

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2028, MM Docket No. 99-296; RM-9661]

Digital Television Broadcast Services; Klamath Falls, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of California Oregon Broadcasting, Inc., licensee of Station KOTI-TV, Klamath Falls, Oregon, substitutes DTV Channel 13 for Station KOTI-TV's assigned DTV Channel 40 at Klamath Falls. *See* 64 FR 54269, October 6, 1999. DTV Channel 13 can be allotted to Klamath Falls at coordinates (42-05-48 N. and 121-37-57 W.) with a power of 45.3, HAAT of 671 meters and with a DTV service population of thousand.

With this action, this proceeding is terminated.

DATES: Effective October 23, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-296, adopted September 6, 2000, and released September 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oregon, is amended by removing DTV Channel 40 and adding DTV Channel 13 at Klamath Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-23270 Filed 9-8-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 99-339; FCC 00-258]

Implementation of Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopt rules to require larger broadcast stations and multichannel programming distributors (MVPDs) to provide programming with video description. This document also adopts rules to require all broadcast stations and MVPDs to pass through any video description they receive from their programming suppliers if they have the technical capability necessary to do so. This document also adopts rules to enhance the accessibility of emergency information. The purpose of these actions is to enhance the accessibility of video programming to persons with visual disabilities.

DATES: Section 79.3 is effective April 1, 2002. Section 79.2 contains information collection requirements which have not been approved by the Office Of Management Budget ("OMB"). The Commission will publish a document in the **Federal Register** announcing the effective date of this section.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Policy and Rules Division, Mass Media Bureau, (202) 418-2130 (voice), (202) 418-1169 (TTY), or ebash@fcc.gov, or Meryl S. Icove, Disabilities Rights Office, Consumer Information Bureau, (202) 418-2372 (voice), 418-0178 (TTY), or micove@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order ("R&O"), FCC 00-258, adopted July 21, 2000; released August 7, 2000. The full text of the Commission's R&O is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this R&O may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report and Order

I. Introduction

1. In this R&O, we adopt rules designed to bring the benefits of video description to the commercial video marketplace but not impose an undue burden on the video programming production and distribution industries. Video description is the description of key visual elements in programming, inserted into natural pauses in the audio of the programming. It is designed to make television programming more accessible to the many Americans who have visual disabilities.

2. As explained further, we conclude that we have the authority to adopt video description rules, and require the top broadcast stations and multichannel video programming distributors (MVPDs) to provide programming with video description on the top programming networks. This will ensure that the broadcast stations and MVPDs that reach the most people will provide video description for the most watched programming. We also adopt rules to enhance the accessibility of emergency information for people with visual disabilities. Specifically, we adopt rules as follows:

- We require affiliates of the top four commercial broadcast TV networks in the top 25 TV markets to provide 50 hours per calendar quarter of prime time and/or children's programming with video description.

- We also require MVPDs with 50,000 or more subscribers to provide 50 hours per calendar quarter of prime time and/or children's programming with video description on each of the top five national nonbroadcast networks they carry.

- In addition, we require any broadcast station, regardless of its market size, to "pass through" any video description it receives from a programming provider, if the broadcast station has the technical capability necessary to do so, and we require any MVPD, regardless of its number of subscribers, to "pass through" any video description it receives from a programming provider, if the MVPD has the technical capability necessary to do so on the channel on which it

distributes the programming of the programming provider.

- The first calendar quarter these rules will be effective will be April–June 2002.

- We also require broadcast stations and MVPDs that provide local emergency information through a regularly scheduled newscast, or an unscheduled newscast that interrupts regularly scheduled programming, to make the critical details of that information accessible to persons with visual disabilities in the affected local area. We also require broadcast stations and MVPDs that provide local emergency information through another manner, such as a “crawl” or “scroll,” to accompany that information with an aural tone to alert persons with visual disabilities that they are providing emergency information. These rules relating to emergency information will become effective upon approval by the Office of Management and Budget.

II. Background

A. Audience for Video Description

3. Video description is designed to make television programming more accessible to persons with visual disabilities, and enable them to “hear what they cannot see.” Thus, the primary audience for video description is persons with visual disabilities. Estimates of the number of persons with visual disabilities are as high as twelve million. This estimate includes persons with a problem seeing that cannot be corrected with ordinary glasses or contact lenses, with a range in severity.

4. A disproportionate number of persons with visual disabilities are seniors. The National Center for Health Statistics reports that eye problems are the third leading cause, after heart disease and arthritis, of restricting the normal daily activities of persons 65 years of age or older. While only 2–3% of the population under 45 years of age has visual disabilities, 9–14% of the population 75 years of age or older does. This means that as the population ages, more and more people will become visually disabled.

