

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

In the Matter of)
)
Victory Temple) CGB-CC-0406
)
Petition for Exemption from the) CG Docket No. 06-181
Closed Captioning Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 2015

Released: November 17, 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 Victory Temple Church, Beaumont, Texas (Victory Temple) for an exemption from the Federal Communications Commission’s (FCC’s or Commission’s) closed captioning requirements for its program, *The World We Live In*. Because we conclude that Victory Temple 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, *The World We Live In* must be captioned no later than February 16, 2016,¹ 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,² and directing the Commission to prescribe rules to carry out this mandate.³ In 1997, the Commission adopted rules and implementation schedules for closed captioning, which became effective on January 1, 1998.⁴ The Commission’s closed

¹ February 15 is a Federal holiday.

² 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).

³ 47 U.S.C. §§ 613(b)-(c).

⁴ 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*

captioning rules currently require video programming distributors, absent an exemption, to caption 100% of all new, English and Spanish language programming.⁵

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.”⁶ 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.⁷ 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.⁸

Accessibility, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (*Closed Captioning Reconsideration Order*).

⁵ 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).

⁶ *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*).

⁷ 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.5, *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).

⁸ 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.

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:

- 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.⁹

5. Each petition must contain a detailed, full showing of any facts or considerations relied upon, supported by affidavit.¹⁰ Failure to support an exemption request with adequate explanation and evidence may result in the dismissal of the request.¹¹ While a petition is pending, the programming subject to the request for exemption is considered exempt from the closed captioning requirements.¹²

6. Victory Temple initially submitted a petition for a closed captioning exemption on January 10, 2006.¹³ The Consumer and Governmental Affairs Bureau (Bureau) granted the exemption to

⁹ *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*).

¹⁰ 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.

¹¹ *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*, CSR Docket No. 5444, Memorandum Opinion and Order, 16 FCC Rcd 13611, 13614, ¶ 12 (Cable Services Bureau, 2001) (*Wild Outdoors 2001*)).

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

¹³ See Letter from Robert Turnage, Pastor, Victory Temple, to Office of the Secretary, FCC (Jan. 10, 2006) (filed Jan. 30, 2006) (2006 Request). In its initial petition, in addition to requesting an exemption based on economic burden, Victory Temple 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. Section 79.1(d)(8) of the Commission's rules exempts "[programming 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)(Emphasis added). 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). Since Victory Temple is a producer of a single program, Victory Temple is not a video programming distributor and does not qualify for an exemption under section 79.1(d)(8). Similarly, Victory Temple's claim to be exempt since it has less than \$3,000,000 in revenues is

Victory Temple by letter order dated September 12, 2006.¹⁴ On November 7, 2006, the Bureau issued a Public Notice holding in abeyance various letter orders granting exemptions, including that to Victory Temple, and inviting comments on certain exemption petitions, including Victory Temple's.¹⁵ On March 2, 2007, several consumer groups jointly opposed the petition.¹⁶ In 2011, the Commission reversed certain Bureau grants of exemption, including that to Victory Temple.¹⁷ By letter dated October 25, 2011, the Bureau notified Victory Temple of this reversal and explained that Victory Temple 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.¹⁸ Victory Temple submitted a new petition dated January 12, 2012.¹⁹ On March 28, 2012, the Bureau requested additional information of Victory Temple,²⁰ and in response, Victory Temple supplemented its Petition in a letter dated April 26, 2012.²¹ In a Public Notice released on August 9, 2012, the Bureau invited comment on the Petition.²² Certain consumer organizations jointly filed an opposition to the Petition.²³ Subsequently, the Bureau requested additional information to enable it to determine whether

incorrect because in order to qualify for the exemption under section 79.1(d)(12), the provider must have a channel (not a program) that produces revenues of under \$3,000,000. 2006 Request at 1, 3. 47 C.F.R. § 79.1(d)(12).

¹⁴ See Letter from Thomas E. Chandler, Chief, Disability Rights Office (DRO), FCC, to Victory Temple (Sept. 12, 2006).

