

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
First Baptist Church, Fort Smith, Arkansas) CGB-CC-0203
)
Request for Exemption from the) CG Docket No. 06-181
Closed Captioning Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 2015

Released: July 9, 2015

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address a petition filed by First Baptist Church (FBC), Fort Smith, Arkansas, for an exemption from the Federal Communication Commission’s (FCC’s or Commission’s) closed captioning requirements for FBC’s live program Hope From Above. Because we conclude that FBC has not demonstrated that its compliance with the Commission’s closed captioning requirements for this program would be economically burdensome to it, we deny the Petition. In light of our action, Hope from Above must be captioned no later than October 7, 2015, which is 90 days from the date of the release of this Order.

II. BACKGROUND

2. In 1996, Congress added section 713 to the Communications Act of 1934, as amended (Communications Act), establishing requirements for closed captioning of video programming to ensure access to such programming by people who are deaf or hard of hearing,1 and directing the Commission to prescribe rules to carry out this mandate.2 In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.3 The Commission’s closed

1 Section 305 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 613). As recognized by Congress, the goal in captioning video programming is “to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.” H.R. Rep. 104-458 (Conf. Rep.) at 183-184, 104th Cong., 2d Sess. (1996). “Video programming” means “programming by, or generally considered comparable to programming provided by a television broadcast station.” 47 U.S.C. § 613(h)(2).

2 47 U.S.C. §§ 613(b)-(c).

3 See 47 C.F.R. § 79.1; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997) (Closed Captioning Report and Order); Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (Closed Captioning Reconsideration Order).

captioning rules currently require video programming distributors, absent an exemption, to caption 100% of all new, English and Spanish language programming.⁴

3. Section 713(d)(3) of the Communications Act authorizes the Commission to grant individual exemptions from the television closed captioning requirements upon a showing that the requirements would be economically burdensome, defined as imposing on the petitioner a “significant difficulty or expense.”⁵ Any entity in the programming distribution chain, including the owner, provider, or distributor of the programming, may petition the Commission for such an exemption under section 79.1(f) of the Commission’s rules.⁶ When making its determination as to whether a petitioner has made the required showing, the Commission, in accordance with section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules, considers the following factors on a case-by-case basis: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷

4. The Commission has also determined that the following information and documentation

⁴ 47 C.F.R. §§ 79.1(b)(1)(iv), (b)(3)(iv). A “video programming distributor” is defined as (1) any television broadcast station licensed by the Commission; (2) any multichannel video programming distributor (MVPD) as defined in section 76.1000(e); and (3) any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. 47 C.F.R. § 79.1(a)(2). The Commission’s rules also require closed captioning of 75% of a programming distributor’s pre-rule, nonexempt English and Spanish language programming that is distributed and exhibited on each channel during each calendar quarter. 47 C.F.R. §§ 79.1(b)(2)(ii), (b)(4)(ii). “Pre-rule” programming refers to analog video programming first published or exhibited before January 1, 1998, or digital video programming first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(6). Bilingual English-Spanish language programming is subject to the same closed captioning requirements for new and pre-rule programming. *See 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, 29 FCC Rcd 2221, 2288-89, ¶ 115 (2014).

⁵ *See* 47 U.S.C. §§ 613(d)(3),(e). *See also* 47 C.F.R. § 79.1(f)(2). As originally enacted in 1996, section 713 of the Communications Act authorized the Commission to grant individual closed captioning exemptions upon a showing that providing closed captioning would “result in an undue burden.” Pub. L. No. 104-104, § 305, 110 Stat. 126 (1996). Section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) replaced the term “undue burden” with the term “economically burdensome.” Pub. L. No. 111-260, § 202(c), 124 Stat. 2771, amending 47 U.S.C. § 613(d)(3). For purposes of evaluating individual exemptions, the Commission has determined that Congress intended the term “economically burdensome” to be synonymous with the term “undue burden” as defined by section 713(e) of the Communications Act and section 79.1(f)(2) of the Commission’s rules. *See Interpretation of Economically Burdensome Standard, Amendment of Section 79.1(f) of the Commission’s Rules, Video Programming Accessibility*, CG Docket No. 11-175, Report and Order, 27 FCC Rcd 8831, 8834, ¶ 7 (2012) (*Economically Burdensome Standard Order*).

