

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[MB Docket No. 11–43; FCC 16–37]

#### Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on proposals to expand the amount of and access to video described programming, for the benefit of consumers who are blind or visually impaired.

**DATES:** Comments are due on or before June 27, 2016; reply comments are due on or before July 26, 2016.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 11–43, by any of the following methods:

- *Federal Communications Commission (FCC) Electronic Comment Filing System (ECFS) Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* U.S. Postal Service first-class, Express, and Priority Mail must be addressed to the FCC Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *Hand or Messenger Delivery:* All hand-delivered or messenger-delivered paper filings for the FCC Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530; or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the “PROCEDURAL MATTERS” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements

contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Notice of Proposed Rulemaking (NPRM)*, FCC 16–37, adopted on March 31, 2016, and released on April 1, 2016. The full text of this document is available electronically via the FCC’s Electronic Document Management System (EDOCS) Web site at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC’s Electronic Comment Filing System (ECFS) Web site at <http://fjallfoss.fcc.gov/ecfs2/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. Alternative formats are available for persons with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### I. Introduction

1. Since the video description rules were reinstated, they have provided substantial benefits to persons who are blind or visually impaired by making television programming more accessible. Through video description, individuals who are blind or visually impaired can independently enjoy and follow popular television programs and be more fully included in the shared cultural experience that television offers. The Federal Communications Commission (“FCC” or “the Commission”) is now proposing revisions to our rules that would expand the availability of, and support consumer access to, video described programming. In 2011, the Commission took the initial step in expanding access to video description, by reinstating the 2000 rules as directed by Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).<sup>1</sup> The CVAA gives the Commission authority, subject to certain limitations, to issue additional regulations, if the benefits of doing so outweigh the costs.<sup>2</sup> As discussed in greater detail below, we

<sup>1</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Red 11847, 11849, para. 3 (2011) (“2011 Order”).

<sup>2</sup> Public Law 111–260, 124 Stat. 2751, sec. 202 (2010). See 47 U.S.C. 613(f)(4).

tentatively conclude that the substantial benefits for individuals who are blind or visually impaired outweigh the likely minimal costs of the proposals we make in this *NPRM*.

2. Specifically, we propose the following revisions to our video description rules:

- An increase in the amount of described programming on each included network (a network carried on a programming stream or channel on which a broadcaster or MVPD is required to provide video description) carried by a covered broadcast station or multichannel video programming distributor (“MVPD”), from 50 hours per calendar quarter to 87.5;

- An increase in the number of included networks carried by covered distributors, from four broadcast and five nonbroadcast networks to five broadcast and ten nonbroadcast networks;

- Adoption of a no-backsliding rule, which would ensure that once a network is designated an “included network” required to provide description, it would remain an “included network” even if it falls out of the top five or top ten ranking;

- Removal of the threshold requirement that nonbroadcast networks reach 50 percent of pay-TV (or MVPD) households in order to be subject to inclusion;

- A requirement that covered distributors provide dedicated customer service contacts who can answer questions about video description; and

- A requirement that petitions for exemptions from the video description requirements, together with comments on or objections to such petitions, be filed with the Commission electronically.

We seek comment on our tentative conclusion regarding the costs and benefits of these proposed rules, on the proposed rules themselves, on appropriate timelines for the proposed rules, and on other possible changes to the rules to ensure that blind and visually impaired consumers have access to television programming.

### II. Background

3. The CVAA was enacted on October 8, 2010 for the purpose of ensuring that individuals with disabilities are able to fully utilize modern communications services and equipment and to better access video programming.<sup>3</sup> As part of

<sup>3</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751 (2010). See H.R. Rep. No. 111–563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111–386, 111th Cong., 2d Sess. at 1 (2010).

this legislation, Congress mandated that the Commission reinstate its previously adopted video description rules for television programming, required periodic reports on issues related to video description, and granted the Commission continuing authority to adopt additional regulations so long as the benefits of those new regulations outweigh their costs. Video description makes video programming 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,” and 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.

4. In August 2011, the Commission reinstated the video description regulations that previously had been adopted in 2000, requiring certain television broadcast stations and MVPDs to provide video description for a portion of the video programming that they offer to consumers on television.<sup>4</sup> These covered broadcasters and MVPDs are required to provide video described programming only on certain networks, as defined by our rules. The Commission’s rules play a key role in affording better access to television programs for individuals who are blind or visually impaired, “enabling millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation.”<sup>5</sup>

5. The Commission’s video description rules require commercial television broadcast stations that are affiliated with ABC, CBS, Fox, or NBC and are located in the top 60 television markets to provide 50 hours per calendar quarter of video described prime time or children’s programming.<sup>6</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 children’s programming on each of the top five national nonbroadcast networks that they carry on those

systems.<sup>7</sup> The nonbroadcast networks currently subject to these video description requirements are USA, TNT, TBS, History, and Disney Channel.<sup>8</sup> Any programming initially aired with video description must include video description if it is re-aired on the same station or MVPD channel, unless the station or MVPD is using the technology for another program-related purpose.

6. The rules also impose video description “pass through” obligations on all network-affiliated broadcast stations regardless of market size, and on all MVPDs regardless of the number of subscribers. Specifically, any broadcast station affiliated or otherwise associated with a television network must pass through video description when it is provided by the network, if the station has the technical capability necessary to do so<sup>9</sup> and if that technology is not being used for another purpose related to the programming. Similarly, 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. Broadcasters and MVPDs were required to be in compliance with the video description requirements beginning on July 1, 2012. The rules permit covered entities to seek a full or partial exemption based on economic burden; we have received no such exemption requests to date.

<sup>7</sup> For purposes of the rules, the top five national nonbroadcast networks are 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 the video description rules. 47 CFR 79.3(b)(4).

<sup>8</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, 30 FCC Rcd 2071, 2071, para. 1 (2015) (“*Update Order*”). The list of the top five networks is updated every three years in response to any changes in ratings. 47 CFR 79.3(b)(4). The *Update Order* was the first of these periodic updates. Absent any revision to our rules, the next update will be in effect on July 1, 2018 based on the ratings for the time period from October 2016 to September 2017, and will be announced earlier in 2018.

