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March 9, 2012

via hand delivery

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

FILED/ACCEPTED

MAR - 9 2012

Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Main Street Living Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0004
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, 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 Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this comment on the petition of Main Street Living ("MSL") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹ While Consumer Groups do not believe that MSL has demonstrated that providing closed captioning would impose an undue economic burden, Consumer Groups appreciate and acknowledge

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Main Street Living, Case No. CGB-CC-0004, CG Docket No. 06-181 (Feb. 8, 2012)*, http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-12-161A1.pdf; *Petition for Exemption from Closed Captioning Requirement for Main Street Living, Case No- CGB-CC-0004, CG Docket No. 06-181 (Jan. 17, 2012)*, <http://apps.fcc.gov/ecfs/document/view?id=7021756004> [hereinafter *MSL Petition*].

MSL's efforts to make their programming accessible to the deaf and hard of hearing community by providing sign language interpretation and open captions. Accordingly, we recommend that the Commission grant MSL a temporary exemption of no more than one year to come into compliance with the captioning rules.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),² as added by the 1996 Act and amended by section 202(c) of the CVAA, "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).³

² Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

³ *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, 14,961-62, ¶¶ 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 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*].

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁴ 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.⁵ The Commission may also consider any other factors described in the petition, including alternatives that constitute a reasonable substitute for closed captioning.⁶ While Consumer Groups do not believe that MSL has shown an inability to afford closed captioning, we nevertheless acknowledge MSL's efforts to make its programming accessible and therefore recommend a temporary exemption.

I. MSL'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.⁷

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed"⁸ and a concerted effort to determine "the most reasonable price" for captioning its programming.⁹ MSL provides tax forms showing total annual revenue of \$91,125, total expenses of \$98,865, and net

⁴ See *Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁵ See *id.*

⁶ 47 C.F.R. § 79.1(f)(3).

⁷ See *Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁸ 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 3, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

⁹ See *The Wild Outdoors*, 16 FCC Rcd. 13,611, 13,613 ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

assets of \$50,897.¹⁰ MSL provides price quotes from two captioning companies and estimates that the lowest cost would be \$9,100 annually.¹¹ While we acknowledge that MSL operates on a relatively small annual budget, MSL also has significant assets that could be used to pay for captioning in the short term while they seek long-term funding solutions or reallocate their budget to support captioning.

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 obtaining assistance with captioning its programming.¹² A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,¹³ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.¹⁴ While MSL states that it has been unable to obtain sponsorship for captioning from its church membership or from businessmen, they do not provide documentation of their efforts, such as correspondence or other records.¹⁵

III. Alternative Means of Compliance

MSL also proposes that it “at least partially” serves the interest of the deaf community by providing picture-in-picture sign language interpretation of the service

¹⁰ *MSL Petition*, *supra* note 1, at 3.

¹¹ *Id.* at 4-7.

¹² *See Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

¹³ *See, e.g., Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), *cited with approval in Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

¹⁴ *See Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), *cited with approval in Anglers 2011*, *supra* note 3, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

¹⁵ *MSL Petition*, *supra* note 1, at 2.

and “open caption[ing] several parts of the program.”¹⁶ While Consumer Groups note that sign language and open captioning are not adequate substitutes for closed captioning for consumers who are deaf or hard of hearing because some consumers do not understand sign language, Consumer Groups appreciate MSL’s efforts to make their programming at least partially accessible to the deaf and hard of hearing community while they marshal the financial resources to provide closed captioning. We encourage MSL to continue offering sign language translation as it transitions to captioning its programming.

IV. Conclusion

Consumer Groups do not agree that MSL has provided sufficient information to suggest that compliance with the closed captioning requirements would in fact impose an undue burden under the Commission’s existing standards. Nevertheless, in light of MSL’s efforts to make its programming accessible through the use of sign language interpretation and open captioning, Consumer Groups recommend that MSL be given a temporary exemption of no more than one year to comply with the closed captioning rules.

¹⁶ *Id.*

Respectfully submitted,



Blake E. Reid, Esq.†

March 9, 2012

*Counsel for Telecommunications for the
Deaf and Hard of Hearing, Inc.*

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/s/

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

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

_____/s/_____

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Association of Late-Deafened Adults (ALDA)

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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 comment, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
March 9, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 9, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing comment was served by first class U.S. mail, postage prepaid, upon the petitioner:

Main Street Living, Inc.
1400 So. Duluth Ave.
Sioux Falls, SD 57105

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich
March 9, 2012