⁶ 47 C.F.R. § 79.1(f)(1). A “video programming provider” is defined as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.” 47 C.F.R. § 79.1(a)(3). *See also* n.4, *supra* (for definition of “video programming distributor”). A petitioner may seek an 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.” 47 C.F.R. § 79.1(f)(1).

⁷ 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f)(2). A petitioner may also present for the Commission’s consideration “any other factors the petitioner deems relevant to the Commission’s final determination,” including alternatives that might constitute a reasonable substitute for closed captioning. 47 C.F.R. § 79.1(f)(3). The Commission has delegated the responsibility for evaluating and ruling on these petitions to the Consumer and Governmental Affairs Bureau. *Economically Burdensome Standard Order*, 27 FCC Rcd at 8834-35, ¶ 8.

must be submitted with closed captioning exemption petitions to enable its consideration of the above factors:

- documentation of the petitioner's financial status, including detailed information regarding finances and assets;
- verification that the petitioner has obtained information about the costs it would incur to provide closed captioning of the programming;
- verification that the petitioner has sought closed captioning assistance from its video programming distributor(s), noting the extent to which such assistance has been provided or rejected;
- verification as to whether the petitioner has sought additional sponsorships (other than from its video programming distributor(s)) or other sources of revenue for captioning; and
- a showing that the petitioner does not have the means to provide captioning for the programming.⁸

5. Each petition must contain a detailed, full showing of any facts or considerations relied upon, supported by affidavit.⁹ Failure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request.¹⁰ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.¹¹

6. FBC initially filed a petition for exemption by letter received by the Commission on January 4, 2006.¹² In response to a letter from the Consumer and Governmental Affairs Bureau (CGB or Bureau), FBC supplemented its petition by letter received by the Commission on May 4, 2006.¹³ On May

⁸ *Anglers for Christ Ministries, Inc., et al.; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*, CG Docket Nos. 06-181 and 11-175, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-56, ¶ 28 & nn. 100-04 (2011) (*Anglers Reversal MO&O*). The Bureau has provided additional guidance for petitioners regarding these requirements in the document "Required Information to Provide in Filing a New Petition to be Exempt from the Closed Captioning Requirements," which is provided by the staff to captioning exemption petitioners and is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf (*Bureau Information Guidance*).

⁹ 47 C.F.R. § 79.1(f)(9). A petition for exemption may also be supported by an unsworn written statement signed by a declarant under penalty of perjury. 47 C.F.R. § 1.16.

¹⁰ *Anglers Reversal MO&O*, 26 FCC Rcd at 14955-56, ¶ 28 (citing *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 13611, 13614, ¶ 12 (Cable Services Bureau, 2001) (*Wild Outdoors 2001*)).

¹¹ 47 U.S.C. § 613(d)(3); 47 C.F.R. § 79.1(f)(11).

¹² See Letter from Carl Riggins, Director of Media Ministries, to Office of the Secretary, FCC (filed Jan. 4, 2006) (January 2006 Petition).

¹³ See Letter from Amelia Brown, Disability Rights Office, CGB, to First Baptist Church, Carl Riggins (Feb. 14, 2006); Letter from Carl Riggins, Director of Media Ministries, First Baptist Church of Fort Smith, to Amelia Brown, Disability Rights Office, FCC (filed May 4, 2006). We have included the dates on which the Commission received FBC's letters in those instances where either FBC's submission to the Commission was not dated, or the date noted on the FBC's submission was different from the date the submission was received by the Commission.

