

# ASIATICO

& ASSOCIATES PLLC



September 5, 2015

Ryan Peak, Staff Counsel  
direct | 972.865.0498  
direct fax | 972.865.0496  
[ryan@baalegal.com](mailto:ryan@baalegal.com)

## VIA ELECTRONIC FILING

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

**Re:***Response to Opposition to Petition for Exemption from Closed Captioning  
CG Docket No. 06-181  
Charles Perry Ministries, Inc. – Restoring Lives  
CGB-CC-1344*

Dear Ms. Dortch:

Charles Perry Ministries, Inc. (the “Ministry”) respectfully submits this response to Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late Deafened Adults, American Association of the Deaf-Blind, and Cerebral Palsy and Deaf Organization’s (collectively referred to as “Consumer Groups”) opposition to the Ministry’s petition for exemption from the Federal Communications Commission’s closed captioning rules.

### **I.     Legal Standard.**

A video programming provider may petition the Federal Communications Commission (the “Commission”) for a full or partial exemption from the Commission’s closed captioning requirements if compliance would be “economically burdensome.” 47 U.S.C. § 613(d)(3). 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) the type of operations of the provider or program owner. 47 U.S.C. § 613(e); 47 C.F.R. 79.1(f)(2). 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. In addition, petitioners must submit their overall financial resources to determine whether captioning would be economically burdensome, not merely the budget for their programming. *In The Matter of First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd. 12833 (2014).

## **II. Background.**

On April 10, 2014, Charles Perry Ministries, Inc. filed a petition for exemption from the Commission's closed captioning rules for its program, *Restoring Lives*. Upon review of the petition, the Consumer and Governmental Affairs Bureau of the Commission requested additional information and documentation regarding the Ministry's incorporation, religious activities, financial resources, and relationship with Word of Restoration International Church, Inc. After submitting the requested information and documentation, the Bureau requested additional financial statements from the Ministry and a clarification of KUBE TV's closed captioning services available. Upon confirming the Ministry had submitted all information and documentation required by 47 C.F.R. 79.1(f), the Commission published a request for comments and opposition to the Ministry's petition for exemption from closed captioning. On August 17, 2015, the Georgetown Law Institute for Public Representation, on behalf of the Consumer Groups, submitted its opposition to the Ministry's petition for exemption because, the Consumer Groups alleged, the Ministry "has not disclosed all financial resources available to its program and because it has been less than candid with the Commission [regarding its closed captioning costs]."

## **III. Argument.**

### PRODUCTION AND DISCLOSURE OF FINANCIAL DATA

Contrary to the Consumers Groups' opposition for exemption, which argues the Ministry did not disclose all financial resources available to it, Charles Perry Ministries,

Inc. has filed all information and documentation required by 47 C.F.R. 79.1(f), including all available financial data it had at the time of filing its petition for exemption and responses to the Commission's requests for additional information.

As with most small nonprofit organizations, the Ministry has very few resources and didn't even employ an accountant, because of the added expense, until it was informed it was required to produce financial statements for its petition for exemption. As such, when the Ministry filed its petition for exemption, it provided all of its bank statements and the only detailed financial statement its new accountant had prepared at that time.<sup>1</sup>

When the Commission requested additional financial data in September 2014 and June 2015, the Ministry supplemented the financial statements previously filed by compiling and preparing Income and Expense Statements for 2012 and 2013 and requesting its accountant prepare its 2014 Financial Statements with Accountant's Report (including the Ministry's 2014 income and expense statement and balance sheet). Each and every time the Ministry submitted financial statements to the Commission, it has submitted all the financial information it had at that time.

#### INTEGRATED AUXILIARY OF A CHURCH

The Consumer Groups believe the Ministry's financial resources should include the financial resources of Word of Restoration International Church, Inc. (the "Church"). However, Charles Perry Ministries, Inc. is an autonomous Texas nonprofit religious corporation separately recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. As such, it has full and exclusive discretion over its decisions, activities, and purposes, and its finances are completely separate from the Church. Despite the Consumer Groups' claim, the Church is not the Ministry's "parent," and the Ministry is neither a subordinate nor a subsidiary of the Church. The connection between these two (2) separate and autonomous nonprofit corporations is in their religious purposes and tax status.

