

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

NOTICE OF PROPOSED RULEMAKING

Adopted: April 22, 2020

Released: April 23, 2020

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose to expand our video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)1 directed the Commission to submit a report to Congress on October 8, 2019, assessing certain aspects of video description.2 The CVAA also provides that as of October 8, 2020, “based upon the findings, conclusions, and recommendations” contained in that report, the Commission has the authority to phase in the video description regulations for up to an additional 10 DMAs each year, if it determines that the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.3 Through this NPRM, the Commission invites comment on its proposal to phase in its video description regulations for an additional 10 DMAs each year for four years, including comments on whether the costs of such an expansion would be reasonable.4 This proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

1 Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(1).

2 47 U.S.C. § 613(f)(4)(C)(iii). See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350 (2019) (Second Report). As directed by the CVAA, the Second Report was submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

3 47 U.S.C. § 613(f)(4)(C)(iv). Specifically, pursuant to the “continuing Commission authority” provision of the CVAA, the Commission has authority “to phase in the video description regulations for up to an additional 10 [DMAs] 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 [DMAs] where it deems appropriate.” Id. See also infra paras. 5-6 (discussing the two reports to Congress regarding video description).

4 In the Second Report, the Media Bureau (Bureau) indicated that it would issue a public notice in early 2020 “to consider whether the costs of such an expansion would be reasonable.” Second Report, 34 FCC Rcd at 9352, n.9. Rather than issue a public notice, we have decided to issue this NPRM containing specific proposals, which will similarly allow the Commission to develop a record on all relevant issues, including costs and benefits.

2. In addition, we propose to modernize the terminology in part 79 of the Commission's regulations to use the term "audio description" rather than "video description." While the CVAA uses the term "video description," there appears to be wide support among consumer organizations and industry for the proposed change. The Commission invites comment on this proposal.

## II. BACKGROUND

3. Video description<sup>5</sup> makes video programming<sup>6</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>7</sup> Video description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio. As required by section 202 of the CVAA, the Commission adopted rules in 2011 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 on television.<sup>8</sup>

4. The current video description rules 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 of video-described programming per calendar quarter during prime time or on children's programming,<sup>9</sup> as well as an additional 37.5 hours of video-described programming per calendar quarter at any time between 6 a.m. and midnight.<sup>10</sup> 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 on children's programming, as well as an

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<sup>5</sup> We note that although the CVAA uses the term "video description" in this context, the Commission considers the terms "video description" and "audio description" to be synonymous and welcomes commenters to use either term to describe this service for purposes of this rulemaking proceeding. See *infra* note 51.

<sup>6</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>7</sup> 47 CFR § 79.3(a)(3).

<sup>8</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847 (2011) (*2011 Video Description Order*). See also 47 CFR § 79.3. In accordance with the CVAA, the *2011 Video Description Order* reinstated with certain modifications the Commission's video description rules that the United States Court of Appeals for the District of Columbia Circuit previously had vacated due to its finding that the Commission had insufficient authority for its rules. See *Motion Picture Ass'n of America, Inc. v. Federal Communications Comm.*, 309 F.3d 796 (D.C. Cir. 2002).

<sup>9</sup> 47 CFR § 79.3(b)(1). See also *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 (2017) (*2017 Video Description Order*) (increasing the amount of described programming that covered broadcast stations and MVPDs are required to provide). 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 *2011 Video Description Order*, 26 FCC Rcd at 11855-56, para. 16.

<sup>10</sup> 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. In addition, the rules require "[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description." 47 CFR § 79.3(b)(3).

additional 37.5 hours of video description per calendar quarter at any time between 6 a.m. and midnight, on each of the top five national nonbroadcast networks that they carry on those systems.<sup>11</sup> The top five nonbroadcast networks currently subject to the video description requirements are USA Network, HGTV, TBS, Discovery, and History.<sup>12</sup>

5. The CVAA required the Commission to submit two reports to Congress related to video description. In the First Report, submitted to Congress in June 2014, the Bureau found that “[t]he availability of video description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and the industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules.”<sup>13</sup> The Bureau also found, however, that “consumers report the need for increased availability of and easier access to video-described programming, both on television and online.”<sup>14</sup>

6. The CVAA required the Commission’s Second Report to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [video-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.”<sup>15</sup> The Bureau submitted the Second Report to Congress in October 2019. This report found that consumers who are blind or visually impaired derive significant benefits from the use of video description and, while it observed that there has been significant progress in the types and amount of video-described programming available over the past five years, it also noted that consumers would benefit from additional described programming.<sup>16</sup> The Bureau observed that the record “indicates that consumers seek expansion of the video description requirements to DMAs outside the top 60, and it provides no basis for concluding that consumers would benefit less from video description in those markets than in other areas.”<sup>17</sup>

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<sup>11</sup> 47 CFR § 79.3(b)(4). For purposes of the video description rules, the top five national nonbroadcast networks include only those 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 video description rules. *Id.* 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 (remaining in effect until June 30, 2021). *See id.* 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 2017 Video Description Order*, 32 FCC Rcd at 5972-73, para. 19. In addition, 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).

<sup>12</sup> *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket 11-43, Order and Public Notice, 33 FCC Rcd 4915 (2018). On October 7, 2019, the Bureau released an order that grants a limited waiver of the video description rules with respect to USA Network for the remainder of the current ratings period ending on June 30, 2021, but it declined to grant a safe harbor from the video description requirements for other similarly situated, top 5 nonbroadcast networks. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, MB Docket No. 11-43, 34 FCC Rcd 9335 (2019). As a condition of the waiver, USA Network must air at least 1,000 hours of described programming each quarter without regard to the number of repeats and must describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter. *Id.*

<sup>13</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report to Congress, 29 FCC Rcd 8011, para. 1 (2014) (First Report).

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

<sup>15</sup> 47 U.S.C. § 613(f)(4)(C)(iii)(IV), (VII).

<sup>16</sup> Second Report, 34 FCC Rcd at 9351-52, para. 3.

<sup>17</sup> *Id.* at 9362, para. 28.

