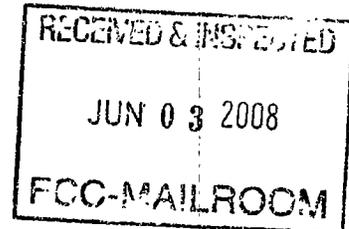


CGB-CC-0789

To the

Federal Communications Commission

**Office of the Secretary
445 12th Street SW
Washington, D.C, 20554**



A Rebuttal

Re: The Petition for exemption from closed captioning by the Villages News Network (VNN) of The Villages, Florida

Rebutting specifically, their second filing of CGB-CC-0789 - Docket No. 06-181 "Consolidated reply to oppositions to petition for exemption and/or waiver"

**From: The Tri-County Association of the Deaf
Mervin D. Garretson, President
11577 SE 179th Loop
Stonecrest
Summerfield, Florida 34491
Relay phone: 1- 866- 327- 8877 --- 352 -307- 2664**

**Louis J. Schwarz, Chair, TCAD Accessibility Committee
2172 Blackville Drive
The Villages, Florida 32162**

29 May 2008

No. of Copies rec'd 20
List A B C D E

A Rebuttal to the Second Filing of CGB-CC-0789 – Docket 06-181

“Consolidated reply to oppositions to petition for exemption and/or waiver”

Should this be acceptable to the FCC, the Tri-County Association of the Deaf submits the following rebuttal to the May 20, 2008 filing of the Village News Network (VNN).

This second petition from the VNN comes across as a picayune hodgepodge of superficial legalese with emphasis on procedural matters which we believe to be inconsistent with the basic issue of closed captioning for an under-served group of people. Attached, an article from the Ocala (FL) Star-Banner, a column and follow-up letter from the Orlando Sentinel, an unsolicited personal letter from a businessman in Ocala, and a commentary in the DHS newsletter.

To review very briefly, the VNN has petitioned the FCC for exemption from the ADA law requiring equal accessibility for all disabled Americans. In citing the “undue burden” clause in the legislation VNN has avoided reporting the vast multi-million resources of the developers of The Villages. Reference is hereby made to a comprehensive article, “It Takes a Village” in the online Big Builder issue of April 28, 2008, which states that last year the developers sold 3,955 homes for better than \$800,000,000 in revenue, making it the fastest growing master planned community in the United States. The article further states that the Gary Morse family “owns the bank, the furniture store, local water utility, real estate, insurance and mortgage companies, assisted living facility, the Daily Sun newspaper, WVLG-AM 64 radio station, and the VNN cable TV station.”

To take in order, the pseudo-legal assertions from the VNN document:

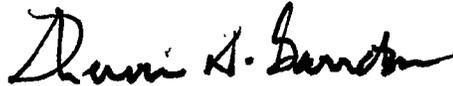
- 1) Reference is made to “canned” pleadings from the various groups filing in opposition to the request for exemption. This unsupported comment is without foundation and should be dismissed.

- 2) **Claiming the presenters are not "interested persons" is probably the most preposterous argument in the whole document. The facts of the matter are that thousands of residents in and around The Villages are understandably concerned since they have serious hearing problems and have been excluded from VNN's programs by lack of closed captioning.**
- 3) **References to "lack of harm or injury" come across as absurd and ludicrous. We believe this to be a pointless argument, another attempt to circumvent the key word, access. Even a single physically disabled person in a wheelchair requires an accessible ramp as mandated by the ADA law. Questions of harm or injury have nothing to do with equal access.**
- 4) **VNN points to the lack of claimants that "at least one of their members resides in the service area of a station that broadcasts their programming or otherwise views its TV programming". Obviously something has been lost about the whole point. Several thousand deaf and hearing impaired seniors reside in The Villages and surrounding areas and have discovered the uselessness of trying to follow silently moving lips on a VNN screen without sound. Again, more rhetoric bypassing the heart of the original petition to deny the plea for exemption.**
- 5) **Once more resorting to trivial technicalities, VNN states the opposition should be dismissed for using single spaced instead of double spaced typing as "FATAL" procedural defects. In other words, making TV accessible to deaf and hard of hearing residents of The Village community is not as important as single or double spaced typing? It's not our nature to indulge in this kind of nitpicking but we could point out that their certificate of service was not mailed to Kimberly House as indicated in their final page, as certified by Mr. Langenbrunner. On top of this, the name, Mervin D. Garretson was spelled incorrectly!**

