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FCC Mail Room

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the matter of)
Television Dominicana, LLC)
) CG-06-181
Petition for Exemption of)
Closed Captioning Requirement)

To: The Commission

**PETITION FOR EXEMPTION FROM
CLOSED CAPTIONING REQUIREMENT**

Televisión Dominicana, LLC ("TVD"), owner and operator of Television Dominicana, a Spanish-language television channel, which provides Dominican American programming ("The Channel"), by its counsel, submits this Petition for Exemption from Closed Captioning Requirement (the "Petition") pursuant to Section 79.1(f) of the Commission's rules. This Petition should be granted because it clearly demonstrates the significant difficulty and expense of compliance with the closed captioning rules would be economically burdensome¹ to TVD.

I. Background

The Channel is a digital channel that features the best productions of the Dominican Republic, including news programs, sports events, and scripted

¹ See 47 C.F.R. § 79.1(f). Upon enactment of the Twenty-First Century Communications and Video Accessibility Act, Pub. L. No. 111-260, 124 Stat. 2751 (2010), ("CVAA"), the terminology used for individual exemptions from closed captioning was changed from "undue burden" to "economically burdensome." (47 U.S.C. §613(d) as amended by Sec. 202 of the CVAA). However, the Commission continues to evaluate captioning waiver petitions using the undue burden factors in Section 713(e) of the Act. See *Interpretation of the Economically Burdensome Standard, Report and Order*, 27 FCC Rcd 8831, 8834 (2012) ("Economically Burdensome Order"); see also *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14960 (2011). ("*Anglers M&O*")

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programming. It provides U.S. audiences with the most popular talent, comedy, and entertainment the region has to offer. The Channel allows the three million Dominicans living in the United States to keep abreast of events in their native country and provides U.S. viewers from all backgrounds the opportunity to connect with the rich history, customs, and culture of the Dominican Republic. In November 2005, The Channel was launched and is currently available to subscribers through various multi-video platform distributors.

II. TVD Should be Granted an Exemption because it Satisfies the Economically Burdensome Standard

The information provided in the corresponding sections that follow is sufficient to show that each of the relevant factors constituting the “economically burdensome” standard has been satisfied, namely: (a) the nature and cost of closed captioning for the programming; (b) the impact on the operation of the provider; (c) the financial resources of the provider; and (d) the type of operations of the provider.² Therefore, TVD respectfully urges the Commission to grant it an exemption from the closed captioning requirement.

(a) Nature and Cost of Closed Captioning

In order to comply with current Commission rules, TVD would need to caption all of its current programming, which amounts to sixty (60) hours of programming per week, excluding repeat showings. TVD does not currently produce any original content, and must air transmissions of all its programming from third parties. As a result, TVD can utilize live captioning services for a portion of its programming, but

² See 47 C.F.R. §79.1(f)(2); See also *Anglers M&O*, 26 FCC Rcd 14941, at 14960.

facilitating cooperation with caption service providers and program providers located outside the U.S. would be extremely difficult, if not impossible in most circumstances. Such obstacles beyond TVD's control, would likely result in significant errors and delayed captions, essentially making efforts and expenses in providing captions futile.

The channel has solicited and received numerous quotes from closed captioning providers, including those documented in Exhibit A attached hereto. Without taking into account the respective providers' quality of services or ability to perform under time constraints, the least expensive closed captioning quotes that TVD received estimated total costs of \$277,680.³ However, the same vendor that provided the quote, disclosed that costs could amount to as much as \$527,280.⁴ These estimates assume that all of the programming would support "real time" captioning and that such captioning could be preserved for repeat broadcasts of the programming. As such, in practice the actual cost of captioning TVD programming is likely to be far more expensive.

However, even if TVD could provide an acceptable viewing experience with "real time" captioning alone and at the least expensive rate provided, the annual cost would still be a significant expense rising to the level of "economically burdensome".

TVD has discussed the possibility of sponsorship and closed captioning assistance with its' distributors, but to date has not received any indication that such support is feasible. Additionally, TVD has enlisted the help of its commercial

³ See Exhibit A [Calculation based on \$89 per hour of programming to provide "real time" captioning.]

⁴ See *Id.* [Calculation based on \$169 per hour of programming to provide "real time" captioning.]

sales representative to seek sponsorship for closed captioning, but efforts have been unsuccessful.⁵

(b) The Impact of Compliance on TVD

If required to incur the additional cost of captioning, TVD would be forced to reduce the amount and variety of programming it currently airs on the Channel. As a result, TVD would deprive Dominican Americans a fulfilling and multifaceted connection to the Dominican Republic. As the preeminent source of Dominican television content, programming cuts to the Channel would deprive many U.S. viewers of their sole opportunity to receive an accurate and comprehensive portrayal of Dominican culture and concerns. Programming cuts would not only likely lead to a drop in individual subscribers to the Channel, but would put TVD at risk of being denied renewal of its distribution contracts, severely impeding its reach to Latino communities.

