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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

CLOSED CAPTIONING et al.) Docket No.06-181
) CGB-CC-0767
Petition for Exemption and/or Waiver of)
St. Luke's United Methodist Church of Houston)

To: Secretary

REPLY TO OPPOSITION TO
PETITION FOR EXEMPTION AND/OR WAIVER

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February 25, 2008

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REPLY TO OPPOSITION OF "COMMENTERS"
TO PETITION FOR EXEMPTION AND/OR WAIVER

St. Luke's United Methodist Church, of Houston, Texas ("SLMC"), respectfully submits this REPLY to the "Letter" of certain "Commenters,"¹ filed on or about February 7, 2008,² in opposition to SLMC's **Petition for Exemption and/or Waiver** from the FCC's closed captioning rules ("Opposition").

1. First, this "canned" pleading, which fails seriously to discuss any of SLMC's unique and specific facts, should be dismissed as facially and patently unresponsive on its face.

2. Moreover, the Commenters fail to establish that they have standing to participate in this matter. Section 79.1 (f) (6) of the FCC's rules provides that "any interested person" may file comments or oppositions to the petition for exemption.³ Yet, the Commenters conspicuously fail to establish they are "interested persons" within the meaning of the FCC's rules and the Administrative Procedure Act.⁴

The "irreducible constitutional minimum" for standing is that the appellant was injured in fact, that its injury was caused by the challenged conduct, and that the injury would likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992); *Microwave Acquisition Corp. v. FCC*, 330 U.S. App. D.C. 340, 145 F.3d 1410, 1412 (D.C. Cir. 1998). Groups, such as the Commenters, have standing to sue on behalf of their members only if (1) at least one of the members would have standing to sue in his own right, (2) the interest the

¹ The pleading is signed by "counsel to TDI" only and thus other named parties cannot lawfully participate in the Opposition. See 47 CFR 1.52.

² The Letter, dated February 7, 2008, was apparently delayed in US mails more than a week before reaching Petitioner's counsel and, thus, to the extent required, Petitioner seeks a waiver of any rules necessary to receive and consider this Reply.

³ 47 C.F.R. §79.1 (f)(6).

⁴ 5 U.S.C.A. § 555(b).

association seeks to protect is germane to its purpose, and (3) neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit.

Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977).

The Commenters do not even allege that the FCC's grant of the above captioned Petition could in any way injure them or any of their members. Nor do they even assert that any member of any of their groups regularly attends or watches SLMC's (new) Sunday Service programs. The Commenters simply have not shown how the FCC's grant of the Petition would cause them or any of their members any harm. Without such a showing of any "injury-in-fact," the Commenters are not "interested persons." Therefore, they do not have standing to participate in this proceeding.

Generally, the FCC accords "party in interest" standing to a petitioner who demonstrates either residence in the station's service area, or that the petitioner listens to or views the station regularly.⁵ *Chet-5 Broadcasting, L.P.* 14 FCC Rcd 13041 (1999). In this case, Commenters failed even to "claim" that at least one of their members resides in the service area of a station that broadcasts SLMC's programming or otherwise views its (new) TV programming. In addition, the Commenters failed to provide the statement of a single member who claims to be aggrieved or adversely affected by the grant of SLMC's Petition. Accordingly, the FCC should dismiss the Opposition on this basis alone .

3. The Opposition also suffers from numerous FATAL procedural defects. Section 1.49(a) of the Commission's Rules provides that all pleadings must be double-spaced. The Commenters' "Opposition" is merely a single-spaced letter. In addition, had the Opposition been properly "double-spaced," it would have exceeded ten double spaced pages" and, thus, been subject to 47 CFR 1.49(b) & (c)'s requirements that it contain a

⁵ 47 U.S.C. §309 (d)(1) ("Any party in interest may file with the Commission a petition to deny. . .")

"table of contents and a summary." The Opposition contained neither a table of contents nor a summary. Finally, as noted supra,⁶ the Opposition fails to comply with 47 CFR 1.52.⁷ Thus, the Opposition should be dismissed for gross procedural violations.

CONCLUSION

An exemption from the FCC's closed captioning requirements for Petitioner's one weekly program – SLMC's Sunday Service -- is not only warranted on the undisputed facts of this case but, clearly, would best serve the public interest. Cf. Television Center of the Archdiocese of Miami , supra (exemption granted as in the public interest).

Respectfully submitted,

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February 25, 2008

⁶ See Note 1.

⁷ The Opposition does not seek waiver of any of these FCC rules or present any facts that would justify the FCC, sua sponte, in granting waivers of these rules for the Commenters.

Certificate of Service

I, Robert Lewis Thompson, do certify under penalty of perjury that the foregoing
REPLY was served by First Class mail this date on the following party:

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February 25, 2008