5. Secondary audiences for video description exist as well. For example, at least one and a half million children between the ages of 6 and 14 with learning disabilities may benefit from video description. Because the medium has both audio description and visual appeal, it has significant potential to capture the attention of learning disabled children and enhance their information processing skills. Described video programming capitalizes on the different perceptual strengths of

learning-disabled children, pairing their more-developed modality with their less-developed modality to reinforce comprehension of information.

B. Process of Providing Video Description

6. Current describers of programming charge between \$2000 and \$4000 per hour for their service. They begin their process by viewing a program, and writing a script to describe key visual elements. The describer times the placement and length of the description to fit within natural pauses in the dialogue. The narration is recorded and mixed with the original program audio to create a full audio track with video description. That audio track is then laid back to the master on a spare channel if the programming is intended for broadcast, and to a separate master if it is intended for distribution by home video. When the audio track with video description is provided on a separate audio channel for broadcast, viewers decide whether they wish to hear the video description. Viewers who wish to hear the description must activate the Second Audio Program (SAP) channel on their TV sets or VCRs. “Closed” video description refers to the process of providing video description on the SAP channel. SAP reception is a standard feature of most TV sets and VCRs built since 1990. SAP-capable TV sets and VCRs can be relatively inexpensive—less than \$150—and converter boxes are also available for use with TV sets and VCRs that are not SAP-capable.

7. Programming providers that wish to distribute programming on the SAP channel typically need the capability to support three audio channels at all points in the distribution process. This is because two audio channels are used to support left and right stereo, so that a third audio channel is necessary to support a monaural mix of the main audio and the video description. The programming provider transmits both audio tracks as part of its main signal. Networks, broadcast stations, and MVPDs that do not have the capability to support three channels of audio generally need to upgrade equipment and plant wiring to do so. The cost depends on the amount and nature of the equipment that needs to be upgraded.

8. A number of commercial broadcast and nonbroadcast networks have provided programming with Spanish language as a second audio program. Each of the top four commercial broadcast TV networks has provided a Spanish language soundtrack as a second audio program, on at least an occasional basis. At least thirty-three

ABC affiliates have the capability to pass through a second soundtrack on the SAP channel; at least twenty-three Fox affiliates do; and approximately twenty NBC affiliates do. Some nonbroadcast networks, such as HBO and Showtime, also have offered a Spanish language soundtrack as a separate audio program, and, Turner Classic Movies has provided a soundtrack with video description as a separate audio program. Some MVPDs that carry their programming provide the audio on the SAP channel.

III. Entities To Provide Programming With Video Description

A. Broadcast Stations in Top 25 DMAs

9. We require broadcast stations in the top 25 Designated Market Areas (DMAs, defined by Nielsen Media Research) affiliated with the top four commercial broadcast networks to provide programming with video description. Our goal in this proceeding is to adopt rules designed to enhance the availability of video description, but not impose an undue burden on programming producers and distributors. Broadcast stations in the top 25 DMAs reach approximately 50% of U.S. TV households. Those affiliated with the top four broadcast networks provide the highest-rated programming, *i.e.*, the most-watched, and therefore the most-advertiser-supported, programming. Some affiliates of the top four networks in the top 25 DMAs already have the technical capability necessary to provide programming with video description. Those that do not are likely to have the resources to acquire that capability without being unduly burdened.

B. Multichannel Video Programming Distributors With at Least 50,000 Subscribers

10. We also require larger multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers to provide programming with video description on each of the top five national nonbroadcast networks they carry, as defined by prime time audience share, as well as the programming of broadcast stations and other networks they carry, under certain circumstances, as described. We believe this result is consistent with our goal of enhancing the availability of video description without imposing an undue burden on the programming production and distribution industries. The “larger MVPDs” as we define them include approximately 275 cable systems that serve approximately 50% of MVPD

households, and two DBS systems that serve over 12 million customers. The top five nonbroadcast networks as we define them include those with the most-watched programming during prime time.

11. Because MVPDs must have the capability to support a third audio channel for each channel on which they intend to provide programming with video description, we have decided to limit the number of nonbroadcast networks for which "larger MVPDs" must provide video description to five. Given that we require MVPDs to provide programming with video description during prime time, we define the top five nonbroadcast networks in terms of prime time audience share, as determined by an average of Nielsen prime time ratings for the time period October 1, 1999–September 30, 2000.