¹⁵ *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).

¹⁶ See CGB-CC-0406 – Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Victory 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 (ALDA), American Association of People with Disabilities (AAPD), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (Mar. 2, 2007) (Consumer Groups 2007 Opposition).

¹⁷ *Anglers Reversal MO&O*, 26 FCC Rcd at 14949, ¶ 25, and 14972 (Appendix A). 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.*, 26 FCC Rcd 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.6, *supra*.

¹⁸ See Letter from Joel Gurin, FCC, to Victory 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. Also see *Notice of Exemption Dismissals and Obligation to Begin Providing Closed Captioning*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 1947 (CGB 2012) (indicating that new petitions filed after January 18, 2012 are considered pending as of the date it was received by the Commission.)

¹⁹ See Letter from Robert Turnage, Pastor, Victory Temple (Jan. 12, 2012) (filed Jan. 23, 2012) (Petition).

²⁰ See Letter from Roger Holberg, Attorney, DRO, FCC, to Victory Temple (Mar. 28, 2012).

²¹ See Letter from Victory Temple to FCC (Apr. 26, 2012) (filed Apr. 27, 2012) (2012 Supplement) (requesting confidential treatment for its Profit and Loss Statements, which was accommodated).

²² *Request for Comment; Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, 27 FCC Rcd 9268 (CGB 2012).

²³ See *Victory Temple Petition for Exemption from the Commission's Closed Captioning Rules, Case No. CGB-CC-0406, CG Docket No. 06-181*, filed by TDI, NAD, DHHCAN, ALDA, and the Cerebral Palsy and Deaf Organization (CPADO) (Sept. 10, 2012) (Consumer Groups 2012 Opposition). Consumer Groups also filed separately its opposition to Victory Temple's request for confidential treatment of materials in its Petition. See *Opposition to Victory Temple's Request for Confidential Treatment and Motion to Extend Public Comment Period*, filed by TDI, NAD, DHHCAN, ALDA, and CPADO (Sept. 10, 2012). The request for confidential treatment was granted because the public version of the Petition had sufficient information to determine whether or not provision

the programming that was the subject of the Petition should be exempt from the Commission's closed captioning obligations.²⁴ In response to Bureau letters dated September 27, 2013 and May 30, 2014, Victory Temple twice supplemented its Petition.²⁵ The Bureau again placed the Petition on Public Notice for comment on January 14, 2015.²⁶ Again, several consumer groups jointly opposed the Petition.²⁷

III. DISCUSSION

7. Victory Temple produces *The World We Live In*, a one-hour program that is broadcast twice weekly on Station KBMT-TV, Beaumont, TX (KBMT-TV), on Sundays at 11:00 a.m. and 11:35 p.m.²⁸ The broadcast consists of an edited portion of a Victory Temple's Sunday morning service that takes place typically around three to four weeks prior to the broadcast.²⁹ Victory Temple reports that "the main objective" of the program "is to take the Gospel of Jesus Christ to the people of its viewing area."³⁰ Victory Temple contends that it is unable to afford closed captioning for the weekly broadcasts, and that, if it is not granted an exemption, its "ability to continue with [its] weekly program could be affected."³¹

8. Victory Temple obtained two quotes to caption its program, one for \$250 per hour from Closed Caption Maker and another for \$300 per hour from VITAC.³² Based on these quotes, Victory Temple states that the cost of captioning services for a full year of *The World We Live In* (i.e., 52 programs) would be \$13,000 and \$15,600, respectively.³³ Further, Victory Temple states that it has considered purchasing equipment to provide closed captioning in-house, but that it is unable to estimate the costs of equipment and labor to do so.³⁴

9. With its Petition, as supplemented, Victory Temple submitted financial statements for

of closed captioning would be economically burdensome. See ¶ 9-10, *supra*. The request for an extension of the public comment period was moot since the Petition subsequently was placed again on Public Notice. See *Request for Comment, 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).

