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Federal Communications Commission
Washington, D.C. 20554

November 5, 2013

St. Luke's United Methodist Church
Attn: Robert Lewis Thompson
SMITHWICK & BELENDIUK, PC
5028 Wisconsin Avenue NW #301
Washington, DC 20016

Re: Case Identifier: CGB-CC-0767, Docket No. 06-181
Petition for Closed Captioning Exemption
Request for Supplemental Information

Dear Mr. Thompson:

This letter concerns your Petition for Exemption from the Federal Communications Commission's ("FCC's") closed captioning requirements. As an initial matter, we reject your claim that application of Section 713 of the Communications Act and Section 79.1 of the Commission's Rules to your programming would violate your First Amendment free exercise rights and those of your viewers. The only case that you cite in support of this proposition, *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S.Ct. 694 (2012), an employment discrimination suit brought on behalf of a minister challenging her church's decision to fire her, is not pertinent to whether a requirement for closed captioning would violate your or your viewers' First Amendment rights. The Court ruled only that the "ministerial exception," which is designed to allow religious groups complete discretion to select their ministers without governmental intervention, bars such a suit. In so ruling, the Court acknowledged its prior holding in *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) that, where the ministerial exception does not apply, the "right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." 132 S.Ct. at 706. The ministerial exception does not apply here because the captioning rules do not interfere with any religious organization's selection of ministers.

As we have stated previously, [1] the captioning requirement is consistent with the First Amendment because the rules are content-neutral and serve an important government interest without burdening substantially more speech than necessary. In order to minimize the potential impact of the captioning requirements on speech, the rules permit an entity to petition the Commission for an exemption pursuant to Section 79.1(f) of the Rules if providing captioning would be economically burdensome. The issue before the Commission is whether you have made the showing required to warrant such an exemption.

After reviewing your Petition and any supplemental information you have filed, the Consumer & Governmental Affairs Bureau (Bureau) has determined that additional and updated information, as set forth below, is required to enable us to determine whether the programming noted in your Petition

[1] *Implementation of Video Description of Video Programming,* Report and Order, 15 FCC Rcd 15230, 15254-15256 (2000).

should be exempted from the FCC's closed captioning requirements because captioning such programming would be economically burdensome to your organization. While we recognize that you may have provided some of the material described below, we request that you carefully review the list of requested information, and make sure that all previously submitted information is complete and brought up-to-date, as indicated below, to be fully responsive to this itemized list.

Accordingly, for the Bureau to complete its consideration of your Petition, we request that you provide the following supplemental information by **December 5, 2013**, which is thirty (30) days from the date of this letter.

- Name of the programming for which an exemption is requested. Provide the specific name of each program for which you request an exemption. Petitions that request an exemption for an entire channel of video programming must identify the channel for which an exemption is requested.

- The nature and cost of the closed captions for the programming. Provide information about your organization's costs associated with closed captioning each specific program for which you are requesting an exemption, and your efforts to find companies that can provide captioning at a reasonable cost.

    - Include documentation for two or more recent quotes you received from closed captioning services to provide closed captioning specifically for each program. "Recent" means a quote you obtained within one year of the date of this letter.

    - For each of the quotes received, include an estimate of your annual cost to caption your program(s). For example, multiply the cost to caption each of your program episodes by the number of program episodes to be produced in one year.

    - In addition to providing the quotes described above, if you have considered buying equipment to produce the closed captioning yourself, provide information about the costs to purchase and maintain the equipment and for any costs associated with hiring personnel to operate the equipment for one year.

- The impact of captioning on your programming activities. Explain in sufficient detail the impact that having to provide closed captioning will have on your programming activities. For example, describe the extent to which your program(s) might not continue to be shown if you are required to provide captions.

- Your financial resources.

    - Provide information about all income and all expenses for your organization, as follows:

        - § Provide a statement of all income (cash receipts) and all expenses (cash disbursements) for the two most recent completed calendar or fiscal years. Cash receipts include money received from all sources for your entire organization, not just the video program(s). Cash disbursements include money paid for purchases, expenses, and settlement of obligations throughout the year for your entire organization, not just the video program(s). List,

describe, and provide the dollar amount for each type of cash receipt and cash disbursement for the two most recent completed calendar or fiscal years. Cash receipts and cash disbursements may each be subtotaled. You must provide a total net dollar amount (sometimes called a surplus or deficit, or profit or loss) for all cash receipts and all cash disbursements.

§ Provide audited financial statements or an accountant's compilation of financial statements for the two most recent completed calendar or fiscal years. If such statements are not available, provide complete federal income tax returns, including all attachments, for your organization for the two most recent completed calendar or fiscal years. If your organization is a sole proprietorship, provide personal tax returns for the two most recent completed calendar or fiscal years. Redact (black out) sensitive information, such as account numbers and social security numbers, before submitting personal tax returns or other documentation.

- Provide information about the current assets and current liabilities of your overall organization, as follows:

  § Provide a statement of all current assets and current liabilities of the overall organization as of the last day of the two most recent completed calendar or fiscal years. List, describe, and provide the dollar amount for each type of current asset and current liability so listed. This requirement may be satisfied by providing complete balance sheets as of the last days of the two most recent completed calendar or fiscal years.

