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July 13, 2015
via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: Consolidated Opposition to Petitions for Exemption from the Commission's
Closed Captioning Rules
CGB Dkt. No. 06-181

**First Baptist Church of Beaver/
First Baptist Church of Beaver**
CGB-CC-1345

**Delaware Standardbred Owners
Association/Post Time**
CGB-CC-1346

**Seeking the Lost Ministries/
Seeking the Lost**
CGB-CC-1347

**Word of Life Full Gospel Baptist
Church/The Word of Life**
CGB-CC-1350

**Fallah Productions/Windy City Poker Championship, Chad Brown Poker
Championship, and Jax 50K Cash Game**
CGB-CC-1352

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), California
Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Association

*Admitted to the Washington bar only;
DC bar membership pending. Practice supervised by members of the DC bar.

of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), and Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this consolidated opposition to the above-captioned request for exemption of their programming from the Federal Communications Commission's (Commission) closed captioning rules.¹ All five Petitioners have failed to show that captioning would be economically burdensome.

The Commission has previously dismissed two Petitioners - Fallah Productions and Seeking the Lost Ministries - for failing to provide the required information to determine whether captioning would be economically burdensome. As discussed below, Consumer Groups believe that similar deficiencies are present in both Petitioners' current waiver requests. These petitions therefore raise important questions regarding a programmer's ability to avoid its captioning obligations by simply re-filing waiver petitions and whether such practices constitute an abuse of the Commission's rules and processes. In re-filing their petitions, Fallah Productions has had a *de facto* waiver of the closed captioning rules for roughly five years, while Seeking the Lost has had one for nearly ten years. Consumer Groups respectfully request that the Commission summarily deny these petitions and similar petitions in the future to prevent parties from avoiding their captioning obligations through the re-filing of patently deficient waiver petitions.

I. Legal Standard

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome."² When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission 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)

¹ *Request for Comment on Requests for Exemption From Commission's Closed Captioning Rules*, Dkt. 06-181, DA 15-687 (June 11, 2015).

² 47 U.S.C. § 613(d)(3). The Commission interpreted the term "economically burdensome" as being synonymous with the term "undue burden" as defined in Section 713(e) of the 1934 Act, and ordered the Bureau to continue to evaluate all exemption petitions using the "undue burden" standard pursuant to Rule 79.1(f)(2)-(3). *Interpretation of Economically Burdensome Standard*, 27 FCC Rcd 8831, 8834 ¶7 (2012).

the type of operations of the provider or program owner.³ The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner's current assets, current liabilities, revenues, expenses, and other documentation "from which its financial condition can be assessed."⁴

Recent decisions by the Consumer and Government Affairs Bureau (Bureau), such as *Joy Ministries*⁵ and *First United Methodist Church of Tupelo*,⁶ are relevant to these pending petitions. In *Joy Ministries*, the Bureau concluded that closed captioning would not be economically burdensome because the petitioner's net income, together with its net current assets, was sufficient to cover the annual cost of captioning.⁷ And in *First United Methodist Church of Tupelo*, the Bureau concluded that captioning would not be economically burdensome because although the petitioner had reported net losses, the petitioner's net current assets were more than sufficient to cover annual captioning costs.⁸

II. Fallah Productions has failed to meet the standard for an economically burdensome waiver.

Petitioner tapes three different annual poker tournaments – the Windy City Poker Championship, Chad Brown Poker Championship, and the Jax50k Cash Game – and produces roughly 40 episodes from these events.⁹ Fallah Productions distributes the episodes to thirteen regional and national sports networks, such as Comcast SportsNet Chicago.¹⁰

Fallah Productions initially petitioned for separate waivers for each poker tournament show in 2010. After the Bureau repeatedly asked for additional information regarding Petitioner's captioning expenses and finances and received

³ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014) (*First Baptist*).

⁴ *Id.* at ¶¶ 13-14; see also *First United Methodist Church of Tupelo*, 30 FCC Rcd 1031 (2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

⁵ *Joy Ministries*, 30 FCC Rcd 2029 (2015).

⁶ *Church of Tupelo*, 30 FCC Rcd 1031 (2015).

⁷ *Joy Ministries*, 30 FCC Rcd 2029, ¶16 (2015).

⁸ *Church of Tupelo*, 30 FCC Rcd at 1037, ¶14.

⁹ *Fallah Productions Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Dec. 12, 2014) (*2014 Fallah Productions Petition*).

