



PUBLIC NOTICE

Federal Communications Commission
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DA 02-1848
July 31, 2002

MEDIA BUREAU ACTION

LETTER TO DISCOVERY COMMUNICATIONS, INC. ON CLOSED CAPTIONING COMPLIANCE

By letter order, the Chief of the Media Bureau approved a plan by Discovery Communications, Inc. ("DCI") to remedy a failure to close caption the required number of hours on four of its cable networks during the first quarter of 2002 as required pursuant to contracts with its programming distributors.

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Washington, D.C. 20554

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DA 02-1848
MB-ILR 02-2

Alexa Verveer
Vice President, Government
Relations and Public Policy
Discovery Communications, Inc.
7700 Wisconsin Avenue
Bethesda, MD 20814-3579

Dear Ms. Verveer:

Shortly after the close of the first quarter of 2002, Discovery Communications, Inc. ("DCI") informed the Commission by letter that it had failed to close caption the required number of hours on four of its cable networks during that quarter as contractually required pursuant to contracts with its programming distributors. Under Section 79.1(b)(ii) of the Commission's rules, distributors of these channels were required to have 900 hours per quarter of captioned material on each of these channels.¹ DCI stated that the Discovery Channel failed to caption 133 hours, The Learning Channel ("TLC") 130 hours, the Travel Channel 52 hours, and Animal Planet 15 hours.

DCI and Commission staff met to discuss the matter. In these discussions, DCI stated that it was taking steps to make up the captioning shortfall for each channel during the second quarter of 2002. Specifically, DCI stated that the Discovery Channel would caption at least 1033 hours of programming, TLC at least 1030 hours, the Travel Channel at least 952 hours, and Animal Planet at least 915 hours. In addition, DCI indicated that it was prepared to caption additional programming beyond that amount required by the rules in order to make up for its captioning shortfalls.

Thereafter, in a letter of July 15, 2002, DCI confirmed that, during the second quarter of 2002, the four channels made up and exceeded the captioning shortfalls. According to DCI, the Discovery channel captioned 1087 hours of programming, TLC captioned 1174 hours of programming, the Travel Channel captioned 1108.5 hours of programming, and Animal Planet captioned 1086 hours of programming. In addition, DCI stated that it would:

exceed by at least 100 hours the captioning it is required to air between now and the end of this year on the Discovery Channel and TLC, its networks with the largest distribution in the United States. DCI is required to caption at least 1800 hours of programming for the Discovery Channel and 1800 hours of programming for TLC during the second half

¹ 47 C.F.R. § 79.1(b)(ii).

of 2002. Instead, DCI will caption at least 1900 hours for each network during that time period.²

DCI also indicated that it had instituted new measures to assure that it would not under-caption in the future. DCI states that it now routinely captions more programming than is required by the rules to guarantee compliance even if programming substitutions occur late in a quarter. DCI also indicates that it is monitoring captioning on a weekly basis to ensure that any deficiencies are identified and resolved quickly.

The Commission's closed captioning rules implement Section 713 of the Communications Act of 1934, as amended.³ In enacting Section 713, Congress generally required that video programming be closed captioned, regardless of distribution technology, to ensure access to persons with hearing disabilities.⁴ Section 713 was intended to further Congress' goal "to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace."⁵ Section 713 required the Commission to adopt rules including implementation schedules to ensure that: (1) video programming first published or exhibited after the effective date of our rules (January 1, 1998) is fully accessible through the provision of closed captions; and (2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of our rules through the provision of closed captions.⁶ The closed captioning rules apply to video program distributors, many of whom obtain their programming from third parties. The Commission established an eight-year transition schedule to phase in closed captioning for new video programming with benchmarks set at two-year intervals. Pursuant to that phase in schedule, between January 1, 2002 and December 31, 2003, video programming distributors must provide closed captioning during at least 900 hours of programming per quarter.⁷

The Commission takes very seriously Congress' goal of ensuring access to all persons with hearing disabilities. Based on the information received, we find: (i) this is the first instance in which DCI failed to caption the required number of programming hours; (ii) DCI promptly and voluntarily brought the lapse in captioning to the Commission's attention; (iii) the lapses were inadvertent, resulting in significant part from changes in program schedules made late in the quarter, (iv) DCI has taken affirmative measures to assure that a lapse in captioning will not reoccur; (v) DCI promptly made up the captioning deficits, and exceeded the missed captioning in the following quarter; and (vi) 200 additional captioned hours will be provided on the Discovery Channel and TLC in the coming two quarters.⁸ Accordingly, in light of the actions already taken by DCI, and the actions to be taken by DCI in the upcoming quarters, we conclude that no further enforcement action should be taken with respect to this matter against either DCI or the distributors of the Discovery Channel, TLC, the Travel Channel, or Animal Planet.

² July 15, 2002 Letter from Alexa Verveer, Vice President, Government Relations and Public Policy, DCI to Marlene H. Dortch, Secretary, Federal Communications Commission at 1.

³ 47 USC § 613.

⁴ See *Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming, Video Programming Accessibility*, 12 FCC Rcd 1044, 1045 (1997).

⁵ H.R. Report 104-458, 104th Cong., 2d Sess. 182 (1996).

⁶ 47 U.S.C. § 613(b) & (c).

⁷ 47 C.F.R. § 79.1(b)(ii).

⁸ Failure to comply with the rules may result in a requirement "that the video programming distributor deliver captioned programming in excess of the established benchmarks." See *Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming, Video Programming Accessibility*, 13 FCC Rcd 3272, 3383 (1997).

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DCI is, however, directed to report its compliance with the captioning benchmarks, including the 200 additional hours on the Discovery Channel and TLC during the next two quarters, to the Commission at the end of each quarter for the next two years. This reporting requirement will begin at the close of the third quarter 2002. Upon DCI's successful completion of the additional captioning and reporting requirement discussed herein, we will consider the matter closed. A copy of this letter and the associated correspondence will be placed in a file associated with the delegated authority number referenced above.

Sincerely,


W. Kenneth Ferree
Chief, Media Bureau