BEFORE the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of WSBS LICENSING, INC. WSBS-DT, Facility ID No. 72053 Key West, Florida WSBS-CD, Facility ID No. 29547 Miami, et al., Florida KTBU LICENSING, INC. KTBU(DT), Facility ID No. 28324 Conroe, Texas MEGA MEDIA HOLDINGS, INC. MEGA TV Network Petition for Exemption of Closed Captioning Requirement To: The Commission	))))))))))))))))))))	CGB-CC-1333 CG Docket No. 06-181

REPLY TO OPPOSITION TO PETITION FOR EXEMPTION

WSBS Licensing, Inc. ("WSBS Licensing"), KTBU Licensing, Inc. ("KTBU Licensing"), and Mega Media Holdings, Inc. ("MMHI," and together with WSBS Licensing and KTBU Licensing, "SBS"), by their attorneys, respectfully submit this Reply to Opposition to Petition for Exemption filed by the Georgetown Law Institute for Public Representation ("Georgetown") purportedly on behalf of 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, the "Consumer Groups").

In its Petition (the "Petition"), SBS sought an exemption from the Commission's closed captioning requirements pursuant to Section 79.1(f) of the FCC's rules, because the burden of complying with the requirements would result in significant difficulty and expense for SBS – thus satisfying the Commission's economically burdensome standard.[1] In fact, as SBS stated bluntly, absent grant of the relief sought, the expenses associated with captioning could result in the closure of SBS's television operating segment.[2]

Georgetown has filed an Opposition to the Petition (the "Opposition") that is based entirely on policy arguments which, if accepted, would rewrite the FCC's rules and policies on captioning waivers. Georgetown advances various hypotheses proclaiming that SBS's Petition is not even entitled to consideration because:

1. SBS operated under the new network captioning exemption between 2006 and 2010.

2. SBS is a large, publicly traded company with "for-profit corporate status."

3. Despite Commission policy mandating review of a multitude of factors when analyzing a petitioner's financial circumstances (including "information and documentation of the petitioner's financial resources, including its income, expenses, current assets, and current liabilities for the two most recent completed calendar or fiscal years"[3]), analysis of

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[1] *See SBS's Petition for Exemption of Closed Captioning Requirement*, CG Docket No. 06-181 (Mar. 24, 2014) ("Petition"); *see also SBS's Response to Request for Supplemental Information*, CG Docket No. 06-181 (Apr. 28, 2014) ("Supplement").

[2] Petition at 1, 5.

[3] *First Baptist Church, Jonesboro, Arkansas Request for Exemption from the Closed Captioning Requirements, Memorandum Opinion and Order*, 29 FCC Rcd 12833, 12835 (CG 2014). In fact, financial data that the Commission considers as part of its exhaustive financial analysis include "a statement of all income (cash receipts) and all expenses for each of the two most recent completed calendar or fiscal years. Cash receipts include money received from all sources for your entire organization, not just the video

SBS's Petition should be limited to two factors: annual net revenues and operating budget.

4. SBS paid too much compensation to its top three executives in the year 2013.

These objections, while admittedly novel, have absolutely no basis in the Commission's captioning rules or precedent and must be summarily rejected.

I. The Opposition Fails to Demonstrate Standing by Any Party.

Before commencing an analysis of the Opposition's unusual theories, SBS notes that the Opposition fails to establish, or even address, how anyone connected with the Opposition has standing to participate in this matter. Section 79.1(f)(6) of the Commission's rules provides that "any interested person" may file comments or oppositions to petitions for exemption. The Opposition neither establishes that it has been submitted on behalf of "interested persons" within the meaning of the FCC's rules, nor alleges (or even mentions) any facts establishing how any party connected with the Opposition can maintain standing as a party to this proceeding. *See, e.g., Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).

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program(s). Cash expenses include money paid for purchases, expenses, and settlement of obligations throughout the year for your entire organization, not just the video program(s)...each type of cash receipt (such as sales, donations, grants, earnings, revenues, dividends, or interest) and for each type of cash expense (such as wages, fees, supplies, rent, mortgage interest, depreciation, or taxes) for the two most recent completed calendar or fiscal years. Cash receipts and cash expenses must each be subtotaled...a total net dollar amount (sometimes called a surplus or deficit, or profit or loss) for all cash receipts and all cash expenses for each year...audited financial statements or an accountant's review or compilation of financial statements for the two most recent completed calendar or fiscal years (or) complete federal income tax returns or tax-exempt information returns, including all schedules and attachments, for your organization for the two most recent completed calendar or fiscal years, if such returns were filed (or) a written statement to that effect . . . information about the current assets and current liabilities of your overall organization, as follows: Provide a statement of all current assets and current liabilities of the overall organization as of the last day of the two most recent completed calendar or fiscal years. Current assets and current liabilities must each be totaled... provid[e] complete balance sheets that identify current assets and current liabilities as of the last days of the two most recent completed calendar or fiscal years." Federal Communications Commission, *Required Information and Documentation to Provide in Filing a New Petition to be Exempt from the Television Closed Captioning Requirements, available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf.

