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March 12, 2014

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554
Attn: CGB Room 3-B431

via hand delivery

Re: Opposition to Los Angeles Unified School District's Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0269, CG Docket No. 06-181

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Cerebral Palsy and Deaf Organization (CPADO), and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Los Angeles Unified School District ("LAUSD") to exempt its

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programming from the Commission's closed captioning rules, which was placed on public notice on Feb. 10, 2014.[1] Consumer Groups oppose the petition because LAUSD can plainly afford to caption its programming as its cited costs constitute an infinitesimal expense compared to LAUSD's $6.78 billion dollar operating budget.

I. Background

LAUSD has not captioned its programming since submitting its first waiver request more than eight years ago.[2] LAUSD holds the license and operates Noncommercial Educational Station KLCS, which its uses to further the education of the 664,000 students in the district by providing "pertinent educational and informational programming to students in classrooms and at home."[3] LAUSD also serves the broader community through its broadcast of important proceedings such as LAUSD Board of Education meetings.[4] The general public in the Los Angeles area served by KLCS includes more than 800,000 individuals who are deaf and hard of hearing, each of whom is entitled to equal access to educational programming provided by the district in the same way that LAUSD must provide equal access to its schools through wheelchair ramps and Braille textbooks.

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[1] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules,* CG Docket No. 06-181 (Feb. 10, 2014).
[2] *See Los Angeles Unified School District's Petition for Exemption from the FCC's Closed Captioning Rules,* Case No. CGB-CC-0269, Dkt. 06-181 (Dec. 23, 2005).
[3] *Id.* at 2, 4.
[4] *Id.*

Out of a $6.78 billion budget for LAUSD, KLCS took in about $5 million in 2012, primarily from LAUSD directly, to produce 428 hours of original programming.[5] It is for these programs that LAUSD now seeks a waiver of the Commission's captioning requirements, which is an extension of LAUSD's original waiver request filed in 2006. At that time, the Commission enacted rules requiring programmers to caption 100% of new, nonexempt programming.[6] Although LAUSD's petition was placed on public notice in 2006, it remained pending for several years.[7] In 2011, the Consumer and Governmental Affairs Bureau ("CGB") told LAUSD that it would need to renew and update its petition to continue to be considered for a waiver.[8] LAUSD then refiled its petition on July 5, 2012, and the Commission placed it on public notice a second time.[9] Consumer Groups filed an opposition to LAUSD's petition in 2012, arguing that the

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[5] *See* Los Angeles Unified School District, Budget Services & Financial Planning Division, Superintendent's 2012-13 Revised Budget at IB- 9 (Sept. 12, 2012), http://budgetrealities.lausd.net/sites/budgetrealities.lausd.net/files/Revised%20Budget%20101112%20-%20FINAL.pdf ("LAUSD Budget"); *LAUSD's Supplement to Request for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0269, Dkt. 06-181, Attachment 3 (Nov. 27, 2013) ("*LAUSD Supplement*").

[6] 47 C.F.R. § 79.1(b)(iv); *see also Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility,* Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd 14941, 14945 (Oct. 20, 2011) ("*Anglers 2011*").

[7] *Public Notice, Request for Exemption from Commission's Closed Captioning Rules: CGB-CC-0269,* CG Docket No. 06-181 (Feb. 17, 2006).

[8] *Letter from Consumer and Governmental Affairs Bureau to LAUSD*, Case No. CGB-CC-00269, Dkt. 06-181 (Apr. 5, 2012).

[9] *See Los Angeles Unified School District's Petition for Exemption from the Commission's Closed Captioning Rules*, Case No. CGB-CC-0269, Dkt. 06-181 (July 5, 2012); *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules,* CG Docket No. 06-181 (Oct. 26, 2012).

district failed to establish that it diligently sought the lowest captioning prices or that captioning its programming would be economically burdensome.[10] In 2013, the CGB again requested additional information from LAUSD, and the district filed a supplement.[11]

In the November 27, 2013 Supplement, LAUSD asked for an exemption for 22 programs that would come to a total of 428 hours of original episodes.[12] While LAUSD points out that this amount is nearly 1/3 total hours than its previous request, it is still a large amount of programming. The programs, which are listed in Appendix A, include 10 original episodes of English and Spanish-language versions of "Families Matter," a weekly broadcast that "emphasizes the important role families play in their child's education and · how engaging parents with their children and their schools is the most effective way to · improve student achievement;"50 hours of LAUSD Board and KLCS R Committee Meetings; and a 30 minute program, "Choices," which profiles the magnet school programs that are available to students.

