the percentage of the property’s current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements by non-LSC funds:

(2) Buyout LSC’s interest in the property (i.e., pay LSC the percentage of the property’s current fair market value proportional to its percent interest in the property); or

(3) Sell the property to a third party and pay LSC a share of the sale proceeds proportional to its interest in the property, after deducting actual and reasonable closing costs, if any.

(4) When a recipient stops receiving LSC funds because it merged with or is succeeded by another recipient, it may transfer the property to the new recipient. The two entities must execute an LSC-approved successor in interest agreement that requires the transferee to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(c) Prior approval process. No later than 60 days before a recipient or former recipient proposes to dispose of real estate purchased with LSC funds, the recipient or former recipients must submit a written request for prior approval to dispose of the property to LSC. The request must include:

(1) The proposed method of disposition and an explanation of why the proposed method is in the best interests of LSC and the recipient;

(2) Documentation showing the fair market value of the property at the time of transfer or sale, including, but not limited to, an independent appraisal of the property and competing bona fide offers to purchase the property;

(3) A description of the recipient’s process for advertising the property for sale and receiving offers;

(4) An accounting of all LSC funds used in the acquisition and any capital improvements of the property. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements; and

(5) Information on the proposed transferee or buyer of the property and a document evidencing the terms of transfer or sale.

§ 1631.21 Retaining income from sale of real estate purchased with LSC funds.

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of real estate purchased with LSC funds according to 45 CFR 1630.17 (Cost Standards and Procedures: Applicability to derivative income) and 45 CFR 1628.3 (Recipient Fund Balances: Policy).

(b) The recipient must account for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.


Mark Freedman,
Senior Associate General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–43; FCC 17–88]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules pursuant to Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, the document adopts the proposal to increase the amount of described programming on each “included network” carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on “included networks” in the calendar quarter beginning on July 1, 2018. The document also provides more flexibility than exists under the Commission’s current rules regarding when the additional hours of described programming may be aired. This update to the Commission’s video description rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.


FOR FURTHER INFORMATION CONTACT: Maria Mullarkey, Maria.Mullarkey@fcc.gov, or Lyle Elder, 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.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order, FCC 17–88, adopted on July 11, 2017, and released on July 12, 2017. 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/ 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 people with disabilities (Braille, large print, electronic files, audio format), by sending an email to 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. In this Report and Order, we expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, we adopt the proposal to increase the amount of described programming on each “included network” carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on “included networks” in the calendar quarter beginning on July 1, 2018. We also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. This update to our rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

1 An “included network” is a network carried on a programming stream or channel on which a broadcaster or MVPD is required to provide video description. Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Notice of Proposed Rulemaking, 81 FR 33642, May 27, 2016, 31 FCC Rcd 2463, 2464, n.4 (2016) (NPRM).
II. Background

1. In 2011, the Commission reinstated the video description regulations that previously were adopted in 2000, requiring certain television broadcast stations and MVPDs to provide video description on top-rated networks. 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.” These 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.”

2. Currently, the Commission’s video description rules require commercial broadcast television 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. 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 networks. The nonbroadcast networks currently subject to these video description requirements are USA, TNT, TBS, History, and Disney Channel. 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.

3. In the Notice of Proposed Rulemaking in this proceeding (NPRM) (81 FR 33642, May 27, 2016), we proposed revisions to our rules that would expand the availability of, and support consumer access to, video described programming. Among other proposals, we proposed to increase 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, and we sought comment on whether to provide more flexibility to covered entities by allowing some amount of non-prime time, non-children’s described programming to count toward the hours. We also sought comment on our tentative conclusion that the benefits of the proposed rules outweigh the costs, and on other issues such as appropriate timelines for the proposals. We take no action on our other NPRM proposals at this time.

III. Authority

4. We conclude that we have the authority under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to increase the number of hours of described programming on each included network by 75 percent, from 50 hours per calendar quarter to 87.5 hours per quarter. This conclusion is consistent with Section 713(f)(4) of the Communications Act of 1934, as amended (“Continuing Commission Authority”). Section 713(f)(4) states that the Commission may not issue additional video description rules unless their benefits outweigh their costs, and “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” Section 713(f)(1).

5. In the NPRM, we explained that our continuing authority is limited by the express requirement in Section 713(f)(4)(A) that the need for and benefits of any new or expanded regulations outweigh their costs, as well as by the express limitations set out in subsection (f)(4)(B) with respect to total described hours and subsection (f)(4)(C) regarding the expansion of video description requirements to additional designated market areas (DMAs). As noted in the NPRM, the statute provides that any new requirements must be limited to programming transmitted for display on television (that is, by broadcasters and MVPDs). In this Order, we conclude that the new requirements we adopt herein are consistent with the limitations in the statute. We note that, as required in subsection (f)(4)(A), more than two years have passed since the completion of the CVAA-mandated report to Congress on video description “in television programming” and “in video programming distributed on the Internet.” Further, the additional regulations adopted today apply only to “programming . . . transmitted for display on television.” As discussed below, we also find that “the need for and benefits of” the regulations “are greater than the[r] technical and economic costs” for the rules we adopt herein. Finally, consistent with subsection (f)(4)(B), the additional regulations do not increase the hour requirement “by more than 75 percent


3 47 CFR 79.3(a)(3).

4 Id. § 79.3(b)(1–2).

5 Id. § 79.3(b)(4).

6 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). 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 next update will be in effect on July 1, 2018 based on the ratings for the time period from October 2016 to September 2017. 47 CFR § 79.3(b)(4)(i–ii).

7 See generally NPRM.

8 We also sought comment in the NPRM on proposals to increase the number of included networks carried by covered distributors, from four broadcast and five nonbroadcast networks to five broadcast and ten nonbroadcast networks; adopt a no-backsliding rule; remove the threshold requirement that nonbroadcast networks reach 50 percent of pay-TV (or MVPD) households in order to be subject to inclusion; require that covered distributors provide dedicated customer service contacts who can answer questions about video description; and require that petitions for exemptions from the video description requirements, together with comments on or objections to such petitions, be filed with the Commission electronically.
of the requirement in the regulations reinstated.’’

IV. Increased Availability of Video Described Programming

A. Additional Hours

6. The CVAA provides that the Commission may increase “in total” the hour requirement by no more than 75 percent, up to a total of 87.5 hours per quarter, and we proposed to adopt such an increase in the NPRM. Based on our analysis of the benefits and costs of the proposal as required under Section 713(f)(4)(A) of the Communications Act, we adopt our proposed increase in this Order. Thus, we will require each covered broadcast station and MVPD, on each stream or channel on which it carries an “included network” to provide 87.5 hours of described programming, per quarter. Our decision to increase the number of required hours of video description per included network is supported by the record. Almost every commenter who addressed this issue supports the proposal as required under Section 713(f)(4)(A) of the Communications Act, the CVAA, the total number of hours required per included network will be limited, averaging less than one hour per day. We find that implementing the maximum increase at this time, rather than a partial increase, will provide the most benefit to consumers without resulting in excessive costs. As discussed below, we also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. 7. On any given day, the average American can choose to watch any program on any one of approximately 264 channels. That adds up to roughly 6,000 hours of linear television options, from which that average American chooses about five hours of programming to watch over the course of the day. Ideally, viewers who are blind or visually impaired would have the same freedom to select and independently view and follow any of the programming for which they pay. Instead, many find that “the current amount of available audio-described content [is] significantly below demand” and indicate that they have difficulty finding programs with video description. Television programming is a shared piece of American culture that the blind and visually impaired community is unable to fully experience without video description. For people with blindness and visual impairments, video description has been shown not only to increase comprehension of television programming, but also to increase opportunities to discuss television programs with sighted people. As a result of increased video description requirements, persons who are blind or visually impaired will be able to engage more fully in television viewing, increasing their social inclusion within community life. Nonetheless, as we noted in the NPRM, we must “seek to ensure that consumers are able to realize the benefits of video description” while “keeping in mind our Congressional directive to proceed judiciously with any expansion of the requirements.”

8. As required by the statute, we find that the benefits of increasing the required number of hours of described programming by 37.5 hours per quarter are greater than the costs. The costs are minimal and represent a very small percentage of total programming expenses and network revenues. Although the price for adding description to television programming can vary, based on filings in the docket we estimate that the maximum cost per hour is $4,202.50. Because a given hour of described programming can be counted twice toward the requirements of the rules (once when initially aired, and once when rerun), any given included network would provide a total of 175 hours of first-run described programming on that network per year to comply with the expanded video description requirement adopted today. For the nine networks required

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15 The requirement in the reinstated regulations is 50 hours of video description on each programming stream or channel per calendar quarter. 47 CFR 79.3(b)(1)-(2). 47.5 percent of those 50 hours is 37.5 hours. Accordingly, 87.5 hours per quarter represents a 75 percent increase in the number of hours of video description (50 + 37.5 = 87.5). We have not expanded the number of DMAs, which we conclude we may not do until 2020 at the earliest. 47 U.S.C. 613(f)(4)(C)(ii)-(iv).

16 NPRM, par. 18. See also 47 U.S.C. 613(f)(4)(B).

17 Absent Congressional action, the Commission does not have authority to further increase the number of hours of video described programming required per quarter on any specific network beyond the 87.5 hours adopted today. NPRM, par. 13. However, we encourage all networks to continue to expand their video described offerings.

18 We also delete what was formerly § 79.3(b)(1) of the rules, which specified the video description requirements that were in effect prior to July 1, 2015, and were not in effect on that date. This rule is obsolete and has no current effect, and its substance is now covered by the new paragraph (b)(1) (what was formerly paragraph (b)(2)).

19 See, e.g., MPAA Comments at 1; ACP Comments at 3; AFB Comments at 1; MCB Reply at 1; ABVI Reply at 1; Barlow Comments at 1; Grossman Comments at 1; Merriweather Comments at 1; Pantaleo Comments at 1; Zodrow Comments at 1; Swartz Reply at 1.

20 See NAB Reply at 3–5.

21 Thirteen weeks per calendar quarter, seven days per week, means an average of 91 days per quarter. Given that the updated requirement calls for only 87.5 hours of described programming per quarter, this averages out to less than one hour per day of described programming on any given included network.


24 Although over-the-air viewers have access to a smaller range of options, that is true regardless of whether they are blind or visually impaired. The virtue of equivalent access remains the same.

25 ACB October 26, 2016 Ex Parte, ACB Survey Finds Need for Increased Audio Description, at 1 (ACB Survey) (reporting that over 75% of survey respondents “strongly believe a greater amount of audio-described programming is needed,” and that 45% of survey respondents “have difficulty finding programs with audio description’’).


27 See 2014 Report, para. 2. See also ACB Survey at 1 (reporting that over 75% of survey respondents “strongly agree that a greater amount of audio-described programming is needed”).
to provide 50 hours of video description per quarter, we estimate the cost of increasing the number of hours of described programming to 87.5 hours per quarter is approximately $315,000 per year.\footnote{37.5 additional hours per quarter × 4 quarters = 150, divided in half (75) because each described hour can be counted twice. 75 hours × $4,202.50 per hour = $315,187.5. For the currently included broadcast networks, the cost of the additional 37.5 hours of described programming per quarter would approximate one hundredth of one percent of their programming costs and net revenues. For the currently included nonbroadcast networks, the cost of the additional 37.5 hours of described programming per quarter would range from 0.02 to 0.08 percent of their net operating revenues, and from 0.01 to 0.04 of their net operating expenses.\textsuperscript{32}}

9. The benefits of additional description, while less easy to quantify than the relatively low costs of providing it, are nonetheless substantial. Longstanding evidence indicates that persons who are blind or visually impaired have television viewing habits that are comparable to those who are not.\footnote{Studies have also shown that persons who are blind or visually impaired subscribe to MVPD services in roughly the same proportion as other households.\textsuperscript{33}} There is considerable evidence that video description of television programming significantly enhances the value of television programming to individuals who are blind or visually impaired. Many television programs contain visual elements that are crucial to understanding what is happening, and are missed by those who are blind or visually impaired.\footnote{The Commission’s 2014 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 sight. See also NPRM, paras. 14–15. See also NPB, paras. 9–10.} There are other benefits, which fall into the categories of education, and information provided by television programming, for a large population of viewers.\footnote{The vast majority of blind and visually impaired people who have experienced video description feel that it affords them greater independence and the ability to be overstated” and “the impact . . . is profound, as the narrative elements of the description make television . . . come alive for me.”}

10. Commenters who are blind or visually impaired emphasize the need for greater amounts of video described programming,\footnote{See, e.g., Brack Reply at 1 (explaining that “[t]he added value of description to television shows . . . for a person who is blind is immeasurable” and “it offers a night-and-day difference in both understanding and enjoyment programming”); Doane Reply at 1 (“[Video description gives blind and visually impaired people knowledge that we can share with others in conversation and allows us to make informed opinions on the programming.”); Edwards Reply at 1 (noting that “[t]here is clearly a huge benefit to be gained” by increasing the number of hours of video description by 75 percent); Grenевич Reply at 1 (“It is hard for me to put into words what audio description adds to programs for a visually impaired individual. You do not realize how many important details you have been missing until you hear a program described.”); Hasley Reply at 1 (“Increasing availability of such description will allow greater access to the entertainment, education, and information provided by television programming, for a large population of viewers.”); Smith para. 15. See also NPRM, paras. 14–15.} as well as the substantial benefits of this service.\footnote{There are other benefits, which fall into the categories of education, and information provided by television programming, for a large population of viewers.\footnote{The vast majority of blind and visually impaired people who have experienced video description feel that it affords them greater independence and the ability to be overstated” and “the impact . . . is profound, as the narrative elements of the description make television . . . come alive for me.”}
The Described and Captioned Media Program (DCMP) and the American Council of the Blind (ACB) also note the benefits of video description to children and individuals on the autism spectrum, because it can help with the development of vocabulary.\textsuperscript{41} 

11. Through its enactment of the CVAA, Congress acknowledged the value of video description. Indeed, the importance of accessibility of video programming to persons who are blind or visually impaired underlies several provisions of the CVAA. Congress mandated not only that the Commission require video description, but also that emergency information contained in video programming, as well as the user interfaces on navigation devices and other digital apparatus that allow users to navigate video programming, be made accessible to those who are blind or visually impaired.\textsuperscript{42} Furthermore, in addition to its considerable benefits to the millions of individuals who are blind or visually impaired today, television programming that is produced with video description now will continue to benefit the growing population of people with blindness or a visual impairment when it is shown again in the future, thus increasing its value. The National Eye Institute estimates that the blind or visually impaired population will double by 2050.\textsuperscript{43}

12. Although we do not assign a specific monetary value to the benefits these additional hours of described programming will provide to the millions of persons who are blind or visually impaired,\textsuperscript{44} we find that the benefits exceed the relatively low costs.\textsuperscript{45}

\section*{B. Increased Flexibility}

13. In addition to increasing the required hours of video described programming, we also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. Several industry commenters argue without opposition that “[t]he Commission should incorporate flexibility into any rules increasing the number of hours.”\textsuperscript{46} MPAA argues that we should consider “whether to allow additional types of programming to count toward the hourly video description requirement if the requirement is moved from 50 hours to 87.5 hours per quarter.”\textsuperscript{47} Time Warner “agrees with other commenters that additional flexibility is essential” if the Commission adopts such an increase.\textsuperscript{48} While commenters generally did not blind or visually impaired get some value from television programming even without video description. Assuming conservatively that, without the benefit of video description, such viewers get 75 percent of the enjoyment of a sighted viewer (or $0.195 per hour), adding video description might add $0.065 of value per hour, per viewer (to equal $0.26, NCTA’s estimate of the total value of an hour of programming). As discussed above, we estimate the highest potential cost for describing an hour of programming to be $4,202.50. At $0.065 per person, 64,654 viewers equal $4,202.51. Various governmental estimates place the number of persons who are blind or visually impaired at between 7,333,805 and 23,700,000. Thus, even accepting NCTA’s low estimate of the value of an hour of programming for the sake of argument, benefits that reached only a fraction of citizens who are blind or visually impaired – 0.3 to 0.9 percent depending on their estimates—would nonetheless outweigh costs. And this calculation does not even take into account the benefits to the friends and family of persons who are blind or visually impaired, or the benefits to networks and distributors of increases in viewerhip.

\textsuperscript{46} NAB argues that the preliminary cost-benefit analysis in the NPRM forms an insufficient basis for the adoption of any new rules. NAB Reply at 3–9. As always, however, we do not adopt any rules based on the analysis in the NPRM. As discussed throughout this Order, our finding that “the need for and benefits of new rules are ‘greater than the technical and economic costs’” is based on a comprehensive analysis of the available facts in the record. NAB has submitted no sound basis to reach a different conclusion here. As stated above, the total number of described hours required under our revised rules is modest (requiring an average of less than one hour of described programming per day) and accordingly will not impose a significant burden on included networks. We have designed our rules to further minimize the burden on included networks by providing flexibility on when the additional hours of described programming may be aired and allowing a given hour of described programming to be counted twice, once when initially aired and once when rerun. We thus reject NAB’s arguments that the new rules are not sufficiently supported by a cost-benefit analysis.\textsuperscript{47} NCTA Comments at 14–15.

\textsuperscript{47} MPAA Comments at 12.

\textsuperscript{48} Time Warner Reply at 4. See also NAB Reply at 18.

\textsuperscript{49} To the extent that any individual network has problems satisfying the new hour requirement even with this flexibility, it may file a waiver request with the Media Bureau. 47 CFR 1.3, 0.283.
across multiple quarters.⁵⁹ Although unlikely, this could mean, in practice, that a network could air a year’s worth of described programming in one quarter, and none at all the rest of the year. We find that the ability to vary compliance with the hour requirement in this manner would have the potential to upset consumer expectations and significantly undermine the value of video description to those who rely upon it. It would not serve the needs of individuals who are blind or visually impaired to have no video described programming on a channel for an entire quarter. NAB suggests increasing the number of times a program and its reruns can be counted toward the hour requirement, from twice to “three or four or more” times.⁶⁰ This would ultimately reduce the overall amount of described programming available to consumers, because some networks might rerun the same described programming over and over. At the same time, the majority of top networks that air primarily first-run programming in prime time would continue to need to produce the same amount of new described programming, meaning this change would not give them additional flexibility. Time Warner proposes that we permit networks to count described hours provided on affiliated networks to satisfy the hour requirement for the primary network.⁶¹ This, too, would undermine the purpose of the rules, which are designed to ensure that programming on the most popular networks is described.⁶² While we appreciate the desire for flexibility reflected in these proposals, we decline to adopt them for the reasons explained above.

16. We recognize, however, that some networks may have a difficult time meeting the new hour requirement in specific calendar quarters, even with the additional flexibility we are providing. For example, Time Warner argues that TNT, an included network, carried a significant amount of live programming in prime time in the second quarter of 2016, and as a result just barely met the existing 50 hour requirement.⁵⁹ In addition to the increased flexibility we provide to programmers to meet our hour requirement, distributors and included networks continue to be permitted to petition for waivers if needed. Some commenters argue that “potentially frequent waiver requests” under an “ad hoc waiver process” are insufficient to resolve certain problems that need to be considered “at the outset” to avoid impacting program scheduling.⁶⁰ Parties made the same arguments prior to the reinstatement of the video description rules.⁶³ As we observed in the NPRM, however, not a single waiver request has been filed in the more than five years since the rules became effective, and under the rules we adopt today, included networks will not need to provide any more description during prime time or children’s programming than they do under the reinstated rules. Therefore, we do not foresee that the new rules will create any problems with program scheduling or that regulators will have difficulty complying with our revised rules. Nonetheless, we continue to emphasize that waiver requests may be filed if our requirements are infeasible or prove to be unduly burdensome under particular circumstances.