<sup>9</sup> A station or MVPD system is technically capable of passing through video description if it has virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost. 2011 Order, 26 FCC Rcd at 11861, para. 27. See also 2000 Order, 15 FCC Rcd at 15243, para. 30. We expect that all stations and MVPDs now have this capability, because of the requirement to provide audible emergency information to persons who are blind or visually impaired, which is also accomplished by means of a secondary audio stream.

7. Pursuant to the direction of the CVAA, not more than two years after the completion of the phase-in of the reinstated video description rules, the Commission submitted a report to Congress with findings relating to the costs and benefits of video description “in television programming” and “in video programming distributed on the Internet.”<sup>10</sup> With regard to the video description rules that are currently in place, the report concluded that “[t]he availability of video description on television programming has provided substantial benefits for individuals who are blind or visually impaired.” Notably, the report found that video description greatly enhances the experience of viewing video programming because viewers who are blind or visually impaired no longer miss critical visual elements of television programming and, therefore, can fully understand and enjoy the program without having to rely on their sighted family members and friends to narrate these visual elements. Commenters expressed that this ability to watch video programming independently is an incredibly important benefit of video description. In addition, the report found that “industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules,” and that the rules have been implemented without exceptional or unexpected costs. It also found, however, that “consumers report the need for increased availability of and easier access to video-described programming.” With respect to video programming distributed on the Internet, the report found that there would be substantial benefits to wider availability, but that there were potential technical challenges and insufficient information to analyze costs. In February of 2016, the Video Description Working Group of the Video Programming Subcommittee of the FCC’s Disability Advisory Committee released a list of recommended issues for our consideration; those issues are addressed throughout the item.<sup>11</sup>

### III. Authority

8. *Additional Regulations and Cost/Benefit Analysis.* As discussed in more detail below, we tentatively conclude

<sup>10</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, 29 FCC Rcd 8011 (2014) (“*2014 Report*”). See 47 U.S.C. 613(f)(3).

<sup>11</sup> *Recommendation of the FCC Disability Advisory Committee, Video Description Working Group of the Video Programming Subcommittee*, MB Docket 11–43 (Feb. 23, 2016) (“*DAC Letter*”).

<sup>4</sup> 47 CFR 79.3. See generally 2011 Order. See also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011) (“*Reinstatement NPRM*”).

<sup>5</sup> 2011 Order, 26 FCC Rcd at 11848, para. 1.

<sup>6</sup> Although the reinstated rules originally applied to the top 25 television markets, as of July 1, 2015, the rules were extended to the top four broadcasters in the top 60 television markets. 47 CFR 79.3(b)(2).

that the statutory requirement for the Commission to issue additional video description regulations is satisfied because “the need for and benefits of” providing video described programming as proposed here would be “greater than the technical and economic costs” if the rules are adopted. The statute grants the Commission “continuing authority” to regulate the provision of video described programming. Our continuing authority, however, is contingent on a finding that the benefits of additional video described programming outweigh the costs. Specifically, we may issue “additional regulations” if we determine that “the need for and benefits of” any video described programming required by the new rules “are greater than the technical and economic costs.” Furthermore, Congress directed us not to make such a determination until at least two years after release of the 2014 Report; as a result, the earliest the Commission can issue additional regulations is June 30, 2016. We therefore will take full consideration of the Report’s findings, as well as the comments in this proceeding, when determining the relative costs and benefits of adopting additional requirements.

9. The 2014 Report found that “[v]ideo description provides significant benefits to individuals who are blind or visually impaired” by allowing “them greater independence and the ability to follow and understand television programs.” One commenter to the proceeding expressed that she enjoys video description immensely when it is available because “[m]ost television shows are pointless to me unless I have description.” Commenters who provided input for the Report described how video description allows them to directly follow the visual elements of television programming, including “expressions, scene changes, visual jokes, and even things like visual clues in a murder mystery.” For example, one commenter noted that without video description “I’d just hear exciting music and have to guess what was happening, but now I can hear how the good guys caught the bad guys, or about the significant looks exchanged by two characters, or how the good guy escaped from some impossible situation. It’s great!” Commenters explained that this information is essential for providing access to the storytelling in what is a fundamentally visual medium, including for viewers who are not blind but who still can have difficulty with small visual details. Of arguably even more significance is the way this direct access to video programming provides

greater independence to persons who are blind or visually impaired. Commenters made clear the immense value of not having to rely on spouses, family members, or friends to keep them “up to speed” on television programming. They talked about the value of being able to enjoy a program without waiting for someone else to want to watch the same thing, and “interrupt their own viewing pleasure to try to tell [them] what was going on.” As Mr. Rodgers’ comment makes clear, the benefits of this independence accrue not just to viewers who are blind or visually impaired, but to the members of their households as well. We seek comment on whether there are any other studies or data points about the use and benefits of video description that should inform our deliberations.

10. While the benefits of video description are extensive, video description itself remains in relatively limited supply, and can be difficult to access even where it exists. The 2014 Report noted that consumers “[o]verwhelmingly . . . desire an increased amount of video description in television programming”; have “concerns regarding the availability of information about which television programs are video-described”; and “express frustration with the quality of customer support service for video description.”

11. The 2014 Report also found that there were “no significant issues with regard to the technical or creative aspects” of providing video description, and that

[t]he costs of video description are consistent with the expectations of industry at the time of rule adoption, and covered entities do not indicate that the costs of video description have impeded their ability to comply with the video description rules.

At the time of the 2014 Report, these costs included the “start-up” costs of developing the technical capability to provide video description, but, as explained in the Report, every distributor should now have that technical capacity.<sup>12</sup> The costs also include the actual description of video

<sup>12</sup> As of May 26, 2015, covered broadcasters and MVPDs are 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, which is required by our rules without exception for technical capability. Since video description is also provided via the secondary audio stream, compliance with the emergency information requirement will give covered broadcasters and MVPDs the technical capability to comply with the video description requirements. 47 CFR 79.2(b)(2)(ii) (implementing 47 U.S.C. 613(g)). See also 2014 Report, 29 FCC Rcd at 8028–29, para. 37.

programming. According to the National Association of Broadcasters (“NAB”), the one-time cost to have an hour of programming video described can range from \$2,500 to \$4,100. The 2014 Report also observed that there had been no petitions for exemption based on economic burden, and that has continued to be the case even after the requirements were extended to broadcasters in smaller television markets. Since the initial rules were adopted, some distributors have provided video description in live and other marquee events.<sup>13</sup> In the 2014 Report, industry commenters noted that some included networks provide more hours than are required, and anticipate that the amount of described programming by some networks would grow even in the absence of additional regulation.

