

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

In the Matter of
Lima Baptist Temple
Petition for Exemption from the
Closed Captioning Requirements
CGB-CC-0218
CG Docket No 06-181

MEMORANDUM OPINION AND ORDER

Adopted: August 7, 2015

Released: August 7, 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 Lima Baptist Temple (LBT) for an exemption from the Federal Communications Commission's (FCC's or Commission's) closed captioning requirements for LBT's weekly worship service broadcast on Sunday mornings. Because we conclude that LBT 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, LBT's program must be captioned no later than November 5, 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 and directing the Commission to prescribe rules to carry out this mandate. In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998. The Commission's closed

1 Telecommunications Act of 1996, Pub. L. No. 104-104, § 305, 110 Stat. 56 (1996 Act) (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 percent 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 must be submitted with closed captioning exemption petitions to enable its consideration of the above factors:

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)(11). 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.” 1996 Act, § 305. 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.

- 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. LBT initially filed a petition for exemption by letter dated December 27, 2005, which the Commission received on January 3, 2006.¹² The Consumer and Governmental Affairs Bureau (CGB or Bureau) requested more information about the petition on February 24, 2006.¹³ After requesting

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 T. Blain Brock, II, Counsel to Lima Baptist Temple, to FCC (Dec. 27, 2005) (filed Jan. 3, 2006). In its initial petition, in addition to requesting an exemption based on economic burden, LBT claimed to be exempt from the Commission's closed captioning rules under section 79.1(d)(8) of the Commission's rules. *Id.* at 1.

¹³ See Letter from Amelia Brown, Disability Rights Office, CGB, to T. Blain Brock II (Feb. 24, 2006). This letter also clarified that LBT does not qualify for an exemption under section 79.1(d)(8) of the Commission's rules, because LBT is not a video programming distributor. *Id.* at 1-2. Section 79.1(d)(8) of the Commission's rules exempts "[p]rogramming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable." 47 C.F.R. § 79.1(d)(8). Section 79.1(a)(2) of the Commission's rules defines "video programming distributor," in part, as "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor." *Id.* § 79.1(a)(2).

additional time to respond,¹⁴ LBT supplemented the petition by letter dated July 17, 2006.¹⁵ The Bureau granted the petition and issued an exemption to LBT by letter order dated September 12, 2006.¹⁶ On November 7, 2006, the Bureau issued a Public Notice holding in abeyance various letter orders granting exemptions, including that to LBT, and inviting comments on certain exemption petitions, including LBT's.¹⁷ On March 2, 2007, certain consumer organizations jointly filed an opposition to LBT's petition.¹⁸ In 2011, the Commission reversed certain Bureau grants of exemption, including the exemption granted to LBT.¹⁹ By letter dated October 25, 2011, the Bureau notified LBT of this reversal and explained that LBT 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.²⁰ In response, LBT filed a new petition by letter received on January 18, 2012 (hereinafter Petition).²¹ By letter dated April 4, 2012, the Bureau notified LBT that the Bureau required 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.²² In response, LBT supplemented its Petition three times.²³ The Bureau placed the Petition

¹⁴ See Letter from T. Blain Brock II, to Amelia Brown, Disability Rights Office, FCC (Apr. 20, 2006) (filed Apr. 25, 2006). We have included the dates on which the Commission received LBT's letters in those instances where the date noted on the LBT's submission was different from the date the submission was received by the Commission.

¹⁵ See Letter from The Lima Baptist Temple, to Amelia Brown, Disability Rights Office, FCC (July 17, 2006). LBT again claimed it is exempt from the Commission's closed captioning rules under section 79.1(d)(8) of the Commission's rules. *Id.* at 4. For the reasons stated previously, *see* n.13, *supra*, we conclude that section 79.1(d)(8) of the Commission's rules does not apply to LBT because it is not a "video programming distributor," as defined in the Commission's rules.

¹⁶ See Letter from Thomas E. Chandler, Chief, Disability Rights Office, CGB, to T. Blain Brock II (Sept. 12, 2006).

¹⁷ *Consumer and Governmental Affairs Bureau Action Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 21 FCC Rcd 13142 (CGB 2006).

¹⁸ CGB-CC-0218 – Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Lima Baptist Temple, 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), Hearing Loss Association of America (HLAA), Association of Late-Deafened Adults, Inc. (ALDA), American Association of People with Disabilities (AAPD), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (Mar. 2, 2007).