12. The per-channel costs for MVPDs also suggests that the cut-off for "larger MVPDs" should be based on cable system size, not on multiple system operator size. We have decided to apply our rules to systems with more than 50,000 subscribers. These systems include approximately 275 cable systems that reach approximately 50% of cable subscribers, just as our rules affect broadcast stations that reach approximately 50% of U.S. TV households. Our decision to apply our rules to MVPDs that serve at least 50,000 subscribers will also include two DBS systems that together reach an additional 12 million subscribers.

C. Equipped Broadcast Stations and MVPDs

13. We further require all broadcast stations, including noncommercial educational stations, that have the technical capability necessary to "pass through" any second audio program containing video description that they receive from their affiliated networks. Similarly, we require all MVPDs that have the technical capability necessary to "pass through" any secondary audio program containing video description that they receive from a broadcast station or nonbroadcast network. We believe this requirement is consistent with our approach to enhance the availability of video description, but not impose an undue burden on programming producers and distributors. We will consider broadcast stations and MVPDs to have the technical capability necessary to support video description if they have virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.

IV. Programming To Contain Video Description

A. Amount of Programming

14. We require broadcast stations in the top 25 DMAs and MVPDs with at least 50,000 subscribers to provide at least fifty hours per calendar quarter of programming with video description. Our goal in this proceeding is to bring the benefits of video description to the commercial video marketplace, while at the same time not impose an undue burden on the broadcast stations and MVPDs subject to our initial rules. We believe that requiring these broadcast stations and MVPDs to provide fifty or more hours per calendar quarter of programming with video description satisfies this goal.

15. We clarify, as suggested by several commenters, that the broadcast stations and MVPDs may not count toward their 50-hour quarterly requirement programming that they have previously aired with video description, once the rules go into effect. In other words, a broadcast station or MVPD may not count toward its 50-hour quarterly requirement any programming it aired with video description after the effective date of the rules when that same broadcast station or MVPD repeats the same programming later. Broadcast stations and MVPDs may, however, count any programming they air after the effective date in excess of their quarterly requirements, and that they repeat later. In addition, they may count any programming with video description they air before the effective date of the rule, and that they later repeat after the effective date. We also clarify, as suggested by several commenters, that once a broadcast station or MVPD has aired a particular program with video description, all of that broadcast station's or MVPD's subsequent airings of that program should contain video description, unless another use is being made of the SAP channel. We further clarify that non-program minutes, however, such as advertisements and public service announcements, aired during a program need not be described.

16. We also believe that our decision to require that 50 hours per quarter, or roughly 4 hours per week, of programming with video description will avoid any conflicts between competing uses of the SAP channel. Some networks use the SAP channel to provide Spanish audio or other services. Although as some commenters point out there is not a technical solution to allow two uses of the SAP channel simultaneously, as others point out most networks that use the SAP channel to

provide Spanish language audio do so on a limited basis. Those few networks that provide more extensive Spanish language audio are not among the networks that will be affected by our rules. Thus, we believe that our rules will not create conflicts between Spanish language audio and video description for use of the SAP channel.

B. Prime Time vs. Other Types of Programming

17. We require that the described programming must either be shown during prime time or be children's programming. Prime time programming is the most watched programming, and so programming provided during this time will reach more people than programming provided at any other time. In addition, the several thousand dollars per hour cost to describe programming is a very small portion of the production budget for the typical prime time program. At the same time, programming with video description may provide a benefit not only to children who are visually disabled, but also to those who are learning disabled. Programming with video description has both audio description and visual appeal, and so has the potential to capture the attention of learning disabled children and enhance their information processing skills. Requiring broadcast stations and MVPDs to provide children's or prime time programming with video description thus ensures that the programming reaches the greatest portion of the audience it is intended to benefit the most. Permitting broadcast stations and MVPDs to select between the two provides them flexibility without compromising that goal.

18. In order to help the public identify the broadcast stations and MVPDs that are required to provide programming with video description, and the programming for which they are doing so, we encourage broadcast stations and MVPDs that provide programming with video description to take steps to educate and inform the public about the service. We encourage broadcast stations and MVPDs to promote the service in their programming and on their websites, and provide the relevant information to magazines and newspapers that follow their programming schedules, as some commenters suggest.