15, 2006, the Bureau invited comment on the petition;¹⁴ no comments were filed. The Bureau granted the petition and issued an exemption to FBC by letter order dated September 11, 2006.¹⁵ In 2011, the Commission reversed the Commission's grant of exemption to FBC because it determined that the Bureau had failed to analyze the individual circumstances of the petitioner under the "undue burden" criteria, as required under the Communications Act and the Commission's rules.¹⁶ By letter dated October 25, 2011, the Bureau notified FBC of this reversal and explained that FBC would need to file a new exemption petition and supplement the record with up-to-date information, supported by affidavit, about its inability to provide closed captioning if it wished to receive a closed captioning exemption.¹⁷ FBC filed a new petition received by the Commission on January 20, 2012 (hereinafter Petition).¹⁸ On April 18, 2012, the Bureau again wrote to FBC requesting additional and updated information that would be needed to make a determination as to whether the FBC's programming should be exempt from the Commission's closed captioning obligations.¹⁹ In response, FBC supplemented its Petition on May 14, 2012.²⁰ The Bureau again placed the Petition on Public Notice for comment on November 30, 2012.²¹ Several consumer organizations jointly filed an opposition to the Petition.²² On two subsequent occasions, September 27, 2013, and May 30, 2014, the Bureau again requested FBC to supplement its petition so that the Bureau would have the information needed to determine whether the programming that was the subject of the Petition should be exempt from the Commission's closed captioning obligations.²³ In response to the Bureau's letters, FBC further supplemented its Petition with materials received by the Commission on January 13, 2014 and June 25, 2014.²⁴ The Bureau again placed the

¹⁴ *Consumer & Governmental Affairs Bureau Action, Request for Exemption from Commission's Closed Captioning Rules, CGB-CC-0203*, Public Notice, 21 FCC Rcd 5204 (CGB 2006).

¹⁵ See Letter from Thomas E. Chandler, Chief, Disability Rights Office, CGB, to First Baptist Church (Sept. 11, 2006).

¹⁶ *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶¶ 25-26. As explained earlier, the economically burdensome criteria now used by the Commission to evaluate closed captioning exemption requests are identical to the undue burden criteria. See n.5, *supra*.

¹⁷ See Letter from Joel Gurin, Chief, CGB, to First Baptist Church (Oct. 25, 2011). See also 47 C.F.R. § 79.1(f)(11); *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 16, n.60.

¹⁸ Letter from Greg Wootten, Church Administrator, First Baptist Church, to Office of the Secretary, FCC (filed Jan. 20, 2012) (Petition).

¹⁹ See Letter from Roger Holberg, Disability Rights Office, CGB, to First Baptist Church of Fort Smith, Arkansas (April 18, 2012).

²⁰ See Letter from Greg Wootten, Church Administrator, First Baptist Church, to Office of the Secretary, FCC (filed May 14, 2012) (May 2012 Petition Supplement).

²¹ *Request for Comment, Request for Exemption from Commission's Closed Caption Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 14921 (CGB 2012).

²² See Re: Opposition to Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181, filed by Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults (ALDA), and Cerebral Palsy and Deaf Organization (CPADO) (Jan. 14, 2013).

²³ See Letter from Cheryl J. King, Disability Rights Office, CGB, to First Baptist Church, Fort Smith, AR, "Hope From Above" (Sept. 27, 2013) (CGB 2013 Letter); Letter from E. Elaine Gardner, Attorney, Disability Rights Office, CGB, to Greg Wootten [sic], First Baptist Church (May 30, 2014) (CGB 2014 Letter).

²⁴ See Letter from Greg Wootten, Church Administrator, First Baptist Church, to Office of the Secretary, FCC (filed Jan. 13, 2014) (January 2014 Petition Supplement); Letter from Greg Wootten, Church Administrator, First Baptist Church, to Office of the Secretary, FCC (filed June 25, 2014) (June 2014 Petition Supplement).