The Commission placed LAUSD's petition on public notice for comment a third time on February 10, 2014.[13]

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[10] *See Consumer Groups' Opposition to LAUSD's Petition for Exemption from the Commission's Closed Captioning Rules*, Case No. CGB-CC-0269, CG Docket No. 06-181 (Nov. 26, 2012).

[11] *See Letter from Consumer and Governmental Affairs Bureau to LAUSD*, Case No. CGB-CC-00269, Dkt. 06-181 (Sept. 27, 2013); *LAUSD Supplement*.

[12] It further explained that real time captioning would be required on four programs totaling 331.5 hours and offline captioning would be required on 18 programs totaling 96.5 hours.

[13] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (Feb. 10, 2013).

II. Legal Standard

Under 47 CFR §79.1(f), a video programming provider, producer or owner may petition for a full or partial exemption of closed captioning. The Commission may only grant an exception if the petitioner provides "sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term 'economically burdensome' means significant difficulty or expense." The core inquiry of the economically burdensome standard is whether a programmer can afford captioning or whether the added costs would jeopardize its ability to broadcast.[14] To meet the standard, the Commission requires petitioners to show that they have bargained for low rates and sought out alternative sources of funding for captioning.[15] Failure to do so may result in dismissal of the waiver petition.[16] Even when an applicant makes the requisite showing, the Commission only issues waivers a limited time.[17]

III. LAUSD's Petition fails to meet the Commission's economically burdensome standard.

A. LAUSD's stated cost of providing closed captions represents an infinitesimal portion of the organization's total operating budget.

LAUSD's captioning costs are exceedingly small in light of its multi-billion dollar budget, demonstrating that the district can easily afford to provide equal access to deaf

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[14] *Id.* at 14952, ¶ 20

[15] *Anglers 2011*, 26 FCC Rcd at 14955-56, ¶ 28 (footnotes omitted).

[16] *Id.*

[17] *Id.* at 14953, ¶ 23 ("an exemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation") (internal quotations omitted).

and hard of hearing individuals by captioning its programming. Captioning should be treated like any other expense of running a broadcast station or school district. LAUSD is a large organization that serves hundreds of thousands of students and the public with hundreds of hours of original programming through KLCS.[18] The LAUSD annual budget – estimated at $6.78 billion in 2012-13 fiscal year – demonstrates that it can afford to provide captioning.[19] Moreover, captioning would further LAUSD's educational mission by increasing access for students, parents, and individuals who are deaf and hard of hearing.

At the outset, it is important to note that LAUSD impermissibly bases its request for exemption video programming budget rather than the budget for the school system.[20] However, the Communications Act and Commission rules require that a petitioner's overall finances must be examined before a party can claim a waiver.[21] Thus, the Commission specifically instructed LAUSD to include comprehensive financial information for the entire organization in its letter asking for supplemental information.[22] And LAUSD itself describes KLCS as part of its general educational

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[18] *See LAUSD Supplement* at 4 (stating that KLCS is licensed and operated by LAUSD and serves 664,233 elementary and secondary school students).
[19] LAUSD Budget at IB-9.
[20] *Anglers 2011*, 26 FCC Rcd at 14950.
[21] 47 U.S.C. § 613(e)(3); *Anglers 2011*, 26 FCC Rcd at 14,950 (describing how the Commission needs "to 'examine the overall budget and revenues of the individual outlet and not simply the resources it chooses to devote to a particular program.'") (quoting *Closed Captioning Report and Order*, 13 FCC Rcd at 3365-66, ¶ 204).
[22] *See Letter from Consumer and Governmental Affairs Bureau to LAUSD*, Case No. CGB-CC-00269, Dkt. 06-181 (Sept. 27, 2013) ("Cash receipts include money received from all sources for your *entire* organization, not just the video program(s)."(emphasis added)).

mission and indicates that most of KLCS's budget comes directly from LAUSD appropriations.[23]

LAUSD's estimated costs of captioning of roughly $52,000 represent less than 0.001% of its total finances. This additional expenditure is so marginal that it cannot reasonably be interpreted as economically burdensome to LAUSD. But even if the Commission were only to consider KLCS's $5 million programming budget,[24] the captioning costs represent only 1% of that budget. Thus LAUSD should be able to afford the cost of captioning.