7. As to the information regarding the costs to program owners, providers, and distributors of creating video-described content, the Bureau reported in the Second Report that the maximum cost of creating video-described programming remains consistent with the Commission's 2017 estimate of \$4,202.50 per hour, while the cost of described pre-recorded programming can be as low as \$1,000 per hour.<sup>18</sup> The Bureau also noted that, according to one industry commenter, "costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description."<sup>19</sup> This commenter further claimed that some stations "could be forced 'to devote a substantial portion of their limited resources to compliance'" and some might "face significant expenditures, such as the purchase of additional equipment, to facilitate video description."<sup>20</sup> The Second Report also noted a consumer commenter's claim that "passing through [an] audio stream that is already included on national broadcast network programming should not be burdensome, regardless of market, because the emergency information rules already require the use of the secondary audio stream."<sup>21</sup> In its summary, the Bureau stated that commenters did not offer "detailed or conclusive information" as to the costs of such an expansion or a station's ability to bear those costs.<sup>22</sup> It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable,<sup>23</sup> explaining that, "[s]hould the Commission seek to expand the video description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that 'the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.'"<sup>24</sup>

### III. DISCUSSION

#### A. Expanding the Number of Markets Subject to Video Description Requirements

8. We propose to phase in the video description requirements for an additional 10 DMAs each year for four years, beginning on January 1, 2021, and we invite comment on this proposal. As indicated in the Second Report, consumers seek expansion of the video description requirements to additional DMAs,<sup>25</sup> and we believe our proposal will provide significant benefits to consumers who are blind or visually impaired and are located in DMAs 61 through 100. As stated, the CVAA provides the Commission with authority for this phase-in, "based upon the findings, conclusions, and recommendations contained in the [Second Report]," "(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 [DMAs] where it deems appropriate."<sup>26</sup> We propose that any further expansion beyond DMA 100 would be undertaken only following a future determination of the reasonableness of the associated costs.

9. We tentatively conclude that the costs of implementing the video description regulations in markets 61 through 100 are reasonable. The Second Report indicates that the costs of adding

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<sup>18</sup> *Id.* at 9361, paras. 23, 24.

<sup>19</sup> *Id.* at 9362, para. 27 (citing National Association of Broadcasters (NAB) Comments for Second Report).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (citing Timothy Wynn (Wynn) Comments for Second Report).

<sup>22</sup> *Id.* at 9362, para. 28.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (quoting 47 U.S.C. § 613(f)(4)(C)(iv)(I)).

<sup>25</sup> *Id.* at 9362, para. 26.

<sup>26</sup> 47 U.S.C. § 613(f)(4)(C)(iv).

description to television programming have held steady since 2017.<sup>27</sup> Costs thus remain at a level the Commission has previously considered “minimal,” relative to total programming expenses and network revenues, when it increased the required number of hours for described programming for commercial broadcast television stations affiliated with ABC, CBS, Fox, or NBC that are located in the top 60 television markets.<sup>28</sup> Similarly, the record in the Second Report reflects that, for purposes of DMAs outside the top 60, “costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description.”<sup>29</sup> We seek comment on this tentative conclusion.

10. We note that covered broadcasters<sup>30</sup> are currently required to have the necessary equipment and infrastructure to deliver a secondary audio stream in order to provide timely, audible emergency information to consumers who are blind or visually impaired, without exception for technical capability or market size.<sup>31</sup> Since video description is also provided via the secondary audio stream, we assume that broadcasters capable of compliance with the emergency information requirement also have the technical capability to comply with the video description requirements. We believe this supports our tentative conclusion that the costs of expanding the video description requirements to DMAs 61 through 100 would be “reasonable.”<sup>32</sup> We seek comment on our analysis. The record gathered for the Second Report was not conclusive on other technical costs of providing video description, such as whether expenditures for any additional equipment might be necessary.<sup>33</sup> Accordingly, we seek comment on this issue.

11. Further, we expect that the costs to program owners, providers, and distributors of providing video description in markets 61 through 100 are reasonable, and we invite comment on whether that is correct. Specifically, we invite comment on the costs of creating video-described programming for network affiliates in markets 61 through 100.<sup>34</sup> We note that the First Report concluded that the costs of complying with the video description requirements were consistent with industry’s expectations at the

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<sup>27</sup> Second Report, 34 FCC Rcd at 9361, paras. 23, 24.

<sup>28</sup> 2017 Video Description Order, 32 FCC Rcd at 5966, para. 9.

<sup>29</sup> Second Report, 34 FCC Rcd at 9362, para. 27.

<sup>30</sup> 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or video programming providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and requiring video programming distributors to ensure that the aural representation of emergency information gets passed through to consumers).

<sup>31</sup> *Id.* (implementing 47 U.S.C. § 613(g)). See also First Report, 29 FCC Rcd at 8028-29, para. 37. But see NAB Comments for Second Report at 10 (noting that not all broadcasters currently have a secondary audio channel and some stations could be forced “to devote a substantial portion of their limited resources to compliance, [which could] lead to difficult decisions about whether to reduce news and other highly-valued programming that is expensive to produce”).

<sup>32</sup> See *supra* para. 9.

<sup>33</sup> Second Report, 34 FCC Rcd at 9362, para. 27.

<sup>34</sup> See NAB Comments for Second Report at 8 (explaining that some stations would face significant expenditures, such as the purchase of additional equipment, to facilitate video description). But see Wynn Comments for Second Report at 3 (stating that passing through a secondary audio stream that is already included on national broadcast network programming should not be burdensome, regardless of market, because the emergency information rules already require the use of the secondary audio stream). While there is no technical capability exception for network affiliated stations in covered DMAs, if commenters have information concerning broadcasters in markets 61 through 100 that are not technically capable of delivering a secondary audio stream, such information would be relevant to determining costs that these stations may incur as a result of this proceeding. We request that such information be presented in detail.

time the rules were adopted and had not impeded industry's ability to comply,<sup>35</sup> and the record for the Second Report did not alter that conclusion. We believe that the costs of providing video description in DMAs 61 through 100 are similar if not the same as the costs of providing video description in DMAs that are already subject to the requirements. For example, network affiliated stations outside of the top 60 DMAs currently provide a substantial amount of video-described programming due to their pass-through obligation.<sup>36</sup> Thus, this mitigates the costs associated with the proposed rule expansion. The record for the Second Report indicates that "compliance costs should be manageable for" network affiliated broadcasters that "typically receive programming via a network feed, and pass through the audio of any video described programming on their [secondary audio] channels, including some stations in markets below the top 60 that do so voluntarily."<sup>37</sup> We seek information on how the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates should impact our analysis. Are there any network affiliates in any DMA that do not receive programming via a network feed?<sup>38</sup> We assume that network affiliated stations in markets 61 through 100 would be able to satisfy the video description requirements entirely by using the programming they receive via a network feed. Is this assumption correct or would they incur costs to describe additional programming in order to meet the requirements? Are there differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations? Commenters should provide specific data on the costs that program owners, providers, and distributors would face if the Commission were to expand the video description requirements to an additional 10 DMAs each year, until all DMAs up to market 100 are covered. Would program owners and providers, as well as broadcast stations in DMAs 61 through 100, face additional costs as a result of the proposed expansion? If so, commenters should specify the nature and amount of those costs. Should we account for the current coronavirus pandemic in evaluating the reasonableness of costs of expanding video description requirements to markets 61 through 100, and if so, how?