Petition on Public Notice for comment on November 19, 2014.²⁵ Again, various consumer organizations jointly filed an opposition to the Petition.²⁶

III. DISCUSSION

7. FBC produces *Hope From Above*, a live broadcast of its Sunday morning service.²⁷ *Hope From Above* is broadcast weekly on Station KFSM-TV, Fort Smith, AR (KFSM), on Sundays from 11 a.m. to noon.²⁸ FBC reports that it has broadcast its services since 1953 and that the purpose of its program is to provide Sunday morning service “to those people in northwestern and western Arkansas and northeastern and eastern Oklahoma who cannot attend a worship service.”²⁹ FBC contends that the cost of providing closed captioning for its program “would create [an] undue burden on human resources and finances; man-hours, additional wages, and equipment.”³⁰

8. *Recurring Captioning Costs.* FBC submitted two recent quotes to caption its program.³¹ The first quote, from VITAC, is for \$150.00 per show, or \$7,800.00 per year (i.e., for 52 programs).³² The second quote, from CaptionMax, is for \$180.00 per show, or \$9,360.00 per year.³³ In addition to the

²⁵ *Request for Comment, Request for Exemption from Commission’s Closed Caption Rules*, CG Docket No. 06-181, Public Notice, 29 FCC Rcd 13907 (CGB 2014) (2014 Public Notice).

²⁶ *See Re: Opposition to Petition for Exemption from the Commission’s Closed Captioning Rules*, CGB Dkt. No. 06-181, First Baptist of Fort Smith, CGB-CC-0203, filed by TDI, NAD, CCASDHH, CPADO, ALDA, and Deaf Seniors of American (DSA) (collectively, Consumer Groups) (Dec. 19, 2014) (Consumer Groups Opposition).

²⁷ January 2014 Petition Supplement at 2.

²⁸ January 2006 Petition at 1.

²⁹ Petition at 2.

³⁰ *Id.* at 3.

³¹ June 2014 Petition Supplement at 1, 3, 5. FBC states that its services “routinely run between 60 and 90 minutes” but estimated its annual closed captioning costs based on quotes for the cost of providing captions for a 60 minute program. *Id.* at 2. In its January 2014 Petition Supplement, FBC also submitted an estimate of \$5,720.00 to caption its program based on a quote from Aberdeen Captioning, Inc. dated March 3, 2012, January 2014 Petition Supplement at 2, 8-9, and an estimate of \$5,304.00 to caption its program based on a quote from Caption Associates, LLC that was undated, *id.* at 3, 12. We do not consider either of these quotes in determining whether providing closed captioning would be economically burdensome for FBC because they were not recent, *i.e.*, they were not provided within one year of the Bureau’s September 27, 2013 letter requesting additional and updated information to enable it to determine whether the programming that was the subject of the Petition should be exempt from the Commission’s closed captioning obligations. *See* CGB 2013 Letter (stating that FBC must provide “documentation for two or more recent quotes [FBC] received from closed captioning services to provide closed captioning specifically for each program” and that “[r]ecent” means a quote [FBC] obtained within one year of the date of [the Bureau’s] letter”); *see also* CGB 2014 Letter (rejecting the estimates based on the Aberdeen Captioning, Inc. and Caption Associates, LLC quotes). We also do not consider the estimate based on the quote from Caption Associates, LLC because it appears that the quote was directed to KFSM for KFSM’s programming and was not made specifically for FBC’s program. *See* January 2014 Petition Supplement at 12.

³² June 2014 Petition Supplement at 1, 3.

³³ *Id.* at 1, 5. FBC also reports a quote from CaptionMax for \$100 per 60-minute episode for “conformation/minor reformat of closed caption file” and estimates that it would cost \$5,200.00 annually for services from CaptionMax to reformat its closed captioning file “for website use.” *Id.* at 1, 5. While the Commission’s rules require all live, nonexempt full-length video programming delivered using Internet protocol (IP) to be provided with closed captions if the programming is published or exhibited on television in the United States with captions on or after March 30, 2013, 47 C.F.R. § 79.4(b)(ii), the cost of reformatting such captions is associated with the costs of providing closed captioning on *IP-delivered* programming. Thus, we do not consider this cost in determining whether providing closed captioning for FBC’s *television* programming would be economically burdensome. If FBC wishes to obtain