12. When the Commission reinstated the video description rules in 2011, it anticipated that the reinstated rules would “enabl[e] millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation,” and considered it “unlikely that the modest requirement of 50 hours per quarter will be economically burdensome.” Our experience to date has confirmed the soundness of those predictions. As discussed below, we are proposing to increase the amount of described programming and make it more accessible. Given the extensive benefits to consumers of the existing requirements, we believe that they will benefit further from the proposed new requirements. We also have no evidence that the total cost of the additional description requirements or our other proposals will impose substantial

<sup>13</sup> For example, people who are blind or visually impaired were able to join “millions of Americans enjoying [the December 3, 2015] live broadcast of *The Wiz* on NBC, thanks to video description of the production.” Alix Hackett, *Perkins Students Enjoy Accessible Broadcast of ‘The Wiz Live!’*, Dec. 4, 2015, <http://www.perkins.org/stories/news/perkins-students-enjoy-accessible-broadcast-of-the-wiz-live>. Carl Augusto, CEO of the American Foundation for the Blind, called the live description of *The Wiz* a “godsend to people with vision loss.” *Comcast, NBC Add Video Descriptions to ‘The Wiz Live!’*, Multichannel News, Dec. 2, 2015, <http://www.multichannel.com/news/content/comcast-nbc-add-video-descriptions-wiz-live/395671> (“This nationally described television broadcast will not only be a godsend to people with vision loss, but also to those who describe action to people with vision loss, and the general public, who will learn about the importance of audio description.”). CBS broadcast a two-hour special called “Stevie Wonder: Songs in the Key of Life—An All-Star Grammy Salute” with video description. See *CBS’ Stevie Wonder Special to Air with Video Description for Visually Impaired*, Feb. 11, 2015, <http://www.broadwayworld.com/bwwtv/article/CBS-Stevie-Wonder-Special-to-Air-with-Video-Description-for-Visually-Impaired-20150211>.

economic burdens. Given the information currently in the record in this proceeding, we tentatively conclude that “the need for and benefits of” the increased availability and accessibility of video described programming would be “greater than the technical and economic costs” if the rules we propose are adopted. We seek comment on this tentative conclusion and the analysis set forth above. To the extent possible, commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained, and any supporting documentation or other evidentiary support.

13. *Limitation.* If the Commission decides to issue additional regulations, the CVAA places a restriction on any increase in the number of hours required to be video described. Paragraph (4)(B) of the CVAA, entitled “Limitation,” reads:

If the Commission makes the determination under subparagraph (A) and issues additional regulations, the Commission may not increase, in total, the hour requirement for additional described programming by more than 75 percent of the requirement in the regulations reinstated under paragraph (1).

The requirement in the reinstated regulations is the same for all included networks—50 hours of video description, per calendar quarter.<sup>14</sup> 75 percent of those 50 hours is 37.5 hours. We therefore read this provision to grant the Commission continuing authority to increase the per-network requirement by 37.5 hours (*i.e.*, up to 87.5 hours per quarter), but no more than this amount.

14. We find unpersuasive an alternative reading that suggests this provision caps the number of hours of video description a distributor must provide across all covered networks it carries. First, the CVAA’s “Limitation” provision says nothing about any increase in the hour requirement being constrained by the number of included networks. The CVAA and reinstated rules imposed the “hour requirement” on MVPDs on a per-channel basis, and on broadcasters on a per-programming stream basis. Thus, we believe that the continuing authority limitation is best interpreted as applying on a per-channel and per-programming stream basis; the

alternative reading would import an aggregate calculation that is simply foreign to the statute and regulations. Second, the Commission cannot control the aggregate number of hours of described programming carried by a given distributor, because that depends on the networks they choose to carry. For example, one MVPD might choose to carry a large number of covered networks, while another might carry few of them, making an aggregate limitation apply differently to different MVPDs. For this reason, we believe an approach that focuses on the hours required for individual included networks, rather than on a theoretical aggregate number of hours that a distributor may or may not carry, better effectuates Congress’s goals. We read the phrase “in total” in the statute to mean that if the Commission increases the required hours per-network of video-described programming in increments, the total increase cannot exceed 75 percent. Finally, we think that if Congress intended to restrict the Commission from increasing the number of included entities, it would have done so explicitly, just as it did by specifying the maximum number of covered DMAs that the rule could be revised to reach over time. We seek comment on our analysis of the statute’s hourly limitation.

15. *Additional Designated Market Areas.* In addition, the CVAA lays out a clear timeline for phasing in the video description regulations in designated market areas (“DMAs”) beyond the 25 included in the initial reinstated rules. A DMA is a Nielsen-defined television market consisting of a unique group of counties. The United States is divided into 210 DMA markets. Nielsen identifies television markets by placing each U.S. county (except for certain counties in Alaska) in a market based on measured viewing patterns and by MVPD distribution. The expansion to the top 60 DMAs occurred in 2015, pursuant to the existing rules. We may not expand beyond these 60 television markets, however, until 2020 at the earliest, and then only after completion of an additional study and report to Congress. The explicit timeline established by the CVAA does not contemplate any alternative approach to expanding the number of covered DMAs. As a result, it limits the Commission’s authority to issue video description rules, at this time, to the top 60 television markets currently covered. We seek comment on this understanding of the scope of our authority.

16. *Television Programming.* Finally, we limit our proposals to programming

“transmitted for display on television.” The 2014 Report did consider the issues, costs, and benefits of “[v]ideo description in video programming distributed on the Internet,” per the directive of the CVAA. The report discussed a range of comments supportive and skeptical of our authority to impose video description requirements on programming distributed on the Internet. We do not propose taking any action at this time with regard to video description on Internet programming.