12. In addition to information about costs, we also seek comment on the benefits of expanding the video description requirements to DMAs 61 through 100, including whether these benefits would outweigh any of the costs referenced above. In the Second Report, the Bureau described the record on this topic, which indicated that some video-described programming is available outside the top 60 DMAs but that consumers desire even more of such programming.<sup>39</sup> It is indisputable that video description enhances the accessibility of video programming to consumers who are blind or visually impaired.<sup>40</sup> Would expanding the video description requirements to DMAs 61 through 100 substantially increase the availability of video description to consumers in these areas, therefore providing a significant

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<sup>35</sup> First Report, 29 FCC Rcd at 8032, para. 49.

<sup>36</sup> See NAB Comments for Second Report at 3 ("Each of the networks covered by the rules exceed the Commission's requirement of 87.5 hours per quarter of video described programming, with the actual amounts ranging up to 100 - 125 hours for some networks.").

<sup>37</sup> *Id.* at 8.

<sup>38</sup> As noted above, all network affiliated stations, including those outside of the top 60 DMAs, are already required to "pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description." 47 CFR § 79.3(b)(3). See *2011 Video Description Order*, 26 FCC Rcd at 11850, para. 4 (noting that the pass-through requirement applies to any network affiliated broadcast station, "regardless of its market size," provided that the technical requirements are satisfied).

<sup>39</sup> Second Report, 34 FCC Rcd at 9362, para. 26.

<sup>40</sup> See, e.g., *id.* at 9357-58, para. 15.

benefit to such consumers?<sup>41</sup> Commenters should provide specific data on the amount of video-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the video description requirements to such DMAs. We also invite commenters to specify the benefits that consumers in the DMAs at issue would derive from the proposed expansion.<sup>42</sup>

13. If the Commission determines that the costs of implementing the video description regulations to program owners, providers, and distributors in DMAs 61 through 100 are “reasonable,” we invite comment on the compliance deadline for the expansion of the video description requirements. While the CVAA provides us with authority to expand the video description regulations to an additional 10 DMAs per year beginning on October 8, 2020, we propose to expand the requirements to DMAs 61 through 70 as of January 1, 2021, to provide entities with sufficient time for compliance. We propose that these expansions would continue with an additional 10 DMAs per year, until the requirements are expanded to DMAs 91 through 100 on January 1, 2024.<sup>43</sup> In 2023, the Commission will determine whether to continue expanding to an additional 10 DMAs per year, with any further expansion to be undertaken only following a future determination of the reasonableness of the associated costs. We invite comment on these proposals. Would stations within the first DMAs subject to the expansion (DMAs 61 through 70) have a sufficient amount of time to comply, or should we provide more time for the first compliance deadline?<sup>44</sup> We do not expect there to be any need to provide more time for any station in a DMA outside the first group subject to the expansion because stations in other DMAs will be fully aware of the applicable compliance deadlines well in advance. Should the current coronavirus pandemic affect our decision regarding the compliance deadline, and if so, how?

14. We propose that any extension of the rules to additional DMAs should be based on an updated Nielsen determination, as the Commission did when previously expanding the application of the rules from the top 25 to the top 60 markets,<sup>45</sup> and we invite comment on this proposal. The video description rules currently apply to stations “licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015.”<sup>46</sup> If we utilize updated Nielsen figures, should the updated figures apply to determine the top 60 markets? What should be the compliance deadline for stations in a DMA that was not in the top 60 markets as of January 1, 2015, but is within the top 60 markets as of January 1, 2020? We believe that using updated Nielsen data would facilitate the roll out of video description obligations to more television households more efficiently.

15. If the Commission expands the video description rules to additional DMAs, we propose that section 79.3(d) of the Commission’s rules will govern any petitions for exemption due to economic

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<sup>41</sup> See Regina Brink Comments for Second Report at 1 (explaining that video-described programming may be particularly valuable to consumers who are blind or visually impaired and who live in DMAs outside the top 60, because these consumers “tend to be even more isolated than those of us who live in larger markets”).

<sup>42</sup> Nielsen data from 2020 indicates that expanding the video description requirements to DMAs 61-70 on January 1, 2021 would cover more than an additional 4.22 million households, with more than an additional 3.63 million households by expanding to DMAs 71-80, more than an additional 3.25 million households by expanding to DMAs 81-90, and more than an additional 2.86 million households by expanding to DMAs 91-100. See MediaTracks Communications, Nielsen DMA Rankings 2020, available at <https://mediatracks.com/resources/nielsen-dma-rankings-2020/> (last visited Mar. 26, 2019).

<sup>43</sup> See Appendix A (adding language at the end of section 79.3(b)(1)).

<sup>44</sup> We recognize that when the Commission reinstated the video description rules in 2011, there were approximately 10 months between the release of the order and the compliance deadline. See *2011 Video Description Order*, 26 FCC Rcd 11847 (released August 25, 2011, with a full compliance deadline of July 1, 2012).

<sup>45</sup> *Id.* at 11856, para. 16.

<sup>46</sup> 47 CFR § 79.3(b)(1).

burden.<sup>47</sup> The video description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.<sup>48</sup> The CVAA also provides that if an expansion of the video description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>49</sup> Section 1.3 governs waivers of the Commission’s rules generally.<sup>50</sup> We tentatively conclude that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the video description rules to additional DMAs, and we invite comment on this conclusion.

