

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Video Description: Implementation of the Twenty-
First Century Communications and Video
Accessibility Act of 2010
MB Docket No. 11-43

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2024

Released: August 8, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a petition filed by Warner Bros. Discovery, Inc. (WBD) on behalf of its wholly owned nonbroadcast programming networks TBS and TNT, for a limited waiver of the Commission’s audio description rules applicable to the top five nonbroadcast networks.1 Specifically, WBD requests that the Commission grant TBS and TNT, two of the top five nonbroadcast networks, a limited waiver of section 79.3(b)(4) of the Commission’s audio description rules, subject to certain conditions.2 Because WBD has made a commitment to provide a substantial amount of audio description on TBS and TNT, as well as on TruTV, that exceeds the current quarterly requirement, and because the unopposed Petition has the support of advocates for blind and visually impaired consumers, we grant the limited waiver for TBS and TNT, subject to the conditions described below.

II. BACKGROUND

2. Audio description makes video programming3 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.”4 The Commission’s audio description rules, adopted pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),5 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.6 To meet the quarterly requirement, covered entities may count each program they air with

1 Request of Warner Bros. Discovery, Inc. for Limited Waiver, MB Docket No. 11-43 (filed June 16, 2024) (Petition).

2 47 CFR § 79.3(b)(4).

3 “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).

4 47 CFR § 79.3(a)(3).

5 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).

6 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.

audio description no more than twice on a given channel (commonly referred to as the “repeat rule”).⁷

3. 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.⁸ The Media Bureau (Bureau) updates the list of top five national nonbroadcast networks every three years to account for changes in ratings, and the fourth triennial update occurred on July 1, 2024, based on the 2022 to 2023 ratings year.⁹ TBS and TNT are currently two of the top five national nonbroadcast networks subject to the audio description rules.¹⁰

4. The Bureau has previously waived its audio description rules and applied alternative audio description requirements with respect to a top five national nonbroadcast network in certain, limited circumstances. Most recently, in 2021 the Bureau granted TBS a limited waiver of the rules through the end of the triennial period concluding on June 30, 2024 based on the “unique challenge[s]” it faced as a nonbroadcast network airing “substantial repeat, live, or near-live programming.”¹¹ 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.¹² Additionally, TBS’s then-owner, WarnerMedia, LLC, 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.¹³

5. In its Petition, WBD requests a limited waiver of section 79.3 for TBS and TNT from July 1, 2024 to June 30, 2027, which are the dates of the current triennial period.¹⁴ As described more fully below, WBD claims that the repeat rule results in “only a small fraction of the hours of described programming that TBS and TNT can and do provide each calendar quarter” counting towards the audio description requirement, and this “significantly impacts the programming discretion of TBS, TNT, and

⁷ 47 CFR § 79.3(c)(2).

⁸ 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 11847 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).

⁹ 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*).

¹⁰ *See 2024 Triennial Nonbroadcast Order and Public Notice* (granting exemptions to Fox News Channel, ESPN, and MSNBC, on the basis that each provides less than 50 hours per calendar quarter of prime time programming that is not live or near-live, and announcing HGTV, Hallmark, TLC, TNT, and TBS as the top five national nonbroadcast networks subject to the audio description rules as of July 1, 2024).

¹¹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, MB Docket No. 11-43, 36 FCC Rcd 12646, 12650, para. 9 (MB 2021) (*2021 TBS Order*).

¹² *Id.* at 12649, para. 8.

¹³ *Id.* *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Memorandum Opinion and Order, 34 FCC Rcd 9335, para. 1 (MB 2019) (*USA Network Order*) (granting USA Network a limited waiver subject to the conditions).