#### IV. Increased Availability of Video Described Programming

17. We propose to increase the quarterly requirement for video described programming to 87.5 hours and to require six additional networks to provide such programming. The existing requirements have proven to be highly beneficial to persons who are blind or visually impaired, and we believe that these proposals will yield similar benefits. At the same time, we do not anticipate that the marginal cost of additional described programming would be higher than it is under the current rules or that the total cost of the requirements would be economically burdensome. As discussed above, in the 2014 Report we noted that the one-time cost to have an hour of programming video described can range from \$2,500 to \$4,100. This would constitute roughly 0.08–0.20 percent of the budget of an episode of an hour-long television drama, which regularly costs between \$2.0 and \$3.0 million.<sup>15</sup> We seek comment on whether there will be any other costs associated with the proposed increase. Accordingly, as noted above, we tentatively conclude that the benefits of our proposal will outweigh the costs, and we seek input on this tentative conclusion.

##### A. Hours per Included Network

18. As discussed above, the CVAA gives us authority to increase the number of hours of described programming required to be aired on each included broadcast and nonbroadcast network carried by an entity subject to the rules, from 50 per quarter to no more than 87.5. Given the extensive benefits and reasonable costs of video described programming, we propose to revise our rules to require the full 87.5 hours per quarter, per included network. Consumers have supported an increase in available video described programming. Although we propose to increase the total number of hours to the

<sup>14</sup> The rules as reinstated require distributors—broadcast stations and covered MVPDs—to provide video description. As a practical matter, however, the included networks themselves, rather than the broadcast stations and MVPDs, generally bear the efforts of preparing and providing video description, which the distributors pass through. 2011 Order, 26 FCC Rcd at 11851–52, para. 8.

<sup>15</sup> See Bill Carter, *Cable TV, the Home of High Drama*, N.Y. Times, Apr. 5, 2010, at B1.

maximum extent permissible under the CVAA, the total amount of hours required per covered network will remain relatively small (*i.e.*, 87.5 hours per quarter amounts to approximately 6 hours and 45 minutes per week in a 13 week calendar quarter). As discussed above in paragraph 11, we have no evidence of compliance difficulties for covered distributors or the currently-included networks, and we do not believe any would arise if a limited amount of additional programming were required. Comments filed in the 2014 Report proceeding indicate that at least some networks are already offering as much described programming as would be required under the proposed revision to the rules. As discussed above, we anticipate that “the need for and benefits of” the increased availability of video described programming would be “greater than the technical and economic costs” of providing this additional video described programming. We seek comment on this proposal.

19. Commenters in this docket previously have expressed concern about having sufficient eligible prime time and children’s programming to meet the requirement. In the 2011 Order, the Commission “note[d] and acknowledge[d] NCTA’s point that due to special circumstances, a covered network could theoretically have fewer than 50 hours of scheduled prime-time or children’s programming that can count toward the requirement in a given quarter.” However, the Commission “anticipate[d] that these instances [would] be exceedingly rare” because included networks “air many, many hours of prime-time and children’s programming each quarter.” The Commission suggested that, if such a situation arose, a programming distributor or provider could seek a waiver for the relevant quarter under the Commission’s general waiver authority. No such waivers have been requested under the existing rules. However, given the proposed increase in described hours, we seek comment on whether we should make any other changes to the rules to provide more flexibility. For instance, should we allow some amount of non-prime time, non-children’s described programming to count toward the increased requirement? If we do, should we continue to require that at least 50 hours per quarter be provided in either prime time or children’s programming? Should we require that any described programming that is counted toward the requirement run between 6 a.m. and Midnight local

time? We seek comment on these questions.

#### B. Covered Networks

20. We propose to extend the requirement to provide video description to additional networks. It currently applies when a covered broadcast station carries one of four named commercial broadcast networks (ABC, CBS, Fox, and NBC) or when a covered MVPD carries one of five popular nonbroadcast networks. We propose to increase these to five broadcast, and ten nonbroadcast, networks. The benefits of video described programming are abundant, and experience to date has borne out predictions regarding the reasonable costs of adding description to programming.

21. Given the obvious parallels to closed captioning, which is required on virtually all television programming, it is not surprising that commenters have called for expanding the requirement for video description, with some going so far as to suggest that we echo the closed captioning requirement to extend the rules to virtually all programming. In the CVAA, however, Congress directed us to expand the video description rules in a measured fashion. Any proposed expansion must satisfy the statutory test that asks whether “the need for and benefits of” the additional video described programming would be “greater than the technical and economic costs” of providing it. In recognition of this directive for a measured approach, we propose a limited increase in the number of included broadcast and nonbroadcast networks on which covered broadcasters and MVPDs must provide video description. We believe that this approach will have a significant benefit to viewers who are blind or visually impaired, given the popularity of the additional programming networks. We seek comment below on whether we should add more or fewer networks at this time, and what the grounds would be for choosing any specific number of networks.

22. First, we propose to revise our rules to require any commercial television broadcast station that (i) is affiliated with ABC, CBS, Fox, and NBC or with any other of the top five commercial television broadcast networks, and (ii) is located in the top 60 television markets, to provide 87.5 hours per calendar quarter of video described prime time or children’s programming on each programming stream on which they carry these networks. The original video description rules that Congress directed

the Commission to reinstate specifically identified ABC, CBS, Fox, and NBC as subject to the description requirement. We propose to revise our rules to include those four networks, as well as any others in the top five nationally, determined triennially.<sup>16</sup> Barring any significant changes to the marketplace, we anticipate this rule change would result in one additional broadcast network being aired with 87.5 hours per quarter (or approximately 6 hours and 45 minutes per week in a 13 week calendar quarter) of video described programming.