Georgetown, which apparently drafted and submitted the Opposition, does not appear to have submitted the Opposition on its own behalf, or to claim that Georgetown somehow possesses standing. And while Georgetown purports to represent eight enumerated organizations, it provides no statement, declaration, affidavit, or documentation of *any* kind demonstrating that any of the named organizations has requested or consented to Georgetown's representation. The relationship between Georgetown and the Consumer Groups is simply unaddressed.

Furthermore, there is no explanation whatsoever of whom the Consumer Groups themselves purport to represent or how grant of the Petition would in any way cause injury to them or any of their members. The Opposition does not include a statement, or explanation of any sort, alleging that any member of the Consumer Groups has ever even seen SBS's programming.

A petitioner is afforded "party-in-interest" status by demonstrating residency within a station's service area, or by regularly listening to or viewing a station, provided that such listening or viewing is not the result of transient contacts with the station. *CHET-5 Broad., L.P.*, 14 FCC Rcd 13041 (1999), *citing Maumee Valley Broad., Inc.*, 12 FCC Rcd. 3487, 3488-3489 (1997). The Opposition fails to establish that anyone connected with it resides in the service area of any of SBS's television services, and fails to provide a statement from any member of any of the Consumer Groups claiming to be aggrieved or injured. Accordingly, the Opposition manifestly fails to meet the minimum threshold required to establish standing to participate in this proceeding.

II. The Opposition's Novel Arguments are Unsupported by Captioning Rules or Policies.

A. The Petition-Driven Economically Burdensome Exemption Operates Independently of the Self-Implementing New Network Exemption.

The Opposition's first proposition is that SBS is entirely barred from consideration for an exemption under the economically burdensome standard, because when SBS launched a network in 2006, it operated under the "new network exemption" automatically afforded by Section 79.1(d)(9) of the FCC's rules. According to the Opposition, expiration of the new network exemption rendered SBS automatically and irreversibly ineligible for any sort of potential further relief from the captioning requirements.

The Opposition cites to no Commission rule or decision stating that initial operation under a new network exemption precludes a program provider from later seeking consideration of relief from the captioning rules for a different reason and under a different standard. Rule 79.1(f)(1) states, *without qualification*, that "[a] video programming provider…may petition the Commission for a full or partial exemption from the closed captioning requirements."[4] The captioning rules enumerate 13 "self-implementing" captioning exemptions, of which the new network exemption is but one, which a program provider may utilize without advance notice or prior approval from the Commission.[5] Conversely, the economically burdensome exemption requires express Commission approval, initiated through a petition process. Despite the plain language of the captioning rules and longstanding Commission policy distinguishing the self-

[4] 47 C.F.R. § 79.1(f)(1)
[5] *See* 47 C.F.R. § 79.1(d)(1-13).

implementing exemptions from the petition-driven economically burdensome exemption, the Opposition now asks the Commission to preclude an entity from seeking relief under the economically burdensome standard if that entity previously benefited from one of the self-implementing exemptions.[6] Such a result is obviously at odds with the purpose and language of the captioning rules and deserves no further consideration.

B. The Economically Burdensome Exemption is Available to Any Party in the Video Programming Distribution Chain.

The Opposition's second theory is that SBS cannot be considered for an exemption because the economically burdensome exemption "was not created to benefit sophisticated, publicly traded commercial media companies."[7] The Opposition's argument, stated simply, is that SBS is too large to qualify for an economically burdensome exemption.

The Commission has never limited the availability of the economically burdensome exemption to any particular type, size, or class of program provider. On the contrary, the Commission has evinced a clear desire to keep open the economically burdensome petition process to as many types of applicants as possible. The FCC will consider exemptions for all "programs, classes of programs, or services."[8] The FCC has noted that the potential applicants and circumstances that might bring them to petition for an exemption could arise under "an enormous number of different circumstances."[9] The

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[6] The Opposition avoids discussing why only the new network exemption, and none of the other 12 self-implementing exemptions, should preclude subsequent consideration of an exemption under the economically burdensome standard.

[7] Opposition at 5.

[8] *Closed Captioning and Video Description of Video Programming, Report and Order*, 13 FCC Rcd 3272, 3342 (1997) ("*Captioning Order*").

[9] *Id.* at 3349.

Commission has stressed that "*any party* in the video programming distribution chain [can] file for an exemption under the [economically burdensome] standard."[10]

Ignoring the Commission's clear objective to allow potential participation in the economically burdensome petition process to be as broad-reaching as possible, the Opposition instead seeks to disqualify SBS from consideration because SBS is a publicly traded, for-profit corporation whose programming reaches a large percentage of the U.S. Hispanic viewing market. Citing no support whatsoever, the Opposition summarily announces that SBS's "vast resources and other characteristics make it ineligible for an economically burdensome waiver."[11]

If accepted, SBS's argument would create a new standard that directly contradicts all previous Commission declarations as to whom may apply and qualify for relief under the economically burdensome standard. The limiting principle encouraged by the Opposition obviously deserves no deliberation in light of the Commission's clear, longstanding policy to grant all program providers access to the economically burdensome petition process.