¹⁴ Petition at 1.

networks with a similar programming strategy.”¹⁵ In addition, WBD explains that “because TBS and TNT routinely air popular live or near-live programming both inside and outside prime time, these networks have even fewer hours in which to schedule described programming that has not already been counted twice toward meeting the threshold.”¹⁶ As a result, WBD seeks a limited waiver for TBS and TNT, subject to the following conditions. With regard to TBS, WBD proposes that the waiver be conditioned on: “(i) airing at least 1,000 hours of audio-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 (ii) describing 100% of newly produced, non-live programming aired between 6:00 a.m. midnight ET within three business days of its receipt from a production company.”¹⁷ WBD additionally proposes that “TruTV would audio describe 100% 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 within seven business days of receipt for non-scripted programming.”¹⁸ With regard to TNT, WBD proposes that the waiver be conditioned on: “(i) airing at least 2,500 hours of audio described programming each year, without regard to the number of repeats; and (ii) audio describing 100% 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 within seven business days for non-scripted programming.”¹⁹ Unlike for TBS, WBD requests that compliance for TNT would be measured on a calendar year basis rather than a quarter basis, due to the additional flexibility needed for seasonal schedules.²⁰ The waiver would apply to MVPDs carrying TBS and/or TNT programming.²¹

6. On June 21, 2024, the Bureau issued a Public Notice seeking comment on WBD’s Petition.²² No commenter opposes WBD’s request.²³ WBD indicates that it “has discussed this Request with representatives of the American Council for the Blind and National Federation for the Blind and is authorized to state their consent to the grant of this request.”²⁴

7. We evaluate WBD’s waiver request pursuant to the general waiver authority in section 1.3 of the Commission’s rules.²⁵ To waive a requirement for good cause, we must explain (1) why deviating from the general requirement serves the public interest, and (2) the nature of the special

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.*

²¹ *Id.* at 5.

²² *Media Bureau Seeks Comment on TBS and TNT’s Petition for Limited Waiver of Audio Description Requirements*, Public Notice, MB Docket No. 11-43, DA 24-598 (MB 2024).

²³ We note that One Ministries, Inc. (OMI) submitted a comment in response to the Public Notice. However, the comment concerns OMI’s own petitions for reconsideration in unrelated proceedings, and it takes no position on this waiver proceeding. *See* One Ministries, Inc. Comments at 1-2 (June 21, 2024). Therefore, we do not address these comments here.

²⁴ Petition at 1.

²⁵ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

circumstances.²⁶

III. DISCUSSION

8. We find that there is good cause to grant WBD's request for a limited waiver of the audio description rules through the current triennial period beginning on July 1, 2024 and ending on June 30, 2027. This limited waiver applies to every covered MVPD across the country, with respect to the channels on which it carries TBS and TNT.

9. We grant WBD's waiver subject to certain conditions. Specifically, with respect to TBS, the waiver is subject to TBS's commitment to (1) air at least 1,000 hours of audio-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) 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. Additionally, WBD will provide audio description on TruTV for 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 within seven business days of receipt for non-scripted programming.²⁷ With respect to TNT, the waiver is subject to TNT's commitment to (1) air at least 2,500 hours of audio described programming each year,²⁸ without regard to the number of repeats; and (2) audio 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 within seven business days of receipt for non-scripted programming.

10. As we emphasized in the *2021 TBS Order*, we continue to recognize the importance of audio description in making video programming more accessible.²⁹ Still, we acknowledge that compliance with the repeat rule presents unique challenges to TBS and TNT based on their programming models. According to WBD, both TBS and TNT's programming schedules include limited hours of original or once-repeated content that can count toward the quarterly programming requirement for audio description, and an increasing amount of live, near-live, and repeat programming.³⁰ Additionally, these networks "routinely air popular or near-live programming both inside and outside prime time," and therefore have "even fewer hours in which to schedule described programming that has not already been counted twice toward meeting the threshold."³¹ WBD further contends that TNT's programming line-up is "constantly evolving," and that the waiver will allow for flexibility in accommodating these changes.³² We find that WBD has sufficiently detailed the unique challenge that the repeat rule poses for TBS and TNT based on their programming strategies, which include substantial repeat, live, or near-live programming. Therefore, we find that granting WBD limited and conditional relief from the audio description rules serves the public interest by allowing these networks to continue to evolve their programming models while ultimately increasing the amount of audio description available on television.

²⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁷ Although TruTV's prior audio description commitment did not distinguish between scripted and non-scripted programming, WBD notes that it has become "untenable" to meet the three business day requirement for unscripted programming due to the additional "operational challenges" posed by audio describing unscripted programming and the increased volume of such programming. Petition at 12.