23. In addition, we propose to revise our rules to require any MVPD system that serves 50,000 or more subscribers to provide 87.5 hours of video description per calendar quarter during prime time or children’s programming on each channel on which they carry one of the top ten national nonbroadcast networks.<sup>17</sup> In adopting the current video description rules, the Commission recognized that the popularity of programming networks shifts over time, and therefore adopted a requirement that we review network ratings every three years to determine the top five. We propose to continue the existing review process, but to expand the number of included networks from five to ten. Because the number of nonbroadcast networks is much larger than the number of broadcast networks,<sup>18</sup> we

<sup>16</sup> The “top five” commercial broadcast networks will be determined in the same fashion as the nonbroadcast networks under the existing and proposed rules. Thus, every three years they will be the top five as determined by an average of the national audience share during prime time of broadcast networks, as calculated by Nielsen for the preceding ratings year, and that has 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. As discussed above, the “top five” will include ABC, CBS, Fox, and NBC, regardless of their relative rankings. In the event that one or more of those named networks suffers a sustained drop below fifth place in relative broadcast network rankings, the “top five” broadcast networks for the purposes of these rules could consist of more than five networks.

<sup>17</sup> As under the current rules, these “top ten” would be determined by an average of the national audience share during prime time of nonbroadcast networks, as calculated by Nielsen for the preceding ratings year, and that has 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.

<sup>18</sup> MVPD subscribers to the most popular tiers of service have access to more than six times as many nonbroadcast networks as broadcast networks. *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92–266, Report on Cable Industry Prices, 29 FCC Rcd 14895, 14905–06, Tbls. 4, 5 (MB 2014) (showing an average of 250.8 total available channels on the most subscribed tiers of service, of which an average of 31.6 are local broadcast channels; these include

believe it is appropriate to include a larger increase in covered nonbroadcast networks. If adopted, once the new rules are in effect, a covered MVPD would be required to provide 87.5 hours per quarter of video described programming on each of the top ten nonbroadcast networks that it carries. Below, we discuss the timing for implementation of these proposed revisions.

24. With this proposal, we seek to ensure that consumers are able to realize the benefits of video description, keeping in mind our Congressional directive to proceed judiciously with any expansion of the requirements. Should we include more, or fewer, additional networks at this time? Commenters should provide justifications for any specific change in the number of included networks. Would an alternative approach to determining included networks, such as a rule that included networks based on a minimum average viewership level, or gross network revenues, be preferable to one based on relative prime time broadcast rankings? We seek comment on the proposed approach and any alternatives.

### C. Other Changes

25. *No Backsliding.* We propose to adopt a “no-backsliding” requirement. Such a rule would state that once a network is designated an “included network” required to provide description, it would remain an “included network” even if it falls out of the top five or top ten ranking. Under the current rules, the covered nonbroadcast networks are those in the top five, recalculated triennially, and when a network drops from the top five during the applicable ratings period, as Nickelodeon did between 2012 and 2015,<sup>19</sup> MVPDs are no longer required to provide video description on that network once the triennial period has ended.<sup>20</sup> In 2011, the Commission

standard definition and high definition streams as well as secondary programming streams). *But see infra* note 21 (noting the “average” subscriber as determined by Nielsen actually receives around 180 channels; assuming the same number of broadcast channels in those average lineups, this would reflect roughly five times as many nonbroadcast as broadcast networks).

<sup>19</sup> Although Nickelodeon is no longer in the top five nonbroadcast networks currently subject to the video description rules, it appears that Nickelodeon has continued to provide video description voluntarily on some of its children’s programming. See American Council of the Blind, *The Audio Description Project, Video Described Shows by Network* (updated 3/6/16), available at <http://www.acb.org/adp/tv.html#shows>.

<sup>20</sup> However, MVPDs must always pass through description on any channel if the network or broadcaster provides description, if they are not using that capacity for another program-related purpose. 47 CFR 79.3(b)(5).

declined to adopt a “no backsliding” rule, noting that it did not have authority at that time to go beyond the scope of the reinstated rules except to the extent provided by the CVAA. The Commission also noted, however, that it would have authority to adopt such a rule “after the passage of time and a review of [the rules’] impact.”

26. Given the passage of time and the continuing authority granted to the Commission in the CVAA to adopt additional video description regulations, we believe that we now have authority to adopt a “no-backsliding” rule. In addition, we believe that there are substantial policy benefits to ensuring that video described programming continues to be offered on networks currently subject to the rules. Once a broadcaster or MVPD begins to carry video described programming on a given network, it creates an expectation in consumers that they will be able to rely on that channel for described programming in the future. A “no-backsliding” rule would ensure that such consumer expectations are fulfilled, and would also result in an increased amount of video described programming for individuals who are blind or visually impaired, as the popularity of networks shifts over time and new networks become subject to the rule. Further, we believe that the burden of continued compliance by formerly covered networks would be limited to the actual costs of describing specific programs, which as discussed above are low relative to the overall costs of television production. Since any included network would be broadcast or carried with video description for at least three years, the processes for including video description in that networks’ programming will have been well established by the next time the Commission reviews rankings.

27. For these reasons, along with the extensive benefits and reasonable costs of video describing programming discussed above, we propose to adopt a “no-backsliding” requirement. We note that networks are not directly covered by the rules. As a practical matter, however, the included networks themselves, rather than the broadcast stations and MVPDs, generally prepare and provide video description, which the distributors pass through. Thus, under the current rules, a network that finds inclusion economically burdensome may petition, as a video programming provider, for exemption from the effect of the rules. We seek comment on whether there should also be an express exemption from the proposed no-backsliding rule for networks that drop significantly in

relative rankings or overall viewership. We seek comment on this proposal.

28. *50 Percent Threshold Elimination.* The rules, as reinstated, exempt nonbroadcast networks from being included networks if they are not available in 50 percent or more of MVPD homes. Thus, for example, even if a network were one of the most popular in prime time, MVPDs would not be required to provide video description of any of that network’s programming if it reaches only 40 percent of MVPD households. This exemption was initially adopted in 2001 at the request of HBO, and effectively exempts premium networks from the video description requirements.

29. We propose to eliminate the exemption for nonbroadcast networks that do not reach 50 percent or more of MVPD households. Given the increasing number of networks and fragmentation of the viewing public,<sup>21</sup> it is no longer clear that carriage into a given number of homes, even 50 percent, is sufficiently more important than prime time ratings for the purpose of establishing a threshold for determining which nonbroadcast networks should be covered by the video description requirements. Some premium networks offer very popular programming, including some of the “must-watch” shows that are very highly rated and have made an impact on popular culture. The proposed rule change would ensure that if any premium networks are among the ten most popular they will be covered. We seek comment on this proposal.

