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April 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

Control Track, Inc.
CGB-CC-0584

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the Deaf-Blind (AADB), Cerebral Palsy and Deaf Organization (CPADO), National Association of the Deaf (NAD), Deaf Seniors of America (DSA), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late Deafened Adults (ALDA), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, "Consumer Groups," respectfully submit this comment on the petition of Control Track, Inc. (Control Track 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

Control Track filed its first petition to exempt its 30-minute Christian music video show on August 10, 2006.¹ Control Track's programming is distributed by Sky Angel and its primary purpose is to "spread the gospel through Christian music video and testimonies of those involved in the industry."² After the full Commission reversed the Consumer and Governmental Affairs Bureau's (CGB or Bureau) earlier grant of a waiver to Control Track, Petitioner resubmitted its waiver request in June 2012.³ After Control Track provided additional information to the Bureau, the FCC placed its waiver petition on public notice in October 2012.⁴ Consumer Groups opposed the petition, arguing that Control Track had failed to document its captioning expenses or sufficiently detail its financial resources, such that it was impossible to tell whether captioning would be economically burdensome.⁵

In response to Consumer Groups' opposition, the Bureau sought additional information from Control Track regarding its captioning costs and financial resources.⁶ From October 2013 to March 2015, Control Track supplemented its petition multiple times as the Bureau asked for more detailed information.⁷ The Bureau then placed the petition on Public Notice for comment on March 12, 2015.⁸

¹ *Control Track, Inc. Request for Exemption from Commission's Closed Captioning Rules*, Dkt. No. 06-181 (Aug. 10, 2006) (2006 Petition).

² *Id.*

³ *Control Track, Inc. Request for Exemption from the Commission's Closed Captioning Rules*, Dkt. No. 06-181 (June 26, 2012) (2012 Petition).

⁴ *Request for Comment, Request for Exemption from the Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 12-1729 (Oct. 26, 2012).

⁵ *Consumer Groups Opposition to Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. No. 06-181 (Nov. 26, 2012).

⁶ Letter from Roger Holberg, Disability Rights Office, CGB, to Control Track, Inc., Dkt. No. 06-181 (Sept. 26, 2013).

⁷ *Control Track, Inc. Request for Exemption from the Commission's Closed Captioning Rules*, Dkt. No. 06-181 (Oct. 22, 2013) (2013 Supplement); Letter from E. Elaine Gardner, FCC, to Control Track, Inc., Dkt. No. 06-181 (May 30, 2014); Letter from Control Track, Inc. to FCC, Dkt. No. 06-181 (June 27, 2014) (2014 Supplement); Letter from Caitlin Vogus, FCC, to Control Track, Inc., Dkt. No. 06-181 (Feb. 12, 2015); Letter from Control Track, Inc. to FCC, Dkt. No. 06-181 (March 2, 2015) (2015 Supplement).

⁸ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, Dkt. No. 06-181, DA 15-319 (Mar. 12, 2015).

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."⁹ The Commission considers several factors on a case-by-case basis when determining whether a petitioner has made the required showing under the economically burdensome standard.¹⁰ An economically burdensome waiver is appropriate when a petitioner has demonstrated that compliance with the closed captioning rules would likely result in the cancellation of its programming.¹¹

III. Consumer Groups do not oppose Control Track's waiver petition.

Based on the financial records provided by Control Track, Consumer Groups do not oppose the FCC granting Petitioner a narrow, time-limited waiver of the closed captioning rules. Control Track provided two closed captioning quotes in support of its waiver request. The first quote, from Video Captioning Corporation, offered a rate of \$235 per show for an annual cost of \$12,220.¹² The second quote, from Aberdeen Broadcast Service, offered to caption at a rate of \$278.10 per show plus additional one-time setup costs of \$14,059.50.¹³ Using Aberdeen's quote, Control Track's first year costs would total \$27,964.50, with annual captioning costs of \$13,905 in subsequent years.¹⁴

Control Track's financial records indicate that captioning its program – even at the lower captioning rate of \$12,220 – would likely be economically burdensome. Petitioner reported a net profit of \$919.01 in 2011 and a net loss of \$310.12 in 2012.¹⁵ Although Control Track did not provide its net current assets for 2012, the records it did provide indicate that Control Track had net current assets of \$5,420 in 2011, \$4,352 in

⁹ 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).

¹⁰ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014).

¹¹ *See Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941, 14952 ¶20 (2011) (*Anglers*).

¹² 2013 Supplement at 4.

¹³ 2014 Supplement.

¹⁴ *Id.*

¹⁵ 2013 Supplement at 8-9.

2013, and \$5,135 in 2014.¹⁶ Thus, even if Control Track devoted all of its net profits and net current assets to captioning, it would still not be able to afford to caption its programming. Thus, requiring Control Track to caption is likely to be economically burdensome.

Consumer Groups therefore do not oppose the FCC granting Control Track a waiver. Any waiver, however, should be limited to six months or one year, as the economically burdensome waiver "is not designed to perpetually relieve a petitioner of its captioning obligation."¹⁷ 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. At the time of this filing, Control Track has operated under a *de facto* waiver of the obligation to provide closed captions for almost nine years.¹⁸ A short waiver will give Control Track time to identify financial resources to bring its programming into compliance with the Commission's closed captioning rules.

Sincerely,

/s/

Aaron Mackey
Angela Campbell
Institute for Public Representation

Counsel to TDI

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

/s/

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¹⁶ 2015 Supplement. In an earlier submission in 2012, Control Track provided a bank statement indicating that it had a balance of \$5,664. *See* 2012 Petition. It is not clear whether the account includes all of Control Track's net current assets.

¹⁷ *Anglers*, 26 FCC Rcd at 14953, ¶23.

¹⁸ *See* 2006 Petition.

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CERTIFICATE OF SERVICE

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

Alan J. Rasmussen, President
Control Track, Inc.
P.O. Box 560124
Orlando, FL 32856-0124

/s/

Niko Pezarich
Institute for Public Representation

April 13, 2015