²⁴ See Letter from Cheryl J. King, Attorney, DRO, FCC, to Victory Temple (Sept. 27, 2013); see also Letter from E. Elaine Gardner, Attorney, DRO, FCC, to Victory Temple (May 30, 2014).

²⁵ See Letter from Robert Turnage, Pastor, Victory Temple, to FCC (Oct. 22, 2013) (filed Oct. 24, 2013) (2013 Supplement) (stating that the program has no repeat value and is not a news program, which is addressed by an FCC letter cited in n. 13, *supra*); Letter from Robert Turnage, Pastor, Victory Temple, to Office of the Secretary, FCC (Oct. 13, 2014) (filed Oct. 14, 2014) (2014 Supplement).

²⁶ 2015 Public Notice.

²⁷ See RE: Opposition to Petition for Exemption from the Commission's Closed Captioning Rules, CG Dkt. No. 06-181, Victory Assembly Church of Beaumont (formerly Victory Temple), CGB-CC-0406, filed by TDI, NAD, CPADO, and Deaf Seniors of America (DSA) (hereinafter "Consumer Groups") (Feb. 13, 2015) (Consumer Groups 2015 Opposition).

²⁸ Petition at 3.

²⁹ *Id.* at 2.

³⁰ 2012 Supplement at 1; 2013 Supplement at 1.

³¹ 2013 Supplement at 2.

³² *Id.* at 5-11; 2014 Supplement at 1.

³³ 2014 Supplement at 1. The undated and non-annualized captioning quote of \$800 per hour from USAStudios is not considered, because it is incomplete. 2013 Supplement at 12-13.

³⁴ 2013 Supplement at 1.

2012 and 2011.³⁵ For 2012, Victory Temple reports total income of \$810,493, and, excluding depreciation expenses, Victory Temple had expenses of \$756,027, resulting in an excess of revenue over expenses (net profit) of \$54,466.³⁶ For 2011, Victory Temple reports total income of \$899,025, and excluding depreciation expenses, Victory Temple had expenses of \$878,963, resulting in an excess of revenue over expenses (net profit) of \$20,062.³⁷

10. Victory Temple also submitted balance sheets for 2011 and 2012. Victory Temple reports current assets as of December 31, 2012 of \$413,970, and no current liabilities, resulting in net current assets of \$413,970.³⁸ Victory Temple also reports current assets as of December 31, 2011 of \$385,697, and no current liabilities, resulting in net current assets of \$385,697.³⁹

11. Victory Temple reports that it requested captioning assistance from its video programming distributor KBMT-TV; however, KBMT-TV was unable to offer captioning assistance.⁴⁰ Victory Temple further indicates that it does not “solicit offerings,”⁴¹ and states that “our program is a way for us to give to those who live in this area, not to ask anything from them.”⁴² Victory Temple asserts that, absent an exemption from the captioning requirements, it may have to discontinue its broadcast of *The World We Live In*.⁴³

12. Consumer Groups, which were the only parties to comment on the Petition in response to the 2015 *Public Notice*, contend that Victory Temple failed to satisfy the statutory and regulatory requirements to demonstrate that captioning would be economically burdensome on several grounds.⁴⁴ First, Consumer Groups urge that the petition be dismissed for Victory Temple’s failure to meet its

³⁵ 2013 Supplement at 20, 2014 Supplement at 2. We note that Victory Temple reports depreciation expenses in 2012 and 2011. Depreciation expenses represent the systemic and rational decrease in the future economic benefits of long term and fixed assets. As noted in our prior decisions, “our analysis in determining whether providing closed captioning would be economically burdensome does not focus on long term assets. Instead, it focuses on current assets, current liabilities, working capital, and the operating cash flows of the organization.” *Van Buren First Assembly of God; Petition for Exemption from the Closed Captioning Requirements*, CGB-CC-0045, CG Docket 06-181, Memorandum and Order, 30 FCC Rcd 7368, at 7373 (CGB 2015) (removing depreciation expenses from petitioner’s expenses for purposes of analysis.) Accordingly, when considering Victory Temple’s overall financial resources to determine if providing closed captioning would be economically burdensome, we do not consider depreciation expenses, and we have removed depreciation expenses from Victory Temple’s 2012 and 2011 expenses for purposes of our analysis.

