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FCC Office of the Secretary



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March 12, 2014

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554  
Attn: CGB Room 3-B431  
*via hand delivery*

Re: Opposition to Faith Center of Paducah, Inc.'s Petition for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181 Case No. CGB-CC-0713

Dear Ms. Dortch,

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Cerebral Palsy and Deaf Organization (CPADO), and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), collectively, "Consumer Groups," respectfully oppose the petition of Faith Center of Paducah, Inc. ("Faith Center") for an exemption from closed captioning

\* Admitted to the California bar only.  
Practice supervised by members of the DC bar.

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requirements because the applicant has failed to show that captioning would be economically burdensome.

Because Faith Center has not had to supply closed captioning the entire time its petition has remained pending, it has already been exempt from captioning for almost seven years. As a result, deaf and hard of hearing members of its potential audience of 1.7 million have been denied access to the program.<sup>1</sup> Consumer Groups also oppose the petition because, despite multiple opportunities to supplement its application, Faith Center has failed to show that captioning would be economically burdensome as required by the FCC rules.

#### **I. Background**

Faith Center first petitioned for an exemption in August 2007 for a thirty-minute program called "Discovering a Better Life" airing on KFVS-TV, Cape Girardeau, Missouri.<sup>2</sup> Consumer Groups filed an opposition on the grounds that Faith Center failed to provide sufficient information to determine whether it had met the standard for exemption.<sup>3</sup> The Commission took no further action until April 2012, when the Consumer and Governmental Affairs Bureau ("CGB") sent a letter to Faith Center noting that "[y]our programming has been exempt from the FCC's closed captioning

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<sup>1</sup> See *Faith Center of Paducah, Inc.'s July 2012 Supplement to Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-0731, Dkt. 06-181 (July 3, 2012), at 1 ("*Faith Center July 2012 Supplement*").

<sup>2</sup> *Faith Center of Paducah, Inc.'s Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-0731, Dkt. 06-181 (Aug. 29, 2007) ("*Faith Center 2007 Petition*").

<sup>3</sup> See *Consumer Groups Opposition to Faith Center of Paducah, Inc.'s Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-0731, Dkt. 06-181 (Oct. 16, 2007).

rules since you filed your petition.”<sup>4</sup> The CGB notified Faith Center that if it wished to continue to request an exemption for “Discovering a Better Life,” it should update its pending petition by July 5, 2012.<sup>5</sup> This letter spelled out in detail the information needed to show that providing closed captions would be economically burdensome.

On July 3, 2012, Faith Center updated its petition and reported that the program’s name had been changed to “Awaken the Heart,” and that it was airing on station WQWQ, which reached 1.7 million potential viewers.<sup>6</sup> It contended that the programming cost \$75 per week, closed captioning would cost an additional \$150 per program, and therefore, if it did not obtain an exemption, it would stop airing the program.

In February 2013, the Commission notified Faith Center that it needed additional information to determine whether closed captioning would be economically burdensome.<sup>7</sup> Specifically, it requested documentation of the Faith Center’s financial status and operations. On April 3, 2013, Faith Center provided additional information.<sup>8</sup> However, in September 2013, the Commission again requested more information.<sup>9</sup> On

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<sup>4</sup> *Letter from Consumer and Governmental Affairs Bureau to Faith Center of Paducah, Inc.*, Case No. CGB-CC-0731, Dkt. 06-181 (Apr. 5, 2012).

<sup>5</sup> *Id.*

<sup>6</sup> It appears that WQWQ is a low power TV station in Paducah, KY, that is controlled by KFVS, which is owned by Raycom. *See Faith Center July 2012 Supplement.*

<sup>7</sup> *See Letter from Consumer and Governmental Affairs Bureau to Faith Center of Paducah, Inc.*, Case No. CGB-CC-0731, Dkt. 06-181 (Feb. 14, 2013).

<sup>8</sup> *See Faith Center’s April 2013 Supplement to Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-0731, Dkt. 06-181 (Apr. 5, 2013).

<sup>9</sup> *See Letter from Consumer and Governmental Affairs Bureau to Faith Center of Paducah, Inc.*, Case No. CGB-CC-0731, Dkt. 06-181 (Sept. 26, 2013).

October 25, 2013, Faith Center supplemented its request.<sup>10</sup> CGB sought comment on this application on February 10, 2014.<sup>11</sup>

## **II. Legal Standard**

Under 47 C.F.R. § 79.1(f), the Commission may only grant an exemption if the petitioner provides “sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term ‘economically burdensome’ means significant difficulty or expense.”<sup>12</sup> To enable the Commission to make this determination, petitioners must provide information about the cost of closed captioning as well as the resources of the organization seeking an exemption.<sup>13</sup>

## **III. Faith Center’s waiver request must be denied.**

### **A. Faith Center’s estimated costs are overstated.**

The cost estimates that Faith Center provides in its most recent supplement are higher than previous estimates. In its July 5, 2012 update, it stated that the “lowest cost that we have been able to find for closed captioning is \$150 for each half-hour program.” However, in its most recent filings, Faith Center provided e-mails quoting

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<sup>10</sup> See *Faith Center’s October 2013 Supplement to Petition for Exemption from Closed Captioning Requirements*, Case No. CGB-CC-0731, Dkt. 06-181 (Oct. 25, 2013) (“*Faith Center October 2013 Supplement*”).