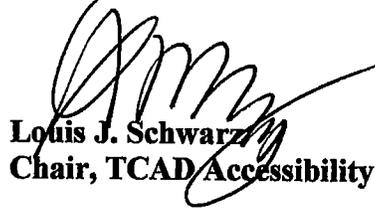
In view of VNN's avoidance of the very essence of the original petition by referring to questionable legal references, and exhibiting glaring inconsistencies, the TCAD respectfully submits that VNN's refusal to provide closed captioning, in spite of the

tremendous resources of the developers of The Villages does not in any way serve the public interest. It is our contention that with all their polemics, sophistry, and rhetoric, the VNN attorneys have failed to make a case against the opposition to their claim for exemption.

Respectfully submitted,



Mervin D. Garretson
TCAD President



Louis J. Schwarz
Chair, TCAD Accessibility Committee

Enclosures:

Lauren Ritchie's column "Villages plea for close captions fall on deaf ears," Orlando Sentinel, May 18, 2008

Op-ed "The Villages keeps the deaf in the dark," by Mervin Garretson, Ocala Star-Banner, May 18, 2008

Personal letter from George Sarre, CEO, SLB Associates, Ocala, Florida

Viewpoints, Orlando Sentinel, June 1, 2008

"The Possible Dream", to be published in the BHS quarterly newsletter

Certificate of Service

I, Mervin D. Garretson, do certify under penalty of perjury that the foregoing Rebuttal was served by First Class mail on this date to the following parties:

**Eric D. Langenbrunner
1028 Lake Sumter Landing
The Villages, Florida 32162**

**Kimberly M. House
President/Executive Director
Deaf and Hearing Services of Lake
and Sumter Counties
220 South 9th Street
Leesburg, Florida 34748**

**Danielle C. Burt
Bingham McCutcheon LLP
2020 K Street NW
Washington, D.C. 20006-1806**

**Rosaline H. Crawford
Director, Law and Advocacy Center
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, Maryland 20910**

SUNDAY LAKE

SECTION J
SUNDAY
MAY 18, 2008
Orlando Sentinel



COMMENTARY
**LAUREN
RITCHIE**
Lakelakefront

Villages' pleas for closed captions fall on deaf ears

Louis Schwarz, who lives part time in The Villages, would really love to get the scoop from the developer's television station about all the fun stuff going on in the massive retirement community of nearly 70,000 people.

The station claims in advertisements to supply 100 percent of all the local news, weather, sports, club listings, lifestyle stories, weather radar, consumer alerts, medical news, government information and storm coverage that Villages residents need.

But Schwarz can't get any of it. He's deaf, and the station doesn't offer closed captioning, though it is required by federal regulations to do so.

Schwarz, who has a financial-management firm based in suburban Washington, D.C., asked station management why VNN lacked captioning and was told the station didn't fall under rules requiring it.

Schwarz fired back this reply: Prove it.

About three weeks later, VNN filed a petition with the Federal Communications Commission

'Undue burden'

That was just the beginning. Schwarz's tenaciousness has ignited a furor over VNN and captioning, which allows viewers to read the dialogue on the screen in real time.

It has come to this: The Villages is threatening to pull VNN off the air because of the "undue burden" it would suffer if it is forced to provide closed captions.

First, a little background. VNN leases Channel 2 from Comcast. The station tapes 15 minutes of happy "news" a day and runs it over and over until 6 p.m. the next day, when a fresh 15-minute segment starts. It also airs club news and recreation events on Channel 20 and weather on Channel 99.

The Villages already is losing \$1.4 million annually on VNN, lawyer Erick Langenbrunner of the law firm McLin & Burnsed wrote me in an e-mail. The station has never made money, he stated in the petition, and it shouldn't be forced to spend even more.

Langenbrunner made a compelling case to the FCC for how critically important VNN is to the residents of the community. He cited the community's "unique" situation and stated that residents have "special" needs, lifestyles and activities, "making access to a specialized, local news service more needed than in ordinary communities."

Losses undocumented

Asked why VNN's information

PLEASE SEE RITCHIE, J10

Villages' pleas for closed captions fall on deaf ears

RITCHIE FROM J1

is critical to people who can hear but not to those who can't, Langenbrunner didn't respond. Don't deaf people who live in the community join the clubs? Go to events at the recreation centers? Have local doctors? Golf?

He ignored two requests to provide documentation that the station loses \$1.4 million a year. Instead, he wrote, "At some point, the increased loss experienced by The Villages will exceed the benefit VNN provides to the community. When considering both the initial capital cost as well as the ongoing operating cost to provide closed captioning, we arrive at that point."

