

## FCC Initiates Rule Making to Reinstate Video Description Regulations

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On March 3, 2011, the Federal Communications Commission (FCC) initiated a rule making proceeding to reinstate its prior video description rules with certain modifications, as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (Act). The proposed rules would require large market broadcast affiliates of the top four national networks and most cable operators and DBS providers to provide programming with audio narrated descriptions of a television program's key visual elements beginning as soon as first quarter 2012. Davis Wright Tremaine previously summarized the Act in our earlier advisory available [here](#).

The Notice of Proposed Rule Making (NPRM) takes the first step toward restoring the video description regulations that the FCC previously adopted in 2000, but which were subsequently vacated by the U.S. Court of Appeals for the D.C. Circuit. Now with explicit Congressional authorization, the FCC seeks to restore the video description rules by Oct. 8, 2011, as required by the Act. The FCC proposes a quick implementation, with the video description and pass-through rules beginning Jan. 1, 2012. The most significant elements of the reinstated video description rules are:

- Broadcast affiliates of the top four national networks—ABC, CBS, Fox, and NBC—located in the top 25 television markets must provide 50 hours per calendar quarter of prime time and/or children's programming with video descriptions.
- The top five national nonbroadcast networks must provide 50 hours per calendar quarter of prime time and/or children's programming with video descriptions. The proposed rule would be applied to multichannel video programming distributors (MVPDs), including cable operators and DBS providers with 50,000 or more subscribers, and presumably then be applied to the top five networks through affiliation agreements.
- "Live" and "near live" programming is exempt from the rules.
- In order to count toward the requirement, the programming must not have been aired previously with video descriptions, on that particular broadcast station or MVPD channel, more than once.
- All broadcast stations, regardless of market size or affiliation, and all MVPDs, regardless of the number of subscribers they serve, must "pass through" video description when such descriptions are provided and when the station or program distributor has the technical capability to do so.

In addition to proposing to reinstate the rules previously adopted by the FCC, the item asks many practical implementation questions about refreshing market rankings, applicability of the rules to low power television, and what constitutes the "technical capability" to pass through video descriptions. In particular, the FCC seeks to refresh the list of the top 25 DMAs, as well as update the top five national nonbroadcast networks subject to the rule. In determining the top five nonbroadcast networks, the FCC proposes to exclude from the top five any nonbroadcast network that does not provide, on average, at least 50 hours per quarter of prime time non-exempt programming, i.e., programming that is not live or near-live. The NPRM specifically seeks comment from any network that believes it should be excluded from the top five covered networks because it does not offer enough pre-recorded prime time or children's programming.

The item also seeks input regarding the definition of "near live" programming, which the FCC proposes to define as programming performed and recorded less than 24 hours prior to the time it is first aired. Other

than live or near live programming, the FCC proposes not to adopt any new categorical exemptions, but seeks input regarding an exemption based on a showing that compliance would be economically burdensome, similar to the existing exemption for closed captioning.

Finally, the FCC seeks comment on how to accommodate digital television stations that multicast multiple programming streams (i.e., whether it must include descriptions on all four streams), including if a station carries a top-four national network on another stream, and whether it should adopt quality standards for video descriptions, assuming that it has the authority to do so.

Comments in this proceeding will be due 30 days after the NPRM is published in the Federal Register, with Reply Comments due 60 days after publication. Interested parties may file comments with the FCC either in paper or electronically through the FCC's Electronic Comment Filing System. For further questions or assistance with preparing comments, please contact Burt Braverman, Maria T. Browne, Robert Corn-Revere, Paul Glist, Brendan Holland, Brian J. Hurh, or Ronald G. London.

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