¹⁰ *Id.* at 3.

insufficient information, it dismissed the petitions in February 2014.¹¹ The Commission stated that “with this dismissal, you must comply with the FCC’s closed captioning requirements,” meaning that Fallah Productions had to immediately begin captioning its programming. Roughly 10 months later, Petitioner filed its latest petition seeking to avoid captioning the same three programs that were the subject of Fallah Productions’ previous petitions.¹²

A. Fallah Productions’ captioning costs are not credible.

Fallah Productions’ purported captioning costs are so high that they are not credible for purposes of determining whether captioning would be economically burdensome. Fallah Productions claims that it would cost \$187,200, using a third-party caption vendor offering a rate of \$120 per hour, to live caption 40 episodes of its three programs.¹³ Fallah Productions claims that each episode is broadcast 3 to 5 times on each of the thirteen networks on which they air and that live captioning each airing is the only option because each episode is re-edited and formatted for each network.¹⁴

The Bureau previously recognized the dubious nature of Petitioner’s captioning costs, noting “that there are procedures to avoid such duplicative captioning.”¹⁵ The Bureau then asked Fallah Productions to “submit documentation from the vendors that such duplicative captioning is required.”¹⁶ Fallah Productions failed to provide the verification from third-party caption vendors required by the Bureau. Instead, Petitioner claims that creating a master copy of each episode is impossible because it adds different visual elements for each network, such as logos, or has to modify an announcer’s narration for local programming.¹⁷ Fallah Productions then claims that it would cost \$263,172 to add post-production captions to each episode.¹⁸

Petitioner’s claims are inadequate for several reasons. First, Fallah Productions did not provide verification from a third-party caption vendor that its duplicative costs

¹¹ Letter to Kurt Fallah, Dkt. 06-181 (Aug. 23, 2012); Letter to Kurt Fallah, Dkt. 06-181 (Feb. 11, 2014); Letter to Kurt Fallah, Dkt. 06-181 (Feb. 11, 2014).

¹² *Fallah Productions Supplement to Petition for Exemption from the Commission’s Closed Captioning Rules*, Dkt. 06-181 (May 15, 2015) (*Fallah 2015 Supplement*).

¹³ *2014 Fallah Productions Petition* at 3.

¹⁴ *Id.*

¹⁵ Letter to Fallah Productions, Dkt. 06-181 (March 24, 2015).

¹⁶ *Id.*

¹⁷ *Fallah 2015 Supplement*.

¹⁸ *Id.*

were necessary, as the Bureau had asked for. Second, Petitioner's justification for why master captioning is impossible is illogical. If all that changes in each episode is a logo that appears on screen – a visual element – that would not impact the captions, which by definition are transcriptions of a program's dialogue and audio. Third, even if Fallah Productions does actually modify the announcer's audio for various shows, it is unreasonable to believe that those minor modifications would render master captioning impossible. Although Consumer Groups would ideally like all content in Petitioner's programming to be captioned, it would not be the first time that there were minor discrepancies between an announcer's narration and a program's captions. Such minor captioning issues should not form the basis of preventing the majority of Petitioner's programming from being captioned.

Moreover, even if Petitioner were correct that relying on a third-party caption vendor to create a master captioned copy is impossible, it fails to show how other, cheaper options would be economically burdensome. For example, Petitioner could purchase captioning software or hardware such as a captioning encoder to be used in-house during the production of each episode.¹⁹ Petitioner failed to investigate these options, even though other petitioners have.²⁰

Further, Fallah Productions' claim that it lacks the time to add captions in-house is not credible in light of the fact that Petitioner later states that it already devotes significant time to "all of post production including writing, graphics, audio editing, video editing and so forth."²¹ Although Fallah Productions would encounter initial startup captioning costs associated with purchasing captioning software and a computer, the ongoing costs would be minimal because all post-production is "done by a single individual" already.²² Petitioner has not provided accurate captioning costs to the Commission as required by its rules and has instead artificially inflated the cost of captioning its programs.

¹⁹ There are ample products on the market that allow producers to create captions and encode them for output to multiple formats. *See e.g.*, Telestream, <http://www.telestream.net/captioning/compare.htm>. Further,

²⁰ *Cf. 2014 Fallah Productions Petition* at 4 (stating that purchasing equipment is not feasible without providing further elaboration) *with First Baptist Church of Fort Smith, Arkansas*, DA 15-802, Dkt. No. 06-181 at ¶9 (July 9, 2015) (discussing Petitioner's estimated costs for an HD captioning encoder of \$7,396.20).