### D. Timing and Coverage

30. We seek comment on the appropriate effective date of the 87.5 hours/quarter requirement and the other proposed rules changes. When we reinstated the rules in 2011, the time from their release to the full compliance date was approximately ten months. If we adopt these proposals, should we allow a similar amount of time for distributors to come into compliance? Under the current rules, July 1, 2018 is the date on which the new list of included nonbroadcast networks will go into effect, after having been determined by the ratings for the time period October 2016 to September 2017. If the

<sup>21</sup> The number of cable channels received by the average subscriber has tripled since the original video description rules were adopted, from around 60 to more than 180. Sam Ro, *Americans Are Paying For a Lot of Channels They Don’t Watch*, Business Insider, Oct. 25, 2015, <http://www.businessinsider.com/number-of-cable-channels-received-vs-viewed-2015-10>. See also *supra* note 18 (noting that as many as 251 channels are widely available, even if not all are received by Nielsen’s “average” 180 channel subscriber).

proposed rules go into effect earlier than July 1, 2018, what ratings period should be used to determine the included networks? Should the effective date of these rules establish the beginning of a new three-year network-list update cycle, or should the existing cycle be retained even if the implementation of these rules requires a mid-cycle addition of some networks? In the alternative, what are the benefits and costs of delaying the effective date of the proposed revisions to the rules until July 1, 2018, and expanding the number of broadcast and nonbroadcast networks that will be determined in reference to the 2016–2017 ratings year? We propose that, as in 2015, in each cycle the Media Bureau will issue a Public Notice and undertake a process to formally establish the updated list of included networks. We seek comment on these questions and this proposal.

#### V. Improving Consumer Access to Video Description

31. The 2014 Report found significant consumer dissatisfaction with the availability of information about which programming is video described. This was contrary to the Commission's expectation that even without any requirements, such information would be made available "in an accessible manner, including on [distributor] Web sites and to companies that publish television listings information." The 2014 Report also found that consumers are frustrated with MVPD customer service when they seek information about accessing video description. In both cases, we urged industry to take voluntary action to resolve these concerns. Therefore, we seek comment on the state of industry efforts, and propose requiring covered distributors to provide dedicated customer service contacts to assist viewers in accessing their video described programming. We tentatively conclude that the benefits of this proposal would exceed its costs, but seek comment on that tentative conclusion. We also seek comment on a requirement that covered distributors notify publishers of programming guides when a program will be video described.

32. *Programming Guide Information.* Although fragmented lists of some video described programming are available online,<sup>22</sup> some consumers report

<sup>22</sup> Some covered networks provide information on their Web sites that identifies programming with video description, see 2014 Report, 29 FCC Rcd at 8023, para. 26, and where possible, the Commission has provided links to these network Web sites at <https://www.fcc.gov/encyclopedia/video-description>. However, consumers assert that information about video described programming

difficulty in finding information in programming guides, which for many remain the primary source of information about their viewing options.<sup>23</sup> Industry commenters state that at least some information is provided to guide services by some included networks, but even they acknowledge that the information does not always actually appear in the guides.<sup>24</sup> We seek comment on whether this situation has improved. Do networks provide information about video description to program guide services, and if not, why not? If they do provide such information, do program guide services choose to include that information in the guides, and if not, why not? Would a requirement that distributors consistently provide notice when a program is going to be described make guide services more likely to include that information in guides? In the children's programming context, our rules require commercial television broadcast licensees to provide to publishers of program guides information identifying programming specifically designed to educate and inform children. Has this requirement been effective in informing consumers about the availability of educational and informational children's programming, and if not, why not? Instead of, or in addition to the programming guide information, should distributors create an easily accessible list of described video programming? What are the benefits and drawbacks of requiring a centralized listing of all described video programming? Would the creation of such a listing assist in ensuring the accuracy and comprehensiveness of information available to the public? Would it be useful toward promoting best practices for identifying video described programming? We seek comment on the costs and benefits of a requirement that distributors provide information identifying video described programming to program guides, and whether we should adopt such a rule, or any other rule to improve consumer access to information about the

available online is not always comprehensive or kept up to date. See 2014 Report, 29 FCC Rcd at 8023–24, para. 27.

<sup>23</sup> Concerns about not being able to easily locate information on video described programs also were raised by participants at the Commission's Video Description Roundtable Event held on June 22, 2015.

<sup>24</sup> 2014 Report, 29 FCC Rcd at 8023, para. 26 (Although NAB claims that broadcast networks provide video description information to program guides, they acknowledge that "this information appears not to be published regularly.") (citing NAB Report Comments at 3–4).

availability of video described programming.

33. *Dedicated Customer Service Contacts.* A number of consumers have expressed significant frustration with inadequate MVPD customer support for video description services. The 2014 Report details instances where consumers would call their provider for help with video description and, after spending "many hours on the phone with ill-informed customer services representatives" ultimately discover that "not one person knew what [the consumer] was talking about." They would be promised return or follow-up calls that never came, or directed to email addresses that proved unhelpful. In some cases it appears that customer support has been so poor that it has essentially denied some consumers the opportunity to access described programming at all. Recognizing this, the 2014 Report encouraged covered distributors to provide proper customer service training and a dedicated point of contact so that consumers could get video-description-specific customer service from knowledgeable representatives. We seek comment on whether customer service has improved since adoption of the 2014 Report. In light of previous shortcomings in customer support, we also propose to require that covered entities provide contact information for a person or office with primary responsibility for accessibility compliance issues to consumers who have questions about the availability of and access to video description services, or who request technical support. The point of contact must be able to address consumers' concerns about video description issues, and would be required to respond to consumer inquiries within one business day. Alternatively, we seek comment on whether we should adopt rules that parallel 47 CFR 79.1(i)(1–3). The rules at Section 79.1(i)(1–3) are similar to our proposal in that they require distributors of programming with closed captioning to provide contact information to consumers and to the Commission, and to assist in resolving consumers' technical problems. They also, however, establish detailed parameters for compliance with those requirements. What would be the costs and benefits of either approach? We seek comment on how, specifically, contact information should be provided to consumers under either approach.

