

February 18, 2014

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Closed Captioning of Video Programming, CG Docket No. 05-231*

Dear Ms. Dortch:

WeatherNation TV, Inc. (“WeatherNation”) and DIRECTV, LLC (“DIRECTV”) hereby jointly respond to the letter submitted by The Weather Channel (“TWC”) on February 7, 2014 regarding closed captioning.¹

DIRECTV no longer carries TWC because of a commercial dispute. One month into that dispute, TWC now asks the Commission to investigate alleged captioning inaccuracies on WeatherNation, a new, independent channel recently added to DIRECTV’s service. As TWC admits, the Commission’s rules do not require WeatherNation to caption its programming at all. WeatherNation exceeds its legal obligations by providing captioning at least a year before it will be required to do so. DIRECTV, for its part, accurately passes through the captions WeatherNation provides to it. Neither party has violated the Commission’s rules, so TWC’s request for sanctions lacks any basis.

WeatherNation and DIRECTV are nonetheless committed to providing service to the deaf and hearing impaired community. As part of its commitment, WeatherNation recognizes the need to improve the captioning it does offer. As TWC itself noted, providing closed captioning “for fast moving weather programs can be challenging.”²

To meet that challenge, WeatherNation recently updated its captioning software and has taken other steps to improve the quality of its captioning. It also has sought proposals from three

¹ Letter from George Callard, EVP and General Counsel, TWC, to Marlene Dortch, Secretary, FCC, GC Docket No. 05-231 (filed Feb. 7, 2014) (“TWC Letter”).

² TWC Letter at 2.

leading providers of manual captioning, and intends to add this capability in the coming months. Moreover, WeatherNation will of course abide by any new rules the Commission may adopt with respect to caption quality.

I. Background

TWC is the country's largest dedicated provider of weather-related television programming. Owned in part by Comcast and in part by private equity Wall Street firms Blackstone and Bain Capital, it has reached more than 100 million households since 2010.³ Yet it has begun to dramatically lose viewership recently, as Americans increasingly receive weather-related information through computers and mobile devices.⁴

TWC's loss in viewership also coincides with a change in its programming. Over the last few years, in an attempt to try to recapture viewers, TWC has replaced much of its weather forecasting programming with what has become known as "weathertainment."⁵ Indeed, as of December, reality programming such as *Highway Thru Hell*, *Freaks of Nature*, and *Coast Guard Florida* made up as much as 40 percent of TWC's schedule.⁶

Last December, as it became clear that negotiations with TWC had neared impasse and to provide its customers with the 24/7 weather coverage they deserve, DIRECTV launched WeatherNation, a new independent competitor devoted entirely to weather coverage.⁷ Like TWC, WeatherNation provides comprehensive weather coverage. Unlike TWC, however, WeatherNation does so on a full-time basis and at a reasonable cost.

When DIRECTV and TWC ultimately found themselves unable to negotiate a renewal, DIRECTV ceased carrying TWC on January 13, 2014. Since then, TWC has argued to anybody who would listen that DIRECTV's refusal to accede to TWC's *private commercial* demands has

³ <http://press.weather.com/company-info/timeline/>.

⁴ Eric Holthaus, *Rainy Days and Reality Shows Always Get Me Down*, slate.com (Jan. 2014), available at http://www.slate.com/articles/technology/future_tense/2014/01/weather_channel_directv_carriage_dispute_an_interview_with_david_kenny.html.

⁵ Press Release, *More Original Shows Shine on Weather Channel*, (Mar. 19, 2012), available at <http://press.weather.com/in-the-news/more-original-shows-shine-on-weather-channel/>.

⁶ See Letter from Mike White, Chairman, President, and CEO, DIRECTV to customers (Jan. 2014) available at <http://directvpromise.com/directv-ceo-mike-white-letter-to-customers/>.

⁷ DIRECTV has no financial interest in WeatherNation, which it launched on December 16, 2013.

jeopardized *public safety*.⁸ It even once compared itself to a public utility—a suggestion implying that government should force DIRECTV to carry TWC on public safety grounds.⁹ This is the context in which the Commission should judge TWC’s latest charges that DIRECTV and WeatherNation have acted in an “indefensible and dangerous” manner.¹⁰

II. WeatherNation and DIRECTV Comply with the Commission’s Captioning Rules

Citing claimed instances of inaccurate captions, TWC demands that the Commission investigate WeatherNation and DIRECTV to determine whether they have violated the Commission’s rules.¹¹ It also urges the Commission to “assess appropriate sanctions.”¹²

These requests stand at odds with TWC’s admission that WeatherNation need not caption its programming at all.¹³ WeatherNation qualifies for at least two separate exemptions to the captioning rules.¹⁴ Because it launched in October 2011, WeatherNation qualifies for the “new network” exemption until next year.¹⁵ The costs of manual captioning would also exceed two percent of WeatherNation’s gross revenues, providing a second, independent basis for exemption.¹⁶

⁸ See, e.g., The Wrap, *The Weather Channel Taunts DirecTV in Full Page Ad* (Jan. 22, 2014), available at <http://www.thewrap.com/weather-channel-taunts-directv-full-page-ad/> (describing newspaper ads taken out by TWC).

⁹ Delia Paunescu, *Would Not Having the Weather Channel Make People Less Safe?*, New York Magazine (Jan. 11, 2014) <http://nymag.com/daily/intelligencer/2014/01/does-the-weather-channel-make-people-safer.html> (noting that, “[w]hen asked whether it is fair to ‘declare [the Weather Channel] a public utility,’ network head David Clark replied, ‘Absolutely. And I’m not kidding. If you’ve ever been in a severe weather situation and you need to make a decision to protect your family and you need to make it fast’ you need ‘to know your information comes from a trusted source’” and observing that the term “trusted source” apparently did not include WeatherNation).