¹⁹ *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 25. The Commission reversed this and other Bureau letter orders that had failed to analyze the individual circumstances of the petitioners under the "undue burden" criteria, as required under the Communications Act and the Commission's rules. *Id.* at 14949, ¶ 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*.

²⁰ See Letter from Joel Gurin, Chief, CGB, to Lima Baptist Temple (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.

²¹ Letter from T. Blain Brock, II, to FCC (Jan. 11, 2012) (filed Jan. 18, 2012) (Petition). In its Petition, LBT again claimed to be exempt from the Commission's closed captioning rules under section 79.1(d)(8) of the Commission's rules. *Id.* at 2-3. For the reasons stated in n.13, *supra*, we conclude that section 79.1(d)(8) of the Commission's rules does not apply to LBT because it is not a "video programming distributor," as defined in the Commission's rules.

²² See Letter from Roger Holberg, Disability Rights Office, CGB, to Huffman, Kelley, Brock & Gottschalk, LLC (Apr. 4, 2012). This letter repeated the determination that LBT does not qualify for an exemption under section 79.1(d)(8) of the Commission's rules, because LBT is not a video programming distributor. *Id.* at 1.

²³ See Letter from T. Blain Brock, II, to Roger Holberg, Office of the Secretary, FCC (Apr. 25, 2012) (filed Apr. 26, 2012) (April 2012 Petition Supplement); Letter from T. Blain Brock, II, to Roger Holberg, Office of the Secretary, FCC (July 3, 2012) (filed July 6, 2012) (July 3, 2012 Petition Supplement); Letter from T. Blain Brock, II, to Roger Holberg, Office of the Secretary, FCC (July 16, 2012) (filed July 18, 2012) (July 16, 2012 Petition Supplement).

on Public Notice for comment on September 6, 2012.²⁴ Again, several consumer groups jointly opposed the Petition.²⁵ After reviewing the public's comments, the Bureau again wrote to LBT requesting additional and updated information to make a determination as to whether LBT's programming merited an exemption from the Commission's closed captioning obligations.²⁶ In response, LBT twice supplemented its Petition.²⁷ The Bureau again placed the Petition on Public Notice for comment on January 14, 2015.²⁸ Again, several consumer groups jointly filed an opposition to the Petition.²⁹

III. DISCUSSION

7. LBT produces a one-hour program of a religious nature that is broadcast weekly on Station WLIO(TV), Lima, Ohio (WLIO), on Sunday mornings at 11 a.m.³⁰ LBT states that it was founded in 1956 and describes itself as a nonprofit religious organization "providing traditional, spiritual, emotional, and physical support to a diverse economic, ethnic, and social population."³¹ According to LBT, its program is "completely operated by volunteers."³²

8. LBT submitted two recent quotes to caption its program.³³ The first quote, from Video Caption Corporation, is for \$300.00 per show, or \$15,600.00 per year (*i.e.*, for 52 programs).³⁴ The

²⁴ *Request for Comment, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 10895 (CGB 2013).

²⁵ *See Re: Lima Baptist Temple Petition for Exemption from the Commission's Closed Captioning Rules*; Case No. CGB-CC-0218; CG Docket No. 06-181, filed by TDI, NAD, DHHCAN, ALDA, CCASDHH, and Cerebral Palsy and Deaf Organization (CPADO) (Oct. 9, 2012).

²⁶ *See* Letter from Cheryl J. King, Disability Rights Office, CGB, to Lima Baptist Temple (Sept. 27, 2013); Letter from E. Elaine Gardner, Disability Rights Office, CGB, to Lima Baptist Temple (May 30, 2014).

²⁷ *See* Letter from T. Blain Brock, II, to Cheryl J. King, Office of the Secretary, FCC (Oct. 23, 2013) (filed Oct. 25, 2013) (October 2013 Petition Supplement); Letter from Gary E. Hohman, Assistant Pastor, Lima Baptist Temple (filed June 24, 2014) (June 2014 Petition Supplement). LBT again claimed to be exempt from the Commission's closed captioning rules under section 79.1(d)(8) of the Commission's rules, notwithstanding the Bureau's prior determination that LBT did not qualify for this exemption. October 2013 Petition Supplement at 4; *see also* n.13, *supra*.

²⁸ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 30 FCC Rcd 176 (CGB 2015) (2015 Public Notice).

²⁹ *Re: Opposition to Petition for Undue Burden Exemption from the Commission's Closed Captioning Rules*, CGB Dkt. No. 06-181, Lima Baptist Temple, CGB-CC-0213, filed by TDI, NAD, CPADO, and Deaf Seniors of America (DSA) (collectively, Consumer Groups) (Feb. 13, 2015) (Consumer Groups Opposition).