16. Finally, we seek comment on whether there are any other issues with respect to our proposal to extend the video description rules to additional DMAs of which we should be aware.

## **B. Modernizing Terminology**

17. Additionally, we propose to make a non-substantive amendment to the rules to substitute the term “audio description” for the term “video description” for purposes of part 79. Because the Commission’s definition of video description already references both terms,<sup>51</sup> our proposed modernization of terminology should not change the substance of any regulations. As early as 2011, in response to the Commission’s Notice of Proposed Rulemaking,<sup>52</sup> consumer and industry groups proposed using the term “audio description” instead of “video description.”<sup>53</sup> Although the Commission previously sought comment on this proposal in its 2016 Notice of Proposed Rulemaking,<sup>54</sup> the Commission has not yet resolved the matter. Recently, the Disability Advisory Committee (DAC) recommended that “the Commission, as soon as practicable, use the term ‘audio description’ to refer to described video programs

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<sup>47</sup> 47 CFR § 79.3(d).

<sup>48</sup> *See id.* The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for video description would be economically burdensome: (i) the nature and cost of providing video description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the video description requirements, and it evaluates economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3). In the First Report, the Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.” First Report, 29 FCC Rcd at 8033, para. 49.

<sup>49</sup> 47 U.S.C. § 613(f)(4)(C)(iv)(II).

<sup>50</sup> 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.”).

<sup>51</sup> *See, e.g.*, 47 CFR § 79.3(a)(3) (using both terms together to define the nature of the description).

<sup>52</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011).

<sup>53</sup> *See 2011 Video Description Order*, 26 FCC Rcd at 11875, para. 58 (noting comments from the American Council of the Blind and the National Association of Broadcasters proposing the term “audio description”).

<sup>54</sup> *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 31 FCC Rcd 2463, 2479-80, para. 39 (2016); *see also 2011 Video Description Order*, 26 FCC Rcd at 11875, para. 58 & n.240 (adopting the statutory term for purposes of our rules, but committing to consider this issue in future inquiries).



when discussing or listing audio described programming.”<sup>55</sup> The DAC points out that the term “audio description” is used by most federal agencies,<sup>56</sup> and explains that consistency in terminology will help consumers and video providers avoid confusion.<sup>57</sup> Indeed, our search to date has not revealed any other federal agency that uses the term “video description.”<sup>58</sup> We are concerned that the use of inconsistent terms may cause confusion for consumers and industry. We recognize that terminology can become obsolete and, historically, agencies have made non-substantive modifications to regulations to reflect the newer terminology, even if the pertinent statute itself may not have been amended.<sup>59</sup> We therefore seek to refresh the record on our proposal to revise our rules to reflect the newer and more commonly used terminology. Because the current definition in the Commission’s rules treats the terms “video description” and “audio description” as synonymous,<sup>60</sup> we propose to retain the statutory term “video description” in the definition while using the more commonly understood term “audio description” elsewhere in the rule. We invite comment on this proposal. We find that the Commission has authority to adopt update its terminology as proposed as part of its “continuing authority” to regulate video description.<sup>61</sup> Updating the terminology does not implicate any limitation contained in the statute,<sup>62</sup> nor does it make any substantive change to the rules. We invite comment on this analysis.

### C. Technical Update to the Rules

18. Finally, we propose to make a non-substantive edit to the video description rules, to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed. We invite comment on this proposal.

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<sup>55</sup> Recommendation of the Federal Communications Commission Disability Advisory Committee Described Audio TV Listings Working Group at 3 (adopted Sept. 24, 2019), MB Docket No. 12-108 (Sept. 26, 2019), *available at* <https://www.fcc.gov/ecfs/filing/109260918804199> (DAC Sept. 2019 Recommendation).

<sup>56</sup> DAC Sept. 2019 Recommendation at 1 (citing Department of Justice, U.S. Access Board, National Parks Service, and Department of Health and Human Services use of the term “audio description”).

<sup>57</sup> DAC Sept. 2019 Recommendation at 1 (stating that “consumers and video providers would benefit from a uniform nomenclature for program listings that include audio description, however, various terms are commonly used including: ‘audio description,’ ‘Descriptive Video Service, or DVS’ or ‘Video Description,’ creating confusion when searching for programs with audio description online and on program guides”).

<sup>58</sup> *See, e.g.*, 28 CFR § 36.303(g)(1)(ii) (U.S. Department of Justice citation to “audio description” as an example of an auxiliary aid in movie theaters); Library of Congress, Audio Description Resource Guide, <https://www.loc.gov/nls/about/services/reference-publications/guides/audio-description-resource-guide/> (last visited Mar. 3, 2020); U.S. Access Board, Revised Section 508 of the Rehabilitation Act (2017) Information and Communication Technology (ICT) Standards and Guidelines, <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/single-file-version> (last visited Mar. 3, 2020); National Parks Service, Harpers Ferry Center Accessibility, <https://www.nps.gov/subjects/hfc/accessibility.htm> (last visited Mar. 3, 2020); U.S. Department of Health and Human Services, HHS Guidance for Audio Description (AD) <https://www.hhs.gov/web/section-508/making-files-accessible/hhs-guidance-audio-description.html> (last visited Mar. 3, 2020).

<sup>59</sup> *See, e.g.*, <https://www.federalregister.gov/documents/2013/08/01/2013-18552/change-in-terminology-mental-retardation-to-intellectual-disability> (while a statute updating the term “mental retardation” to “intellectual disability” did not expressly include the regulations promulgated by the Social Security Administration (SSA), SSA relied on the spirit of the law to update outdated terminology in its regulations).

<sup>60</sup> *See* 47 CFR § 79.3(a)(3).

<sup>61</sup> *See* 47 U.S.C. § 613(f)(4).

<sup>62</sup> *See, e.g., id.* § 613(f)(4)(B) (prohibiting any increase in total hour requirements for additional described programming by more than 75%).

#### IV. PROCEDURAL MATTERS

19. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>63</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to the NPRM. The IRFA is set forth in Appendix B.

20. *Paperwork Reduction Act.* This document contains proposed new or revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

21. *Ex Parte Rules—Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>64</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

22. *Filing Requirements—Comments and Replies.* 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.
- All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>63</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>64</sup> 47 CFR § 1.1200 *et seq.*

- 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 445 12th Street, SW, 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. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
  - 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.

23. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

24. *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), (202) 418-0432 (TTY).

25. *Additional Information.* For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

## V. ORDERING CLAUSES

26. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613, this Notice of Proposed Rulemaking **IS ADOPTED**.

27. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

For ease of review, the proposed rules set forth below show amendments in **bold/underline** (for additions) and ~~strikethrough~~ (for deletions).

The Federal Communications Commission proposes to amend 47 CFR part 79 to read as follows:

## PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.2 by revising paragraph (b)(5) to read as follows:

**§ 79.2 Accessibility of programming providing emergency information.**

\* \* \* \* \*

(b) \* \* \*

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including ~~video~~**audio** description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

\* \* \* \* \*

3. Amend § 79.3 by revising the heading and paragraphs (a)(3), (b) introductory text, (b)(1), (b)(3), (b)(4), (b)(5)(i), (b)(5)(ii), (c)(2), (c)(3), (c)(4)(i), (c)(4)(ii), (c)(5), (d)(1), (d)(2) introductory text, (d)(2)(i), (d)(3), (d)(10), (d)(11), (e)(1) introductory text, (e)(3)(i), and (e)(3)(ii) to read as follows:

**§ 79.3 ~~Video~~**Audio** description of video programming.**

(a) \* \* \*

(3) ~~Video~~**Audio** description/~~Audio~~**Video** ~~d~~Description. The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

\* \* \* \* \*

(b) The following video programming distributors must provide programming with ~~video~~**audio** description as follows:

(1) ~~Beginning July 1, 2015,~~**C**ommercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, ~~2015,~~ must provide 50 hours of ~~video~~**audio** description per calendar quarter, either during prime time or on children's programming, and, ~~beginning July 1, 2018,~~ 37.5 additional hours of ~~video~~**audio**

description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a **previously unaffiliated** station in one of these markets becomes affiliated with one of these networks ~~after July 1, 2015~~, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. **On January 1, 2021, and each year thereafter until January 1, 2024, the requirements of this paragraph shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 2020;**

\* \* \* \* \*

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through ~~video~~-**audio** description when the network provides ~~video~~-**audio** description and the broadcast station has the technical capability necessary to pass through the ~~video~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of ~~video~~-**audio** description per calendar quarter during prime time or children's programming, and, ~~beginning July 1, 2018~~, 37.5 additional hours of ~~video~~-**audio** description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of 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 these rules. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009-September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013-September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016-September 2017; and so on; and

(5) \* \* \*

(i) Must pass through ~~video~~-**audio** description on each broadcast station they carry, when the broadcast station provides ~~video~~-**audio** description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the ~~video~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description; and

(ii) Must pass through ~~video~~-**audio** description on each nonbroadcast network they carry, when the network provides ~~video~~-**audio** description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the ~~video~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description.

(c) \* \* \*

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with ~~video~~-**audio** description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with ~~video~~audio description, it is required to include ~~video~~audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide ~~video~~audio description for another purpose related to the programming that would conflict with providing the ~~video~~audio description.

(4) \* \* \*

(i) Has aired a particular program with ~~video~~audio description on a broadcast station it carries, it is required to include ~~video~~audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide ~~video~~audio description for another purpose related to the programming that would conflict with providing the ~~video~~audio description; or

(ii) Has aired a particular program with ~~video~~audio description on a nonbroadcast network it carries, it is required to include ~~video~~audio description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide ~~video~~audio description for another purpose related to the programming that would conflict with providing the ~~video~~audio description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with ~~video~~audio description, the Commission will consider showings that any lack of ~~video~~audio description was de minimis and reasonable under the circumstances.

(d) \* \* \*

(1) A video programming provider may petition the Commission for a full or partial exemption from the ~~video~~audio description requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with ~~video~~audio description would be economically burdensome. The term “economically burdensome” means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for ~~video~~audio description would be economically burdensome:

(i) The nature and cost of providing ~~video~~audio description of the programming;

\* \* \* \* \*

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission’s final determination and any available alternative that might constitute a reasonable substitute for the ~~video~~audio description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

\* \* \* \* \*

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the ~~video~~audio description requirements.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the ~~video~~audio description requirements.

(e) \* \* \*

(1) A complainant may file a complaint concerning an alleged violation of the ~~video~~-**audio** description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, 445 12th Street, SW., Washington, DC 20554. A complaint must include:

\* \* \* \* \*

(3) \* \* \*

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our ~~video~~-**audio** description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the ~~video~~-**audio** description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing ~~video~~-**audio** description in excess of its requirements.

\* \* \* \* \*

4. Amend § 79.105 by revising the heading and paragraphs (a)(1) and (b)(3)(i), to read as follows:

**§ 79.105 ~~Video~~-**Audio** description and emergency information accessibility requirements for all apparatus.**

(a) \* \* \*

(1) The transmission and delivery of ~~video~~-**audio** description services as required by §79.3; and

\* \* \* \* \*

(3)(i) *Achievable*. Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the ~~video~~-**audio** description and emergency information requirements of this section pursuant to §1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

\* \* \* \* \*

5. Amend § 79.106 by revising the heading and paragraph (b) to read as follows:

**§ 79.106 ~~Video~~Audio description and emergency information accessibility requirements for recording devices.**

\* \* \* \* \*

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of ~~video~~audio description signals and emergency information (as that term is defined in §79.2) such that viewers are able to activate and de-activate the ~~video~~audio description as the video programming is played back on a picture screen of any size.

\* \* \* \* \*

6. Amend § 79.107 by revising paragraph (a)(4)(viii) to read as follows:

**§ 79.107 User interfaces provided by digital apparatus.**

(a) \* \* \*

(4) \* \* \*

(viii) *Configuration—~~Video~~Audio Description Control.* Function that allows the user to enable or disable the output of ~~video~~audio description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains ~~video~~audio description, and from the secondary audio stream back to the main audio).

\* \* \* \* \*

7. Amend § 79.108 by revising paragraph (a)(2)(vi) to read as follows:

**§ 79.108 Video programming guides and menus provided by navigation devices.**

(a) \* \* \*

(2) \* \* \*

(vi) *Configuration—~~Video~~Audio Description Control.* Function that allows the user to enable or disable the output of ~~video~~audio description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains ~~video~~audio description, and from the secondary audio stream back to the main audio).