19. We note the some commenters suggest that we should not focus on entertainment programming, but rather on the accessibility of text information aired on TV, such as emergency information, the identity of speakers on news and talk shows, and telephone

numbers or other contact information in advertisements. We believe that the accessibility of this type of information is important, and address the accessibility of emergency information in particular below. We believe, however, that a secondary audio program may not be the appropriate vehicle to provide text-based information. However, we do encourage producers of programming with text information to provide that information aurally, by announcing the names of speakers. Advertisers should already have a commercial incentive to provide contact information aurally.

V. Effective Date of New Rules

20. We require the broadcast stations in the top 25 DMAs and MVPDs with at least 50,00 subscribers to begin providing programming with video description during the first calendar quarter that is eighteen months after the adoption date of this *R&O*, *i.e.*, April through June 2002. Although we appreciate the desire of many to have programming with video description earlier, we wish to give the affected broadcast stations, MVPDs, and networks the time that may be necessary to make arrangements to describe the programming, and to upgrade their equipment and infrastructure. We believe that giving the affected parties until April 2002 is ample time. We decline to make our effective date coincide with the beginning of the TV season for broadcast networks because our rules also affect nonbroadcast networks, which may or may not use the same schedule to introduce new programs as broadcast networks do. We encourage parties that seek to make the beginning of their new programming seasons coincide with starting date of their providing video description to make the necessary arrangements to do so, within the time frame to meet their first quarterly compliance requirement in April–June 2002.

VI. Exemptions

21. We adopt procedures and standards to exempt any broadcast station or MVPD subject to our rules for which compliance would be an “undue burden.” We, therefore, will exempt any affected broadcast station or MVPD that can demonstrate through sufficient evidence that compliance would result in an “undue burden,” which means significant difficulty or expense. We will consider the following factors: The nature and cost of providing video description of the programming; the impact on the operation of the broadcast station or MVPD; the financial resources of the broadcast station or MVPD; the

type of operations of the broadcast station or MVPD; any other factors the petitioner deems relevant; and any available alternatives to video description. Given the limited nature of our initial video description rules, we decline to exempt, however, any particular categories of programming or class of programming providers.

VII. Enforcement

22. We adopt enforcement procedures as follows. A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate a complainant’s disability. A complaint shall include the name and address of the complainant. The complaint shall include the name of the broadcast station or MVPD against whom the complaint is alleged. A complaint against a broadcast station should include the name and address of the station, and its call letters and network affiliation. A complaint against an MVPD should include the name and address of the MVPD, and the name of the network that provides the programming that is the subject of the complaint. Complaints should include a statement of facts sufficient to show that the broadcast station or MVPD has violated or is violating the Commission’s rules, and, if applicable, the date and time of the alleged violation; the specific relief or satisfaction sought by the complainant; and the complainant’s preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant’s disability). Complaints should be sent to the Commission’s Consumer Information Bureau. That bureau will forward formal complaints to the Commission’s Enforcement Bureau, and we delegate authority to the Enforcement Bureau to act on and resolve any complaints in a manner consistent with this *R&O*.

23. Complaints satisfying the requirements described will be promptly forwarded by Commission staff to the broadcast station or MVPD involved, which shall be called on to answer the complaint within a specified time, generally within 30 days. To ensure fair and meaningful enforcement of our video description requirements, we will authorize the staff to either shorten or lengthen the time required for responding to complaints in

particular cases. For example, if a complaint alleges that the video description disappeared during a program, we believe that it is appropriate to require the broadcast station or MVPD to respond within 10 days after being notified of the complaint in order to minimize the risk of repeat or recurring problems. If, on the other hand, a complaint alleges that a broadcast station or MVPD has not met its quarterly requirements, it may not be appropriate to require the broadcast station or MVPD to respond until the end of the quarter that is the subject of the complaint. However, recurring complaints or a pattern of such complaints against a particular broadcast station or MVPD may warrant a more immediate response to ensure that quarterly requirements are being addressed by the broadcast station or MVPD in manner consistent with their intended purposes. Commission staff will manage our complaint processes to reflect these and other case specific differences. The burden of proof of compliance in response to a complaint is on the broadcast station or MVPD, and they must maintain records sufficient to show their compliance with our rules.

