

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Implementation of |) | MM Docket No. 99-339 |
| Video Description of |) | |
| Video Programming |) | |

REPLY COMMENTS OF THE WEATHER CHANNEL, INC.

The Weather Channel, Inc., by its attorneys, hereby files its reply comments on the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

Numerous commenters in this proceeding, including commenters who support a video description requirement, advised the Commission that live programming without natural pauses should not be covered by any Commission requirements on video description. The Weather Channel agrees that video description of audio-intensive live programming is impractical and is far more likely to confuse and frustrate visually disabled viewers than to help them.

Moreover, The Weather Channel agrees with the numerous commenters who seriously call into question the Commission's authority to impose video description requirements.² In

¹ In the Matter of Implementation of Video Description of Video Programming, Notice of Proposed Rulemaking, MM Docket No. 99-339, FCC 99-353 (rel. Nov. 18, 1999) ("NPRM").

² See, e.g., Comments of A&E Television Networks (Feb. 23, 2000), at 5-14; Comments of C-SPAN and C-SPAN 2 (National Cable Satellite Corp.) (Feb. 24, 2000), at 5-9; Comments of DirecTV, Inc. (Feb. 23, 2000), at 4; Comments of Grupo Televisa, S.A. (Feb. 23, 2000), at 2; (footnote continued ...)

particular, as both NCTA and NAB demonstrate, adoption of video description requirements would be inconsistent with the plain meaning and legislative history of Section 713(f).³

With respect to the commenters suggesting that an aural tone be required to accompany all public safety messages, The Weather Channel already provides where technically feasible an aural tone to alert its audience, including the visually disabled, to local emergency weather bulletins.

Finally, The Weather Channel is starting to provide an aural explanation of its text and graphic only local weather segments. However, doing so is complex, costly, and time-consuming, and it clearly would be inappropriate for the Commission to impose a requirement mandating that this text and graphic information be video described.

II. VIDEO DESCRIPTION OF LIVE PROGRAMMING IS IMPRACTICAL, UNNECESSARY, AND CONFUSING.

Congress clearly intended that video description would only be appropriate where there are natural pauses in the audio portion of the programming. Section 713(g) of the Communications Act defines video description as the "narrated descriptions of a television program's key visual elements" inserted during "natural pauses" in the program's dialogue.⁴ In the

(... footnote continued)

Comments of the Motion Picture Association of America, Inc. (Feb. 23, 2000), at 3-14; Comments of the National Association of Broadcasters (Feb. 23, 2000), at 2-13; Comments of the National Cable Television Association (Feb. 23, 2000), at 4-7.

³ See Comments of NAB at 2-7 (noting that: (1) the plain language of the Communications Act only authorizes the Commission to conduct an inquiry on video description and then report to Congress; and (2) the legislative history establishes that the conference committee deleted the House provision referencing a Commission rulemaking on video description); Comments of NCTA at 4-5 (same).

⁴ 47 U.S.C. § 613(g).

NPRM, the Commission acknowledged that video description should be used to provide a description when there are "natural pauses" in the video programming.⁵

The record in this proceeding is now replete with numerous commenters who concur with Congress that live programming with no natural pauses is not suitable for video description.⁶ For example, the National Television Video Access Coalition recognizes the difficulties inherent in video describing live programming.⁷ Moreover, providers of programming services, such as QVC and C-SPAN, explained that video description is inappropriate and impractical for their programming which is "primarily aural" in nature."⁸

⁵ See NPRM at ¶ 1 & n. 3. The Commission similarly concluded in its 1996 Video Accessibility Report that "[l]ower priority for video description should be given to programming that is primarily aural in nature, including newscasts and sports events." See NPRM at ¶ 14 (citing Video Accessibility Report, 11 FCC Rcd. 19214, at ¶ 140 (1996)) (emphasis added).