\* \* \* \* \*

8. Amend § 79.109 by revising paragraph (a)(2) to read as follows:

**§ 79.109 Activating accessibility features.**

(a) \* \* \*

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video



programming transmitted in digital format using Internet protocol, with built-in ~~video~~audio description capability must ensure that ~~video~~audio description can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in §76.1200 of this chapter.

\* \* \* \* \*

## APPENDIX B

## Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the NPRM, we propose to expand our video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)<sup>4</sup> directed the Commission to submit a report to Congress on October 8, 2019, assessing certain aspects of video description.<sup>5</sup> The CVAA also provides that as of October 8, 2020, “based upon the findings, conclusions, and recommendations” contained in that report, the Commission has the authority to phase in the video description regulations for up to an additional 10 DMAs each year, if it determines that the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.<sup>6</sup> Through the NPRM, the Commission invites comment on its proposal to phase in its video description regulations for an additional 10 DMAs each year for four years, including comments on whether the costs of such an expansion would be reasonable.<sup>7</sup> This proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

3. In addition, the Commission proposes to modernize the terminology in part 79 of the Commission’s regulations to use the term “audio description” rather than “video description.” While the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(1).

<sup>5</sup> 47 U.S.C. § 613(f)(4)(C)(iii). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350 (2019) (Second Report). As directed by the CVAA, the Second Report was submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

<sup>6</sup> 47 U.S.C. § 613(f)(4)(C)(iv). Specifically, pursuant to the “continuing Commission authority” provision of the CVAA, the Commission has authority “to phase in the video description regulations for up to an additional 10 [DMAs] 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 [DMAs] where it deems appropriate.” *Id.*

<sup>7</sup> In the Second Report the Media Bureau (Bureau) indicated that it would issue a public notice in early 2020 “to consider whether the costs of such an expansion would be reasonable.” Second Report, 34 FCC Rcd at 9352, n.9. Rather than issue a public notice, we have decided to issue this NPRM containing specific proposals, which will similarly allow the Commission to develop a record on all relevant issues, including costs and benefits.

CVAA uses the term “video description,” there appears to be wide support among consumer organizations and industry for the proposed change. The Commission invites comment on this proposal.

## **B. Legal Basis**

4. The authority for the action proposed in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613.

## **C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.<sup>8</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>9</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>10</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>11</sup>

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>12</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>13</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.<sup>14</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than \$25 million, 25 had annual receipts ranging from \$25 million to \$49,999,999, and 70 had annual receipts of \$50 million or more.<sup>15</sup> Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

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<sup>8</sup> 5 U.S.C. § 603(b)(3).

<sup>9</sup> *Id.* § 601(6).

<sup>10</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>11</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>12</sup> *2012 NAICS Definitions* (NAICS Code 515120).

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

<sup>14</sup> 13 CFR § 121.201 (2012) (NAICS Code 515120).

<sup>15</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

7. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1374.<sup>16</sup> Of this total, 1,282 stations (or 94.2%) had revenues of \$41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388.<sup>17</sup> The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>18</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

9. There are also 387 Class A stations.<sup>19</sup> Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations.<sup>20</sup> Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>21</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>22</sup> Census data for 2012 show that there were 3,117 firms that operated

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<sup>16</sup> Press Release, FCC, Broadcast Station Totals as of December 31, 2019 (rel. Jan. 3, 2020), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2019>.

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

<sup>18</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

<sup>19</sup> *See supra* note 16 (Broadcast Station Totals).

<sup>20</sup> *See id.*

<sup>21</sup> U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017)

<sup>22</sup> 13 CFR § 121.201 (NAICS Code 517110).

that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>23</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>24</sup> The SBA size standard for this industry establishes as small, any company in this category which has annual receipts of \$41.5 million or less.<sup>25</sup> According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year.<sup>26</sup> Of that number, 319 operated with annual receipts of less than \$25 million a year.<sup>27</sup> Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

12. *Cable Television Distribution Services.* Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>28</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>29</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Thus, the majority of these firms can be considered small.

13. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the

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<sup>23</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTtype=table).

<sup>24</sup> See U.S. Census Bureau, 2012 NAICS Definitions, “515210 Cable and other Subscription Programming”, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.515210#>.

<sup>25</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>26</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ4, Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 515210, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515210).

<sup>27</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have receipts of \$38.5 million or less.

<sup>28</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012>.

<sup>29</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>30</sup> *Id.*

Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>31</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>32</sup> Industry data indicate that there are currently 4,392 active cable systems in the United States.<sup>33</sup> Of this total, 3,691 cable systems have fewer than 15,000 subscribers, and 701 systems have 15,000 or more.<sup>34</sup> Thus, we estimate that most cable systems are small entities.

14. *Cable System Operators (Telecommunications Act Standard)*. The Act also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>35</sup> There are approximately 49,011,210 cable video subscribers in the United States today.<sup>36</sup> Accordingly, an operator serving fewer than 490,112 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>37</sup> Based on available data, we find that all but five incumbent cable operators are small entities under this size standard.<sup>38</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. Most recent available data also indicate that there are 188 cable antenna relay service (CARS) licensees.<sup>39</sup> The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

16. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using

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<sup>31</sup> 47 CFR § 76.901(d). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266 *et al.*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>32</sup> 47 CFR § 76.901(c).

<sup>33</sup> S&P Market Intelligence-MediaCensus data.

<sup>34</sup> *Id.*

<sup>35</sup> 47 U.S.C. § 543(m)(2). *See also* 47 CFR § 76.901(e).

<sup>36</sup> *See* SNL Kagan, *Multichannel Industry Benchmarks*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks> (last visited Jan. 14, 2020).

<sup>37</sup> *See* 47 CFR § 76.901(e).

<sup>38</sup> *See* SNL Kagan, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (last visited Jan. 14, 2020).

<sup>39</sup> August 24, 2017, report from Media Bureau staff based on data contained in COALS, [www.fcc.gov/coals](http://www.fcc.gov/coals).

wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>40</sup> The SBA determines that a wireline business is small if it has fewer than 1,500 employees.<sup>41</sup> Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>42</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.<sup>43</sup> DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that, in general, DBS service is provided only by large firms.

