



PUBLIC NOTICE

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MEDIA BUREAU SEEKS COMMENT ON RECENT DEVELOPMENTS IN THE VIDEO DESCRIPTION MARKETPLACE TO INFORM REPORT TO CONGRESS

MB Docket No. 11-43

Comments Due: April 1, 2019

Reply Comments Due: May 1, 2019

1. By this Public Notice (PN), the Media Bureau seeks comment on recent developments in the video description marketplace to inform a report to Congress required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) on the availability, use, benefits, and costs of video description, which must be completed no later than October 8, 2019.¹

2. **Background.** Video description is “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”² It makes video programming accessible to individuals who are blind or visually impaired. Pursuant to the CVAA, the Commission has adopted rules requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide video description for a portion of the video programming that they offer to consumers.³

3. The CVAA directed the Commission to reinstate the video description rules previously vacated by the U.S. Court of Appeals for the District of Columbia Circuit,⁴ which the Commission did

¹ 47 U.S.C. § 613(f)(4)(C)(iii). A year after the deadline for the report to Congress, the Commission shall have the authority, based upon the findings, conclusions, and recommendations in the report, to phase in the video description regulations for up to an additional 10 designated market areas each year: (i) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (ii) except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate. *Id.* § 613(f)(4)(C)(iv).

² 47 CFR § 79.3(a)(3).

³ In this context, “video programming” is defined as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” *Id.* § 79.3(a)(4).

⁴ See 47 U.S.C. § 613(f)(1)-(2). In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description. See *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230 (2000) (*2000 Video Description Order*). The D.C. Circuit vacated the rules five months after they went into effect, on the ground that the Commission lacked authority to promulgate video description rules. *Motion Picture Ass’n of Am., Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

through a Report and Order released in 2011.⁵ The CVAA also directed the Commission to study the video description marketplace, specifically how it developed after the rules were reinstated. The Commission was then to make two reports to Congress based on those inquiries. The first report, addressing video description in television programming and video description in video programming distributed on the Internet, had to be completed prior to the adoption of any additional video description regulations. That report was submitted to Congress on June 30, 2014,⁶ and the Commission updated the video description regulations in 2017.⁷ The second and final report, which will be based on the responses to this PN, must be submitted to Congress in 2019.⁸ As discussed below, the Commission may then begin to phase the rules in to additional broadcast markets, or “Designated Market Areas,” if doing so is supported by the “findings, conclusions, and recommendations” of this second report.⁹

4. As noted above, the video description rules were updated in 2017. The updated rules increased the amount of described programming required to be carried by covered broadcast stations and MVPDs to 87.5 hours per quarter.¹⁰ The video description rules now require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top 60 television markets to provide 50 hours per calendar quarter of video-described prime time or children’s programming,¹¹ and to provide an additional 37.5 hours of video-described programming per calendar quarter at any time between 6 a.m. and midnight.¹² In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children’s programming on each of the top five national nonbroadcast networks that they carry on those systems,¹³ and must provide an additional 37.5 hours of video description per calendar quarter at any time between 6 a.m. and midnight.¹⁴

5. The rules also impose video description “pass through” obligations on all network-affiliated broadcast stations regardless of market size,¹⁵ and on all MVPDs regardless of the number of subscribers.¹⁶ Any programming aired with video description must include video description if it is re-

⁵ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011) (*2011 Video Description Order*). Broadcasters and MVPDs were required to be in full compliance with the reinstated video description requirements beginning on July 1, 2012. 47 CFR § 79.3(c)(1).

⁶ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, 29 FCC Rcd 8011 (2014) (*2014 Video Description Report*).

⁷ See *infra* para. 4.

⁸ Specifically, this report must be submitted on October 8, 2019 to the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on Commerce, Science, and Transportation of the United States Senate. 47 U.S.C. § 613(f)(4)(C)(iii).

⁹ See *infra* para. 10.

¹⁰ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 32 FCC Rcd 5962 (2017) (*2017 Video Description Order*).

¹¹ 47 CFR § 79.3(b)(1). See also *2011 Video Description Order*, 26 FCC Rcd at 11849, para. 4. On July 1, 2015, full-power affiliates of the top four television broadcast networks located in markets 26 through 60 became subject to the video description requirements in addition to the top 25 markets already covered by the requirements. See *id.* at 11855-56, para. 16.

¹² 47 CFR § 79.3(b)(1). See also *2017 Video Description Order*, 32 FCC Rcd at 5965, 5970, paras. 7, 15. Covered broadcast stations became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. See *id.* at 5972-73, para. 19.