⁶ See, e.g., Comments of NCTA at 17-20 ("[V]ideo description ... is unsuitable for a wide variety of cable programming offered...[Live or a tape-delayed version of a live event] presents unique difficulties in video description...."); Comments of MPAA at 28 ("[T]he Commission has failed to articulate exemptions and waivers of its proposed rules for types of programming that do not readily lend themselves to aural descriptions of on-screen action, including live programming, situation comedies, sports, news...MPAA believes that if rules are adopted, absolute exemptions should be made for these categories, due to the infeasibility of providing video descriptions in these formats."); Comments of NAB at 26 ("[T]he Commission should completely exempt certain categories of programming from any description requirements because certain program types (e.g., news, sports and live programs) are inherently unsuited to video description.").

⁷ Comments of The National Television Video Access Coalition (Feb. 23, 2000), at 4 ("[N]ews programs leave no space to insert descriptions...the Coalition has suggested that live news and sports should be exempted from any video description."). See also Comments of the WGBH National Center for Accessible Media (Feb. 22, 2000), at 17 ("[B]ind and visually impaired people have clearly stated that [news or sports] programming is of far less interest or utility to them than dramas, comedies, movies, and narrative documentaries.").

⁸ Comments of C-SPAN and C-SPAN2 at 2-4; Comments of QVC, Inc. (Feb. 23, 2000), at 2, 5-6.

The Weather Channel agrees that video description of live programming which has no natural pauses would not be feasible. The Weather Channel 's programming is word-intensive and does not contain natural pauses. For example, The Weather Channel analyzes weather patterns, provides temperatures, describes weather phenomena, and provides historical and scientific weather information. Throughout all of this programming, there is continuous dialogue by one or more of The Weather Channel's reporters. There simply are no natural pauses in which to insert video descriptions.

Not only would video descriptions be impractical for The Weather Channel and other services with continuous audio, the absence of natural pauses means that video descriptions inevitably would interfere with the original audio feed.⁹ Thus, video descriptions would confuse the visually disabled audience who would hear competing simultaneous voices because the video description would overlap the original program audio.¹⁰

A further difficulty with providing video description arises with unscripted programming. The Weather Channel's programming is over 90% unscripted with the reporters deciding on-the-air what to say. Thus, there is no opportunity to insert video description into this programming since not until the reporters begin speaking on-the-air does anyone know where video description, if any, could be inserted and what should be described.

⁹ Report of National Coalition of Blind and Visually Impaired Persons for Increased Video Access, MM Docket No. 95-176, WT Docket No. 96-198 (filed Feb. 7, 1997), at 5 ("Coalition Report") (video description should be inserted into natural pauses in the program's dialogue "without interfering with the original audio of a program or movie.").

¹⁰ Comments of QVC, Inc. at 6-7 (video description of live programming would create consumer confusion).

Moreover, video description of live programming which has continuous audio is unnecessary. The Commission has stated that its purpose in requiring video description is to help visually disabled individuals avoid the "difficulty of being able to follow the visual action in television programs."¹¹ As many commenters pointed out, programming services which consist primarily of continuous live dialogue already may be followed by audiences with visual disabilities. For example, C-SPAN explained that its programming is essentially self-described.¹² The Game Show Network pointed out that none of the information essential for a visually disabled person to follow a program (e.g., information about action on the screen, body movements, description of settings, and character's appearance and clothing) is essential for a visually disabled person to follow what is happening on a game show.¹³

Similarly, a visually disabled person can follow The Weather Channel's programming by listening to its audio feed. For example, when The Weather Channel displays national temperature maps or shows a particular weather phenomenon, there is always a reporter describing what is on the map or what is occurring with regard to specific weather events. Indeed, the very purpose of the reporter is to provide detailed oral weather descriptions. And, as described above, the audio on The Weather Channel's programming is continuous. Thus,

¹¹ NPRM at ¶ 1.

¹² Comments of C-SPAN and C-SPAN2 at 3 ("[M]en and women on the screen invariably give conversational clues to each other and to their audiences that permit full comprehension by those who for whatever reason are not looking at the screen.").