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cost of real-time captioning services, FBC also indicates that it would incur costs for two telephone lines necessary to provide real-time closed captioning and for “[a]dditional human resources (man-hours, wages, etc.)” to “set up the closed captioning and also insure that the system is ready for each live broadcast.”³⁴ FBC does not state how much the telephone lines and additional human resources would cost.³⁵

9. *Start-Up Captioning Costs.* FBC also provides information about the projected start-up costs associated with captioning its program. It reports that multiple captioning vendors “recommend various HD encoders as required equipment for their respective captioning services.”³⁶ FBC provides two quotes for HD encoders, one for \$7,396.20 from Fowler, Inc., and the other for \$7,850.00 from EEG.³⁷

10. FBC submitted financial statements for 2011 and 2012.³⁸ For 2012, FBC reports total income of \$4,178,799.00 and total expenses of \$3,913,147.00, for an excess of revenue over expenses of \$265,652.00.³⁹ For 2011, FBC reports total income of \$4,402,684.00 and total expenses of \$4,180,738.00, for an excess of revenue over expenses of \$221,946.00.⁴⁰

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an exemption for the closed captioning of its IP-delivered programming on the theory that providing such captioning would cause it an economic burden, it must file a separate petition in CG Docket No. 13-318. *See* 47 C.F.R. § 79.4(d). For more information about the exemption process for IP-delivered programming, see <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements-video-programming-deli>.

³⁴ January 2014 Petition Supplement at 3. FBC also states that it would have to hire additional paid staff and obtain additional equipment at a cost of \$8,000 to record its live broadcast, if FBC is required to caption its webcasts and re-broadcasts in addition to its live broadcasts. For the reasons as stated in n.34, *supra*, we do not consider the costs incurred by FBC to caption its IP-delivered video programming in our determination of whether providing captions for its television programming would be economically burdensome.

³⁵ Because FBC does not provide details on the costs of the telephone lines and additional human resources, we will not consider these in evaluating whether providing closed captioning would be economically burdensome for FBC.

³⁶ January 2014 Petition Supplement at 3. It remains unclear whether FBC actually must purchase HD encoders in order to provide closed captioning for its programming. Based on statements made by VITAC in its quote for captioning services, it appears that KFSM may already have the necessary equipment. *See id.* at 10 (“[I]f this is being broadcast through a CBS affiliate, then they should have all the necessary equipment to do closed captioning, which could make this process a lot easier. . . . You would have to check with your CBS contact, but chances are they have [the required] equipment.”). FBC does not state in its Petition or supplemental materials whether it contacted KFSM to confirm that FBC must purchase HD encoders in order to provide closed captioning for its program. Because we determine that providing closed captioning would not be economically burdensome to FBC even if it must purchase HD encoders, *see* ¶ 15, *infra*, we need not decide whether the purchase of HD encoders is necessary in order for FBC to provide closed captioning for *Hope from Above*.

³⁷ *Id.* at 14-16.

³⁸ *Id.* at 32-45 (“First Baptist Church of Fort Smith, Report on Examination of Financial Statements, For the Years Ended December 31, 2012 and 2011”). In its January 2014 Petition Supplement, FBC also submitted a “Summary of General Income and Expense” for 2013 and 2012. *See id.* at 4-5. Similarly, in its May 2012 Petition Supplement, FBC submitted a “Summary of Income and Expense” for 2011. May 2012 Petition Supplement at 9 (Attachment 2). We do not consider this information in determining whether providing closed captioning would be economically burdensome for FBC because it does not include sufficient information about FBC’s cash receipts and disbursements. Rather, we rely on the financial information contained in the “Report on Examination of Financial Statements, For the Years Ended December 31, 2012 and 2011.” January 2014 Petition Supplement at 32-45.

³⁹ January 2014 Petition Supplement at 38.

⁴⁰ *Id.* at 39.