    - Current assets are any asset (or resource) as of the last day of the calendar or fiscal year that can be converted into cash within the following year.
      - Examples of current assets for an individual or sole proprietor: cash; checking accounts; savings accounts; investment accounts including money market accounts; certificates of deposit and bonds that will mature within one year; stocks; and trust/endowment account amounts available for that year.
      - Examples of current assets for a corporation: cash; accounts receivable; inventory; marketable securities; and prepaid expenses.

    - Current liabilities are obligations (or debts) as of the last day of the calendar or fiscal year that must be paid within the following year.
      - Examples of current liabilities for an individual or sole proprietor: any loans (principal and interest) and mortgage payments (principal, interest, taxes, and insurance) due to be paid within one year; the balance of any credit cards as of the last day of the year; and unpaid bills as of the last day of the year (utility bills, and medical bills).
      - Examples of current liabilities for a corporation: accounts payable; accrued liabilities; notes payable; current portion of long-term debt; and taxes payable.

- Video programing distributor assistance. Verify that you have sought assistance (such as funding or services) from your video programming distributor(s). A distributor is any TV broadcast station, cable provider, or satellite system that shows your program(s). State whether you have asked your distributor(s) to help you provide captions, whether this request was accepted or rejected, and, if accepted, describe the assistance that each distributor has offered to provide.

- Additional sponsorships. Verify that you have sought additional sponsorships (other than from your program distributor) or other sources of revenue. State your efforts to obtain such revenue, and whether these requests were accepted or rejected. If rejected, state whether you do not otherwise have the means to provide captioning. If accepted, describe the assistance that each sponsor has offered to provide. If your organization is precluded from seeking outside assistance or you cannot solicit and/or accept such sponsorships, provide the reason why you are unable to do so.

- Your type of operations. Describe your overall operations.

- Affidavit or declaration. Your submission must contain a detailed, full showing, supported by a signed affidavit or sworn declaration attesting to the truthfulness and accuracy of the information and representations contained in your submission. An affidavit is a written statement made under oath, before an official who is authorized to administer oaths, such as a notary public or county clerk. A declaration is a written statement made under penalty of perjury, such as "I declare under penalty of perjury that the information contained in this submission is true and correct." (*See* 47 C.F.R. § 1.16.)

You may also provide other information that you deem relevant to our determination of your exemption request pertaining to the impact that captioning will have on your program or programming activities and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming.

Because of the public nature of FCC proceedings, your submission, as well as any supporting financial or other information provided, will be available for inspection by the general public. If your submission contains some specific information that you would like not to be made routinely available for public inspection, you may request its "confidential treatment, pursuant to FCC rules. (*See* 47 C.F.R. § 0.459.). If you seek such treatment, you must identify the *specific* information which you would not like to be made available to the general public and provide the basis for your request, for example, that the information is proprietary financial information, contains a trade secret, or is legally privileged. Also describe how disclosing the information to the general public may cause you substantial competitive harm. You must also submit a second version of your submission with the confidential information redacted (removed or blacked out). This second version must be submitted along with your request for confidential treatment. The redacted version (*i.e.*, the version that does not contain the confidential information) will be disclosed publicly. If your request for confidential treatment is granted, the "public version" of your submission must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that members of the public have notice of the basis for your exemption request and can comment on its merits.

If the Bureau determines that your Petition, as supplemented by your response to this letter, provides sufficient information upon which to make a determination of whether or not to grant a closed captioning exemption, we will place your Petition on public notice under Docket No. 06-181 at http://fjallfoss.fcc.gov/ecfs. Members of the public will then have 30 days to file comments on and/or oppositions to your Petition, including the supplemental information you have provided in response to this letter, after which you will have 20 days to respond. At the end of this timeframe, the Bureau will review your Petition, along with any comments and responses received, to determine whether you have demonstrated that providing closed captions would be economically burdensome. If Bureau denies your Petition, you will have ninety (90) days from the date of your notification of the denial to begin captioning.

If you do not supplement your Petition with all of the updated information and documentation requested in this letter within thirty (30) days of the date of this letter, we will conclude that you have failed to support your exemption request with adequate explanation and evidence, and will dismiss your Petition. In the event of such dismissal, your organization will be required to begin providing closed captioning for your program(s) within ninety (90) days of the date of our notification to you that your Petition has been dismissed.

If you have questions pertaining to this letter or the information and materials requested herein, please contact the FCC's Disability Rights Office at captioningexemption@fcc.gov.

Suzy Rosen Singleton
Attorney, Disability Rights Office
Consumer and Governmental Affairs Bureau

Instructions for Filing a Supplement to a Closed Captioning Exemption Petition

You must send the FCC an original and two (2) copies of the information supplementing your previously filed petition for a closed captioning exemption. Filings must be delivered by hand or messenger service, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For delivery by hand or messenger service, U.S. Postal Service mail, including express mail, priority mail, and first class mail, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-C438
445 12th Street, SW
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-C438
9300 East Hampton Drive
Capitol Heights, MD 20743

Electronic filing and faxes of supplements to petitions will not be accepted at this time.

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your supplement has been received. **You must include your case identifier number and Docket No. 06-181, which is located at the top of this letter, in all correspondence with the FCC regarding your petition.**