24. Commission staff will review all relevant information provided by the complainant and defendant broadcast station or MVPD and may request additional information from either or both parties when needed for a full resolution of the complaint. Certifications of compliance from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, may be relied on by broadcast stations and MVPDs to defend against claims of noncompliance. As a general matter, distributors will not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets our video description requirements and the distributor did not know and could not have reasonably ascertained that the certification was false. However, we expect broadcast stations and MVPDs to establish appropriate policies and procedures to safeguard against such false certifications. Commission staff will scrutinize complaints to ensure that broadcast stations and MVPDs vigilantly adhere to our video description requirements. If we determine that a violation has occurred, we will use our considerable discretion under the Act to tailor sanctions and remedies to the individual circumstances of a particular violation. For example, in egregious

cases or cases demonstrating a pattern or practice of noncompliance, sanctions may include a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

VIII. Emergency Information

25. We require any broadcast station or MVPD that provides local emergency information to make the critical details of that information accessible to persons with visual disabilities. Our rule applies to all broadcast stations and MVPDs that provide emergency information, as opposed to just those in the largest TV markets or with the largest number of subscribers. We believe this is appropriate both because of the importance of emergency information and because it does not involve the kinds of technical issues involved in using a SAP channel. We envision that affected broadcast stations and MVPDs will aurally describe the emergency information in the main audio as part of their ordinary operations. This would be similar to providing "open" video description. We define emergency information to be that which is intended to protect life, health, safety, and property, *i.e.*, critical details about an emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list. We do not believe an exhaustive list of examples is necessary to convey what is covered by the rule. Our definition of emergency information will include the provision of critical details in an accessible manner. Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

26. The rule will require broadcast stations and MVPDs that provide local emergency information to make that information accessible to viewers who

are blind or have visual disabilities in the affected local area through aural presentation whenever such information is provided during regularly scheduled newscasts, unscheduled newscasts that preempt regularly scheduled programming or during continuing coverage of a situation. As a result of our rule, persons with visual disabilities will have access to the same critical information to which other viewers have access. Under this rule, broadcast stations and MVPDs are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers visually, only the visual information intended to further the protection of life, health, safety, and property. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments.

27. We believe that our requirement that broadcast stations and MVPDs make the critical details of emergency information available during regularly scheduled newscasts and newscasts that are sufficiently urgent to interrupt regular programming will generally ensure that the critical details of emergency information will be accessible to persons with visual disabilities. This is because we expect that broadcast stations and MVPDs will provide emergency information of an extremely urgent nature by interrupting their regularly scheduled programming with a newsbreak, and we require them to make the critical details of this information accessible. To the extent, however, that a broadcast station or MVPD does not interrupt its regular programming to provide emergency information but rather does so through another manner, such as a "crawl" or "scroll," during that programming, we require them to accompany that information with an aural tone, as referenced in the Notice of Proposed Rule Making ("NPRM"), 64 FR 67236 (December 1, 1999).

28. The new rules regarding emergency information will be effective upon approval by the Office of Management and Budget. We adopt an earlier effective date for this rule because of the importance of emergency information, and because there should be little if any equipment and infrastructure costs associated with compliance.

IX. Jurisdiction

29. We conclude that we have the authority to adopt video description rules. Section 1 of the Act (codified as 47 U.S.C. 151) established the

Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States* * * * a rapid, efficient, Nationwide, and world-wide wire and radio communication service. * * *" (emphasis added). Section 1 also established the Commission "for the purpose of promoting safety of life and property through the use of wire and radio communication." Section 2(a) of the Act (codified as 47 U.S.C. 152(a)) states that "[t]he provisions of this act shall apply to all interstate and foreign communication by wire or radio" and "all persons engaged within the United States in such communication." Section 4(i) (codified as 47 U.S.C. 154(i)) states that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions" and section 303(r) (codified as 47 U.S.C. 303(r)) states that "the Commission from time to time, as public convenience, interest, or necessity requires shall * * * [m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. * * *"

30. Congress has thus authorized the Commission to make available to all Americans a radio and wire communication service, and to promote safety and life through such service, and to make such regulations to carry out that mandate, that are consistent with the public interest and not inconsistent with other provisions of the Act or other law. In other words, as the Commission has previously explained, "[t]he courts have consistently held that the Commission has broad discretion so long as its actions further the legislative purposes for which the Commission was created and are not contrary to the basic statutory scheme." Thus, in considering the Commission's power to create the universal service fund (for which at the time there was no explicit statutory authority), the U.S. Court of Appeals for the D.C. Circuit relied, solely, on sections 1 and 4(i) of the statute, holding: "As the Universal Service Fund was proposed in order to further the objective of making communication service available to all Americans at reasonable charges, the proposal was within the Commission's statutory authority."

31. We disagree with those parties that contend that video description rules would be inconsistent with other provisions in the Act or other law.

Specifically, some parties contend that video description rules are inconsistent with sections 624 and 713 of the Act, and the First Amendment. Others suggest that the rules interfere with the rights of copyright holders. We address each of these.