¹³ 47 CFR § 79.3(b)(4). See also *2011 Video Description Order*, 26 FCC Rcd at 11849-50, para. 4. For purposes of the video description rules, the top five national nonbroadcast networks include only those that reach 50 percent or

aired on the same station or MVPD channel.¹⁷ Video description services for television are provided on a secondary audio stream, and typically a consumer can access video description through an on-screen menu provided by the home television receiver or set-top box.¹⁸

6. Video Description in Television Programming. In preparation for the next report, Section 713(f)(4)(C)(iii) of the Communications Act of 1934 as amended (the Act), which was added by the CVAA, directs the Commission to inquire about the following specific issues related to video description in television programming:

- The types of described video programming that are available to consumers;
- Consumer use of such programming;
- The costs to program owners, providers, and distributors of creating such programming;
- The potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming;
- The benefits to consumers of such programming;
- The amount of such programming currently available; and
- The need for additional described programming in designated market areas outside the top 60.¹⁹

In accordance with Congress' directive, we request comment on each of the issues set forth above, and specifically laid out below, including information on pertinent developments since the previous video description report to Congress in 2014.²⁰

more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the video description rules. 47 CFR § 79.3(b)(4). *See also 2011 Video Description Order*, 26 FCC Rcd at 11854-55, paras. 12-15. The list of the top five networks is updated every three years based on changes in ratings and was last updated on July 1, 2018. 47 CFR § 79.3(b)(4). *See 2017 Video Description Order*, 32 FCC Rcd at 5963, n.7. The top five nonbroadcast networks currently subject to the video description requirements are USA, HGTV, TBS, Discovery, and History. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, MB Docket 11-43, DA 18-508 (rel. May 17, 2018) (*2018 Top Five Nonbroadcast Networks Public Notice*).

¹⁴ 47 CFR § 79.3(b)(4). *See also 2017 Video Description Order*, 32 FCC Rcd at 5965, 5970, paras. 7, 15. Covered MVPDs became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. *See id.* at 5972-73, para. 19.

¹⁵ Specifically, any television broadcast station affiliated or otherwise associated with a television network must pass through video description when it is provided by the network, if the station has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming. 47 CFR § 79.3(b)(3). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463, 2466, n.16 (2016) (*2016 Video Description NPRM*) (“We expect that all stations and MVPDs now have this [pass-through] capability, because of the requirement to provide audible emergency information to persons who are blind or visually impaired, which is also accomplished by means of a secondary audio stream.”).

¹⁶ Similarly, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming. 47 CFR § 79.3(b)(5)(i)-(ii).

¹⁷ *Id.* §§ 79.3(c)(3), (c)(4)(i)-(ii).

¹⁸ The Commission adopted rules under the authority of section 203 of the CVAA requiring apparatus that are designed to receive, play back, or record video programming transmitted simultaneously with sound to make

7. Type and Amount. We solicit data on the amount of video-described programming that is currently available to consumers on television, as well as the types of programming that are provided with video description. We also solicit data on the types of described video programming being used to meet both the 50-hour requirement as well as the expanded hourly programming requirement,²¹ and the amount of rerun programming being used to meet the video description requirements.²² In addition, we seek comment on the amount of children’s programming that is used to meet the video description requirements. We encourage commenters to provide specific examples of video described programs. For covered broadcasters, how much of the overall programming requirement is being met with programming passed through from the national broadcast networks?²³ For covered MVPDs, is any of the video description hours requirement being met with programming that is not passed through with video description from a nonbroadcast network? Are any MVPDs providing video description that is not being passed through from a nonbroadcast network? We seek comment on both programming that is video-described by covered entities to comply with the Commission’s rules and programming that is video-described voluntarily. How much and what kind of video-described programming is being provided voluntarily?²⁴ Our request includes previously-covered nonbroadcast networks that are no longer bound by the obligation to provide the requisite hours of video description per calendar quarter.²⁵ What mechanisms do covered entities use to verify the amount of described programming they provide? Is any of this information publicly available? To the extent covered entities are relying on contractual partners to verify the amount of described programming provided, what are the relevant contractual terms? Also, we have previously noted that broadcast and nonbroadcast networks select the programming that receives video-description.²⁶ We seek comment to clarify if that is in fact the case, and whether other parties, such as program owners and distributors, have a hand in the selection process.²⁷

secondary audio streams available for video description services. *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4907, para. 49 (2013). In addition, the Commission adopted rules under the authority of Sections 204 and 205 of the CVAA to make user interfaces and video programming guides and menus, including access to the secondary audio stream, accessible on televisions, set-top boxes, and other devices used to view video programming. *See Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013).

¹⁹ 47 U.S.C. § 613(f)(4)(C)(iii).

²⁰ *2014 Video Description Report*, 29 FCC Rcd 8011.

²¹ *See* 47 CFR § 79.3(b)(1), (4).

²² *See id.* § 79.3(c)(2) (repeat programming rules).