²¹ *2014 Fallah Productions Petition* at 8.

²² *Id.*

B. Petitioner has failed to provide financial records demonstrating an economic burden.

Fallah Productions has also failed to provide detailed, verifiable records of its financial resources as required by the Commission. Fallah Productions' petition raises more questions than it answers regarding the financial health of the Petitioner. The only financial data Petitioner provides is a single page that purports to list Fallah Productions' tax return information for 2012 and 2013.²³ The provided information claims that Fallah Productions had a loss of \$3,620 and assets of \$1,527 in 2012 with profits of \$32 and no assets in 2013.²⁴

There are several problems with the dearth of information provided by Petitioner. First, there is no way to verify whether the totals submitted reflect the actual financial position of Fallah Productions because the information is not a copy of an actual tax return filed by Petitioner. Relatedly, the lack of detail provided by Petitioner is insufficient to adequately judge the programmer's financial health. Although the Commission has reviewed tax returns for purposes of a waiver determination, Petitioner has not even provided actual tax returns in this case. In short, there is no way to actually assess whether Petitioner has resources available to pay for captions.

Additionally, Petitioner's financial figures are not credible. For example, although Fallah Productions has camera and production equipment, it claims it had no assets in 2013. That does not seem to be possible. Further, the petition indicates that Fallah Productions receives all or some portion of the proceeds from local and regional advertisements that appear when its programming airs.²⁵ The ad revenue does not square with Petitioner's claim that it lacks the financial resources to pay for captioning.

Additionally, although Petitioner claims it sought assistance from two distributors of its programming, it did not provide verification that it did so for the other 11 sports networks on which its programming appears. Commission rules require that a petitioner verify that it has sought assistance from all distributors of its programming before obtaining an economically burdensome waiver. Fallah Productions has failed to make such a showing here. The Commission should not grant any waiver based on such a thin record and Petitioner's failure to meet its burden is grounds for denial of the petition.

²³ *Supplement to Fallah Productions Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (March 3, 2015).

²⁴ *Id.*

²⁵ *Id.* at 6-8.

Finally, the Commission should investigate whether Fallah Productions violated the closed captioning rules in 2014. As mentioned above, the Bureau dismissed Fallah Productions' previous petitions for failing to provide sufficient information in February 2014 and required it to begin captioning immediately. Fallah Productions did not file a new petition for its programming until December 2014.²⁶ Although it is not clear from the record, it is likely that episodes of Petitioner's programming aired without captions during the intervening months before Fallah Productions sought its latest waiver.²⁷ If this is true, it would constitute a violation of the Commission's rules. Consumer Groups respectfully request that the Commission investigate this issue before ruling on the petition.

III. The Commission should deny Seeking the Lost's waiver petition.

Seeking The Lost, a half-hour weekly television program on CBS affiliate WIAT 42 in Birmingham, Alabama, is a cooperative production of nine congregations of the Church of Christ in Alabama. Petitioner's current request for exemption from the Commission's closed captioning rules comes nearly ten years after its original petition,²⁸ which was granted²⁹ but subsequently reversed in 2011.³⁰ After Petitioner renewed its exemption petition in 2013, the Commission dismissed it as incomplete on June 2, 2014³¹ after multiple requests by the Bureau for additional information.³²

²⁶ *Id.*

²⁷ A petitioner's programming is exempt from the captioning obligations when it has a pending petition before the Commission. 47 C.F.R. § 79.1(f)(11). Lacking a pending petition, however, the rules require all nonexempt programming to be captioned.

²⁸ *Dilworth Church of Christ Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Dec. 13, 2005).

²⁹ *Letter from Thomas E. Chandler, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181 (Sept. 11, 2006).

³⁰ *Letter from Joel Gurin, Consumer and Governmental Affairs Bureau, to Dilworth Church of Christ*, Dkt. 06-181 (Oct. 25, 2011).

³¹ *Letter from E. Elaine Gardner, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181 (Jun. 2, 2014).

³² *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181, at 1 (Apr. 11, 2012); *Letter from Cheryl J. King, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181 (Sep. 27, 2013).