32. *Section 713.* Some commenters contend that section 713(f) of the Act, codified as 47 U.S.C. 613(f), only authorizes the Commission to conduct an inquiry, and thus forecloses a rulemaking, on video description. Section 713(f) of the Act states, in its entirety:

Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess the appropriate methods and schedule for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

Section 713(f) is silent with respect to—and thus by itself neither authorizes nor precludes—a rulemaking. In other words, section 713(f) does not change the purpose for which the Commission was created, as expressed in section 1 of the Act, nor does it derogate the general rulemaking powers the Commission has, as expressed in sections 4(i) and 303(r) of the Act.

33. We recognize, as some commenters point out, that the legislative history to section 713 indicates that Congress considered, but did not enact, language explicitly referencing a rulemaking proceeding. The Conference Report indicates that the House amendment to the Senate bill contained language explicitly referencing a rulemaking proceeding: “Following the completion of this inquiry the Commission may adopt regulations it deems necessary to promote the accessibility of video programming to persons with visual impairments.” The conferees agreed, however, to remove such language: “The agreement deletes the House provision referencing a Commission rulemaking with respect to video description.” While this history indicates that section 713 should not be construed to authorize a Commission rulemaking, the history does not indicate that section 713 should be construed to prohibit such a rulemaking, given our otherwise broad powers to make rules, as expressed in

sections 4(i) and 303(r) of the Act. Had Congress intended to limit our general authority, it could have expressly done so, as it has elsewhere in the Act.

34. *Section 624(f).* Some commenters also contend that, absent express authority to conduct a rulemaking on video description elsewhere in the Act, section 624(f) of the Act precludes the Commission from adopting video description rules for cable operators. Section 624(f) states that “[a]ny Federal agency * * * may not impose requirements regarding the provision or content of cable services, except as expressly provided in [Title VI].” The U.S. Court of Appeals for the D.C. Circuit has interpreted this section to forbid “rules requiring cable companies to carry particular programming.” The video description rules we adopt today are not content-based, and as such, do not require cable companies (or any other distributor of video programming) to carry particular programming. Rather, our rules simply require that, if a distributor chooses to carry the programming of the largest networks, it must provide a small amount of programming with video description.

35. *First Amendment.* Some commenters argue that requiring video description is inconsistent with the First Amendment, because it compels speech, or otherwise is content-based regulation. Other commenters, however, contend that our rules are content-neutral regulations, similar to time, place, and manner regulations, and under the applicable test, are consistent with the First Amendment. The Supreme Court has held that “[t]he principal inquiry in determining content neutrality, in speech cases generally and in time, place or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to free expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” The purpose of our video description rules is to enhance the accessibility of video programming to persons with disabilities, and is not related to content.

36. The fact that our rules will require, as opposed to restrict, speech does not change the analysis. As a number of commenters explain, a mandate to provide video description does not require a programmer to express anything other than what the programmer has already chosen to express in the visual elements of the program. Our rules simply require a

programmer to express what it has already chosen to express in an alternative format to enhance the accessibility of the message. As such, our rules are comparable to a requirement to translate one's speech into another language in other contexts. A requirement to provide programming with video description is most similar to our existing requirements to provide programming with closed captioning, which, as several commenters point out, has not been challenged on First Amendment grounds. Indeed, the U.S. Court of Appeals for the D.C. Circuit concluded nearly twenty years ago that any requirement to provide programming with closed captioning would not violate the First Amendment.

37. Given that our video description rules are content-neutral regulations, the applicable test for reviewing their constitutionality is whether the regulations promote an important government purpose, and whether they do not burden substantially more speech than necessary. As indicated, our purpose in adopting our rules is to enhance the accessibility of television programming to persons with visual disabilities. As we observed in the *NPRM*, television programming shapes American culture and public opinion in myriad ways, because it is our principal source of news and information, and provides hours of entertainment weekly. Millions of Americans have visual disabilities and have difficulty following the visual elements in television programming, which can be overcome through video description. We believe this is an important government purpose in the context of the First Amendment, and believe that other legislation designed to enhance the accessibility of communications to persons with disabilities supports our conclusion.

38. We also believe that video description will not burden any more speech than necessary. As described, video description is in effect the translation of the visual elements of programming into another language to provide functional equivalency for the blind. Our rules will require only a limited amount of programming to contain video description. To the extent the video description is distracting to viewers who do not wish to hear it, they can simply listen to the main audio instead of the SAP channel.

