

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
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DA 21-497

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MEDIA BUREAU SEEKS COMMENT ON TBS'S PETITION FOR LIMITED WAIVER OF AUDIO DESCRIPTION REQUIREMENTS

MB Docket No. 11-43

Comments Due: June 1, 2021

Reply Comments Due: June 14, 2021

WarnerMedia, LLC (WarnerMedia), on behalf of its wholly-owned, nonbroadcast programming network, TBS (collectively, TBS), has filed a petition¹ requesting that the Media Bureau grant a limited waiver of the Commission's requirement that covered entities provide a certain amount of audio described programming per calendar quarter. Specifically, TBS requests a limited waiver of section 79.3(b)(4) of the Commission's rules covering the period April 1, 2021, through June 30, 2024, for multichannel video programming distributor (MVPD) systems that carry TBS, subject to the condition that the network meet an alternative minimum requirement for providing described programming.²

Audio description³ makes video programming⁴ more accessible to individuals who are blind or visually impaired through "[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue."⁵ The Commission's audio description rules, adopted pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),⁶ require MVPDs that serve 50,000 or more subscribers to provide 87.5 hours of audio description per calendar quarter on channels carrying each of the top five national nonbroadcast

¹ Request of TBS for Limited Waiver of Audio Description Rule, MB Docket No. 11-43 (filed March 31, 2021) (Petition).

² TBS also requests a waiver of section 79.3(c)(2) of the Commission's rules if needed to comply with any alternative minimum description requirement. Petition at 2, n. 2.

³ The Commission recently modernized the terminology in part 79 of the Commission's rules to use the more common and widely understood term "audio description" rather than "video description." *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 35 FCC Rcd 12577 (Oct. 27, 2020) (*2020 Audio Description Order*). The Commission has long considered the terms "video description" and "audio description" to be synonymous. *See, e.g.*, 47 CFR § 79.3(a)(3).

⁴ "Video programming" refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media. 47 U.S.C. § 613(h)(2); 47 CFR § 79.3(a)(4).

⁵ 47 CFR § 79.3(a)(3).

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

networks.⁷ To meet the quarterly requirement, covered entities may count each program they air with audio description no more than twice on a given channel (commonly referred to as the “repeat rule”).⁸

The top five national nonbroadcast networks are defined by an average of the national audience share during prime time among nonbroadcast networks that reach 50 percent or 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 audio description rules.⁹ The Bureau updates the list of top five national nonbroadcast networks every three years to account for changes in ratings, and the third triennial update will occur on July 1, 2021, based on the 2019 to 2020 ratings year.¹⁰ TBS is currently a top five national nonbroadcast network subject to the audio description rules and will remain so during the next triennial period beginning on July 1, 2021.¹¹

In 2019, the Bureau granted USA Network a limited waiver of the rules through the end of the current triennial period on June 30, 2021 based on the “unique difficulties” it faced as a nonbroadcast network airing “a large amount of repeat programming.”¹² The USA Network limited waiver was granted subject to the condition that the network air at least 1,000 hours of described programming each quarter without regard to the number of repeats and describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter.¹³

TBS requests a waiver similar to the limited waiver granted to USA Network during the current triennial period due to the “significant and growing challenge” the repeat rule presents to its programming strategy.¹⁴ Specifically, TBS requests a waiver of section 79.3(b)(4) of the audio description rules for MVPDs carrying TBS programming that are unable to provide 87.5 hours of described programming in

⁷ 47 CFR § 79.3(b)(4). The rule requires that 50 hours per calendar quarter be provided in prime time or during children’s programming, while the additional 37.5 hours may be provided at any time between 6 a.m. and 11:59 p.m. local time. *Id.*

⁸ 47 CFR § 79.3(c)(2).

⁹ 47 CFR § 79.3(b)(4). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd at 11854-55, paras. 12-15 (2011) (*2011 Audio Description Order*). “Live or near-live programming” is defined as programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor. 47 CFR § 79.3(a)(7).

¹⁰ 47 CFR § 79.3(b)(4); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, MB Docket No. 11-43, DA 21-281, para. 1 (MB 2021) (*2021 Triennial Nonbroadcast Order and Public Notice*).

¹¹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, 33 FCC Rcd 4915, para. 1 (MB 2018); *2021 Triennial Nonbroadcast Order and Public Notice* (announcing that, beginning July 1, 2021, the top five national nonbroadcast networks will be TLC, HGTV, Hallmark, History, and TBS).

¹² *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 34 FCC Rcd 9335, 9337-38, para. 7 (MB 2019) (*USA Network Order*).

¹³ *Id.* at 9338, para. 8.

¹⁴ Petition at 4-5. TBS claims that, due in part to the repeat rule, it has been a challenge to comply with the audio description rules since the Commission’s quarterly hours threshold increased to 87.5, despite airing on average more than 5,000 hours of described programming annually from 2018 to 2020 without regard to repeats and adding audio description to 100 percent of its newly produced programming in the first and fourth quarters of 2020. *Id.* at 4. TBS further claims that a waiver would allow it “greater flexibility to account for expected future changes in the programming mix, which could include more repeat programming, less newly produced programming, and more live and near live programming, including during prime time, such as a new Major League Baseball game on Tuesday nights.” *Id.* at 5, n. 13.

any calendar quarter from April 1, 2021, through June 30, 2024.¹⁵ TBS requests this waiver subject to the conditions that TBS would: (1) air at least 1,000 hours of described programming each quarter (and more than 1,400 hours of described programming on average per quarter over the waiver period) without regard to the number of repeats; and (2) describe 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of its receipt from a production company.¹⁶ Additionally, if granted the limited waiver, WarnerMedia commits that it would describe 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt on TNT and TruTV, TBS sister networks.¹⁷

TBS argues that the requested waiver would “support the public’s interest in the provision of [audio] description with programming, while providing flexibility to accommodate successful programming models.”¹⁸ TBS further contends that the commitments it proposes in the petition “will result in much more described programming” by exceeding conditions established in the USA Network waiver order,¹⁹ and that it has discussed the waiver request with accessibility advocates, “all of whom expressed their support.”²⁰ We seek comment on TBS’s request.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket No. 11-43. 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). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- 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.
- Filings can be sent 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.
 - 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

¹⁵ Petition at 2, 7.

¹⁶ *Id.* at 2, 8.

¹⁷ *Id.* at 8. We note that, although TBS has proposed to commit itself to providing additional audio description on programming airing between 6:00 a.m. and midnight ET, our rules require covered entities to provide 37.5 hours of described programming on the top five national nonbroadcast networks “between 6 a.m. and 11:59 p.m. local time.” 47 CFR § 79.3(b)(4).

¹⁸ Petition at 8-9 (quoting *USA Network Order*).

¹⁹ *Id.* at 8.

²⁰ *Id.* at 2, 8 (describing discussions between AT&T, on behalf of WarnerMedia, and representatives of the American Council for the Blind, National Federation for the Blind, American Foundation for the Blind, and American Printing House for the Blind).

- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFs. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Michael Scurato (202-418-2083; Michael.Scurato@fcc.gov).

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