¹⁰ TWC Letter at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5 (predicting that “WeatherNation will probably assert an exemption from captioning requirements”).

¹⁴ See Declaration of Michael Norton, President, WeatherNation TV, Inc., attached hereto as Exhibit A.

¹⁵ 47 C.F.R. § 79.1(d)(10) (“For purposes of determining compliance with this section, any video programming or video programming provider that meets one or more of the following criteria shall be exempt to the extent specified in this paragraph. . . . [including programming] on a video programming network for the first four years after it begins operation.”).

¹⁶ 47 C.F.R. § 79.1(d)(11) (“No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year.”).

WeatherNation exceeds its legal obligations under the Commission's rules by captioning programming at least a year before it will be required to do so. DIRECTV, for its part, meets its own obligations by accurately passing through WeatherNation's captions.¹⁷ It has confirmed that the equipment it uses to do so works properly.¹⁸ TWC has thus failed to allege any violation of the Commission's rules. In such circumstances, the Commission has no basis to "investigate" (much less "sanction") WeatherNation and DIRECTV.

III. WeatherNation Will Improve Its Captioning

WeatherNation recognizes the importance of closed captioning. Indeed, it began captioning long before required to do so, and had begun working to improve the accuracy of such captioning well before receiving TWC's letter.

As TWC points out, however, providing live closed captioning "for fast-moving weather programming can be challenging."¹⁹ Until last month, WeatherNation has had to meet this challenge using the very limited means available to a startup network with minimal distribution. Since it began providing captions in January 2012, WeatherNation has used a product called "enCaption" offered by ENCO Systems. Recognizing the importance of providing accurate captioning to its viewers, however, WeatherNation upgraded to the latest "enCaption 3" platform two weeks ago.

WeatherNation believes that this upgrade, once completed, will improve its captioning dramatically. It has also submitted additional material to ENCO's "accepted/restricted" word libraries, which should further improve overall captioning accuracy. In addition, WeatherNation recently sought estimates from three leading providers of manual captioning, VITAC,²⁰ Caption Colorado,²¹ and LNS Captioning.²² It intends to add manual captioning capability in the coming months. It will also, of course, comply with any caption quality

¹⁷ 47 C.F.R. § 79.1(c) ("All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.").

¹⁸ See Declaration of Lisa Shipley, Senior Director, Broadcast Operations, DIRECTV, attached hereto as Exhibit B.

¹⁹ TWC Letter at 2.

²⁰ For more information about VITAC, please see <http://www.vitac.com/index.asp>.

²¹ For more information about Caption Colorado, please see <http://www.captioncolorado.com/>.

²² For more information about LNS captioning, please see <http://lnscaptioning.com/>.

requirements the Commission may adopt.

* * *

WeatherNation and DIRECTV regret that TWC and its owners have chosen to use the Commission as a forum in which to attempt to negotiate a way out of TWC's private, contractual disputes. Both, however, understand the importance of providing accurate closed captioning, and are committed to providing the best service to WeatherNation viewers.

/s/

Michael Norton
President
WEATHERNATION TV, INC.
8101 East Prentice Ave, Suite 700
Greenwood Village, CO 80111
(303) 339-7317

Respectfully submitted,

/s/

Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, LLC
901 F Street, NW, Suite 600
Washington, DC 20004
(202) 383-6300

Exhibit A

DECLARATION

I, Michael Norton, do hereby declare and state under penalty of perjury as follows:

1. I am the President of WeatherNation TV, Inc. ("WeatherNation"). I have held this position for approximately 3 years. My business address is 8101 East Prentice Avenue, Suite 700, Greenwood Village, Colorado 80111.
2. I have primary responsibility for overall operations of WeatherNation TV, Inc., and have personal knowledge of WeatherNation's captioning of its programming.
3. I have reviewed the response to The Weather Channel ("TWC") to which this declaration is attached. It is true and correct to the best of my knowledge with respect to WeatherNation's provision of captions, and its plans to improve such captioning in the future.

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

February 18, 2014

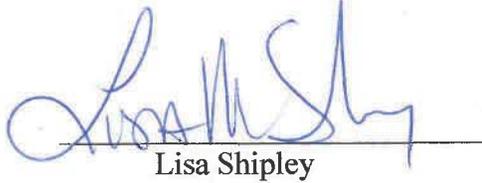
Exhibit B

DECLARATION

I, Lisa Shipley, do hereby declare and state under penalty of perjury as follows:

1. I am the Senior Director, Broadcast Operations, at DIRECTV's Los Angeles Broadcast Center ("LABC"). I have held this position for approximately four months, though I have been with the company in other positions for over a decade. My business address is 2230 E. Imperial Highway, El Segundo, CA 90245.
2. I have primary responsibility for, and personal knowledge of, DIRECTV's pass through of captions provided by programmers such as WeatherNation, which occurs at LABC.
3. I have reviewed the response to The Weather Channel ("TWC") to which this declaration is attached. It is true and correct to the best of my knowledge with respect to DIRECTV's pass-through of captions received from WeatherNation.
4. As of February 12, 2014, the hardware and software at LABC is properly configured to, and does in fact, accurately pass through captions provided by WeatherNation. To the best of my knowledge, it has done so during the entire period referenced in TWC's letter.

February 13, 2014



Lisa Shipley