But here's the real kicker: "The Villages sincerely regrets that a small group of people may be responsible for VNN ceasing to provide its service to the community."

I think I gasped aloud when I read that one — right before roaring with laughter. So VNN's demise would be the fault of those who can't hear and just want the station to comply with FCC captioning rules?

\$65 a day

Deaf and Hearing Services of Lake & Sumter Counties serves at least 200 clients in The Villages. And if studies by Gallaudet University, the internationally respected school for the deaf, are correct, 44 percent of people 55 and older have trouble hearing. At least some of those roughly 30,800 Villages residents could benefit from captioning.

And the "undue burden" the Villages can't meet? It would be \$65 a day if the Villages contracted with the National Captioning Institute, accord-

ing to Jay Feinberg, director of marketing services for the nonprofit group based in Virginia — cheaper, he said, if VNN did it themselves. The one-time capital investment is \$3,000, he said, making the cost of the first year \$26,725.

And the solution is . . .

It is with great relief that I am able to offer a solution.

Consider that The Villages' developer operates three corporate jets and a single-engine airplane from the flight department headquartered at Leesburg International Airport. In addition to pilots, maintenance and fuel, the developer lays out \$137,515 annually for U.S. Customs agents to staff the airport so passengers aboard Villages flights from international destinations don't have to clear customs at some other port of entry.

Then there is the developer's Dutch-built 147-foot megayacht called the Cracker Bay and registered in the Cayman Islands.

Throttle back on jet fuel

First, let's take the mid-grade corporate jet, a Falcon 50. It can fly six hours on the approximately 2,382 gallons of fuel it carries. At \$5.19 a gallon, it costs \$12,362 to fill 'er up. Since Jan. 15, the jet made 95 flights to far-flung destinations, including the ski resort city of Aspen, Colo., and the Bahamas settlement of Marsh Harbour, a jumping-off point for vacationers to the out-islands.

At least some of the Villages' flights were freebies for political figures — federal elections records show that developer Gary Morse contributed at least \$565,000 to President Bush and the GOP over the past seven years,

much of it in complimentary jet rides.

So if Morse trimmed just 12 hours of free rides for Republican friends or eliminated a couple of winter jaunts to Aspen, he could save enough in fuel alone so that deaf people could "hear" his television channel for a whole year.

Or, the captioning price easily could be recouped from the budget of the megayacht. The Cracker Bay has two Caterpillar diesel engines that at mid-cruising speed together suck down 112 gallons per hour.

If the Morse family just one time would forgo sending the Cracker Bay to Charlotte Amalie in the Virgin Islands, then flying down for a weekend rendezvous — voila! Captioning could go on two years!

It's a marketing tool

Clearly, the developer can afford the cost of meeting FCC rules without "undue burden." But he could also solicit sponsors for closed captioning, as other stations routinely do. Surely advertisers want to reach a market of 70,000 retirees with disposable income and time to shop.

The key to the decision in The Villages case lies in the petition Langenbrunner submitted to the FCC. It states that VNN has never made money.

Of course not. That is because, despite advertising claims, VNN is a marketing tool, not a legitimate community news channel. It might provide information, but that is not its purpose. It exists to help the developer sell houses in the community.

There's nothing wrong with using television to sell homes, just as there's nothing wrong with being rich and having really cool toys such as jets

and an exquisite megayacht.

A little P.R. advice

What's wrong is trying to shave money off your marketing program at the expense of people who are handicapped — and claiming you can't afford it when the cost clearly is chump change. That becomes reprehensible when your whole business revolves around senior citizens, who in significant numbers have a hard time hearing.

The FCC isn't expected to rule for several months, so The Villages developer has the opportunity to do the right thing — withdraw the petition and provide close captions on VNN.

And that action has the added attraction of providing a great little public-relations kicker for the developer.

Lauren Ritchie can be reached at lritchie@orlandosentinel.com or 352-742-5918.



Come I

SUPERIOR
RESIDENCES
of Clermont

Subj: **The Villages - VNN**
Date: 5/19/2008 1:24:08 P.M. Eastern Daylight Time
From: slbunitec@atlantic.net
To: mgarre2568@aol.com

Dear Mr. Garretson,

We read your Special Letter to OSB 05/18/08 with regards the refusal of VNN in the Villages to furnish accessibility for the Hearing Impaired to the demographic market they serve.

You cannot imagine my reaction when I read; "VNN is claiming it does not have the money to pay for close captioning and that they would have to go out of business if forced to do so. VNN is using the "undue burden" clause in the law."

I believe that has to be the most audacious claim that anyone can use to excuse themselves from the obligation and responsibility to serve the best interest and welfare of the constituents of their market area.

I believe VNN's claim is flawed by duplicity and chicanery simply because they have voluntarily elected to limit their income revenue stream from advertisers. Management of VNN has refused to accept any advertisements from properly licensed vendors, merchants and professionals unless they are physically located in a retail or office space located on Village reality.

The "undue burden" clause needs to be defined by the FCC as to cause in the matter of VNN. Surely, the FCC will not allow this claim on the part of VNN to set precedence for all other broadcasters to follow suit, should they so choose, and discontinue services for the Hearing Impaired – just because it will cost more than they can afford and will cause them to go out of business.

Why don't they (The Villages) just do what they should have done prior to hiring Phillip Marquardt – spin VNN off to a qualified entity that has the ability to operate a broadcasting enterprise successfully rendering the full service mandated by the FCC to its' demographic constituents.

I know several of our clients; service and business merchants as well as professionals that would be glad to participate as advertisers, providing the rates are within the parameters of other media rates in their market place, which I am confident will balance the costs.

Just a few thoughts for your consideration.

Regards,

SLB Associates

George Sarres, CEO

slbunitec@atlantic.net

The Villages keeps the deaf in the dark

BY MERV GARRETSON
SPECIAL TO THE STAR-BANNER

Published: Sunday, May 18, 2008 at 6:30 a.m.
Last Modified: Sunday, May 18, 2008 at 6:52 a.m.

Although congratulations may be in order for the news staff of the Villages News Network, upon their recognition with a first-place honor during the Florida Associated Press Broadcasters Awards Banquet, we need to point out that their television shows are not accessible to the deaf and hard-of-hearing community of The Villages and surrounding localities.

A preponderance of retired and over-55 senior citizens face serious hearing problems and would welcome closed captioning to be able to follow programs televised by VNN.

Federal law, specifically the Americans with Disabilities Act (ADA), prohibits discrimination against deaf and hard-of-hearing people in places of public accommodation, which would entail provision of closed or open captions and/or sign language interpreters.

However, in March VNN filed a petition for exemption with the Federal Communications Commission to avoid providing this accessibility to thousands of people in The Villages, Stonecrest, Spruce Creek Country Club and other local communities.

VNN is claiming it does not have the money to pay for close captioning and that they would have to go out of business if forced to do so. VNN is using the "undue burden" clause in the law.

Yet practically all television stations provide closed captioning, even advertisers on TV. An increasing number of TV sets in restaurants and bars, and in some private offices, are demonstrating awareness to this population, are sensitive to our communicative needs and are providing closed captioning.

The Tri-County Association of the Deaf has joined several national organizations in challenging this callous disregard for communication access for a large segment of the residential population of this area.

Representing Marion, Sumter and Lake counties, as well as surrounding areas of deaf and hard-of-hearing communities in North Central Florida, the TCAD finds it ironic that VNN, which if not exempted would face penalties for breaking federal law, requests an exemption from closed captioning, as their application states, "in furtherance of the public interest."

Are not the thousands of deaf and hard-of-hearing persons in the locality part of the public?

Further, the petition states the exemption would "allow VNN to continue its programming distribution, thereby serving the public interest and allowing for continued provision of local news and important information upon which The Villages residents have come to rely."

Are not deaf and hard-of-hearing people residents of The Villages? Thousands of other residents of The Villages happen to be retired people and senior citizens with serious hearing problems who rely on closed captions in order to follow the ongoing dialogue.

Thus, the TCAD and others - Deaf and Hearing Services of Lake and Sumter counties; Telecommunications for the Deaf and Hard of Hearing Inc.; the National Association of the Deaf; the Deaf and Hard of Hearing Consumer Advocacy Network; the Hearing Loss Association of America; the Association of Late-Deafened Adults Inc.; the American Association of People with Disabilities; and the California Coalition of Agencies Serving the Deaf and Hard of Hearing - have written the FCC in opposition to the petition.

We do not have an actual census of the size of the deaf and hard-of-hearing population in The Villages and surrounding areas. We know that approximately 100 deaf people have purchased residences in The Villages, Del Webb's Spruce Creek Country Club, Spruce Creek South, Stonecrest and other outlying areas.