C. SBS is Entitled to, and the Commission Must Provide, Consideration of All of SBS's Financial Data.

The Opposition's next assertion is that, despite the FCC's assurance that in analyzing economically burdensome petitions it will thoroughly review extensive information broadly indicative of "the financial resources of the provider or program

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[10] *Closed Captioning of Video Programming, Order on Reconsideration, Order on Reconsideration*, 13 FCC Rcd 19973, 20021 (1998). "The Petition may seek exemption for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider." *Captioning Order* at 3364.

[11] Opposition at 6.

owner,"[12] the only data worthy of review for SBS's Petition are "annual net revenues and . . . operating budget."[13] This is so, according to the Opposition, even though "the Commission usually focuses its analysis on a petitioner's net income and net current assets."[14] Demonstrating a complete lack of comprehension of corporate operation and accounting, the Opposition then attempts to brush aside SBS's substantial net losses and net current liabilities as anomalies, and focuses entirely on net revenues and operating income.

As required, SBS has provided ample financial information with its Petition and Supplement. All of this information deserves full Commission review. While SBS may well be "the largest publicly traded, Hispanic controlled media company in the United States,"[15] the size of SBS's overall corporate operation has not translated into positive economic attainment for SBS's television operating segment. As explained in previous filings, SBS's television operations lost a combined $109,279,000 from 2006-2012. The Commission has made clear that the economically burdensome analysis focuses on "the individual outlet in question and not its affiliates or parent corporations."[16] Here, that is SBS's television division, which has historically suffered substantial losses.

The Opposition's plea to the Commission to ignore all the financial data required as part of the economically burdensome petition, and instead to focus solely on two

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[12] 47 C.F.R. § 79.1(f)(2). *See* note 3 supra for an exhaustive description of the financial data that is considered.

[13] Opposition at 7.
[14] *Id.*

[15] Opposition at 6.

[16] *Captioning Order* at 3365.

unrepresentative metrics, is contrary to established Commission policy and is entirely without justification or support.

D. SBS's Compensation of Executives in Irrelevant to the Economically Burdensome Analysis.

The Opposition saves its most uninformed protest for last. The Opposition objects that expenditures for closed captioning could not possibly detrimentally impact SBS, because of the level at which SBS compensated three executives in the year 2013.

At no point in the development and implementation of the captioning rules and their exemptions, nowhere in the text of the captioning rules, and in no Commission decision of which SBS is aware has the Commission ever recognized, let alone considered, executive compensation as a factor to be considered in analyzing an economically burdensome petition. Even if compensation where somehow a valid metric for consideration, the remuneration complained of in the Opposition covered significant duties performed outside the SBS television division – the operating segment at issue here – and is entirely in line with that of similarly situated executives for comparable media companies. In fact, executives in SBS's "peer group" are often compensated at levels significantly above those at SBS.[17]

CONCLUSION

The Opposition is riddled with faults and based entirely on theories with no basis in the Commission's closed captioning rules or policies. It fails to address the critical issue of individual and/or institutional standing. It asserts various *opinions*, but no rules or case law in support, pontificating that SBS is ineligible for consideration under the

[17] *See, e.g.*, Dave Seyler, *Gray and Gray Execs Prospered in 2014*, Radio+Television Business Report, *available at* http://rbr.com/gray-and-gray-execs-prospered-in-2014/ (noting that Gray Communications' President/CEO, SVP/CFO, and SVP/Business Affairs earned totals of $4,197,413; $1,867,384; and $2,022,587, respectively, in 2014, and that Gray considers SBS to be in its peer group.)

economic burdensome standard because it once operated a new network; SBS is disqualified from filing its Petition because SBS is just too large; SBS's financial information documenting heavy, long-term losses in the television division should be disregarded in favor of a laser-like focus on two wholly unrepresentative financial metrics; and SBS is ineligible for relief under the economically burdensome due to the compensation paid to three executives in 2013. None of these novel whims is supported by the Commission's captioning rules, policies, or precedent.

SBS respectfully requests that the Commission grant its Petition.

Respectfully submitted,

Spanish Broadcasting System, Inc.

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May 4, 2015

DECLARATION OF JOSEPH A. GARCIA

I, Joseph A. Garcia, am Senior Executive Vice President of Spanish Broadcasting System, Inc. ("SBS").

I have reviewed the foregoing Reply to Opposition to Petition for Exemption. I certify that the facts set forth therein, except those of which official notice may be taken or that are attested to by other SBS employees, are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. I understand that this Declaration will be submitted to the Federal Communications Commission.

May 4, 2015

CERTIFICATE OF SERVICE

I, Deborah A. Morris, a secretary in the law firm of Lerman Senter PLLC, do hereby certify that a true copy of the foregoing Reply to Opposition to Petition for Exemption was sent this 4th day of May, 2015 by first-class mail to the following party:

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Deborah A. Morris