³⁰ October 2013 Petition Supplement at 2. The exact program running time is 58:26. *Id.*

³¹ *Id.* at 1, 4.

³² April 2012 Petition Supplement at 2; June 2014 Petition Supplement at 1.

³³ October 2013 Petition Supplement at 35-36. LBT submitted other quotes to caption its program and other pricing information in its Petition and April 2012 Petition Supplement. *See* Petition at 5-6 (Exhibits A and B) (providing quotes from Video Caption Corporation and Computer Prompting & Captioning Co.); April 2012 Petition Supplement at 5 (providing what appears to be an advertisement from CaptionSync), 6 (providing a quote from Computer Prompting & Captioning Co.). Because these quotes are not recent, we do not consider them in making our determination as to whether providing closed captioning would be economically burdensome for LBT. We also do not consider the information from CaptionSync provided in LBT's April 2012 Petition Supplement because it appears not to be specific to LBT's program.

³⁴ October 2013 Petition Supplement at 35. The annual cost of closed captioning based on the quote from Video Caption Corporation is calculated by multiplying the cost per show (\$300.00) by the number of shows per year (52).

second quote, from Impact Media, is for \$325.00 per show, or \$16,900.00 per year.³⁵ LBT also reports that it has rejected the use of “[i]n-house voice recognition software for transcribing the program . . . due to its expensive startup costs” and impracticality, because LBT’s program features “many and various speakers on a regular basis.”³⁶ In addition, LBT states that it has ruled out “prepared scrolls and subtitles,” as speakers on the program “regularly speak in an extemporaneous and expositional style.”³⁷

9. LBT submitted financial statements for 2012 and 2011.³⁸ For 2012, LBT’s Statement of Activities reports total income of \$1,249,441.00, total expenses of \$1,179,233.00, and excess of revenue over expenses of \$70,208.00.³⁹ For 2011, LBT’s Statement of Activities reports total income of \$1,121,684.00, total expenses of \$1,052,574.00, and excess of revenue over expenses of \$69,110.00.⁴⁰

10. LBT also submitted statements of financial position for 2012 and 2011. LBT reports current assets as of December 31, 2012 of \$321,596.00 and current liabilities of \$559.00, resulting in net current assets of \$321,037.00.⁴¹ LBT also reports current assets as of December 31, 2011 of \$250,902.00 and current liabilities of \$73.00, resulting in net current assets of \$250,829.00.⁴²

11. LBT reports that it requested captioning assistance from its video programming distributor WLIO; however, WLIO was unable to offer captioning assistance.⁴³ LBT further indicates that it was unsuccessful in its efforts to secure additional sponsorship sources for closed captioning.⁴⁴

³⁵ *Id.* at 36. The annual cost of closed captioning based on the quote from Video Caption Corporation is calculated by multiplying the cost per show (\$325.00) by the number of shows per year (52). LBT states that, “[i]n addition to the transcribing cost, subtitling and dubbing expense, there would be additional expense in hiring a local editing professional in order to meet the shipping receipt deadline requirement of the transcribing vendor and return shipping deadline requirement to meet the WLIO on air deadlines.” *Id.* at 2-3. Because LBT does not provide an estimate of these costs despite our specific request for clarification by our letter dated May 30, 2014, we do not consider these costs in making our determination of economic burden.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *See id.* at 11-28. In addition to its financial statements, FBC submitted an “Income/Expense Report” for 2012 and 2011. *Id.* at 9-10. The amounts stated for total income, total expenses, and excess of revenues over expenses in the Income/Expense Report varies slightly from the same information provided in the financial statements submitted by LBT. *Cf. id.* at 9-10 and *id.* at 15, 24. Because the financial information in LBT’s financial statements has undergone an independent accountants’ review, we find that this information is more reliable than the financial information contained in the Income/Expense Report, and we therefore rely on the information contained in the financial statements in determining whether providing closed captioning would be economically burdensome for LBT. LBT also submitted financial information for nine months of 2013. *See id.* at 8 (Lima Baptist Temple, Profit & Loss Prev Year Comparison – General Fund Only, January through September 2013). Because this statement does not provide financial information for a complete calendar or fiscal year, and because LBT did not submit an audited financial statement, accountant’s compilation, or complete federal tax returns covering 2013, we do not consider LBT’s partial 2013 financial information in our economic burden determination.