X. Conclusion

39. Today we adopt rules to enhance the accessibility of the important medium of television to persons with visual disabilities. We do not impose an undue burden on the programming

production and distribution industries. Our rules will require only the largest broadcast stations and MVPDs—which provide television programming to the majority of the public—to provide a limited amount of programming with video description. These broadcast stations and MVPDs will provide programming with video description on the largest networks they carry—which provide the most watched television programming. Our rules will thus create a benefit to the greatest number of persons with visual disabilities but at the same time impose a cost on the least number of broadcast stations and MVPDs. As the industry and the public gain greater experience with video description, we hope that more broadcast stations and MVPDs will provide video description, and those that do so will provide more hours of programming with video description.

XI. Administrative Matters

40. This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or by sending an email to access@fcc.gov.

41. *Final Paperwork Reduction Act Analysis*. This *R&O* contains information collection requirements that the Commission is submitting to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

42. *Final Regulatory Flexibility Certification*. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*

XII. Ordering Clauses

43. Accordingly, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613, part 79 of the Commission's rules are amended as set forth.

44. The rules set forth that revise § 79.2 of the Commission's rules, 47 CFR 79.2, shall become effective upon approval from the Office of Management and Budget, and the rules set forth that add § 79.3 to the Commission's rules, 47 CFR 79.3, shall become effective on April 1, 2002.

45. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

46. This proceeding is terminated.

XIII. Final Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The *NPRM* published in this proceeding proposed rules to provide video description on video programming in order to ensure the accessibility of video programming to persons with visual impairments.

48. In an abundance of caution, the Commission published an Initial Regulatory Flexibility Analysis (IRFA) in the *NPRM*, even though the Commission was reasonably confident that the proposed rules would not have the requisite "significant economic impact" on a "substantial number of small entities." The IRFA sought written public comment on the proposed rules. No written comments were received on the IRFA, nor were general comments received that raised concerns about the impact of the proposed rules on small entities.

49. The rules adopted in this *R&O* requiring stations to provide video descriptions on video programming will affect at most five small broadcasters, which are affiliates of the top four networks in the top 25 Nielsen Designated Market Areas, in the amount of \$5,000 to \$25,000 each. We recognize that the upper end of the possible economic impact might constitute a significant impact for some small broadcasters, but, as noted, this impact will reach, at most, 10 entities, and we have provided an exemption (upon application) for those small entities for which the cost is burdensome. The pass through of programming will have no significant economic impact on small entities because they are required to pass through the programming with video description only if they already have the technical capability necessary to do so. The Commission believes that the emergency notification requirement will have a negligible effect on small entities as well. In addition, if this requirement should prove burdensome to small entities, they may apply for an exemption.

50. The Commission therefore certifies, pursuant to the RFA, that the rules adopted in the present *R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *R&O*, including a copy of this final certification, in a report to be

sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including a copy of this final certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, a copy of the *R&O* and this final certification will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 79

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules

Part 79 of Title 47 of the U.S. Code of Federal Regulations is amended by revising it to read as follows:

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

1. The title of part 79 is revised to read as set forth above:

2. The authority citation for part 79 is revised to read as follows:

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

3. Section 79.2 is amended by revising paragraphs (a)(1), (b)(1), and (b)(3) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

(a) *Definitions*. (1) For purposes of this section, the definitions in §§ 79.1 and 79.3 apply.

* * * * *

(b) Requirements for accessibility of programming providing emergency information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided in the audio portion of the programming must be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1 of this part;

(ii) Emergency information that is provided in the video portion of a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to persons with visual disabilities; and

(iii) Emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that

interrupts regular programming, must be accompanied with an aural tone.

* * * * *

(3) Video programming distributors must ensure that:

- (i) Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning; and
- (ii) Emergency information should not block any video description and any video description provided should not block any emergency information provided by means other than video description.

* * * * *

4. Part 79 is amended by adding § 79.3 to read as follows:

§ 79.3 Video description of video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Designated Market Areas (DMAs).* Unique, county-based geographic areas designated by Nielsen Media Research, a television audience measurement service, based on television viewership in the counties that make up each DMA.

(2) *Second Audio Program (SAP) channel.* A channel containing the frequency-modulated second audio program subcarrier, as defined in, and subject to, the Commission's OET Bulletin No. 60, Revision A, "Multichannel Television Sound Transmission and Processing Requirements for the BTSC System," February 1986.

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

(4) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.

(5) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.