¹³ Comments of The Game Show Network (Feb. 23, 2000), at 7.

insertion of video description into The Weather Channel's programming is unnecessary for the visually disabled to follow the visual action.

III. THE WEATHER CHANNEL PROVIDES AN AURAL TONE WHERE TECHNICALLY FEASIBLE TO ALERT ITS AUDIENCE TO EMERGENCY WEATHER BULLETINS; HOWEVER, IT WOULD NOT BE TECHNICALLY FEASIBLE TO INSERT AN AUDIO VOICE-OVER FOR SUCH BULLETINS.

The Commission requested comment on the Coalition's proposal that an aural tone be required to accompany the public safety messages that scroll across the television screen. This tone would alert persons with visual disabilities to turn on a radio, the Secondary Audio Programming channel, or a designated digital channel.¹⁴ The Weather Channel already provides where technically feasible such a tone for the National Weather Service emergency weather bulletins it broadcasts. The Weather Channel distributes emergency weather bulletins to the relevant geographic audiences by placing these bulletins at the bottom of the television screen,¹⁵ accompanied by an aural tone for the local audience affected by a given emergency weather bulletin.

Specifically, The Weather Channel provides text-only reproductions of all emergency weather bulletins released by the National Weather Service. The Weather Channel distributes these warnings through its Weather Stars, a system of more than 10,000 automated, graphic and/or text computers located at headends throughout the United States. The Weather Channel's Star system is fully automated, downloads emergency weather bulletins directly from the National

¹⁴ NPRM at ¶ 32. See Comments of the American Council of the Blind (Jan. 10, 2000), at 7 ("[ACB] believe[s] that the stations could provide a tone and have a phone number to call for the information which could simply be a recorded message.").

¹⁵ Households served by satellite dishes do not receive these emergency weather bulletins.

Weather Service, and displays the bulletins to the relevant geographic audiences. No personnel from The Weather Channel have any advance notice of the bulletins. Since these emergency bulletins are distributed by the Weather Star system within seconds of their release by the National Weather Service, there would be no time to create an audio track even if it were technically possible to do so. Moreover, any time lost in distributing these emergency bulletins caused by the insertion of an audio voice-over could have serious consequences for The Weather Channel's audience, including the visually disabled. In short, the Weather Star system is fully automated and there is no opportunity -- either technically or from a time standpoint -- for The Weather Channel to insert an audio voice-over of the emergency weather bulletins.

IV. THE WEATHER CHANNEL IS CONTINUING TO EXPLORE WAYS TO MAKE ITS LOCAL WEATHER INFORMATION SEGMENTS, WHICH ARE IN A TEXT AND GRAPHICS-ONLY FORMAT, MORE ACCESSIBLE.

The Weather Channel's local weather information (e.g., temperature highs and lows, humidity) is presented every ten minutes "on the eights," (i.e., :08, :18, :28, :38, etc.). The information is displayed in a full-screen, text and graphics format.

The Weather Channel is continuing to explore methods to enhance its local weather segments. In fact, The Weather Channel has begun to provide some limited aural description for its local weather segments on a test basis in the Atlanta market. This enhancement will be rolled out in all areas served by the latest generation Weather Stars (serving 41 million households) beginning March 27, 2000. The Weather Channel wishes to stress, however, that this process is extraordinarily complex, time-consuming and costly. The technology for providing voice to accompany its local weather segments requires a specific piece of hardware at each cable headend to transmit different descriptions simultaneously to over 9,000 unique customer sets based on the different weather conditions in each geographic area. Moreover, the software development

necessary to accommodate over 14,000 headends served by The Weather Channel is complicated and time-consuming.

The Weather Channel will continue to investigate ways to enhance its service for its audience, including the visually disabled. However, given the difficulties inherent in providing a voice-over for its local weather segments, it clearly would be inappropriate for the Commission to impose a requirement mandating that they must be video described.

CONCLUSION

Based on the foregoing, The Weather Channel respectfully requests that the Commission not impose video description requirements on live programming services such as The Weather Channel.

Respectfully submitted,

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