²³ *See 2016 Video Description NPRM*, 31 FCC Rcd at 2475, para. 27 (“As a practical matter...the included networks themselves, rather than the broadcast stations...generally prepare and provide video description, which the distributors pass through.”).

²⁴ *See 2014 Video Description Report*, 29 FCC Rcd at 8019-20, para. 20 (for examples of voluntary video description programming that was available at that time).

²⁵ *See generally 2018 Top Five Nonbroadcast Networks Public Notice* (2018-2021 covered networks: USA, HGTV, TBS, Discovery, and History). *See also 2017 Video Description Order*, 32 FCC Rcd at 5963, para. 3 (2015-2018 covered networks: USA, TNT, TBS, History, and Disney); *2011 Video Description Order*, 26 FCC Rcd at 11854, para. 12 (2012-2015 covered networks: USA, TNT, TBS, Nickelodeon, and Disney). Therefore, Nickelodeon, Disney, and TNT are the three nonbroadcast networks towards which we direct this specific inquiry. *See, e.g., 2016*

8. Consumer Use and Benefits. We seek comment on the extent to which both visually impaired and non-visually impaired consumers use video description services when viewing television programming, as well as the benefits to consumers of such services. Specifically, we solicit data on the amount of video-described programming that is currently being watched by persons who are blind or visually impaired, members of their households, and other consumers.²⁸ We also seek comment on how consumers can access information about video-described programming from covered entities, such as via program lists and schedules. More specifically, we seek comment on methods used and developed by covered entities to inform consumers about which programs contain video description, such as through their websites, centralized program guides, and other information outlets, and on the effectiveness of their efforts to notify consumers about the availability of video-described programming.²⁹ Further, although we recognize the difficulty inherent in quantifying the intrinsic benefits of video description, we seek comment on how we can calculate the value of video description to individuals who are blind or visually impaired, their family and friends, and other consumers. Are there any data points that quantify or otherwise capture the benefits of video description for audiences?³⁰ Finally, we note that video description is generally provided on the same secondary audio stream as other audio services such as foreign language audio tracks, and as a result is sometimes not available when its provision would conflict with these other uses.³¹ We seek comment on the extent to which there are developments in the marketplace that are enabling or will enable apparatus to handle more than two audio tracks.³²

9. Cost. We request information regarding the costs of providing video description for video programming on television. The Commission recently estimated \$4,202.50 as the maximum cost of adding video description to an hour of video programming, and we seek comment on whether this estimate remains accurate and request data that might impact this estimate.³³ Have there been any technological developments since 2017 that could impact the cost of video description? The *2017 Video Description Order* points to a potential increased demand for video description services that might drive

Video Description NPRM, 31 FCC Rcd at 2474, para. 25, n.89 (“Although Nickelodeon is no longer in the top five nonbroadcast networks currently subject to the video description rules, it appears that Nickelodeon has continued to provide video description voluntarily on some of its children’s programming.”).

²⁶ See *2014 Video Description Report*, 29 FCC Rcd at 8030, para. 42 (noting the video description programming selection decisions made by program networks). See also *2016 Video Description NPRM*, 31 FCC Rcd at 2475, para. 27 (“As a practical matter...the included networks themselves, rather than the broadcast stations...generally prepare and provide video description, which the distributors pass through.”).

²⁷ We emphasize that we do not seek comment on how or why specific programs are chosen for description, but rather aim to clarify the parties involved in the selection process. See *2011 Video Description Order*, 26 FCC Rcd at 11871-72, para. 51.

²⁸ See, e.g., Letter from Anthony Stephens, Director of Advocacy and Governmental Affairs, American Council of the Blind, to Tom Wheeler, Chairman, FCC, at 1-2 (July 25, 2016) (referencing a national study conducted by the American Council of the Blind on measuring the use and value of video described programming and sharing preliminary data from the survey).

²⁹ See, e.g., *2016 Video Description NPRM*, 31 FCC Rcd at 2477, para. 32; *2014 Video Description Report*, 29 FCC Rcd at 8022-24, paras. 25-28.

³⁰ See, e.g., *2017 Video Description Order*, 32 FCC Rcd at n.50 (acknowledging the “viewing value by the hour” for consumers of cable programming promoted by NCTA and presuming that the price of enjoying each hour of programming could be used as a conservative estimate of the value of video described programming after adjusting for the benefits that blind and visually impaired viewers get from programming even without video description).