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

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), as of September 30, 2000, and

that are licensed to a community located in the top 25 DMAs, as determined by Nielsen Media Research, Inc. for the year 2000, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming;

(2) Television broadcast stations that are affiliated or otherwise associated with any television network, must 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;

(3) Multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers, as of September 30, 2000, must provide 50 hours of video description per calendar quarter during prime time or on children's programming, 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, as determined by Nielsen Media Research, Inc., for the time period October 1999 through September 2000; and

(4) Multichannel video programming distributors (MVPDs) of any size:

(i) Must pass through video description on each broadcast station they carry, when the broadcast station provides video 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 description; and

(ii) Must pass through video description on each nonbroadcast network they carry, when the network provides video description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the video description.

(c) *Responsibility for and determination of compliance.* (1) The Commission will calculate compliance on a per channel, calendar quarter basis, beginning with the calendar quarter April 1 through June 30, 2002.

(2) Programming with video description will count toward a broadcaster's or MVPD's minimum requirement for a particular quarter only if that programming has not previously been counted by that broadcaster or MVPD towards its minimum requirement for any quarter.

(3) Once an entity has aired a particular program with video description, it is required to include video description with all subsequent airings of that program, unless the entity uses the SAP channel in connection

with the program for a purpose other than providing video description.

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

(d) Procedures for exemptions based on undue burden.

(1) A video programming distributor may petition the Commission for a full or partial exemption from the video description requirements of this section, which the Commission may grant upon a finding that the requirements will result in an undue burden.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with video description would cause an undue burden. The term "undue burden" means significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for video description impose an undue burden:

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

(ii) The impact on the operation of the video programming distributor;

(iii) The financial resources of the video programming distributor; and

(iv) The type of operations of the video programming distributor.

(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 description requirements. The Commission will evaluate undue burden with regard to the individual outlet.

(4) The petitioner must file an original and two (2) copies of a petition requesting an exemption based on the undue burden standard, and all subsequent pleadings, in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Persons that file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must

include a certification that the petitioner was served with a copy. Parties filing replies to comments or oppositions must serve the commenting or opposing party with copies of such replies and shall include a certification that the party was served with a copy.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

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

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

(e) *Complaint procedures.* (1) A complainant may file a complaint concerning an alleged violation of the video description requirements of this section by transmitting it to the Consumer Information Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet 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 Information Bureau, 445 12th Street, SW, Washington, DC 20554. A complaint must include:

(i) The name and address of the complainant;

(ii) The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;

(iii) A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;

(iv) The specific relief or satisfaction sought by the complainant; and

(v) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability).

(2) The Commission will promptly forward complaints satisfying the requirements to the video programming distributor involved. The video programming distributor must respond to the complaint within a specified time, generally within 30 days. The Commission may authorize Commission staff to either shorten or lengthen the time required for responding to complaints in particular cases.

(3) The Commission will review all relevant information provided by the complainant and the video programming distributor and will request additional information from either or both parties when needed for a full resolution of the complaint.

(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 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 description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

(f) Private rights of action are prohibited. Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[FR Doc. 00-23154 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

Property Reporting Requirements

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA FAR Supplement (NFS) to

comply with OMB Bulletin 97-01 and makes other changes to NASA's property reporting requirements. Specific changes include: Additional instructions on how to adjust previously reported values; a new definition of Agency Peculiar Property to exclude completed end items destined for permanent operation in space; and a new definition of Work in Process to include completed end items destined for permanent operation in space which otherwise meet the definition of Agency Peculiar Property.

DATES: *Effective Date:* September 11, 2000.

Comment Date: Comments should be submitted to NASA at the address below on or before November 13, 2000.

ADDRESSES: Comments should be sent to James H. Dolvin, NASA Headquarters, Code HK, Washington, DC 20546, (202) 358-1279, jdolvin1@mail.hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358-1279.

SUPPLEMENTARY INFORMATION:

A. Background

OMB Bulletin 97-01, Form and Content of Agency Financial Statements, prescribes financial accounting and reporting requirements for Federal agencies. Included are accounting standards which apply to property, plant and equipment. Comments have been received from contractors regarding NASA's initial implementation of the standards through the NASA Form 1018 reporting format. In addition to changes being made to respond to contractors' concerns, changes are needed in NASA's reporting requirements to ensure compliance with the accounting standards and accurate and timely financial statements.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because less than three per cent of NASA contracts with small businesses have property reporting requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, applies to this proposed rule because it contains information collection requirements. Approval for the additional requirements has been obtained under OMB Control No. 2700-0017, approving an increase in burden hours from 5,700 to 8,144.