The current petition was filed on August 29, 2014.³³ On September 12, 2014, the Bureau requested additional information, including a request to “clarify the extent to which Seeking the Lost Ministries is a program or activity of the congregations that contribute financial support.”³⁴ After Seeking the Lost responded on October 14, 2014 with a description of the role of local congregations, documentation of captioning quotes, and financial information pertaining to only the broadcast itself,³⁵ the Bureau placed the petition on Public Notice for comment on June 11, 2015.³⁶

Seeking the Lost provided documentation for two quotes for captioning services, the lower of the two from Aberdeen Broadcast Services for \$185 per episode, with an annual cost of \$9,620.³⁷ Consumer Groups cannot determine whether the relatively modest quoted captioning costs would be economically burdensome, however, because Seeking the Lost has repeatedly failed to provide complete financial information for the nine congregations involved in producing the program. The only financial documentation submitted with the petition indicates the current net income and net assets of the Seeking the Lost program in 2012 and 2013 would not cover these captioning costs.³⁸

Such limited financial information is insufficient for purposes of receiving an economically burdensome waiver. Under Commission precedent, petitioners must submit their overall financial resources to determine whether captioning would be economically burdensome, not merely the budget for their programming.³⁹ Petitioner has described its television broadcast as “a cooperative outreach program of the contributing congregations” in which “each congregation contributes a supporting amount of the overall cost of recording and distributing the tapes. . . . The supporting churches ‘buy in’ to the broadcasting message, and therefore use the Seeking the Lost

³³ *Seeking the Lost Petition for Exemption from the Commission’s Closed Captioning Rules*, Dkt. 06-181 (Aug. 29, 2014).

³⁴ *Letter from Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181 at 4 (Sep. 12, 2013).

³⁵ *Seeking the Lost Supplement to Petition for Exemption from the Commission’s Closed Captioning Rules*, Dkt. 06-181 (Oct. 14, 2014) (*Petition Supplement*).

³⁶ *Request for Comment on Request for Exemption from Commission’s Closed Captioning Rules*, Public Notice, Dkt. 06-181, DA 15-687 (June 11, 2015).

³⁷ *Petition Supplement* at 2-6.

³⁸ Seeking the Lost reported a net income of \$1061 in 2013 and net loss of \$1531 in 2012, and net current assets of \$1692 in 2013 and -\$4079 in 2012. *Petition Supplement* at 7-28.

³⁹ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶¶13-14.

program as one activity of their overall budgeted activities.”⁴⁰ If all nine congregations are providing financial support for Seeking the Lost, then all nine congregations' finances should be submitted to determine whether it would be economically burdensome for them to pay for captioning.⁴¹

The Bureau has made clear as far back as April 2012, in response to a previous petition, that documentation of the Petitioner's financial status must go beyond merely the resources devoted to, or costs associated with, the television program at issue.⁴² In addition, Consumer Groups have stressed since April 2013 the need for the complete recent financial information of the other Churches of Christ congregations who appear to be directly involved in the Seeking the Lost Broadcast.⁴³ Because Petitioner has avoided captioning for ten years and repeatedly failed to provide the necessary complete financial information to determine whether captioning would be economically burdensome to the congregations involved in production, Consumer Groups request that the Bureau deny their petition.

IV. Requiring Post Time to caption would not be economically burdensome because it has ample financial resources.

Post Time is a 30-minute television program chronicling the harness horse racing industry on the Delmarva Peninsula that airs every Sunday on WBOC-TV, a CBS affiliate in Salisbury, Maryland.⁴⁴ The program is produced by the Delaware Standardbred Owners Association, a trade association that represents about 650 people who compete at horse racing tracks in Delaware and Maryland.⁴⁵ The trade association

⁴⁰ *Petition Supplement* at 29.

⁴¹ At the very least, Seeking the Lost must provide complete financial information for Dilworth Church of Christ, the original 2005 petitioner and congregation who appears to lead the production and coordination efforts of the larger group of participating congregations.

⁴² *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, to Earl Barnett*, Dkt. 06-181, at 1 (Apr. 11, 2012) (noting in part that the petition “provided some financial documentation but it pertained only to the *Seeking the Lost* account and not to the financial status of the Dilworth Church of Christ, generally”).

⁴³ *Consumer Group Opposition to Petition for Exemption from the Commission's closed Captioning Rules*, Dkt. 06-181, at 8 (Apr. 1, 2013).

⁴⁴ *Delaware Standardbred Owners Association Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181, at 2-4 (Aug. 28, 2014) (2014 *Post Time* Petition).