11. FBC reports current assets as of December 31, 2012, of \$2,037,693.00⁴¹ and current liabilities of \$35,896.00, resulting in net current assets of \$2,001,797.00.⁴² FBC reports current assets as of December 31, 2011, of \$1,989,669.00⁴³ and current liabilities of \$32,403.00,⁴⁴ resulting in net current assets of \$1,957,266.00.⁴⁵

12. FBC reports that it requested captioning assistance from its video programming distributor KFSM; KFSM responded that it does not offer captioning services itself, but it directed FBC to its closed captioning vendor, Caption Associates, LLC.⁴⁶ FBC also reports that it did not solicit captioning assistance from other sources due to the nature of the organization.⁴⁷ FBC reports that it displays the words to songs on an “in-house screen” during its program because it knows in advance what songs will be sung in each service, but it is unable to similarly display the content of the sermon shown on the program because the pastor speaks extemporaneously from “abbreviated notes.”⁴⁸ FBC asserts that, absent an exemption from the captioning requirements, it would not cease broadcasting *Hope From Above*.⁴⁹ However, FBC states, “In the long term, [it] hope[s] these additional burdens, if required, will not cause [it] to terminate other ministries within the church.”⁵⁰

13. Consumer Groups, which were the only parties to comment on the Petition in response to the 2014 *Public Notice*, contend that FBC has had a “*de facto*” waiver from captioning its program for nine years because FBC’s petition has been pending with the Commission since 2006.⁵¹ Consumer Groups argue that FBC failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.⁵² First, Consumer Groups argue that providing closed captioning would not be economically burdensome to FBC because it “could provide captioning and still have excess revenue and assets.”⁵³ In this regard, Consumer Groups claim that FBC’s

⁴¹ See *id.* at 36 (reporting “Cash and Cash Equivalents” of \$1,947,016.00 and “Certificates of Deposit” of \$90,677.00 as of as of December 31, 2012).

⁴² FBC’s net current assets as of December 31, 2012, are computed as follows: \$2,037,693.00 (FBC’s current assets) minus \$35,896 (FBC’s current liabilities) = \$2,001,797.00.

⁴³ See January 2014 Petition Supplement at 37 (reporting “Cash and Cash Equivalents” of \$1,898,765.00 and “Certificates of Deposit” of \$90,904.00 as of December 31, 2011).

⁴⁴ See *id.* at 37.

⁴⁵ FBC’s net current assets as of December 31, 2011, are computed as follows: \$1,989,669.00 (FBC’s current assets) minus \$32,403.00 (FBC’s current liabilities) = \$1,957,266.00.

⁴⁶ January 2014 Petition Supplement at 5. FBC included a “captioning bid” from Caption Associates, LLC, in its January 2014 Petition Supplement. *Id.* at 12. However, for the reasons noted above, see n.32, *supra*, we do not consider the quote from Caption Associates in evaluating whether providing captions would be economically burdensome for FBC. *Id.*

⁴⁷ *Id.* at 5 (“As a religious organization, we do not feel it is appropriate for us to pursue sponsorship from others to fund required closed captioning services. These services should be something that we provide out of our budget for viewers of our program and not something that we ask a third party(ies) to fund and subsequently receive promotional services during the program. We have not and do not plan to solicit direct sponsorship from others.”).

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 3.

⁵¹ Consumer Groups Opposition at 2.

⁵² See generally *id.*

⁵³ *Id.* at 4.

annual captioning costs would be approximately \$5,304.00 and that it had net revenue of \$120,449.00, \$508,812.00, and \$336,191.00 in 2013, 2012, and 2011, respectively.⁵⁴ Accordingly, Consumer Groups argue, FBC could have provided closed captioning and “still have had surplus revenues of \$330,887, \$503,508, and \$115,145 each year.”⁵⁵ In addition, Consumer Groups claim that FBC had net assets of \$8,313,728.00 and \$8,048,076.00 in 2012 and 2011, respectively, and therefore could have provided closed captioning and still have maintained \$8,308,424.00 and \$8,042,772.00 of net assets in those years.⁵⁶ For these reasons, Consumer Groups assert that FBC “has more than enough income and assets to support its other programs while still providing captioning.”⁵⁷ Second, Consumer Groups argue that FBC’s claim that “paying for captioning will divert funds from several other ministries” should be rejected because the Bureau has previously found that a petition “must ‘focus on the impact that captioning will have on the petitioner’s programming activities . . . not other activities or missions that are unrelated to that programming.’”⁵⁸ Finally, Consumer Groups state that FBC’s petition should be denied because it did not seek additional sponsorship sources for closed captioning. Consumer Groups argue that FBC’s “preference not to engage sponsors cannot relieve it of its obligation to comply with the Commission’s closed captioning rules.”⁵⁹