³⁶ 2013 Supplement at 20, 2014 Supplement at 2. Victory Temple’s 2012 expenses, excluding its depreciation expenses, are calculated as follows: \$1,012,060 (total expenses) minus \$256,033 (depreciation expenses) = \$756,027.

³⁷ 2013 Supplement at 20; 2014 Supplement at 2. Victory Temple’s 2011 expenses, excluding its depreciation expenses, are calculated as follows: \$1,135,746 (total expenses) minus \$256,783 (depreciation expenses) = \$878,963.

³⁸ 2013 Supplement at 19.

³⁹ *Id.*

⁴⁰ See Petition at 2, 10; 2013 Supplement at 4.

⁴¹ 2013 Supplement at 1.

⁴² 2014 Supplement at 1.

⁴³ Petition at 3; 2013 Supplement at 3; 2014 Supplement at 1.

⁴⁴ Consumer Groups 2015 Opposition at 4-7. Consumer Groups refer to petitioner as “Victory Assembly Church of Beaumont (formerly Victory Temple),” see Consumer Groups 2015 Opposition at 1. Because Petitioner has not formally advised the Commission of a name change and in fact refers to itself as Victory Temple in its 2014 Supplement, we refer to the Petitioner as Victory Temple. See 2014 Supplement at 3.

burden of proof under the economically burdensome standard.⁴⁵ They point to what they term a repeated failure “to provide a full financial statement with adequate explanation and evidence, despite numerous requests from the FCC.”⁴⁶ In particular, Consumer Groups claim that the Victory Temple failed to provide key parts of their auditor’s report, “Notes to Financial Statements,” as requested by the Bureau.⁴⁷ Consumer Groups maintain that “this missing information would shed light on some of Victory’s unusual expenses,” and that failure to submit these Notes warrants dismissal of the Petition.⁴⁸ Consumer Groups additionally note that “Victory’s unexplained depreciation expenses raise additional questions about its financial health.”⁴⁹ They challenge Victory Temple’s inclusion of depreciation as an expense, especially because this “skews its annual expenses to make it appear as though Petitioner has annual losses.”⁵⁰

13. In addition to the above alleged inadequacies in the Petition, Consumer Groups next allege that, based on the information that Victory Temple did provide to the Commission, sufficient evidence exists to warrant denial of the Petition.⁵¹ When considering Victory Temple’s annual net profits at \$20,062 and \$54,466 for the years 2011 and 2012, respectively, and captioning costs of \$10,400 annually,⁵² Consumer Groups note that Victory Temple would have still retained excess profits of \$9,662 in 2011, and \$44,066 in 2012.⁵³ Consumer Groups point out that such costs represented only 19% of Victory Temple’s 2012 net profits, less than the percentage determined not to be economically burdensome in a different Bureau captioning exemption order.⁵⁴ Further, Consumer Groups note that, even if the disputed depreciation costs were figured in, Victory Temple would have had ample current net assets of \$385,697 in 2011, and \$413,970 in 2012, for closed captioning.⁵⁵ Thus, Consumer Groups conclude, Victory Temple has adequate resources to provide closed captioning, and requiring Victory Temple to caption its program would not be economically burdensome.⁵⁶

⁴⁵ Consumer Groups 2015 Opposition at 4-6.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 5.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 6.

⁵¹ *Id.* at 6-7.

⁵² For purposes of calculating the lowest quote for captioning costs, the Consumer Groups rely on a quote of \$200, rather than \$250 from Closed Caption Maker. *Id.* at n. 34. The higher quote of \$250 that we have used for purposes of calculating the lowest quote for captioning costs includes the cost of captioning DVDs. We have used the higher quote in this order because the petitioner indicated a need for such services. *See* ¶ 8.

⁵³ *Id.* at 7. Similar to our analysis, Consumer Groups do not include Victory Temple’s depreciation expenses in calculating Victory Temple’s annual net profits.