As a small and closely held company, TVD values its employees, all of whom go above and beyond their duties to ensure U.S. viewers have meaningful access to Dominican programming. However, if required to comply with closed captioning rules, TVD may be forced to cut valuable team members and burden its already leanly-staffed work force.

(c) TVD's Financial Resources

As demonstrated by the Profit and Loss Statement for 2013, attached hereto as Exhibit C, TVD is not in a financial position to expend the additional cost of closed captioning services. Even using the lowest estimated quote, the cost of closed

⁵ See Exhibit B attached hereto.

captioning would constitute over [REDACTED] of TVD's net revenue for 2013, and could constitute as much as [REDACTED] of net revenue.

Furthermore, while currently operating at a profit, TVD has allocated the majority of the surplus to secure new programming for The Channel to ensure it can honor ongoing commitments to its distributors. Additionally, existing obligations to investors and lenders restrict the use of other available funds that may be used for closed captioning.

As a result, incurring an additional expense of several hundred thousand dollars would make it impossible for TVD to comply with its' existing contractual and legal obligations.

(d) TVD Operations

TVD offers exclusive and unique programming to underserved communities in the United States. The Channel is the first and only of its kind to limit content to serve the needs of those seeking Dominican programming exclusively.

The Channel has gained a substantial number of subscribers because it is one of the only networks to offer viewers a realistic and in-depth interaction with Dominican culture, including its inherent values, historical background, and every day evolution. Through its exclusive Dominican programming, TVD provides comfort and connectivity for immigrants and helps increase awareness of and appreciation for the Dominican populace residing in the United States.

Thus far, TVD has been fortunate to exercise the requisite financial freedom to pursue these goals. It is imperative that TVD maintain current operations without the encumbrance of new and significant financial obligations so it can continue to

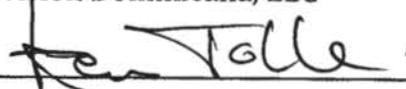
serve as one of the pre-eminent sources of Dominican representation in the United States.

III. Conclusion

Based on the information provided above and as supported by the exhibits attached hereto, TVD respectfully urges the Commission to grant TVD an exemption from the closed captioning requirement, as compliance would be "economically burdensome".

Respectfully Submitted,

Televisión Dominicana, LLC

By:  _____

Ken Tolle
Launch Pad Media Advisors, PC
1127 Auraria Pkwy, Suite 103(b)
Denver, Colorado 80204

December 20, 2013

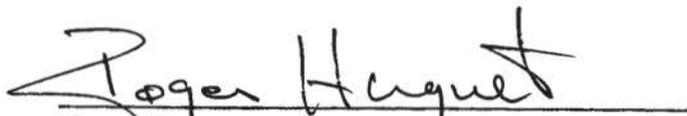
Its Attorneys

DECLARATION

I, Roger Huguet, declare the following:

1. I am Chief Executive Officer of Televisión Dominicana, LLC ("TVD").
2. I have reviewed the foregoing Petition for Closed Captioning Exemption of TVD and all attached exhibits, including the Profit and Loss Statement for 2013 ("The Petition"). All information and statements contained in The Petition are true and correct to the best of my knowledge and belief.

I declare under penalty and perjury of the laws of the United States of America that the foregoing is true and correct. Executed on December 20, 2013.



Roger Huguet
Chief Executive Officer
Televisión Dominicana, LLC

EXHIBIT A

From: Steve Holmes [mailto:Steve@abercap.com]
Sent: Sunday, September 29, 2013 11:52 PM
To: Carlos Padron
Subject: RE: Real-time & Off-line Spanish Captioning w/ Aberdeen Broadcast Services

Hi Carlos,

Nice to connect with you on the phone Friday. I am looking forward to continuing to assess what our service would look like with your goals for the upcoming year. I would eventually like to get you, and your supervisor speaking with our head of multi-language services Joanna Scavo, as well as head of sales, Ed Gallagher, and perhaps even the owner of the company Matt Cook. I think they will be able to help me pin down the exact pricing we should be offering your operation. This, especially considering the fact this is a new endeavor for you, and also do the volume of work you would have for us to tackle. The scope of the project is large, but I am confident we are more than ready to provide a stellar service for you on the live and off-lines sides. Please be thinking of a meeting time that might work for you and your supervisor this week or next.

In the meantime, to help you for your Monday morning meeting, and until we can get our teams together, please see the following pricing ranges that could be expected.

- Live (real-time) Spanish closed captioning typically between \$89.00 to \$169.00 per hour
- Post-production (off-line) Spanish closed captioning typically between \$129.00 to \$269.00 per 30 minutes

Please realize these are simply broad stroke numbers. We could start you off in more affordable products, although still high quality, that could be something that is working towards getting your channels into FCC compliance. We could always modify the workflows moving forward. We have resources around the globe making it possible for us to deliver captioning that is geared towards the regions you've identified. We also have a technology minded team that can help you streamline your internal workflows, evidenced by our digital distribution division.