14. *Determination.* After a careful review of the record, the Bureau finds that FBC has not demonstrated that the provision of closed captioning for its program would be economically burdensome. As an initial matter, the Commission has previously determined that, when conducting an economically burdensome analysis, “all of the petitioners’ available resources” must be taken into consideration.⁶⁰ The Commission has rejected suggestions “to consider only the resources available for a specific program” in making the determination of whether provision of closed captioning is economically burdensome.⁶¹ Thus, consistent with prior Commission orders, we consider the overall financial resources available to FBC in determining whether it would be economically burdensome to comply with the Commission’s closed captioning requirements.

15. According to the information and documentation it has provided, FBC operated at an excess of revenue over expenses of \$265,652.00 in 2012.⁶² When we compare the one-time startup cost

⁵⁴ *Id.* at 5. Consumer Groups base their estimate of FBC’s annual captioning costs of \$5,304.00 based on the quote from Caption Associates, LLC that FBC submitted. *Id.* at 5, n.15. For the reasons stated above, *see* n.32, *supra*, we do not consider the quote provided by Caption Associates, LLC in determining whether providing closed captioning would be economically burdensome to FBC. Additionally, Consumer Groups state the net revenue of FBC based on the information contained in the “Summary of General Income and Expense” provided by FBC. *See* January 2014 Petition Supplement at 5; May 2012 Petition Supplement at 9 (Attachment 2). For the reasons stated above, *see* n.39, *supra*, we do not rely on the financial information contained in the “Summary of General Income and Expense” in determining whether providing closed captioning would be economically burdensome to FBC.

⁵⁵ Consumer Groups Opposition at 5.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 6 (quoting *First Baptist Church, Jonesboro, Arkansas; Request for Exemption from the Closed Captioning Requirements*, CGB-CC-0303, CG Docket No. 06-181, Memorandum Opinion and Order, 29 FCC Rcd 12833, 12840, ¶ 14 (CGB 2014)).

⁵⁹ Consumer Groups Opposition at 6.

⁶⁰ *Anglers Reversal MO&O*, 26 FCC Rcd at 14950, ¶ 17 (explaining that consideration of a petitioner’s request for exemption must take into account “the overall financial resources of the provider or program owner”).

⁶¹ *Id.*

⁶² *See* ¶ 10, *supra*. Consumer Groups state that FBC had net revenue of \$508,812.00 in 2012. *See* ¶ 13, *supra*. However, this figure is based on financial information provided in the “Summary of General Income and Expense”

(continued....)

of \$7,396.20 for an HD encoder and \$7,800 in annual closed captioning costs,⁶³ for a total cost of \$15,196.20 for closed captioning in the first year, to FBC's excess of revenue over expenses in 2012, we conclude that such revenue was sufficient to cover the cost of captioning *Hope From Above*. Specifically, FBC could have purchased the HD encoder and closed captioning services and still operated at an excess of revenue over expenses of \$250,455.80 in 2012. In addition, FBC had net current assets of \$2,001,797.00 as of December 31, 2012, which provides further evidence that the provision of closed captioning would not be economically burdensome.⁶⁴ Based on this review and analysis, we conclude that closed captioning would not be economically burdensome for FBC.⁶⁵