⁴⁵ *Id.* at 2-3.

represents its members before the Delaware General Assembly and Delaware Harness Racing Commission and also negotiates on their behalf with various race tracks.⁴⁶

Post Time first petitioned for a waiver of the Commission's closed captioning rules in 2012.⁴⁷ When the Bureau placed the petition on public notice in October 2012, Consumer Groups opposed it, arguing, among other things, that Petitioner had failed to meet the requirements of the waiver standard.⁴⁸ In response to Consumer Group's opposition, the Bureau sought additional information from Post Time.⁴⁹ The Bureau subsequently dismissed Post Time's petition in June 2014 after it did not receive sufficient information in response to its earlier request.⁵⁰ Post Time subsequently renewed its petition for waiver of the closed captioning rules in August 2014.⁵¹

Post Time has significant financial resources and modest captioning costs, such that requiring it to caption its programming would not be economically burdensome. As part of its renewed petition, Post Time obtained two captioning quotes from VITAC and the National Captioning Institute.⁵² VITAC, the lower of the two, offered to caption Post Time's program for \$175 per episode, meaning that Petitioner's annual captioning costs for 50 shows would be \$8,750.⁵³

Post Time's revenues and assets could easily cover its captioning expenses. Petitioner reported net revenues of \$509,583 and \$980,270 in 2012 and 2013, respectively.⁵⁴ Additionally, Post Time reported having \$329,699 in cash or cash equivalents in 2012 with \$1,045,426 in cash or cash equivalents in 2013.⁵⁵ When

⁴⁶ *Id.*

⁴⁷ *Delaware Standardbred Owners Association Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (March 26, 2012).

⁴⁸ *See Consumer Groups Opposition to Delaware Standardbred Owners Association Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Nov. 5, 2012).

⁴⁹ *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, to Delaware Standardbred Owners Association*, Dkt. 06-181 (Sept. 26, 2013).

⁵⁰ *Notice of Dismissal of Closed Captioning Exemption Petitions and Obligation to Begin Providing Closed Captioning*, Public Notice, Dkt. 06-181, DA 14-762 (June 2, 2014).

⁵¹ *2014 Post Time Petition*.

⁵² *Id.* at Exs. B, C.

⁵³ *Id.* at Ex. B.

⁵⁴ In 2012, Post Time reported revenues of \$4,062,906 and expenses of \$3,553,323. *2014 Post Time Petition*, Ex. H. In 2013, Post Time reported revenues of \$4,085,105 and expenses of \$3,104,835. *Id.*

⁵⁵ *Id.*

compared to Petitioner's captioning costs of \$8,750, Post Time could easily afford to pay for accessible programming and still have ample net revenues and net current assets left over. For example, if Post Time had paid for captioning in 2012 and 2013, it still would have reported net revenues of \$500,833 and \$971,520, respectively. Further, Post Time could have devoted a small portion of its net current assets to captioning and still had \$320,949 in cash and cash equivalents in 2012 and \$1,036,676 in 2013. Thus, requiring Post Time to caption would not be economically burdensome.

Consumer Groups acknowledge that Post Time keeps large quantities of cash and liquid assets available to ensure the vitality of the pension fund and health insurance it provides for its members.⁵⁶ Post Time has failed to show, however, how paying modest captioning costs of \$8,750 annually would jeopardize those initiatives, particularly when it incurs other annual expenses that are unrelated to its members' pension plans and healthcare benefits.⁵⁷ Because Post Time's captioning expenses would represent roughly 1.7 percent of its net revenues in 2012 and less than 1 percent of its net revenues in 2013, Petitioner could pay for captioning while maintaining significant cash reserves for the pension and health insurance programs. The Commission should therefore deny Post Time's waiver.⁵⁸

V. First Baptist has failed to show how captioning its program would be economically burdensome.

First Baptist petitioned the Commission in July 2014 to exempt its 30-minute weekly broadcast of its Sunday sermon on WVVA Channel 18, an NBC affiliate in Beaver, West Virginia.⁵⁹ The program airs every Monday "for the purpose of providing the sermons to shut-ins."⁶⁰

In light of First Baptist's modest captioning costs, requiring it to comply with the closed captioning rules would not be economically burdensome. Petitioner submitted

⁵⁶ *Id.* Ex. J.