So, whether delivering a broadcast ready, closed captioned file that would require no downloading, transcoding ("flipping"), and would yield better looking picture quality, or simply furnishing the requested stand alone caption (.scc) file, we will have a solution for you.

Thank you for finding us and for the stellar opportunity to come alongside your Imagina US! Looking forward to hearing your thoughts.

Best regards,

Steve Holmes

Sales Engineer

.....

from edit to air...we'll get you there

Aberdeen Broadcast Services

22362 Gilberto, Suite 120 | Rancho Santa Margarita, CA 92688

[direct] 949.216.1050 | [tf] 800.688.6621 x207 | [cell] 949.235.1941

[24-hour emergency line] 949.302.0004



TO: Carlos Padron, Operations Manager, Imagina US

DATE: September 13, 2013

RE: Quote for Closed Captions

Thank you for the opportunity to provide you with a quote for your 4 Spanish language networks.

VITAC has been in the closed captioning business for 27 years. We have over 45 exclusive network contracts with broadcast and cable networks. In the past 7 months, VITAC has closed captioned over 10,000 hours of programming for the following Spanish language clients:

- 593 Ecuador Inc.
- KSTS - Telemundo
- WNJU - Telemundo
- WSCV - Telemundo
- Alabama Public Television
- Alma Media LLC
- Ana Perez Productions Inc.
- Caravana de La Bahia
- Cipar Esoteric
- CNN
- Discovery en Espanol
- ESPN, Inc.
- Euro Auto Imports
- Finnmax, LLC
- FOX Sports International
- Fox Sports Net - West 1
- FOX Sports San Diego
- KVDA - Telemundo San Antonio
- KVEA
- KXTX - Telemundo
- Mark Burnett Productions, Inc.
- Mojo Brands Media
- Mun2
- NBC
- PrimeTicket
- Second Church of Christ, Scientist

101 Hillpointe Drive | Canonsburg, PA 15317 | Phone 724.514.4000 | Fax 724.514.4111
4605 Lankershim Boulevard, Suite 250 | North Hollywood, CA 91602 | Phone 818.755.0410 | Fax 818.755.0411
1501 Wilson Boulevard, Suite 1003 | Arlington, VA 22209 | Phone 703.807.2766 | Fax 703.807.2761



- Stoneridge CJD/Stevens Creek CJD
- Strong, LLC
- Sunnyvale Ford Lincoln
- Telemundo
- The Universal Church - New York
- Trade Mark Advertising
- TuTV, LLC
- World Wrestling Entertainment [WWE]
- WSNS TV

Spanish > Spanish Offline		Cost/Hour	Hours/Week	Cost/Week	Cost/Year
Option #1	Roll-Up	\$265	40	\$10,600	\$551,200
Option #2	Pop-On	\$530	40	\$21,200	\$1,102,400
Spanish > Spanish Realtime		Cost/Hour	Hours/Week	Cost/Week	Cost/Year
		\$99	120	\$11,880	\$617,760
Realtime Schedule: 12 hours/day x 2 networks x 5 days week = 120 hours					

We look forward to your feedback.

Best Regards,

Maggie McDermott

EXHIBIT B

From: Kurt Pflucker <kurt@hispanicgroup.net>
Subject: Re: Closed Captioning - Advertisers
Date: December 18, 2013 at 3:49:22 PM EST
To: Francisco Gimenez <francisco.gimenez@imaginaus.com>
Cc: Kurt Pflucker <kurt@laetv.tv>

Mr Gimenez:

We have inquired but there are no advertisers interested in sponsoring closed captioning for Hispanic networks as Pasioness, TVD and CATV.

Regards

Sent from my iPhone

On Dec 18, 2013, at 1:20 PM, Francisco Gimenez <francisco.gimenez@imaginaus.com> wrote:

Dear Mr. Pflucker,

I wanted to confirm our previous discussions that there are no advertisers willing to sponsor closed captioning.

Please advise at your earliest convenience.

Thanks and best regards

EXHIBIT C

**Television Dominicana Profit & Loss Statement
2013**

Profit Center	TVD Performance 2013
	USD 000s
Affiliate Sales	\$ [REDACTED]
Advertising	\$ [REDACTED]
Other Income	\$
Total Sales	\$ [REDACTED]
Commission & Carriage/Distribution	\$ [REDACTED]
Programming/Production	\$ [REDACTED]
Tech/Duplication & Mastering	\$ [REDACTED]
Contributors	
Amortization	
Total Staff Costs	
Marketing & Research	\$ [REDACTED]
Administrative/Office Expenses	\$ [REDACTED]
Consultancy- Legal & Professional	\$ [REDACTED]
Accommodation & Maintenance	\$ [REDACTED]
Miscellaneous	\$ [REDACTED]
Depreciation	
Total Costs	\$ [REDACTED]
Profit Before Interest & Tax	\$ [REDACTED]