Unlike the relationship between a parent organization and its subsidiary, the status of the Ministry as an integrated auxiliary of the Church is solely a tax classification. *See*, 26 U.S.C. § 6033(a)(3)(A)(i). To be recognized as an integrated auxiliary of a church, an organization must be both a 501(c)(3) charitable organization and a 509(a)(1) public charity, affiliated with a church, and internally supported. Importantly, there is no

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<sup>1</sup> Accountant Compilation of Financials for January 1, 2014 to March 31, 2014.

requirement that a church have any governance authority over its integrated auxiliary or that a church provide financial support to its integrated auxiliary. A church may donate goods, services, or cash contributions to its integrated auxiliary, as it may to any 501(c)(3) organization; however, there is no requirement that a church fund or donate to its integrated auxiliary.

As indicated in the Ministry's response to the Commission's request for additional information, the Church does not and has not made any monetary contributions to the Ministry. The Church currently donates the use of its recording equipment and facilities and the services of some its employees to the Ministry. To be self-sustaining in the future, however, the Ministry's long-term business model includes hiring employees to perform services for the Ministry and purchasing its own recording equipment. At present, however, the Ministry is unable to do so.

The Consumer Groups argue that the Ministry's closed captioning costs could be paid for by donations from the Church. Denying the Ministry's petition on these grounds would amount to punishment of the Ministry simply for having a relationship with an organization that has more funding. The same can be said for all charitable organizations that could potentially receive large donations, theoretically making all such organizations ineligible for exemption under 47 C.F.R. 79.1(f). Therefore, the Consumer Groups' argument that the Ministry's closed captioning costs could be paid for by the Church is not a basis on which the Commission should deny the Ministry's petition.

#### CAPTIONING COSTS

The Consumer Groups claim that the Ministry purposefully failed to disclose the KUBE TV contract because it had a lower closed captioning quote is incorrect. The Ministry was candid and accurate in all of its representations of potential closed captioning costs. Prior to filing its petition for exemption on April 10, 2014, the Ministry contacted KUBE TV's General Manager, JD Huey, to confirm the cost for KUBE TV to caption the program and to inquire into whether KUBE TV would be willing to assist or sponsor the captioning of the Ministry's program. At the time of this conversation, KUBE TV was unable to assist with captioning *Restoring Lives* because it did not have the necessary resources or staffing to perform captioning services. When the Commission requested a clarification regarding KUBE TV's closed captioning costs, the Ministry again contacted KUBE TV and requested an update on the cost of closed captioning

services. KUBE TV confirmed it could not provide closed captioning services; however, it had contracted with a third party organization that could complete the captioning for \$130.00 per episode. Upon receipt of this update, the Ministry immediately informed the Commission of this rate.

#### **IV. Conclusion.**

The Consumer Groups' assertion that closed captioning costs would not economically burden the Ministry is not supported by the facts. Even if the Ministry had used KUBE TV's third party closed captioning provider to caption *Restoring Lives*, the Ministry would still be economically burdened by the Commission's closed captioning requirement. As the Consumer Groups indicated, if the Ministry had used KUBE TV's third party provider last year, its closed captioning costs of \$130 per episode would have equaled \$33,800, \$404.17 more than the Ministry's net gross receipts of \$33,395.83. The Ministry fails to understand how this is not an economic burden.

The Ministry has maximized its revenue through the donations of office space, use of recording equipment, and services of employees of the Church, as well as the services of volunteers. However, the Church will not always be able to donate the use of its equipment, space, and employees to the Ministry, and reliance on these donations has never been part of the Ministry's long-term business plan. If the Ministry is required to caption *Restoring Lives*, it will not be able to buy its own recording equipment, hire its own employees, or carry out the other activities it plans to do in furtherance of its religious purposes, effectively requiring the Ministry to stop producing *Restoring Lives*. For these reasons, Charles Perry Ministries, Inc. respectfully requests it be granted an exemption for the Federal Communications Commission's closed captioning requirement.

Sincerely,  
Asiatico & Associates, PLLC  
Counsel to Charles Perry Ministries, Inc.



by Ryan Peak, Staff Counsel



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### CERTIFICATE OF SERVICE

I certify that, on September 5, 2015, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Consumer Groups and their Counsel at the addresses listed below.



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Ryan Peak



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Date

Georgetown Law Institute for Public Representation  
600 New Jersey Avenue, NW, Suite 312  
Washington, D.C. 20001-2075

Telecommunications for the Deaf and Hard of Hearing, Inc.  
8630 Fenton Street, Suite 121  
Silver Spring, Maryland 20910

Association of Late Deafened Adults  
8038 Macintosh Lane, Suite 2  
Rockford, Illinois 61107

American Association of the Deaf-Blind  
PO Box 8064  
Silver Spring, Maryland 20907

Cerebral Palsy and Deaf Organization  
12025 SE Pine Street #302  
Portland, Oregon 97216