⁵⁷ For example, Post Time reported taxable contributions to political campaigns totaling \$10,100 and \$8,534 in 2012 and 2013, respectively. *Id.* Ex. H.

⁵⁸ In light of Post Time's significant financial resources and modest captioning costs, its claims that requiring it to make its programming accessible would result in laying off one of its employees and firing an independent cameraman and editor are not credible. See 2014 *Post Time Petition* at 3-4.

⁵⁹ *First Baptist Church of Beaver Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (July 21, 2014) (*First Baptist Petition*).

⁶⁰ *Id.*

three quotes from captioning providers, including an offer from WVVA to caption the program for \$60 per episode.⁶¹ Using WVVA's captioning quote, First Baptist would incur \$3,120 in annual captioning expenses.⁶²

Petitioner's financial information indicates that although it incurred annual losses of \$20,082 and \$27,367 in 2012 and 2013, respectively, it has large reserves that could cover its losses and pay for captioning with ample money left over.⁶³ Specifically, First Baptist had \$76,098 in cash assets in 2012 and \$48,731 in cash assets in 2013 that covered its net losses both years.⁶⁴ If Petitioner had paid for captioning in both years, it still would have had \$72,978 and \$45,611 in cash assets in 2012 and 2013, respectively. Thus, First Baptist has sufficient financial resources to cover its losses and its captioning costs.

First United Methodist Church of Tupelo supports denying First Baptist's waiver. Much like First Baptist, the petitioner had reported net annual losses, but those were covered by significant cash reserves.⁶⁵ The Bureau reasoned that because the petitioner had ample cash assets to cover its annual losses, pay for captioning, and still have reserves, captioning would not be economically burdensome.⁶⁶ The same logic applies to First Baptist's petition, which the Commission should similarly deny.

Finally, Consumer Groups reiterate that the Commission should only grant economically burdensome waivers as a last resort after a petitioner has exhausted all of its options, including seeking additional sponsorships.⁶⁷ First Baptist indicates in its petition that it has only sought sponsorships from its church rather than the public because "[i]t has always been the practice of our church not to ask those who are not members of our church to assist us financially with our projects."⁶⁸ Petitioner should

⁶¹ *Id.* at 2.

⁶² \$60 per episodes multiplied by 52 episodes equals \$3,120.

⁶³ *First Baptist Petition* at 4-5 (showing 2013 revenues of \$79,247 and expenses of \$106,614 for net loss of \$27,367), 8-9 (showing 2012 revenues of 78,755 and expenses of \$98,837 for net loss of \$20,082).

⁶⁴ *First Baptist Petition* at 5, 9.

⁶⁵ *Church of Tupelo*, 30 FCC Rcd at 1037, ¶14.

⁶⁶ *Id.*

⁶⁷ *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd 14941, 14956, ¶28 (2011) ("Finally, each petitioner must indicate whether it has sought additional sponsorship sources of other sources of revenue for captioning and show that it does not have the means to provide captioning for its programming.").

⁶⁸ *First Baptist Supplement* at 2.

not be able to refuse to seek outside sponsorships for its programming while simultaneously claiming that captioning would be economically burdensome. In sum, the Commission should deny First Baptist's waiver.

VI. Captioning Word of Life would not be economically burdensome.

Word of Life initially filed a petition on March 7, 2013, seeking a waiver of the Commission's closed captioning rules for the broadcast of its half-hour weekly morning service, "*The Word of Life*," on KTVE NBC 10 in Monroe, Louisiana.⁶⁹ The Bureau found that Word of Life's petition was missing required information and thus sought additional documentation.⁷⁰ Word of Life submitted a new petition on November 21, 2014,⁷¹ which again was found to be missing required information,⁷² as was also the case with its response on January 5, 2015.⁷³ Word of Life responded with supplemental information on February 20, 2015.⁷⁴

Requiring Word of Life to caption its program would not be economically burdensome because it has significant assets to cover its modest captioning costs. Word of Life obtained two recent quotes from captioning services to caption its worship program. The first quote from CaptionMax would provide captioning for \$235 per episode.⁷⁵ The second quote from VITAC would provide captioning for \$387.50 per episode.⁷⁶ Based on the lower quote from CaptionMax at \$235 per episode, for fifty-two calendar weeks, Word of Life's annual captioning costs would be \$12,220.

Word of Life's financial report shows that it has sufficient assets to cover the cost of captioning, with money left over. In addition to reporting gains of \$232 in 2013 and

⁶⁹ *Word of Life Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Mar. 7, 2013).