³⁹ *See id.* at 24. LBT’s 2012 total income is calculated by adding its “Total Unrestricted Support And Reclassification” of \$1,254,754.00 plus its “Decrease In Temporarily Restricted Net Assets” of (\$5,313.00) = \$1,249,441.00.

⁴⁰ *See id.* at 15. LBT’s 2011 total income is calculated by adding its “Total Unrestricted Support And Reclassification” of \$1,083,190.00 plus its “Increase In Temporarily Restricted Net Assets” of \$38,494.00 = \$1,121,684.00.

⁴¹ *Id.* at 23.

⁴² *Id.* at 14.

⁴³ Petition at 3; July 16, 2012 Petition Supplement at 2; October 2013 Petition Supplement at 3.

⁴⁴ July 3, 2012 Petition Supplement at 2; October 2013 Petition Supplement at 7.

LBT states that its program “is funded through the church’s general fund budget” and that monies in LBT’s “designated fund,” which consists of donations made to LBT for specific purposes “can only be expended for the purpose for which they were given.”⁴⁵ In addition, LBT asserts that, absent an exemption from the captioning requirements, it may have to divert funds from other church ministries or discontinue its broadcast of its program.⁴⁶

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2015 *Public Notice*, contend that LBT failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.⁴⁷ First, Consumer Groups states that the Bureau should reject what Consumer Groups describe as LBT’s argument that the Commission should “limit its analysis to the program’s ‘designated funds’” when determining whether providing closed captioning would be economically burdensome to LBT,⁴⁸ because the Commission should “concentrate its analysis on [LBT’s] overall financial resources.”⁴⁹ Additionally, Consumer Groups argue that LBT’s claim that it may have to divert funds from other areas in order to provide closed captioning “is irrelevant to the Commission’s analysis,” which, Consumer Groups urge, “must focus on the impact that captioning will have on the petitioner’s programming activities . . . not other activities missions that are unrelated to that programming.”⁵⁰

13. Next, Consumer Groups argue that LBT’s financial resources are adequate to cover even the higher estimated annual cost of closed captioning of “approximately \$16,000.00 and \$17,000.00.”⁵¹ In this regard, Consumer Groups claim that LBT reported excess revenues of \$68,885.35 in 2011 and \$70,531.87 in 2012.⁵² Consumer Groups argue that, even with an annual cost of \$16,000.00 to provide closed captioning, LBT could have provided closed captioning in 2011 and 2012 and still have operated with excess revenues of \$52,885.35 and \$54,531.87, respectively.⁵³ Consumer Groups also note that LBT reported current net assets of \$250,829.00 in 2011 and \$321,037.00 in 2012.⁵⁴ Consumer Groups argue that LBT’s “ample net current assets,” together with its “annual excess profits,” suggest that LBT “can afford to provide captioning.”⁵⁵ Thus, Consumer Groups conclude, requiring LBT to caption its program

⁴⁵ October 2013 Petition Supplement at 3.

⁴⁶ Petition at 3; April 2012 Petition Supplement at 2; October 2013 Petition Supplement at 3; June 2014 Petition Supplement at 1.

⁴⁷ Consumer Groups Opposition at 4-7.

⁴⁸ *Id.* at 4 (citing October 2013 Petition Supplement at 3 (stating that “[t]he designated fund is comprised of donations made to [LBT] for specific purposes. These monies can only be expended for the purpose for which they were given” and that “the television ministry is funded through the church’s general fund budget”)).

⁴⁹ *Id.*

⁵⁰ *Id.* (quoting *Anglers Reversal MO&O*, 26 FCC Rcd at 14951-52, ¶ 20).

⁵¹ *Id.* at 5. Consumer Groups also argue that, in the first instance, the Bureau should base its analysis on an estimated annual cost of \$7,300.80 for closed captioning, based on the price information from CaptionSync submitted by LBT in 2012. *Id.* at 5. For the reasons stated above, *see* n.33, *supra*, we do not consider the price information from CaptionSync in determining whether providing closed captioning would be economically burdensome for LBT. Because we determine that providing closed captioning would not be economically burdensome for LBT even using a higher estimate of the annual cost of closed captioning, *see* ¶¶ 14-15, *infra*, we need not consider this lower estimate of the annual cost of closed captioning.