B. LAUSD's fundraising efforts reinforce Consumer Groups' belief that the organization will be able to afford captioning.

LAUSD's stated efforts to increase funding for KLCS further suggest that the district can afford to caption its programming. LAUSD's supplement indicates that on top of its multi-billion dollar budget, the district has formed a nonprofit exclusively dedicated to raising funds for KLCS.[25] LAUSD notes that a top priority for the nonprofit is securing funding to pay for captioning.[26] In short, LAUSD will likely receive more money in the future, which will put it in an even better position to afford captioning.

IV. LAUSD's existing obligations to caption its programming further support a denial of its petition.

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[23] *See LAUSD Supplement*, at 4 ("[A]s part of its mission, LAUSD is the licensee of, and operates . . . KLCS . . . ."), Attachment 3 (showing that in 2012 $3,452,358 of KLCS's $4,786,638 total cash receipts came from LAUSD Appropriations).
[24] *See LAUSD Supplement*, Attachment 3 at 6.
[25] *LAUSD Supplement* at 4.
[26] *Id.*

As discussed in our previous opposition filed in 2012, a dismissal of LAUSD's petition is further supported because the district is already obligated to caption all of its programming under federal and state accessibility laws.[27] Title II of the Americans with Disabilities Act of 1990 ("ADA") prevents public entities – including school districts – from discriminating against people with disabilities through exclusion from their benefits, services, or programs.[28] Regulations enacted under the ADA require public entities to make their television accessible to people with disabilities, ideally through the provision of closed captioning.[29] Furthermore, any violation of the ADA also constitutes a separate violation of California's Unruh Civil Rights Act.[30] Finally, as an organization receiving federal financial assistance, LAUSD is barred from excluding the deaf and hard of hearing from their programming under Section 504 of the Rehabilitation Act of 1973.[31] Thus Consumer Groups believe that LAUSD is already

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[27] *See Consumer Groups Opposition to Los Angeles Unified School District's Petition for Exemption from the Commission's Closed Captioning Rules*, CG Docket No. 06-181 (Nov. 26, 2012).

[28] School districts like LAUSD are public entities for the purposes of the ADA, as defined under 42 U.S.C. § 12131(1). *See, e.g., Cave v. E. Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610, 639 (E.D.N.Y. 2007).

[29] 28 C.F.R. § 35.160; 28 C.F.R. Pt. 35, App. B ("Television and videotape programming produced by public entities are covered by this section. Access to audio portions of such programming may be provided by closed captioning.").

[30] Cal. Civ. Code § 51(f).

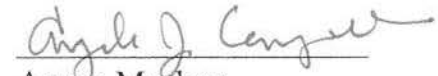
[31] *See* 29 U.S.C. § 794(a) ("No otherwise qualified individual with a disability in the United States, . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."); LAUSD Budget Realities, *FAQs: Where does LAUSD's revenue for the General Fund come from?*, http://budgetrealities.lausd.net/faq#t13n68 (last visited Mar. 2, 2014) (noting that LAUSD received $762 million in federal funding in 2013).

obligated to caption its programming, and that these obligations further support a dismissal of LAUSD's petition.

V. Conclusion

LAUSD has requested exemptions for a large amount of educational and informational programming. At the same time, the cost to caption this programming represents only a tiny fraction of the school district's annual budget. Because LAUSD has failed to show that captioning would be economically burdensome, the Commission should deny the exemption. LAUSD has not had to provide captioning while its petition was pending before the Commission, and as a result, deaf and hard of hearing students and parents in Los Angeles have already waited approximately eight years for captioning that the school district is obligated to provide under the law. Thus, the Commission should not give the school district any more time to bring its programming into compliance with the FCC's captioning rules. Nonetheless, should the Commission grant LAUSD a waiver, it should be for an extremely limited time.

Respectfully submitted



Aaron Mackey
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CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
March 12, 2014

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 12, 2014, a copy of the Opposition to Los Angeles Unified School District's Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0269, CG Docket No. 06-181 was served by first class U.S. mail, postage prepaid, upon the Petitioner at the addresses listed below.

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Niko Perazich
March 12, 2014