34. *Timing.* We also seek comment on the timing for implementing the rule changes discussed in this Section. We believe that implementation of these consumer access and customer service rules could be accomplished quickly,

but we seek input on a reasonable timeframe.

35. Are there other changes to the rules that we should adopt to improve consumer access without imposing excessive burdens on regulated parties? We seek comment on any such changes.

## VI. Other Matters

36. *Electronic Filing.* We propose that petitions for exemption from the video description rules, and filings related to those requests, be filed exclusively electronically. In the 2011 Electronic Filing Report and Order,<sup>25</sup> the Commission amended certain of its procedural rules to increase the efficiency of Commission decision-making and modernize Commission procedures in the digital age, including adoption of a requirement to use electronic filing whenever technically feasible. In the closed captioning context, for example, requests for exemption are filed and available to the public electronically. Should we amend our rules to require the electronic filing of individual video description exemption requests in machine readable format, and further revise our rules to require that comments on and oppositions to such petitions also be filed electronically in machine readable format? We seek comment on the benefits of this approach, whether there would be associated costs, and the appropriate timing for implementing this rule change.

37. *Described Video-on-Demand.* We seek comment on a potential requirement that Video-On-Demand (“VOD”) programming include video description if it has been previously carried by that MVPD with video description. If a program is carried on a linear programming stream with description and also made available on the MVPD’s VOD service, it is not clear whether MVPDs are making the video description available to the VOD viewer. We seek comment on whether this comports with our existing rules.<sup>26</sup> In 2014, we confirmed that closed captioning must be preserved in VOD programming.<sup>27</sup> Should we have a

similarly explicit requirement in the video description context? What are the technical and financial costs of such a requirement for MVPDs and other distributors?

38. *Secondary Audio.* We seek comment on the state of the marketplace with regard to the use of multiple audio streams. The Commission previously has noted that “digital transmission enables broadcasters and MVPDs to provide numerous audio channels for any given video stream,” but that in practice many MVPDs were only capable of providing two audio streams, and many consumers were only capable of receiving two audio streams.<sup>28</sup> The Commission found video description was thus likely to be provided on the same secondary audio stream as other alternate audio uses, like foreign language audio tracks, but expected “that at some point in the near future, due to voluntary upgrades and equipment obsolescence, broadcasters, MVPDs, and the installed base of consumer equipment will be sufficiently advanced to handle a video description audio track that does not conflict with any other program-related service.” Has the marketplace moved toward a realization of this expectation? Should we revise our rules at this time to reflect any such changes, and if so, how?

39. *Terminology.* During the Commission’s Video Description Roundtable, consumers observed that many other federal agencies use the term “audio described” to reference video programming containing audio description, rather than the term “video described.” We note that the CVAA uses the term “video description,” but we recognize that it may be preferable to use “audio description” if this is the term most common to a majority of federal agencies and more widely used by consumers. We seek comment on whether we should revise our rules and/or change our usage to reflect this different terminology.

40. *Statutory Authority.* As discussed above, we believe the CVAA grants the Commission “continuing authority” to regulate the provision of video

described programming. We seek comment on our statutory authority to adopt the changes discussed above, both the proposed rules and the others on which we seek comment. Are our proposals above consistent with the CVAA?

41. *Other Comments Requested.* Finally, we invite comment on any other changes the Commission should consider making to the video description rules. For any other changes proposed, comments should include potential costs and benefits of such changes.

## VII. Procedural Matters

### A. Initial Regulatory Flexibility Act

42. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>29</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible economic impact on small entities by the policies and rules proposed in the *Notice*. 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 as specified in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>30</sup> In addition, the *Notice* and this IRFA (or summaries thereof) will be published in the **Federal Register**.

#### 1. Need for, and Objectives of, the Proposed Rule Changes

1. In the *Notice*, the Commission seeks comment on a series of proposals to increase the amount of video described programming available to consumers, and to make it easier to access. The NPRM tentatively concludes that the statutory requirement for the Commission to issue additional video description regulations is satisfied because “the need for and benefits of” providing video described programming as proposed here would be “greater than the technical and economic costs” if the rules are adopted. The proposed rules would require that each included network provide 75% more described programming, or 87.5 hours per quarter, and would include six additional networks within the rules, while revising the way included networks are determined. It proposes to require covered parties to provide dedicated

<sup>25</sup> *Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10–44, Report and Order, 26 FCC Rcd 1594, 1599–602, paras. 14–21 (2011).

<sup>26</sup> DVR recordings of described programming, for example, must preserve the secondary audio stream that contains video description and make it available when the recording is later replayed.

<sup>27</sup> *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05–231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2290–91, paras. 118–19 (2014)

(“[W]e confirm that all ‘on demand’ programming not subject to an exemption must comply with the relevant captioning requirements for new and pre-rule programming.”).

<sup>28</sup> 2011 Order, 26 FCC Rcd at 11862–63, paras. 28–31. See also *Emergency Information/Video Description Order*, 28 FCC Rcd at 4882–83, para. 14 (“At this time, we do not require covered entities to provide an audio stream that is dedicated solely to aurally accessible emergency information. MVPD commenters argue that mandating more than two audio streams—one for main audio, one for video description, and one for emergency information—would be costly and, in some cases, would pose technical difficulties.”) (footnote omitted).

<sup>29</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>30</sup> See 5 U.S.C. 603(a).



consumer service contacts to deal with video description issues, and to file any exemption petitions electronically. It also seeks comment on a range of related issues.

## 2. Legal Basis

2. 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. 111–260, 124 Stat. 2751, and Sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, 307, 309, 310, and 613.

## 3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

3. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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.

4. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,390. In addition, according to Commission staff review of the BIA Advisory Services, LLC’s Media Access Pro Television Database on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

5. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations 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, an element of the definition of “small business” is that the 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 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 to that extent.

6. In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395. These stations are non-profit, and therefore considered to be small entities.