⁵⁴ *Id.* Consumer Groups compare this percentage of captioning costs, as well as Victory Temple’s higher net profits, to those reported by the petitioner whose exemption was denied in *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326 (2014), to support denial of this Petition. In *First Lutheran*, Consumer Groups explain, the Commission concluded that it would not be economically burdensome for the petitioner to afford closed captions when the percentage of profits that would have been used to pay for captioning would have equaled 19%. In addition, under Consumer Groups’ calculations, after paying for captioning, Victory would be left with at least \$10,000 more than First Lutheran in net profits.

⁵⁵ *Id.*

⁵⁶ *Id.* Consumer Groups also raise additional concerns regarding the prospect that Victory Temple has not disclosed the financial assets of a possibly related entity, The School of Christ International (SCI), and the failure of Victory Temple to seek outside sponsors for its captioning. *Id.*

14. *Determination.* After a careful review of the record, the Bureau finds that Victory Temple has not demonstrated that the provision of closed captioning for its program would be economically burdensome to it. As an initial matter, the Commission has previously determined that, when conducting an economically burdensome analysis, “all the petitioners’ available resources” must be taken into consideration.⁵⁷ According to the information and documentation it has provided, Victory Temple operated with an excess of revenue over expenses (net profit) of \$54,466 in 2012.⁵⁸ When we compare Victory Temple’s reported costs for providing closed captioning of \$13,000 annually⁵⁹ to this net profit, we conclude that such revenue was sufficient to cover the cost of captioning Victory Temple’s program. Additionally, Victory Temple had net current assets of \$413,970 as of December 31, 2012,⁶⁰ further supporting a finding that it had sufficient funding to fund the captioning of its program in that year.⁶¹

15. Victory Temple asserts that, if not granted a captioning exemption, it will have to cease production of its telecast.⁶² Because we conclude, based on the information provided by Victory Temple, that Victory Temple has adequate financial resources to enable it to afford the costs of captioning its television program,⁶³ we do not find credible Victory Temple’s claimed uncertainty about continuing its program if it must provide closed captioning. Accordingly, we conclude that it would not be economically burdensome for Victory Temple to caption its program within the meaning of the Communications Act and the Commission’s rules.

IV. ORDERING CLAUSES

16. 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,⁶⁴ IT IS ORDERED that the Petition filed by Victory Temple, requesting an exemption from the Commission’s closed captioning rules, IS DENIED.

17. IT IS FURTHER ORDERED that the programming that is the subject of its Petition must be captioned no later than February 16, 2016, which is 90 days from the date of the release of this Order.

18. IT IS FURTHER ORDERED that Victory Temple 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.⁶⁵ The e-mail attachment must reference Case Identifier

⁵⁷ *Angler 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 See ¶ 9, *supra*. This figure is after the removal of depreciation expenses, which, as noted above, see n.35, *supra*, we remove when considering an entity’s overall financial resources to determine whether providing closed captioning would be economically burdensome. However, even if we were to consider Victory Temple’s depreciation expense in 2011 and 2012 and Victory Temple’s reported net losses of \$236,721.00 in 2011 and \$201,567.00 for 2012, our conclusion that closed captioning is not economically burdensome for Victory Temple would remain the same based on the amount of Victory Temple’s net assets in each of these years.

⁵⁹ See ¶ 8, *supra*.

⁶⁰ See ¶ 10, *supra*.

⁶¹ We do not address petition deficiencies alleged by Consumer Groups, see ¶ 12, *supra*, because we are able to conclude without considering the merits of these arguments that providing closed captioning for its program would not be economically burdensome for Victory Temple.

⁶² See ¶ 7, *supra*.

⁶³ See ¶ 13, *supra*.

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

⁶⁵ See *Notice of New Electronic Filing Procedures for Television Closed Captioning Exemption Requests*, Public Notice, 29 FCC Rcd 3960 (CGB 2014).

CGB-CC-0406 and will be posted on the docket in order to be publicly available.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau