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March 16, 2012

via hand delivery

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: CGB Room 3-B431

Re: **NorthStar Community, Inc. Request for Exemption from the Commission's Closed Captioning Rules**
Case No. CGB-CC-0119
CG Docket No. 06-181

Dear Ms. Dortch:

Telecommunications of 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 Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of NorthStar Community, Inc. c/o Bon Air Baptist Church ("NorthStar") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).[1] NorthStar has provided insufficient information to demonstrate that it cannot afford to caption its programming.

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[1] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, NorthStar Community, Inc.*, Case No. CGB-CC-0119, CG Docket No. 06-181 (Feb. 15, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0215/DA-12-217A1.pdf; *Petition for Exemption from Closed Captioning Requirement for NorthStar Community, Inc.*, Case No. CGB-CC-0119, CG Docket No. 06-181 (Jan. 12, 2012),

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Consumer Groups acknowledge NorthStar's efforts to "get the message of hope out to hurting people who either cannot or will not travel to [its] meeting sites."[2] The requested exemption, however, would deny equal access to NorthStar's programming for members of NorthStar's community who are deaf and hard of hearing. NorthStar acknowledges that "[h]urting people are often disadvantaged economically, may lack transportation or a driver's license, live isolated lives, or even attend other churches on Saturday evening or Sunday morning."[3] People who are deaf or hard of hearing who would not otherwise be able to attend services may also be part of the constituency that NorthStar intends its program to benefit. Moreover, maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits of video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

NorthStar has provided insufficient information to demonstrate, or for the Commission to determine, that NorthStar cannot afford to caption its programming. Accordingly, Consumer Groups recommend that NorthStar be given 45 days either to comply with the closed captioning rules or to re-apply with sufficient information to

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http://apps.fcc.gov/ecfs/document/view?id=7021755982 [hereinafter *NorthStar Petition*].

[2] *NorthStar Petition, supra* note 1, at 1.

[3] *Id.*

allow the Commission and the public to accurately determine whether NorthStar's petition meets the legal standard for granting an exemption.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),[4] as added by the Telecommunications Act of 1996 ("1996 Act")[5] and amended by section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"),[6] "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the "undue burden" standard in section 713(e) of the 1934 Act, pursuant to the Commission's existing rules in 47 C.F.R. § 79.1(f)(2)-(3).[7]

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[4] Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

[5] Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

[6] Pub. L. 111-260, 124 Stat. 2751 (2010) (to be codified in scattered sections of 47 U.S.C.).

[7] *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), http://transition.fcc.gov./Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard,* CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf. *See also 2011 ISO* at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. *E.g., Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). *See Anglers for Christ*

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.[8] More specifically, a petitioner must first demonstrate its inability to afford providing closed captions for its programming.[9] If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.[10] Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.[11]

I. NorthStar's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.[12] Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning services.

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation

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Ministries, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

[8] *See Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,955-56, ¶ 28.

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See id.*

"from which its financial condition can be assessed."[13] NorthStar provides its 2011 income and expenses, which indicate a net loss of approximately $51,000 for the year, but offers no details about the nature of its expenses or sources of revenue.[14] Moreover, NorthStar does not provide any information about its available assets, nor does it explain how it can afford to operate at a net loss of more than $51,000, yet cannot afford to incur the modest additional cost of captioning.[15] Without more information, it is impossible to verify whether or not NorthStar can afford to direct its assets toward captioning efforts.

NorthStar nevertheless argues that it is entitled to an exemption because it is a non-profit provider of TV programming.[16] While a petitioner's non-profit status may weigh on its financial resources, the Commission does not "grant [petitioners] favorable exemption treatment because of their non-profit status."[17]

NorthStar also argues that "the significant expense of closed captioning would [threaten] to divert monies away from [other] ministries."[18] In analyzing whether captioning creates an undue burden, the Commission has found it improper to consider "the extent to which the provision of captioning would curtail other activities important to a petitioner's mission."[19] Rather, the Commission "balance[s] the need for closed captioned programming against the potential for hindering *the production and*

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[13] *E.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

[14] *NorthStar Petition, supra* note 1, Exhibit D.

[15] *Id.* at 3.

[16] *Id.* at 3, Exhibit E.

[17] *See Anglers 2011, supra* note 7, at 14,951, ¶ 18.

[18] *NorthStar Petition, supra* note 1, at 3.

[19] *See Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

distribution of programming."[20] NorthStar presents no evidence that providing captions would hinder the production and distribution of its programming.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.[21] In particular, a petitioner must show that it has sought out sponsorships or other sources of revenue to cover the cost of captioning its program and is unable to obtain alternative means of funding captions for its programming.[22]

NorthStar, however, argues that it should not have to solicit sponsorships because it used to have a permanent exemption, so it was "not on [its] radar to seek sponsorship."[23] NorthStar had 90 days, however, during which the Commission's captioning requirements were on its "radar," but provides no evidence that it undertook any efforts to seek sponsorship during that time.[24] NorthStar's erroneous receipt of a permanent exemption does not warrant continuing noncompliance with the Commission's rules.

NorthStar also claims that it would not be able to receive sponsorship support because its program is unique and it is "too Christian for [secular donations], and too recovery focused for [donations from] the Christians."[25] NorthStar's conclusory assertion that it will not be successful in receiving sponsorships is insufficient to excuse its failure to even attempt to obtain captioning support from other sources. Given that

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[20] *Id.* (emphasis in original).

[21] *See Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

[22] *See Outland Sports,* 16 FCC Rcd. at 13607-08, ¶ 7 (2001), *cited with approval in Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

[23] *NorthStar Petition, supra* note 1, at 2.

[24] *See Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,965, ¶ 55

[25] *NorthStar Petition, supra* note 1, at 2.

many similarly-situated entities seek out and obtain captioning sponsorship for their programming, we are unaware of any reason that NorthStar's refusal to seek sponsorship support for captioning should excuse it from complying with the Commission's rules.

III. NorthStar Does Not Qualify for the Local, Non-News Exemption

NorthStar also argues that it qualifies for the local, non-news exemption to the Commission's closed captioning rules.[26] The Commission has made clear, however, that the categorical exemption under section 79.1(d)(8) specifically requires that such "locally produced and distributed non-news programming be produced by the *video programming distributor*, not programmers."[27] NorthStar does not qualify for this exemption because it is not a video programming distributor.

IV. Conclusion

NorthStar's petition does not include sufficient information to conclude that NorthStar cannot afford to caption its programming at this time or that it has exhausted all available alternative options for providing captioning. Because the petition fails to conclusively demonstrate that it would be unduly burdensome for NorthStar to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission give NorthStar 45 days either to comply with the closed captioning rules or to re-apply with sufficient information, including its most recent financial statements, to allow the Commission and the public to determine whether NorthStar's petition meets the legal standard for granting an exemption.

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[26] *Id.* at 4.

[27] *See Anglers 2011, supra* note 7, 26 FCC Rcd. at 14,950, ¶ 17 n. 63 (emphasis added).

Respectfully submitted,

Blake E. Reid, Esq.†
March 16, 2012

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† Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

Hearing Loss Association of America (HLAA)

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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 in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
March 16, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

NorthStar Community, Inc.
C/O Bon Air Baptist Church
2531 Buford Road
Richmond, VA 23235

Niko Perazich
March 16, 2012