#### **D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements for Small Entities**

17. The NPRM proposes certain new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. Specifically, it proposes phasing in the existing video description requirements for an additional 10 DMAs each year, beginning on January 1, 2021 and continuing until January 1, 2024. The substance of the video description requirements would not change, but rather, this would be an expansion of the DMAs in which broadcast television stations are required to comply with the requirements. The NPRM proposes that the expansion to an additional 10 DMAs per year would continue until all DMAs up to market 100 are covered. In determining which DMAs are subject to the video description requirements, the NPRM proposes that the Commission should base the extension on an updated Nielsen determination. Finally, if the Commission expands the video description requirements to additional DMAs, the NPRM proposes that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden, and the NPRM also states that section 1.3 of the Commission's rules governs waivers of the Commission's rules generally. While we do not believe that the proposed requirements would affect small entities disproportionately, in section E below we describe steps taken to minimize the impact on such entities.

18. The Commission's proposal to update the term "video description" to "audio description" is a non-substantive change that will not cause any new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. The same is true of its proposal to make a non-substantive edit to the video description rules to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1)

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<sup>40</sup> See U.S. Census Bureau, *2017 North American Industry Classifications System (NAICS) Definitions*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (2012 NAICS Definitions) (NAICS Code 517110).

<sup>41</sup> 13 CFR § 121.201 (2012) (NAICS Code 517110).

<sup>42</sup> See U.S. Census Bureau, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>43</sup> See *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, FCC 18-131, 2018 WL 6839365, at \*20, paras. 50-51 (Dec. 26, 2018).

the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>44</sup>

20. The NPRM proposes rules intended to expand consumer access to video-described programming. The existing requirement to provide video description applies to commercial television broadcast stations that are affiliated with ABC, CBS, Fox, or NBC and are located in the top 60 television markets, as well as MVPD systems that serve 50,000 or more subscribers. Under the proposed expansion of DMAs in which the video description requirements apply, network affiliates would still be the only broadcasters that would need to comply with these requirements, and they would continue to apply only to MVPD systems with 50,000 or more subscribers. In addition, the expansion does not apply to the smallest DMAs, but rather, it ends with DMA 100. Any further expansion would only be undertaken following a future Commission determination of the reasonableness of the associated costs. Thus, the extension to DMAs 61 through 100 would have a limited impact on small entities.

21. The NPRM focuses on engaging in a cost-benefit analysis to determine the effects the expansion would have. It tentatively concludes that the costs of the expansion would be “reasonable,” and it seeks information on the costs for network affiliates that receive programming via a network feed as compared with other network affiliates, including whether there are any network affiliates in any DMA that do not receive programming via a network feed. Even if the expansion would require additional resources, we expect that it may provide benefits to consumers that would outweigh any costs, and the NPRM seeks comment on this issue. The NPRM states that it is indisputable that video description enhances the accessibility of video programming to consumers who are blind or visually impaired, and it asks commenters to provide specific data on the amount of video-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the video description requirements to such DMAs. Comments on the NPRM will help us determine whether the benefits of the expansion would indeed outweigh any costs.

22. Additionally, the Commission has made proposals that would minimize the impact of the rules on small entities. First, although the CVAA authorizes the Commission to begin expanding the DMAs subject to the video description requirements as of October 8, 2020, the Commission instead proposes a compliance deadline of January 1, 2021 for DMAs 61 through 70. This deadline would provide all entities, including small entities, with additional time to comply. Second, rather than proposing an automatic expansion of the video description requirements to an additional 10 DMAs per year until all DMAs are covered, the Commission only proposes to expand the requirements to DMAs 61 through 100. Any further expansion would require future Commission action, including a determination of the reasonableness of the associated costs. This approach would help ensure that any economic burden, including in particular on small businesses, could be minimized.

23. The NPRM also proposes that section 79.3(d) of the Commission’s rules will govern any petitions for exemption due to economic burden. The video description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome. The NPRM also states that section 1.3 of the Commission’s rules governs waivers of the Commission’s rules generally. Small entities will still be able to seek relief from the expansion in appropriate situations in accordance with sections 79.3(d) and 1.3, just as they are able to under the current video description requirements. The NPRM tentatively concludes that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the video description rules to additional DMAs, and it invites comment on this conclusion.

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<sup>44</sup> 5 U.S.C. § 603(c)(1)-(c)(4).



24. Updating the term “video description” to “audio description” and deleting the reference to a compliance deadline that has passed are both non-substantive changes that will have no economic impact on small entities.

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission’s Proposals**

25. None.

## APPENDIX C

**2020 Nielsen DMA Rankings**

Below are the 2020 Nielsen DMA rankings, based on the list available at <https://mediatracks.com/resources/nielsen-dma-rankings-2020/>.

1. New York
2. Los Angeles
3. Chicago
4. Philadelphia
5. Dallas-Ft. Worth
6. San Francisco-Oak-San Jose
7. Washington, DC (Hagrstwn)
8. Houston
9. Boston (Manchester)
10. Atlanta
11. Phoenix (Prescott)
12. Tampa-St. Pete (Sarasota)
13. Seattle-Tacoma
14. Detroit
15. Minneapolis-St. Paul
16. Miami-Ft. Lauderdale
17. Denver
18. Orlando-Daytona Bch-Melbrn
19. Cleveland-Akron (Canton)
20. Sacramnto-Stkton-Modesto
21. Charlotte
22. Portland, OR
23. St. Louis
24. Pittsburgh
25. Indianapolis
26. Baltimore
27. Raleigh-Durham (Fayetville)
28. Nashville
29. San Diego
30. Salt Lake City
31. San Antonio
32. Kansas City
33. Hartford & New Haven
34. Columbus, OH
35. Milwaukee
36. West Palm Beach-Ft. Pierce
37. Cincinnati
38. Greenvll-Spart-Ashevll-And
39. Las Vegas
40. Austin
41. Jacksonville
42. Norfolk-Portsmth-Newpt Nws
43. Oklahoma City
44. Birmingham (Ann and Tusc)
45. Grand Rapids-Kalmzoo-B.Crk

