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May 21, 2014

Accepted/Filed

MAY 21 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

FCC Office of the Secretary

**Re: CG Docket No. 05-231
Request for Waiver of Deadline
United Communications Corporation
Television Station WWNY-TV
Carthage, New York (Facility ID# 68851)**

Dear Ms. Dortch:

United Communications Corporation ("UCC"), by its counsel, hereby requests a waiver of the deadline for implementation of certain rule revisions relating to the use of Electronic Newsroom Technique ("ENT") for closed captioning of television programs, currently June 30, 2014 (the "Deadline"), with respect to television station WWNY-TV, Carthage, New York (the "Station"). In the recent *Closed Captioning Quality Order*,¹ the Commission noted that stations that would have difficulty meeting the Deadline could seek a "limited waiver of the effective date, supported by an appropriate good cause showing."

In *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), the United States Court of Appeals for the DC Circuit articulated the standard for a waiver request. The Court explained that a rule waiver, in appropriate cases, allows the agency to take into account certain factors that will produce a "more effective implementation of overall policy on an individualized basis." *Id.* at 11 (emphasis added). Waiver is warranted when deviating from the general rule will serve the public interest better. However, in order for the Commission to act on a clear sense of the public interest, it is critical that the regulatory context of the matter be made explicit.

¹ *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 14-12 (February 24, 2014).

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I. THE REGULATORY BACKGROUND OF THE CLOSED CAPTIONING PROCEEDING STRESSES THE 'PUBLIC INTEREST' VALUE OF LOCAL NEWS PROGRAMMING.

The FCC's overriding goal throughout its scheme of regulation of television broadcast stations is to promote the public interest in the availability of local news, weather and emergency information. In the *Closed Captioning Quality Order*, the Commission observed that "the public interest would not be served were television stations required to cut back on local news programming." *Closed Captioning Quality Order* at ¶77. In particular, it would confer no benefit upon the hearing-impaired residents of the Station's service area if the costs associated with the requirement for use of enhanced ENT forced the Station to curtail valuable free local programming service that the Station has traditionally provided. Clearly the purposes of the instant proceeding would be frustrated if mandated enhanced ENT results in a loss of local program content not only for the hearing-impaired but also for the majority of viewers who have good hearing.

II. THE PUBLIC INTEREST WARRANTS WAIVER OF THE JUNE 30 DEADLINE WITH RESPECT TO THE STATION.

UCC operates its Station in the Watertown-Carthage, New York television market. This market is currently ranked by Nielsen as number 176 in size (with only 94,330 television households) out of a total of 210 television markets.² In addition to locally-produced and syndicated programming, the Station broadcasts programming of the CBS network on its main digital stream. Programming of the Fox television network is aired on the secondary digital stream and on UCC's Class A low power television stations licensed to Wtaertown and Massena, New York.

The Station was started sixty years ago by the Johnson Newspaper Corporation, owner of the *Watertown Daily Times*. The Johnson family defied the conventional wisdom that the market was too small to support a local television station. After 27 years of operation by the Johnson family, the Station was sold to UCC in a divestiture forced by an FCC concerned about newspaper-television cross-ownership. From that day to this, the Station has been owned by the Brown family.

The Station has long been recognized for its exceptional commitment to local news and emergency information. Thus, for example, this year WWNY News has won awards from the New York State Broadcaster's Association and the Syracuse Press Club. The Station is the only full power commercial television station that has a regular locally-originated newscast. There is another commercial full power station in the market,

² http://www.tvb.org/media/file/TVB_Market_Profiles_Nielsen_TVHH_DMA_Ranks_2013-2014.pdf.

namely WWTI, but for all practical purposes it is operated out of Syracuse as a satellite of the ABC affiliate there. See <http://en.wikipedia.org/wiki/WWTI>. For a number of years, WWTI attempted to produce a local news broadcast, but the quality of WWNY-TV's offerings was so superior that it typically garnered an audience roughly ten times larger than the number of viewers attracted to WWTI. Some ten years ago, WWTI ceased trying to produce a newscast in Watertown.

In recent years, UCC has had to invest in the conversion from analog, standard definition TV to high definition digital TV with attendant costs virtually the same as if it operated in a large market. Major purchases like transmitters are no cheaper merely because they will be installed in a market serving 90,000 households than they are in a market serving millions of households. In addition to transmission equipment, virtually every piece of equipment in master and production control has been replaced to comply with new standards.

The Station currently produces more than 25 hours of local news programming per week. To add the additional closed captioning mandate in a short period of time to the costs already associated with this ambitious level of local production would impose a hardship on the Station. UCC realizes that the NAB, in its comments, suggested that implementation of enhanced ENT would not be burdensome, but with all due respect, the NAB is not controlled by broadcasters operating in markets 175 and smaller. The NAB staff lives in the Washington, DC television market, which has more than *25 times* the population of the Watertown market. As an illustration, an additional cost of \$60,000 would be very significant for the Station, but would only be a rounding error for a station operating in Washington, DC. Such an investment would not be debatable in a market where the hearing-impaired population numbers in the hundreds of thousands, but in Watertown, the cost would be spread over a much smaller number of beneficiaries – if it could be afforded at all.

In that regard, we note that much of the Station's weather and sports programming is unscripted, but is supported by full screen graphics, such that the hearing-impaired are able to understand the gist of the programming even without complete enhanced captioning. Viewers understand that the Station makes its best efforts to make such programming comprehensible to the hearing-impaired, and there have been virtually no complaints about the level of captioning in locally-produced programming.

The Station is in the process of converting news field equipment to an HD format as part of its 2014 budget. This is a major project requiring installation and training for News and Operations. The *Closed Captioning Quality Order* was released after the budgeting process for 2014 had been completed. There are no additional funds in the budget for enhanced closed captioning.

The Station remains an oasis of family-owned and community oriented broadcasting in a world where that has become the exception. UCC does not have other ways to free up the funds to implement enhanced ENT inasmuch as there are only two very small TV station markets in which the Brown family operates. UCC's other properties are local newspapers. The Commission is no doubt fully aware of the financial stress afflicting the newspaper business at this time.

Granting the instant request would therefore serve the Commission's intent, and the public interest, in preserving the current level of local programming in the Watertown DMA, while allowing a reasonable time for marshalling the resources needed to implement the enhanced ENT requirements.

III. CONCLUSION

The public interest will be disserved if strict enforcement of the Deadline results in WWNY having to cut back on the amount and quality of local programming. In view of the foregoing, the regulatory burden that strict compliance with the existing Deadline would impose on UCC is excessive under the circumstances, and should be moderated to allow UCC to upgrade its captioning ability in an orderly fashion. Accordingly, UCC requests a waiver so as to permit a one year extension of the Deadline.

Respectfully submitted,

**UNITED COMMUNICATIONS
CORPORATION**

By: Barry D. Wood
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