Since the population of The Villages consists of people aged 55 and older, with a population of around 100,000, it is probable that at least 15 percent - or 1,500 of them - have serious hearing losses.

But I believe that if only one deaf person resided in The Villages, he or she should still have the right to be able to understand dialogue, reports, storm warnings, announcements and other verbal messages on television.

Our aim is to make possible the impossible dream, to right the unrightable wrong and so to reach the unreachable star.

Viewpoints (Orlando Sentinel), Sunday, June 1, 2008

I believe Lauren Ritchie's May 18 column on closed captions for the deaf to be an outstanding exemplar of investigative journalism. In addition to Ms. Ritchie's findings that the developers of The Villages can well afford to provide closed captioning, her column reflects awareness, understanding and sensitivity to the accessibility needs of the deaf and hard-of-hearing population in The Villages and surrounding areas, and for that matter, everywhere.

To review briefly, the televised Villages News Network (VNN) has refused to observe the federal Americans with Disabilities Act law that requires equal access for all disabled people. On Feb. 28, their attorneys filed with the Federal Communications Commission a petition for exemption to this requirement, pleading lack of funds and citing the "undue burden" clause in the law.

One has to smile at this outrageous claim. According to a 2005 article in Big Builder magazine, the Gary Morse family "owns the bank, the furniture store, local water utility, real estate, insurance, and mortgage companies, assisted living facility, The Daily Sun newspaper, WVLG-AM 640 radio station, and the VNN cable TV station."

Ms. Ritchie cited studies from studies by Gallaudet University showing that 44 percent of people 55 and older have difficulty hearing. Given The Villages' population of about 70,000, a large number might have difficulty in following the voiced dialogue on TV. Closed captioning would be the answer to their becoming an active part of the served community.

To add insult to injury, more recently, on May 20 VNN attorneys filed "a consolidated reply to opposition to petition for exemption and/or waiver." This laughable new filing comes across as a hodgepodge of legalese and procedural trivia, completely bypassing the central point of the reason for opposition to the petition as filed by the Tri-County Association of the Deaf, Deaf and Hearing Services of Lake and Sumter counties and other larger national organizations.

The *raison d'être* for the Tri-County Association of the Deaf includes promotion of the educational, communicative and social needs of deaf and hard of hearing people, protection of their legal rights and increasing awareness and understanding among the general public.

Our aim is to make possible the impossible dream, to right the unrightable wrong, and so to reach the unreachable star.

Merv Garretson

The Possible Dream

In 1880, over 100 years ago, the International Conference on Education of the Deaf (ICED), met in Milan, Italy and voted overwhelmingly to abolish sign language and fingerspelling in every school for the deaf in the world. Simultaneously in the United States a group of deaf leaders got together and established the National Association of the Deaf (NAD). Their purpose, to quote from the lyrics of Joe Darion in Man of La Mancha, was "to dream the impossible dream, to fight the unbeatable foe, to bear with unbearable sorrow, to go where the brave dare not go."

And so all through the years the battle for equal access and recognition has gone on for the deaf community, both in this country and in the rest of our troubled world. Among the organizations involved in this search for accessibility is the World Federation of the Deaf (WFD), of which the NAD is an active member.

Which brings us to today's current struggle with the Villages News Network (VNN) right here in north central Florida, in Marion, Lake, and Sumter counties. Thousands of retired people have made their homes in this vast, interrelated community of lovely developments. It is possible that as many as 20,000 of these people are deaf, hard of hearing, and have increasing hearing losses as they become older.

VNN produces television programs with news stories, commentaries, reports, storm warnings, announcements, and other voiced messages. All of these people with hearing losses are unable to understand these programs without closed captioning, which has become available in practically all television outlets nowadays. However, VNN refuses to close-caption their programs, which is against the federal law, Americans with Disabilities Act (ADA). They have filed with the Federal Communications Commission (FCC) a petition for exemption from this law, claiming lack of funds and citing the "undue burden" clause in the legislation. We find this questionable as we understand The Villages to be a multi-million dollar corporation fully capable of providing support for closed captioning.

The Tri-County Association of the Deaf (TCAD), along with the Deaf and Hearing Services of Lake and Sumter Counties (DHS), and other national organizations have counter-filed opposition to this petition. We await results of the FCC study and determination as to whether VNN should comply with the law.

In any event, the deaf and hard of hearing community, along with their supportive hearing friends will continue to seek equal accessibility and realization of the possible dream.

Merv Garretson