16. Finally, we wish to respond to FBC's assertion that, if not granted a captioning exemption, it may have to "terminate other ministries within the church."⁶⁶ We agree with Consumer Groups that this argument cannot justify a finding that providing closed captioning would be economically burdensome.⁶⁷ The Commission may consider additional factors besides those set forth in section 713(e) of the Act when making a determination for an individual closed captioning exemption.⁶⁸ However, the Commission has previously explained that any additional factors that it considers "must focus on the impact that captioning will have on the petitioner's programming activities – for example the extent to which *programming* might not be shown if program owners or providers are required to provide captions – not other activities or missions that are unrelated to that programming."⁶⁹ FBC acknowledges that it "would not plan to cease" broadcasting *Hope From Above* if its Petition were denied,⁷⁰ thus, its assertion that a denial of the Petition may result in the elimination of or reduction in existing ministries and programs is not relevant to our economically burdensome determination. Because we conclude, based on the information provided by FBC, that FBC has adequate financial resources to afford the costs

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for 2012. See January 2014 Petition Supplement at 4-5. For the reasons stated previously, *see* n.39, *supra*, we do not consider the information contained in the "Summary of General Income and Expense" in determining whether providing closed captioning would be economically burdensome for FBC. Rather, we rely on the financial information contained in the "Report on Examination of Financial Statements, For the Years Ended December 31, 2012 and 2011," which shows that FBC had an excess of revenue over expenses of \$265,652.00 in 2012. January 2014 Petition Supplement at 32-45; ¶ 10, *supra*.

⁶³ See ¶¶ 8-9, *supra*.

⁶⁴ See ¶ 11, *supra*. Consumer Groups state that FBC had net assets of \$8,313,728.00 in 2012. See ¶ 13, *supra*. However, this figure is the amount of FBC's total net assets, including both current and long-term net assets. In determining whether providing closed captioning would be economically burdensome to FBC, we consider the amount of FBC's net *current* assets in order to determine the current financial resources of the organization. Net current assets are determined by taking current assets, which are financial resources that are cash or items that can be easily converted into cash (i.e., highly liquid assets) and subtracting current liabilities, which are debts due within a year.

⁶⁵ We do not reach the question of whether FBC can avoid its closed captioning obligations because it is unwilling to seek additional sponsorships (other than from its program distributor) or other sources of revenue to caption its program, *see* Consumer Groups Opposition at 6, because we conclude that even without this effort, it would not be economically burdensome for FBC to provide closed captioning for its program.

⁶⁶ See ¶ 12, *supra*.

⁶⁷ See ¶ 13, *supra*.

⁶⁸ *Anglers Reversal MO&O*, 26 FCC Rcd at 14951-52, ¶ 20 (citing 47 C.F.R. § 79.1(f)(3)).

⁶⁹ *Anglers Reversal MO&O*, 26 FCC Rcd at 14952, ¶ 20.

⁷⁰ January 2014 Petition Supplement; *see* ¶ 12, *supra*.

of captioning *Hope From Above*,⁷¹ we find that it would not be economically burdensome for FBC to caption its program within the meaning of the Communications Act and the Commission's rules.

IV. ORDERING CLAUSES

17. Accordingly, pursuant to section 713 of the Communications Act of 1934, as amended, and sections 0.141(f) and 79.1(f) of the Commission's rules,⁷² IT IS ORDERED that the Petition filed by FBC, requesting an exemption from the Commission's closed captioning rules, IS DENIED.

18. IT IS FURTHER ORDERED that the programming that is the subject of its Petition must be captioned no later than October 7, 2015, which is 90 days from the date of the release of this Order.

19. IT IS FURTHER ORDERED that FBC must inform the Commission of the date on which the programming is closed captioned in accordance with this Order and the Commission's rules by e-mail to captioningexemption@fcc.gov.⁷³ The e-mail attachment must reference Case Identifier CGB-CC-0203 and will be posted on the docket to be publicly available.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

⁷¹ See ¶¶ 14-15, *supra*.

⁷² 47 U.S.C. § 613; 47 C.F.R. §§ 0.141(f), 79.1(f).

⁷³ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, CG Docket Nos. 06-181 and 05-231, Public Notice, 29 FCC Rcd 3960 (CGB 2014).