations" fund that had \$46,339 in 2012 and \$249,245 in 2011.¹⁸ Additionally, the financial reports indicate that CTNY had \$2.2 million left over in its self-insurance fund in 2012 and \$1.46 million in 2011.¹⁹ Both the Bishop's Reserve Operations and the self-insurance funds' excess revenue could have been used to pay for captioning for several years, demonstrating that captioning would not be economically burdensome.

Moreover, CTNY has ample net current assets to cover its captioning costs. CTNY reported net current assets of \$7,178,454.00 as of June 2012 and \$6,495,834.00 as of June 2011.²⁰ If CTNY had paid \$10,689.64 per year to caption "The Mass for Shut-Ins," it would still have had net current assets of \$7,167,764.36 as of June 2012 and \$6,485,144.36 as of June 2011. CTNY's net current assets therefore indicate that the provision of closed captioning would not be economically burdensome, despite CTNY's reported net loss in its operating fund in 2012.

The conclusion that captioning CTNY's programming would not be economically burdensome is further supported by the Bureau's recent decision in *Joy Ministries*.²¹ In that case, the Bureau concluded that closed captioning would not be economically burdensome because the petitioner's net income, together with its net current assets, was sufficient to cover the annual cost of captioning.²² The same principle applies here. CTNY's net income in the June 2011-June 2012 year, together with its net current assets as of June 2012, was sufficient to cover the cost of closed

¹⁶ 2013 Supplement at 21.

¹⁷ *Id.* at 22.

¹⁸ *Id.* at 23-24.

¹⁹ *Id.* at 25-26.

²⁰ *Id.* at 19-20.

²¹ *Joy Ministries*, Dkt. No. 06-181, DA 15-286 (Mar. 4, 2015).

²² *Id.* at ¶16.

captioning. Specifically, CTNY could have provided closed captioning, covered its central service operations losses, and still retained \$6,094,330.36 of its net current assets in that year. Captioning would therefore not be economically burdensome.

Because CTNY has failed to show that captioning would be economically burdensome, the Commission need not reach other arguments raised by CTNY. Nonetheless, Consumer Groups respond to CTNY's claim that "The Mass for Shut-Ins" qualifies for a categorical exemption under Section 79.1(d)(8).²³ The Commission has consistently explained that this exemption only applies when programming is produced by the video programming distributor (VPD).²⁴ CTNY is not a VPD within the meaning of the Commission's rules;²⁵ therefore it does not qualify for this exemption.

IV. Conclusion

CTNY has not shown that captioning "The Mass for Shut-Ins" would be economically burdensome. Thus, Consumer Groups ask the Commission to deny CTNY's petition and require it to caption its programming. If the Commission does conclude that CTNY has demonstrated that its financial situation makes captioning costs economically burdensome, Consumer Groups ask that the Commission only approve an extremely limited exemption. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a petitioner may change, the Commission should refrain from granting lengthy or open-ended exemptions.

Sincerely,

/s/

Aaron Mackey
Angela Campbell
Institute for Public Representation

Counsel to TDI

Christopher Dioguardi
Georgetown Law Student

²³ 2013 Supplement at 2.

²⁴ See, e.g., *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶6 n. 13 (2014); *Faith Center of Paducah*, Dkt. No. 06-181, DA 15-89, ¶6 n. 12 (Jan. 22, 2015).

²⁵ 47 C.F.R. § 79.1(a)(11).

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/s/

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CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 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.

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/s/

Niko Pezarich
Institute for Public Representation

March 16, 2015