<sup>11</sup> *Public Notice, Request for Comment: Request for Exemption from Commission’s Closed Captioning Rules*, CG Docket No. 06-181 (Feb. 10, 2014).

<sup>12</sup> *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd 14941, 14953 (Oct. 20, 2011) (“*Anglers 2011*”).

<sup>13</sup> *Id.*

estimates of \$240 per show and \$295 per show.<sup>14</sup> It provides no explanation for why these estimates are so much higher, or evidence that it attempted to bargain for lower rates.<sup>15</sup>

Faith Center's annual estimated cost of captioning of \$16,500 is also inflated and unsupported.<sup>16</sup> Even assuming that Faith Center had to caption 52 programs per year at a cost of \$240 per program, the total would only come to \$12,480.<sup>17</sup> At \$150 per program, the total cost would only be \$7,800 for 52 episodes.

Furthermore, even if Faith Center had appropriately calculated its captioning costs, the quoted costs would still likely be overstated because Faith Center failed to document that it ever bargained for a lower captioning rate. In particular, the captioning provider offering a rate of \$240 per show stated that it would "significantly discount" its services for regular clients. Faith Center's petition fails to indicate whether it followed up with this provider to discuss the possibility of such discounts.<sup>18</sup>

**B. Faith Center failed to diligently pursue other funding options.**

Faith Center also failed to exhaust all reasonable possibilities for outside assistance. Faith Center states that it made a "targeted appeal" to its congregation and

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<sup>14</sup> *Faith Center October 2013 Supplement*, Attachment A1, A2.

<sup>15</sup> Faith Center did explore the alternative of captioning on its own, but found that it would cost \$13,900 for this first year, which is substantially more than the cost of outsourcing. *Faith Center October 2013 Supplement*, at 2.

<sup>16</sup> *Id.*

<sup>17</sup> While Faith Center also cites the cost of couriers in its petition, it is difficult to believe that those costs would amount to \$4,000 per year.

<sup>18</sup> See *Faith Center October 2013 Supplement*, Attachment A1 (email from Video Caption Corporation Faith Center).

requested support from the business community.<sup>19</sup> However, it provides no documentation of these efforts. Its only documentation is a letter dated April 3, 2013 from the Program Director of KFVS/WQWQ stating that “at the current time we do not provide that service.”

Another possible source for outside assistance is the producer of “Awaken the Heart.” While Faith Center does not identify who produces “Awaken the Heart,” in July 2012 it reported that its “current outlay for programming costs are \$75 per week,” suggesting that Faith Center does not itself produce the half-hour program. Moreover, in its first request in 2007, Faith Center stated that the predecessor programming “Discovering a Better Life” was produced by Journey Multimedia Productions, which appears to be based in Greeley, CO.<sup>20</sup> If “Awaken the Heart” is produced by a third party such as Journey Multimedia Productions for airing on more than one television station, it would be more efficient for the production company to supply the captioning. Yet, Faith Center’s petition does not even consider this possibility.

### **C. Faith Center has sufficient resources to afford closed captioning**

Faith Center’s financial records indicate that the organization should be able to afford captioning. The profit and loss statement for calendar year 2012 shows that Faith Center took in \$512,224 in donations and expended \$421,477, leaving it with a surplus

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<sup>19</sup> *Faith Center October 2013 Supplement*, at 3.

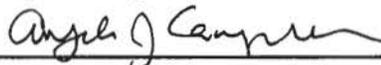
<sup>20</sup> Journey Multimedia, Inc., <http://www.journeymm.com> (last visited Mar. 6, 2014).

of \$90,857.<sup>21</sup> Even using the inflated annual cost estimate of \$16,500, this surplus would pay for captioning for more than five years. Or put differently, \$16,500 would only amount to roughly 3% of the funds taken in that year. Thus, captioning would not impose significant difficulty or expense on Faith Center.

#### IV. Conclusion

Faith Center has failed to make the showing required to obtain an exemption from closed captioning. We urge the Commission to act promptly to deny the exemption. Because Faith Center was not required to provide closed captioning while its waiver request was pending, it has already benefited from a *de facto* waiver for seven years. The purpose of waivers under the economically burdensome standard is to allow a petitioner sufficient time to identify resources to caption its programming and comply with the law.<sup>22</sup> Faith Center has already had plenty of time to identify resources for captioning.

Respectfully submitted,



Aaron Mackey  
Angela J. Campbell  
*Counsel to TDI*

Lane Johnson  
*Georgetown Law Student*

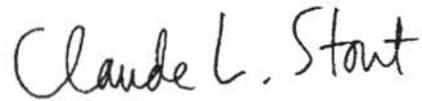
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<sup>21</sup> For calendar year 2011, Faith Center took in \$586,213 in donations and expended \$667,534, leaving it with a loss of \$81,320. However, the Faith Center admits that 2011 was a very difficult year. *Faith Center October 2013 Supplement*, at 2.

<sup>22</sup> *Anglers 2011*.

## 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.

A handwritten signature in cursive script that reads "Claude L. Stout".

Claude Stout  
March 12, 2014

## CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 12, 2014, a copy of the Opposition to Faith Center of Paducah, Inc.'s Petition for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181 Case No. CGB-CC-0713 was served by first class U.S. mail, postage prepaid, upon the petitioner at the addresses listed below.

John Aitken  
Pastor/President  
Faith Center of Paducah, Inc.  
5121 Charter Oak Drive  
Paducah, KY 42001



Niko Perazich  
March 12, 2014