46. Albuquerque-Santa Fe
47. Harrisburg-Lncstr-Leb-York
48. Louisville
49. Greensboro-H.Point-W.Salem
50. New Orleans
51. Memphis
52. Buffalo
53. Ft.Myers-Naples
54. Richmond-Petersburg
55. Fresno-Visalia
56. Providence-New Bedford
57. Mobile-Pensacola (Ft Walt)
58. Tulsa
59. Albany-Schenectady-Troy
60. Wilkes Barre-Scranton-Hztn
61. Knoxville
62. Little Rock-Pine Bluff
63. Dayton
64. Lexington
65. Tucson (Sierra Vista)
66. Honolulu
67. Green Bay-Appleton
68. Des Moines-Ames
69. Roanoke-Lynchburg
70. Spokane
71. Omaha
72. Wichita-Hutchinson Plus
73. Springfield, MO
74. Charleston-Huntington
75. Columbia, SC
76. Rochester, NY
77. Flint-Saginaw-Bay City
78. Huntsville-Decatur (Flor)
79. Portland-Auburn
80. Toledo
81. Madison
82. Waco-Temple-Bryan
83. Harlingen-Wslco-Brnsvl-McA
84. Paducah-Cape Girard-Harsbg
85. Colorado Springs-Pueblo
86. Shreveport
87. Syracuse
88. Champaign&Sprngfld-Decatur
89. Savannah
90. Cedar Rapids-Wtrlo-IWC&Dub
91. Charleston, SC
92. Chattanooga
93. El Paso (Las Cruces)
94. Baton Rouge
95. Jackson, MS
96. Burlington-Plattsburgh
97. Myrtle Beach-Florence

98. South Bend-Elkhart
99. Tri-Cities, TN-VA
100. Greenville-N.Bern-Washngtn
101. Ft. Smith-Fay-Sprngdl-Rgrs
102. Boise
103. Davenport-R.Island-Moline
104. Reno
105. Evansville
106. Johnstown-Altoona-St Colge
107. Lincoln & Hastings-Krny
108. Augusta-Aiken
109. Tallahassee-Thomasville
110. Ft. Wayne
111. Springfield-Holyoke
112. Lansing
113. Sioux Falls (Mitchell)
114. Tyler-Longview (Lfkn&Ncgd)
115. Youngstown
116. Fargo
117. Eugene
118. Yakima-Pasco-Rchlnd-Knnwck
119. Macon
120. Peoria-Bloomington
121. Traverse City-Cadillac
122. Montgomery-Selma
123. Lafayette, LA
124. Monterey-Salinas
125. Bakersfield
126. SantaBarbra-SanMar-SanLuOb
127. Wilmington
128. Corpus Christi
129. La Crosse-Eau Claire
130. Columbus, GA (Opelika, AL)
131. Chico-Redding
132. Amarillo
133. Columbus-Tupelo-W Pnt-Hstn
134. Wausau-Rhineland
135. Medford-Klamath Falls
136. Salisbury
137. Columbia-Jefferson City
138. Rockford
139. Duluth-Superior
140. Monroe-El Dorado
141. Palm Springs
142. Lubbock
143. Beaumont-Port Arthur
144. Topeka
145. Odessa-Midland
146. Minot-Bsmrck-Dcknsn (Wlstn)
147. Wichita Falls & Lawton
148. Sioux City
149. Panama City

150. Rochestr-Mason City-Austin
151. Anchorage
152. Erie
153. Joplin-Pittsburg
154. Albany, GA
155. Biloxi-Gulfport
156. Gainesville
157. Wheeling-Steubenville
158. Sherman-Ada
159. Bangor
160. Terre Haute
161. Binghamton
162. Idaho Falls-Pocatillo (Jcks)
163. Missoula
164. Abilene-Sweetwater
165. Yuma-El Centro
166. Bluefield-Beckley-Oak Hill
167. Hattiesburg-Laurel
168. Billings
169. Rapid City
170. Lake Charles
171. Dothan
172. Utica
173. Clarksburg-Weston
174. Quincy-Hannibal-Keokuk
175. Harrisonburg
176. Jackson, TN
177. Bowling Green
178. Alexandria, LA
179. Elmira (Corning)
180. Marquette
181. Watertown
182. Charlottesville
183. Jonesboro
184. Laredo
185. Bend, OR
186. Butte-Bozeman
187. Lafayette, IN
188. Grand Junction-Montrose
189. Lima
190. Meridian
191. Twin Falls
192. Great Falls
193. Parkersburg
194. Greenwood-Greenville
195. San Angelo
196. Cheyenne-Scottsbluff
197. Eureka
198. Mankato
199. Casper-Riverton
200. St. Joseph
201. Ottumwa-Kirksville

- 202. Victoria
- 203. Fairbanks
- 204. Zanesville
- 205. Helena
- 206. Presque Isle
- 207. Juneau
- 208. Alpena
- 209. North Platte
- 210. Glendive

**STATEMENT OF  
COMMISSIONER MICHAEL O’RIELLY**

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

I will support moving forward with another rulemaking to implement certain provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), but I would like to highlight a few brief points. First, as I have noted in previous CVAA-related items, it is important that our regulations adhere to the proper scope of authority granted to the Commission under the law. To change the regulatory term “video description” to “audio description” may seem like a small, and even widely-agreed upon, modification, but the implications of making such a change should be acknowledged. Is regulatory fiat greater than the law? Or should we rely on Congress to update the law where needed? Reasonable minds often differ as to the interpretation of a statute, but when the text is clear and unambiguous, attempting to “modernize” the operative legal terms could lead us down a slippery slope if the practice is not limited to only the most mundane and limited cases, as I hope is the case here.

Second, whenever the Commission has considered what many find to be useful improvements for visually impaired Americans under the CVAA, I have sought to remind the Commission that, while such audio streams may be useful, they do come at a cost. In this instance, consider the “covered broadcasters” that have some of the needed equipment in place, but that may face additional, less apparent, costs in making more content descriptions available. Indeed, while a cost-benefit analysis is always necessary to inform whether the benefits of a regulatory mandate may outweigh its costs, making these calculations is especially critical now, given the pandemic and the incredible toll it is taking on the broadcast industry, with many strapped for cash or going broke as the advertising marketplace dries up due to COVID-19. Yet most broadcasters are continuing to provide a full slate of local news to keep their communities safe and informed, including in the smaller markets. To be fair, in certain paragraphs of this item we do seek comment on how the pandemic should factor into specific proposals, and this is important. But, as we move forward with adding further requirements to smaller market stations while other segments of the broader video content industry do not face similar, heightened mandates, I would encourage all of us to be mindful of these costs and how they should inform the entire effort.