⁷⁰ *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, to Pastor James Garland Smith*, Dkt. 06-181 (Apr. 19, 2013).

⁷¹ *Word of Life Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Nov. 21, 2014) (*Petition*).

⁷² *Letter from Elaine Gardner, Consumer and Governmental Affairs Bureau, to Pastor James Garland Smith*, Dkt. 06-181 (Dec. 4, 2014).

⁷³ *Word of Life Supplement to Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Jan. 5, 2015); *Letter from E. Elaine Gardner, Consumer and Governmental Affairs Bureau, to Pastor James Garland Smith*, Dkt. 06-181 (Jan. 9, 2015).

⁷⁴ *Word of Life Supplement to Petition for Exemption from the Commission's Closed Captioning Rules*, Dkt. 06-181 (Feb. 20, 2015) (*Petition Supplement*).

⁷⁵ *Jan. 2015 Supplement*, at 12.

⁷⁶ *Id.* at 8.

\$2,679 in 2012, Word of Life carried forward \$67,642 in revenue at the beginning of 2013 and \$67,410 at the beginning of 2012.⁷⁷ Thus, with total carryover of \$67,642 in 2013 and \$67,410 in 2012,⁷⁸ if Word of Life had paid \$12,220 per year to caption its weekly service, it still would have had \$55,422 in excess revenues in 2013 and \$55,190 in 2012.

Therefore, even though closed captioning costs would have resulted in net losses for 2013 and 2012, the total net current assets would have been more than enough to cover such losses without being economically burdensome. Additionally, similar to First Baptist's petition, Commission precedent supports the conclusion that requiring Word of Life to caption would not be economically burdensome.⁷⁹

Because the finding that closed captioning is not economically burdensome for Word of Life is dispositive, other deficiencies in Word of Life's petition need not be addressed. However, Consumer Groups note that Word of Life has not verified that it has sufficiently sought video programming distributor assistance, as repeatedly requested by the Bureau.⁸⁰ The economically burdensome standard requires that petitioners attempt to receive financial assistance from their distributors before seeking a waiver.⁸¹ Petitioner has also failed to meet its burden in this regard.

VII. Conclusion

For the reasons described above, Consumer Groups respectfully request that the Commission deny the waiver petitions of Fallah Productions, Seeking the Lost, Post Time, First Baptist, and Word of Life. Nonetheless, should the Commission conclude that any of the Petitioners have shown that captioning would be economically burdensome, Consumer Groups ask that the Commission only approve an extremely limited exemption. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a petitioner may change, the Commission should refrain from granting lengthy or open-ended exemptions.

⁷⁷ *Petition Supplement*, Statement B.

⁷⁸ *Id.*

⁷⁹ See Section II, *supra*; *Joy Ministries*, 30 FCC Rcd 2029 (2015); *Church of Tupelo*, 30 FCC Rcd at 1037, ¶14.

⁸⁰ *Letter from Roger Holberg, Consumer and Governmental Affairs Bureau, to Pastor James Garland Smith*, Dkt. 06-181 at 1 (Apr. 19, 2013); *Letter from Elaine Gardner, Consumer and Governmental Affairs Bureau, to Pastor James Garland Smith*, Dkt. 06-181, at 4 (Dec. 4, 2014).

⁸¹ *Anglers for Christ Ministries, Inc.*, 26 FCC Rcd at 14956, ¶28 (2011).

Sincerely,

/s/

Aaron Mackey
Drew Simshaw
Angela Campbell
Institute for Public Representation

Counsel to TDI

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

/s/

Claude Stout, Executive Director • cstout@TDIforAccess.org
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California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

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Cerebral Palsy and Deaf Organization (CPADO)

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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 Stout
July 13, 2015

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on July 13, 2015, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Petitioners at the addresses listed below.

First Baptist Church of Beaver
Attn: Judith Prince, Treasurer
P.O. Box 98
Beaver, West Virginia 25813

Andrew Markano, President
Delaware Standardbred Owners Association
c/o Kathleen Kirby, Attorney At Law
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Minister Earl Barnett
Seeking the Lost Ministries
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Pastor James Garland Smith
c/o Mr. Vince Anderson
Word of Life Full Gospel Baptist Church
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Fallah Productions, Inc.
18728 Center Avenue
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/s/

Niko Perazich
Institute for Public Representation

July 13, 2015