

# PUBLIC NOTICE

Federal Communications Commission  
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Washington, DC 20554

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DA 24-598

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

MB Docket No. 11-43

Comments Due: June 28, 2024

Reply Comments Due: July 5, 2024

Warner Bros. Discovery, Inc. (WBD), on behalf of its wholly-owned, nonbroadcast programming networks, TBS and TNT, has filed a petition<sup>1</sup> 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, WBD requests a limited waiver of section 79.3(b)(4) of the Commission's rules covering the period July 1, 2024, through June 30, 2027, for multichannel video programming distributor (MVPD) systems that carry TBS and TNT.

Audio description makes video programming<sup>2</sup> 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."<sup>3</sup> The Commission's audio description rules, adopted pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),<sup>4</sup> 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 networks.<sup>5</sup> 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").<sup>6</sup>

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

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<sup>1</sup> Request of Warner Bros. Discovery, Inc. for Limited Waiver, MB Docket No. 11-43 (filed June 14, 2024) (Petition).

<sup>2</sup> "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).

<sup>3</sup> 47 CFR § 79.3(a)(3).

<sup>4</sup> 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).

<sup>5</sup> 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.*

<sup>6</sup> 47 CFR § 79.3(c)(2).

or otherwise exempt under the audio description rules.<sup>7</sup> The Bureau updates the list of top five national nonbroadcast networks every three years to account for changes in ratings, and the fourth triennial update will occur on July 1, 2024, based on the 2022 to 2023 ratings year.<sup>8</sup> TBS is currently in the top five national nonbroadcast networks subject to the audio description rules, and TNT will join TBS in the top five nonbroadcast networks during the next triennial period beginning July 1, 2024.<sup>9</sup>

WBD requests a waiver for TNT and TBS similar to the limited waiver granted to TBS during the current triennial period,<sup>10</sup> because it contends that the repeat rule makes it “extremely difficult, and sometimes impossible” for its networks to comply with the Commission’s rules.<sup>11</sup> Specifically, WBD requests a waiver of section 79.3(b)(4) of the audio description rules for MVPDs carrying TBS and TNT programming that are unable to provide 87.5 hours of described programming in any calendar quarter from July 1, 2024, through June 30, 2027.<sup>12</sup> WBD 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.<sup>13</sup> Additionally, if granted the limited waiver, WBD commits that it would describe 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within seven business days of receipt on TBS’s

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<sup>7</sup> 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).

<sup>8</sup> 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 24-184, para. 1 (MB 2024) (*2024 Triennial Nonbroadcast Order and Public Notice*).

<sup>9</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, DA 21-281, para. 1 (MB 2021); *2024 Triennial Nonbroadcast Order and Public Notice* (announcing that, beginning July 1, 2024, the top five national nonbroadcast networks will be HGTV, Hallmark, TLC, TNT, and TBS).

<sup>10</sup> In 2021, the Bureau previously granted TBS a limited waiver of the rules through the end of the current triennial period on June 30, 2024 based on the “unique challenge[s]” it faced as a nonbroadcast network airing “substantial repeat, live, or near-live programming.” *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, DA 21-1013, para. 9 (MB 2021) (*2021 TBS Order*). The TBS limited waiver was granted subject to the conditions that the network (1) air at least 1,000 hours of described programming each quarter (and more than 1,400 hours of audio described programming on average per quarter over the entire waiver period) without regard to the number of repeats, and (2) audio describe all newly produced, non-live programming aired between 6:00 a.m. and 11:59 p.m. local time within three business days of its receipt from a production company. *Id.* at 4, para. 8. Additionally, TBS’s then-owner, WarnerMedia (now WBD), agreed to provide audio description for 100 percent of its newly-produced, non-live programming on commonly-owned networks, TNT and TruTV, aired between 6:00 a.m. and 11:59 p.m. local time within three business days of receipt. *Id.*

<sup>11</sup> Petition at 2. WBD claims that video programmers have learned over time that airing repeat programming attracts and retains the greatest number of subscribers possible. *Id.* According to WBD, because TNT and TBS carry a “significant amount” of live or near-live programming, the repeat rule “makes it difficult or nearly impossible to meet the hours threshold in the remaining time, particularly because many of those hours are required to be scheduled in prime time slots.” *Id.*

<sup>12</sup> Petition at 2, 11.

<sup>13</sup> *Id.* at 12.

sister network, TruTV.<sup>14</sup> With regard to TNT, WBD requests this waiver subject to the conditions that TNT would: (1) air at least 2,500 hours of audio described programming each year, 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 receipt for scripted programming, and seven business days for non-scripted programming.<sup>15</sup>

WBD argues that the requested waiver would support the public interest by providing thousands of hours more of audio described programming than would normally be required, including “the newest original programming offered on several of the most popular programming networks.”<sup>16</sup> Second, WBD contends that the waiver is consistent with precedent, as the Bureau previously found in the *2021 TBS Order* that the repeat rule poses “unique challenges” to TBS, and by extension TNT, based on their programming models.<sup>17</sup> WBD also notes that its request was developed collaboratively and supported by the American Council for the Blind and the National Federation for the Blind.<sup>18</sup> We seek comment on WBD’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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
  - Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - 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.
  - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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<sup>14</sup> *Id.* In its 2021 request, WarnerMedia committed TruTV to describe programming within three business days of receipt for both scripted and non-scripted programming. WBD now argues that this commitment is untenable given the increase in unscripted programming on TNT and TBS and the “additional operational challenges” of audio describing unscripted programming within a three-day time frame. *Id.*

<sup>15</sup> Petition at 13. WBD notes that TNT airs a greater amount of repeat, live, and near-live programming than TBS, and therefore requests that compliance be measured on a calendar year basis, rather than a quarterly basis, to account for seasonal demand of sports schedules. *Id.* at 12-13.

<sup>16</sup> *Id.* at 13-14.

<sup>17</sup> *Id.* at 14.

<sup>18</sup> *Id.* at 1.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

*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 Diana Sokolow (202-418-0588; [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov)).

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