⁵² Consumer Groups Opposition at 5.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Consumer Groups also argue that “the limited, unaudited financial information [LBT] provided for 2013 does not alter the conclusion that captioning would not be economically burdensome” because LBT’s “multi-year financial records suggest that it receives a significant increase in revenue toward the end of each calendar year,”

(continued....)

cannot be considered economically burdensome.⁵⁶

14. *Determination.* After a careful review of the record, the Bureau finds that LBT has not demonstrated that the provision of closed captioning for its program would be economically burdensome. As an initial matter, we agree with Consumer Groups that the Commission has previously determined that, when conducting an economically burdensome analysis, “all of the petitioners’ available resources” must be taken into consideration.⁵⁷ 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.⁵⁸ Thus, consistent with prior Commission orders, we consider the overall financial resources available to LBT 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, LBT operated at an excess of revenue over expenses of \$70,208.00 in 2012.⁵⁹ When we compare the annual cost of closed captioning of \$15,600.00,⁶⁰ to LBT’s excess of revenue over expenses in 2012, we conclude that such revenue was sufficient to cover the cost of captioning LBT’s program. Specifically, LBT could have provided closed captioning and still operated at an excess of revenue over expenses of \$54,608.00 in 2012. In addition, LBT had net current assets of \$321,037.00 as of December 31, 2012, which provides further evidence that the provision of closed captioning would not be economically burdensome.⁶¹ Based on our review and analysis, we conclude that closed captioning would not be economically burdensome for LBT.

16. LBT asserts that, if not granted a captioning exemption, it would have to divert funds from other church ministries.⁶² We agree with Consumer Groups that this argument cannot justify a finding that providing closed captioning would be economically burdensome.⁶³ The Commission may consider additional factors besides those set forth in section 713(e) of the Act when making a

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suggesting that LBT likely received an increase in revenue in late 2013 to avoid a net loss in that year. *Id.* at 6. Additionally, Consumer Groups argue that “[e]ven if [LBT] closed the year at a loss, the reviewed financial reports indicate that [LBT] would have had enough money in net current assets to cover both the deficit and the cost of captioning.” *Id.* at 6-7. For the reasons stated above, *see* n.38, *supra*, we do not consider the financial information submitted by LBT for part of 2013 in determining whether providing closed captioning would be economically burdensome to LBT.

⁵⁶ Consumer Groups Opposition at 7.

⁵⁷ *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”).

⁵⁸ *Id.*

⁵⁹ *See* ¶ 9, *supra*. Consumer Groups state that FBC had net revenue of \$70,531.87 in 2012. *See* ¶ 13, *supra*. However, this figure is based on financial information provided in the “Income/Expense Report – 2012.” *See* October 2013 Petition Supplement at 10. For the reasons stated previously, *see* n.38, *supra*, we do not consider the information contained in the Income/Expense Report in determining whether providing closed captioning would be economically burdensome for LBT. Rather, we rely on the financial information contained in the financial statements, which shows that FBC had an excess of revenue over expenses of \$70,208.00 in 2012. October 2013 Petition Supplement at 24; ¶ 9, *supra*.

⁶⁰ *See* ¶ 8, *supra*.

⁶¹ *See* ¶ 10, *supra*.

⁶² Petition at 3; April 2012 Petition Supplement at 2; October 2013 Petition Supplement at 3; June 2014 Petition Supplement at 1.

⁶³ *See* ¶ 12, *supra*.

determination for an individual closed captioning exemption.⁶⁴ 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.”⁶⁵ Thus, LBT’s 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.⁶⁶ Because we conclude, based on the information provided by LBT, that LBT has adequate financial resources to enable it to afford the costs of captioning its television program, we find that it would not be economically burdensome for LBT 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,⁶⁷ IT IS ORDERED that the Petition filed by LBT, 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 November 5, 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.⁶⁸ The e-mail attachment must reference Case Identifier CGB-CC-0218 and will be posted on the docket to be publicly available.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau

⁶⁴ *Anglers Reversal MO&O*, 26 FCC Rcd at 14951-52, ¶ 20 (citing 47 C.F.R. § 79.1(f)(3)).

⁶⁵ *Id.* at 14952, ¶ 20.

⁶⁶ See *Dawson Memorial Baptist Church; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0144, CG Docket No. 06-181, Memorandum Opinion and Order, 29 FCC Rcd 15509, 15517, ¶ 17 (CGB 2014) (rejecting the petitioner’s argument that providing closed captioning would be an economic burden because it would require the petitioner to forgo other activities in order to afford the cost of closed captioning); *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); *First Baptist Church, Fort Smith, Arkansas; Request for Exemption from the Closed Captioning Requirements*, CGB-CC-0203, CG Docket No. 06-181, Memorandum Opinion and Order, 30 FCC Rcd 7214, 7222 ¶ 16 (CGB 2015).

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

⁶⁸ 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).