7. There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

8. *Wired Telecommunications Carriers.* The North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” 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.” The SBA has developed a small business size standard for wireline firms for the broad economic census category of “Wired Telecommunications Carriers.” Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or

more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

9. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

10. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there are currently 660 cable operators. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,629 cable systems nationwide. Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

11. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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.” There are approximately 54 million cable video subscribers in the United States today. Accordingly, an operator serving fewer than 540,000 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. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. 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 \$250,000,000, 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.

12. *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, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for that entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The *Notice* proposes the following new or revised reporting or recordkeeping requirements that would be applicable to small entities. First, it proposes that all covered broadcasters and MVPDs provide dedicated customer service contacts to answer video

description questions. In particular, it would require covered entities to provide contact information for a person or office with primary responsibility for accessibility compliance issues to consumers who have questions about the availability of or access to video description services, or who request technical support. The *Notice* also proposes to require all covered broadcasters and MVPDs to file petitions for exemption electronically.

14. With regard to other compliance requirements, the *Notice* proposes to revise the video description rules by requiring an increase in the amount of described programming on each included network carried by a covered broadcast station or MVPD, from 50 hours per calendar quarter to 87.5, as well as an increase in the number of included networks carried by covered distributors to five broadcast and ten nonbroadcast networks.

15. Finally, the *Notice* seeks comment on requiring distributors to notify program guides about the presence of video description, and to include video description with Video-on-Demand programming when that programming has been previously provided with descriptions.

16. While the economic impact of these proposed rules on small entities is not quantifiable at this time, they are not likely to be burdensome for small entities or to affect small entities disproportionately.

#### 5. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

17. 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) 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.

18. The *Notice* 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. Thus,

the proposed increase in the amount of video description required and expansion of the video description requirements to additional included networks will impose no direct burden on small broadcasters or small MVPDs. Although the rules currently impose “pass through” obligations on all network-affiliated broadcast stations regardless of market size and on all MVPDs regardless of the number of subscribers, most all stations and MVPDs, including small entities, now have this capability. As such, we anticipate that these proposals will have little to no impact on small entities.

19. The proposed requirement to file exemption petitions electronically will not impose an additional burden on small entities, and may reduce the burden. The proposed requirement that covered broadcasters and MVPDs provide dedicated customer service contacts to answer video description questions may not require significant additional resources for small entities. Even if it requires additional resources, however, we believe it would provide benefits to consumers that outweigh any costs, and that those benefits would be undermined if the requirement were not universal. The item seeks comment on the timing for implementing the requirements. Finally, we invite comment on any other changes the Commission should consider making to the video description rules. For any other changes proposed, comments should include potential costs and benefits of such changes.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

20. None.

#### B. Paperwork Reduction Act

21. This document contains proposed new 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### C. Ex Parte Rules

22. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose”

requirements under Section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

#### D. Filing Requirements

23. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference MB Docket No. 11–43 and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 445 12th Street SW., Washington, DC 20554.

24. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

25. **Availability of Documents.** Comments and reply comments will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

#### VIII. Ordering Clauses

26. Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in and Sections 1, 2(a), 4(i), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 613, *comment is hereby sought* on the proposals described and rules set forth in this *Notice of Proposed Rulemaking*.

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* in MB Docket No. 11–43, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

#### PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority 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 § 79.3 by:

- a. Adding paragraphs (a)(9) and (10), (b)(6) and (7) and,

- b. Revising paragraphs (b) introductory text, (b)(1), (2) and (5), (c)(2), (3) and (4) introductory text.

The additions and revisions read as follows:

#### § 79.3 Video description of video programming.

(a) \* \* \*

(9) *Top commercial television broadcast networks.* ABC, CBS, Fox, NBC, and any other commercial television broadcast network in the top five as determined by an average of the national audience share during prime time of broadcast networks and that has 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, based on the ratings for the time period October 2016–September 2017, and will update at three year intervals. The first update will be July 1, 2021, based on the ratings for the time period October 2019–September 2020; the second will be July 1, 2024, based on the ratings for the time period October 2022–September 2023; and so on. Also, any commercial television broadcast network that the Commission identified as having met this definition as of 2018 or later, even if it is no longer in the top five based on subsequent ratings.

(10) *Top national nonbroadcast television networks.* Any nonbroadcast television network in the top ten, as determined by an average of the national audience share during prime time of nonbroadcast networks that 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 ten networks are those determined by The Nielsen Company, based on the ratings for the time period October 2016–September 2017, and will update at three year intervals. The first update will be July 1, 2021, based on the ratings for the time period October 2019–September 2020; the second will be July 1, 2024, based on the ratings for the time period October 2022–September 2023; and so on. Also, any nonbroadcast television network that the Commission

identified as having met this definition as of 2018 or later, even if it is no longer in the top ten based on subsequent ratings.

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

(1) Beginning July 1, 2015, commercial 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 description per calendar quarter, either during prime time or on children's programming, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a 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;

(2) Beginning July 1, 2018, commercial television broadcast stations that are affiliated with one of the top commercial television broadcast networks and licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015, must provide 87.5 hours of video description per calendar quarter, either during prime time or on children's programming, on each programming stream on which they carry one of the top commercial television broadcast networks. If a station in one of these markets becomes affiliated with one of one of the top commercial television broadcast networks after July 1, 2018, it must begin compliance with these

requirements no later than three months after the affiliation agreement is finalized;

\* \* \* \* \*

(5) Beginning July 1, 2018, multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 87.5 hours of video description per calendar quarter during prime time or children's programming, on each channel on which they carry one of the top national nonbroadcast television networks; and

(6) Multichannel video programming distributor (MVPD) systems 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, 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; 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, 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.

(7) Each video programming distributor subject to paragraphs (b)(1), (2), (4), and/or (5) of this section shall make readily available contact information for a person or office with

primary responsibility for accessibility compliance issues to consumers who have questions about the availability of or access to video description services, or who request technical support. The point of contact must be able to address consumers' concerns about video description issues, and must respond to consumer inquiries within one business day.

(c) \* \* \*

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with video 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 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) or (b)(2) of this section has aired a particular program with video description, it is required to include video description with all subsequent airings of that program on that same broadcast station, 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.

(4) Once an MVPD as defined under paragraph (b)(4) or (b)(5) of this section:

\* \* \* \* \*

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