²⁸ WBD requests that TNT's waiver be measured on a calendar year basis, rather than a quarterly basis, to allow for flexibility around seasonal schedules. *Id.* at 13.

²⁹ *2021 TBS Order*, 36 FCC Rcd at 12649, para. 9. *See also USA Network Order*, 34 FCC Rcd at 9338, para. 9.

³⁰ Petition at 4, 6, 9.

³¹ *Id.* at 4.

³² *Id.* at 3.

11. WBD's commitment to providing a significant amount of audio described programming is a significant factor in our decision to grant the limited waivers here. In the first quarter of 2024, TBS aired 1,791 hours of audio-described programming, far exceeding the 87.5 hours required by the Commission's rules.³³ Because a large percentage of that programming was repeat programming that aired between three and six times that quarter, however, it could only be counted toward the compliance requirement twice pursuant to the repeat rule.³⁴ Similarly, TNT aired 807 hours of audio described programming with a large percentage of repeats that could not be counted absent a waiver.³⁵

12. WBD's proposed conditions for TBS are comparable to the ones granted in the *2021 TBS Order*.³⁶ We also acknowledge that WBD has committed to providing additional audio described programming on its affiliate network, TruTV.³⁷ Specifically, TruTV will audio describe all newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.³⁸ Regarding TNT, WBD's proposal of 2,500 hours per calendar year of audio described programming without regard to the number of repeats exceeds the minimum hours required by the rules³⁹ and is "tailored to reflect the greater amount of repeat, live, and near-live programming on TNT" as compared to TBS.⁴⁰ As with TruTV, TNT also will audio describe all newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.⁴¹

13. Moreover, we take notice of WBD's indication that the American Council for the Blind and the National Federation of the Blind consent to the grant of the waiver.⁴² We find that granting WBD's Petition, with the aforementioned conditions, has the potential to expand accessible content for viewers who are blind or visually impaired.

³³ *Id.* at 9.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Petition at 11-12; *2021 TBS Order*, 36 FCC Rcd at 12649, para. 8.

³⁷ In the *2021 TBS Order*, the Bureau restated Commission guidance that it "will look favorably upon waiver requests demonstrating that (1) all pre-recorded programming between 6 A.M. and midnight in the relevant calendar quarter is being audio described, even if not all of it can be counted toward the rules and (2) the petitioner commits to provide additional hours of video description in calendar quarters other than the one for which it is seeking the waiver, or commits to provide the additional hours of video description in the same calendar quarter but on an affiliated network." *2021 TBS Order*, 36 FCC Rcd at 12648, n.16 (quoting *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 32 FCC Rcd 5962, 5972 (2017)); *id.* at 12649, para. 8.

³⁸ Petition at 12. The *2021 TBS Order* included a commitment to "provide audio description for 100 percent of 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." *2021 TBS Order*, 36 FCC Rcd at 12649, para. 8. We are persuaded by the explanation in the Petition that "WBD has found that prior commitment challenging" particularly due to the increase in the amount of unscripted programming and the "increased volume of such programming." Petition at 12.

³⁹ The rules require 87.5 hours of audio described programming per calendar quarter, totaling 350 hours per calendar year. See 47 CFR § 79.3(b)(4). By airing 2,500 hours of audio described programming per calendar year, TNT will greatly exceed the minimum number of hours required by the rules.

⁴⁰ Petition at 12-13.

⁴¹ *Id.* at 13.

⁴² *Id.* at 1.

14. For these reasons, we find good cause to grant WBD a limited waiver of section 79.3(b)(4) of the Commission's audio description rules for MVPDs carrying TBS and TNT for the period beginning on July 1, 2024, and ending on June 30, 2027, subject to the conditions described above.⁴³

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and 1.3, this Memorandum Opinion and Order **IS ADOPTED**.

16. **IT IS FURTHER ORDERED** that the petition for waiver of section 79.3(b)(4) of the Commission's rules, 47 CFR § 79.3(b)(4), filed by Warner Bros. Discovery, Inc. is **GRANTED**, subject to the conditions described herein.

17. 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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

⁴³ We note that WBD filed its waiver request only two weeks before the July 1 effective date. In order to allow sufficient comment and processing time, we urge WBD to file future waiver requests in a more timely fashion.