³¹ See *supra* note 15.

down the price.³⁴ The Commission also pointed to a potential partial offset in costs due to an increase in advertising revenue from additional audience reach of described programming.³⁵ Is there any evidence of described programming reaching a larger audience than it did before the addition of description or indicating that it attracts a wider audience than if the programming did not contain video description? Would such data be useful in determining advertising revenue correlated with video description? Are there any additional financial costs that have been incurred by program owners, providers, and distributors in creating and distributing video-described programming?³⁶ Previously, we noted that the cost of adding video description to programming was paid by program owners.³⁷ We seek comment whether that is still the case. If so, are the costs being passed on to video distributors and providers? Once a program has video description added, do program owners make that programming available to distributors and providers without description as a cheaper or alternative option?

10. Additional Market Areas. Section 713(f)(4)(C)(iv) of the Act grants the Commission the authority, based upon the findings, conclusions, and recommendations in the report to Congress, to phase in the video description requirements for up to an additional 10 designated market areas each year starting after October 8, 2020: (i) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (ii) except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate.³⁸ Pursuant to the Congressional directive to assess the reasonableness of expanding the number of covered market areas, we seek comment on the availability of, and demand or need for, video description outside the currently covered market areas, as well as on the costs to program owners, providers, and distributors. Specifically, we request data on the amount of programming with video description currently available in the market areas outside the top 60, and the amount of video-described programming being passed through by broadcast stations from national networks.³⁹ Would there be benefits to expanding the number of covered market areas, even if programming with video description is already being passed through by broadcast stations from national networks in market areas outside the top 60? We seek comment on the need for additional described programming in market areas outside the top 60 and, specifically, on whether there is any evidence that there is a lack of, or specific demand for more, video described programming in these markets. We also seek comment and request data on whether there are program owners or providers operating outside the top 60 markets who are providing programming with video description that are not also operating within the top 60 markets. We seek comment on the potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming. For example,

³² See *2016 Video Description NPRM*, 31 FCC Rcd at 2479, para. 38 (noting the expectation “that at some point in the near future, due to voluntary upgrades and equipment obsolescence, broadcasters, MVPDs, and the installed base of consumer equipment will be sufficiently advanced to handle a video description audio track that does not conflict with any other program-related service”).

³³ See *2017 Video Description Order*, 32 FCC Rcd at 5966-67, para. 9.

³⁴ *Id.* at n.36. See, e.g., American Council of the Blind, Press Release, *Hulu Becomes Latest Streaming Service to Commit to Accessibility for Blind Users*, Oct. 17, 2018, available at <http://www.acb.org/hulu-accessibility> (noting that Hulu has agreed to provide video description tracks for as much of its streaming content as possible).

³⁵ *2017 Video Description Order*, 32 FCC Rcd at n.35.

³⁶ See *supra* note 15.

³⁷ See *2011 Video Description Order*, 26 FCC Rcd at 11851-52, para. 8 (“[M]ost video description has historically been created by programmers with whom broadcast stations and MVPDs contract for distribution of their content.”).

³⁸ See 47 U.S.C. § 613(f)(4)(C)(iv).

³⁹ See *supra* note 23.

we noted in the *2014 Video Description Report* some of the costs associated with adding video description like voiceover artist fees.⁴⁰ Is there any evidence that description costs differ for programming created outside the top 60 market areas?

11. Video-On-Demand. We seek comment on the availability of video-on-demand (VOD) programming that includes video description where such programming has previously been carried by that MVPD with video description. How much video-described programming, if any, is being provided on VOD?⁴¹ Are there technical and financial costs in providing video described programming on VOD for MVPDs and other distributors?

12. Video Description in Video Programming Distributed on the Internet. In preparation for the *2014 Video Description Report*, the Commission sought comment on “[t]he technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol (“IP”).”⁴² We ask commenters to provide any updated information related to these issues, costs, and benefits, as well as any other relevant legal and policy issues regarding the provision of video description on video programming distributed on the Internet.⁴³

13. Other Issues. We ask commenters to provide information on any other relevant legal and policy issues regarding the provision of video description in television programming that can help inform the Commission’s report to Congress.

14. Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁴⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

⁴⁰ See *2014 Video Description Report*, 29 FCC Rcd at 8032, para. 47.

⁴¹ See *id.* at 2478-79, para. 37 (“If a program is carried on a linear programming stream with description and also made available on the MVPD’s VOD service, it is not clear whether MVPDs are making the video description available to the VOD viewer.”).

⁴² Public Notice, *Media Bureau Seeks Comment on Video Description in Video Programming Distributed on Television and on the Internet*, 28 FCC Rcd 9043 (2013).

⁴³ We note that the Commission’s regulations require video description only by certain television broadcast stations and MVPDs, and do not apply to IP-delivered video programming that is not otherwise an MVPD service.

⁴⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
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- Filings are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, telephone (202) 418-0270.
- For further information, contact Lyle Elder, Lyle.Elder@fcc.gov, (202) 418-2120, or Maria Mullarkey, Maria.Mullarkey@fcc.gov, (202) 418-2120.

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