17. Although the record does not suggest that either broadcast stations or MVPDs will typically have difficulty complying with our revised rules, if does suggest that compliance problems could arise in two atypical circumstances.⁶² First, a network may be carrying an unusually large amount of live or near-live programming during special events during a single calendar quarter (the Olympics, March Madness, etc.).⁶³ Second, a network may be airing an unusually large number of video-described reruns during a particular quarter. Bearing these concerns in mind, we will look favorably upon waiver requests demonstrating that:

- All pre-recorded programming between 6 a.m. and midnight in the relevant calendar quarter is being described, even if not all of it can be counted toward the rules;⁶⁴ and
- The petitioner commits to provide additional hours of video description in calendar quarters other than the one for which it is seeking the waiver,⁶⁵ or commits to provide the additional hours of video description in the same calendar quarter but on an affiliated network.⁶⁶

If both of these conditions are met, we believe that it is more likely than not that consumer needs will still be met at the level contemplated by these rules without unduly burdening the industry.

C. Timing

18. The revised rule will be effective 30 days after publication in the Federal Register, and covered broadcast stations and MVPDs must start providing the additional hours of video described programming on “included networks” in the calendar quarter beginning on July 1, 2018. We sought comment in the NPRM on an appropriate compliance deadline for the rule. In particular, we

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⁵⁵ NCTA Comments at 15. See also Time Warner Reply at 5.
⁵⁶ NAB Reply at 18.
⁵⁷ Time Warner Reply at 5.
⁵⁸ Other proposals are less problematic but are rendered unnecessary given the approach we have adopted. For instance, NCTA proposes to create a categorical exemption if all eligible programming in a quarter is described. NCTA Comments at 15. This does not seem likely to occur now that 18 hours a day of programming are eligible to count toward the description requirement, but, as discussed below, if it does occur we will consider that circumstance when deciding whether to grant a waiver.

⁶⁰ Although we received no comments on this issue, we recognize that broadcast networks do not program a broadcast station’s full day. Broadcast stations also program part of the broadcast day independently of their network, airing locally originated programming and syndicated programming. Therefore, in the case of waiver requests from broadcasters or broadcast networks, we will also look favorably on waiver requests demonstrating that all non-“live or near-live” programs provided in hours programmed by the broadcast network are described. Also, for all covered networks filing waiver requests, to the extent they have not provided video description on all pre-recorded programming they are, of course, free to make a showing that reasonable circumstances prevent them from doing so.

⁶⁶ The Commission will evaluate whether the affiliated network receives MVPD coverage and viewership sufficient to make it an adequate substitute for the network on which video description is required to be provided.
noted that when we reinstated the video description rules in 2011, the time from their release to the full compliance date was approximately ten months, and we asked whether we should allow a similar amount of time for distributors to come into compliance.67 We also noted that July 1, 2018 is the date on which the updated list of included nonbroadcast networks will go into effect, based on the ratings period from October 2016 to September 2017, and we inquired whether the compliance deadline for the rules should coincide with this date.68 Some commenters argue for compliance to be required as soon as possible,69 while others either support a longer period to come into compliance or were silent on the issue.70 To provide sufficient time for distributors to ensure that included networks provide an additional 37.5 hours of described programming per quarter, we will give covered entities until July 1, 2018, the date of the next three-year network list update, to come into compliance.71 Given that currently covered networks already have processes in place for creating and complying with the video description requirements, we believe that giving them a one-year period to provide an additional 37.5 hours of video described programming per quarter is reasonable.72 We therefore will require that the additional hours of described programming be provided by the four broadcast and five nonbroadcast networks covered by the rules in the calendar quarter beginning July 1, 2018.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)73 and Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.74

2. This Report and Order, adopts the proposal to increase the amount of video described programming on each “included network” carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of described programming on “included networks” in the calendar quarter beginning on July 1, 2018. The Report and Order also provides more flexibility than exists an expectation in consumers that they can rely on that network for increased video described programming, only to have such requirement last for a few short months. For these reasons, we believe that it is reasonable to align the compliance deadline with the network update so that only those networks responsible for compliance as of July 1, 2018 are required to provide the additional hours of video described programming; although we encourage any network that falls off the list to continue to provide video description.

3. Because a given hour of described programming can be counted twice toward the requirements of the rules (once when initially aired, and once when rerun), the total number of new hours of described programming per year needed to comply with the expanded video description requirement is actually 75.


additional criteria established by the SBA.

7. Television Broadcasting. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999, and 70 had annual receipts of $50,000,000 or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. 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, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to identify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

10. There are also 1,965 LPTV stations, 417 Class A stations, and 3,778 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.

11. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

12. Cable and Other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard qualifying that if a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

13. Cable Companies and Systems (Rate Regulation). 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 indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber 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 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

14. 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 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 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 nine incumbent cable operators are small entities under this 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.
15. Direct Broadcast Satellite (DBS) Service. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,000 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. In this section, we describe the reporting, recordkeeping, and other compliance requirements adopted in the Report and Order and consider whether small entities are affected disproportionately by these requirements.

17. Reporting Requirements. The Report and Order does not adopt reporting requirements.

18. Recordkeeping Requirements. The Report and Order does not adopt recordkeeping requirements.

19. Other Compliance Requirements. The Report and Order does adopt other compliance requirements. Specifically, the new rules require each covered broadcast station and MVPD, on each stream or channel on which it carries an “included network,” to provide 87.5 hours of described programming, per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of described programming on “included networks” in the calendar quarter beginning on July 1, 2018. Currently, 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. 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. We do not believe that this compliance requirement will disproportionately affect small entities, but we have described ways in which the Commission’s rules will minimize the impact on such entities (see discussion below).

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

20. 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.

21. The obligation to provide 87.5 hours of video described programming per quarter 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 rules adopted in this Report and Order may have an economic impact on small entities. In formulating the final rules, however, the Commission has considered methods to minimize the economic impact on small entities. In particular, the Report and Order provides more flexibility than exists under the current rules regarding when the additional hours of described programming may be aired to reduce any potential burden that covered entities may encounter in scheduling video described programming. The new rule allows covered broadcast stations and MVPDs to provide the additional 37.5 hours per quarter of described programming at any time between 6 a.m. and midnight. The Report and Order also emphasizes that waiver requests may be filed if our requirements are infeasible or prove to be unduly burdensome under particular circumstances. This process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis and to modify the application of the rules to accommodate individual circumstances, which can reduce the costs of compliance for these entities.

22. Overall, we believe we have appropriately considered both the interests of individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress’ goal to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”

6. Report to Congress

23. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

B. Final Paperwork Reduction Act of 1995 Analysis

the Commission previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

VI. Ordering Clauses

1. 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 contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, this Report and Order is hereby adopted.

2. It is further ordered that part 79 of the Commission’s rules, 47 CFR part 79, is amended as set forth herein, and such rule amendments shall be effective September 11, 2017.

3. It is further ordered that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

4. It is further ordered that the Commission shall send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 79

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

Federal Communications Commission.

Marlene H. Dortch, Secretary.

Final Rules

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

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

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

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

2. Amend §79.3 by revising paragraph (b)(1), removing and reserving paragraph (b)(2), and revising paragraphs (b)(4), (c)(2), and (c)(4) introductory text.

The revisions read as follows:

§79.3 Video description of video programming.

(b) * * *

(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, and, beginning July 1, 2018, 37.5 additional hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a 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;

* * * * *

(4) Multichannel video programming distributor (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, and, beginning July 1, 2018, 37.5 additional hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. Initially, the top five networks are those determined by the Nielsen Company, for the time period October 2009–September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013–September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016–September 2017; and so on; and

* * * * *

(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 four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

* * * * *

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

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 03–185, 15–137; GN Docket No. 12–268, FCC 17–29]

Channel Sharing Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collections associated with the Commission’s decision, in Report and Order, Channel Sharing by Full Power and Class A Stations Outside of the Broadcast Television Spectrum Incentive Auction Context. Specifically, OMB has approved the Commission’s rules that require that sharing stations: file applications for construction permit and license to implement their channel sharing arrangement (CSA); that they include a copy of their CSA with their construction permit application; and that they provide notice of their CSA to multichannel video programming distributors (MVPDs). OMB also approved changes to the Commission’s Form 2100 Schedules A, B, C, D, E and F to implement these changes. This document is consistent with the Report and Order, which stated that the Commission would publish a document in the Federal Register announcing OMB approval and the effective date of these rule changes.

DATES: The final rules regarding 47 CFR 73.3800, 73.6028, 74.799 and FCC Form 2100, Schedules A, B, C, D, E and F published at 82 FR 18240 on April 18, 2017, are effective August 10, 2017.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy