



PUBLIC NOTICE

Federal Communications Commission
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Media Bureau Seeks Comment on USA Network's Petition for Limited Waiver of Video Description Requirements

MB Docket No. 11-43

Comments Due: July 12, 2019

Reply Comments Due: July 26, 2019

NBCUniversal, LLC (NBCUniversal), on behalf of its wholly owned non-broadcast programming network, USA Network (USA), has filed a petition¹ requesting that the Media Bureau grant a limited waiver of the Commission's requirement that covered entities provide a certain amount of video described programming per calendar quarter.² Specifically, NBCUniversal requests a limited waiver of section 79.3 of the Commission's rules to provide a safe harbor for multichannel video programming distributors (MVPDs) carrying USA and similarly situated networks, subject to the conditions described below.

Pursuant to the Commission's responsibilities under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),³ the Commission reinstated the video description regulations that previously were adopted in 2000.⁴ Video description is "[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue."⁵ It makes video programming accessible to individuals who are blind or visually impaired. The current rules require MVPDs that serve 50,000 or more subscribers to provide video described programming on each of the top five national non-broadcast networks that they carry.⁶

¹ Request of USA Network for Limited Waiver of Video Description Rules, MB Docket No. 11-43 (filed May 3, 2019) (Petition).

² 47 CFR § 79.3.

³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

⁴ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011). The previous rules were struck down due to lack of authority. *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230 (2000), recon. granted in part and denied in part, *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1251 (2001), *vacated sub nom*, Motion Picture Ass'n of Am., Inc. v. FCC, 309 F.3d 796 (D.C. Cir. 2002).

⁵ 47 CFR § 79.3(a)(3).

⁶ 47 CFR § 79.3(b)(4). Similarly, commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, or NBC), and that are licensed to a community

In 2017, the Commission adopted an *Order* to expand the availability of video described programming by increasing the amount of described programming covered entities must provide from 50 hours per calendar quarter to 87.5 hours per quarter.⁷ Specifically, section 79.3(b)(4) of the Commission's rules requires covered MVPDs to provide 50 hours of video description per calendar quarter, either during prime time or on children's programming, and an additional 37.5 hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time,⁸ on each channel on which they carry one of the top five national non-broadcast networks,⁹ as determined by the Nielsen Company for the given period.¹⁰ USA is currently a top five national non-broadcast network.¹¹

Although the Commission's rules place video description requirements on programming distributors, as NBCUniversal notes in its Petition, "the programming networks actually procure and supply the video description in the secondary audio programming channel of the programming services provided to distributors."¹² To meet the quarterly requirement, covered entities may count each program they air with video description no more than twice on a given channel.¹³ NBCUniversal claims the repeat rule allows only a small fraction of the hours of video described programming USA provides each calendar quarter to be credited in determining compliance with the qualitative requirements of the video description regulations.¹⁴ NBCUniversal explains that this limitation presents special challenges for networks such as USA that do not regularly air scheduled children's programming and build their programming schedules on a combination of repeats and new programming.¹⁵

NBCUniversal requests that the Commission grant USA a limited waiver with respect to section 79.3 of the Commission's rules for the period ending on June 30, 2021, subject to the conditions that USA—(1) airs at least 1,000 hours of described programming each quarter without regard to repeats and (2) describes at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter.¹⁶ NBCUniversal also requests that the Commission extend the waiver to

located in the top 60 television markets must provide video described programming on each of the top four commercial television broadcast networks. 47 CFR § 79.3(b)(1).

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 32 FCC Rcd 5962 (2017).

⁸ *Id.*

⁹ 47 CFR 79.3(b)(4) ("[A]s 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.").

¹⁰ *Id.*

¹¹ Petition at 4-5. The top five networks were initially those determined by The Nielsen Company for the period October 2009 through September 2010. This list is updated every three years, with the most recent interval beginning on July 1, 2018 (based on the ratings for the period October 2016-September 2017) and ending on June 30, 2021. See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, 33 FCC Rcd 4915, 4919-20, para. 10 (2018).

¹² Petition at 5.

¹³ 47 CFR 79.3(c)(2).

¹⁴ Petition at 2, 5-6.

¹⁵ *Id.*

¹⁶ *Id.* at 2-3. According to the Petition, in the four quarters from January to December 2018, USA averaged more than 1,600 hours of described programming each quarter without regard to repeats and described more than 78

any other top-five ranked non-broadcast network that meets the proposed safe harbor conditions during the waiver period.¹⁷ We seek comment on NBCUniversal's request.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁸

- 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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percent of all newly produced, non-live quarterly programming that was aired between 6:00 a.m. and midnight (ET). *Id.* at 8-9. Although NBCUniversal describes its request as a waiver for the USA Network, we reiterate that our rules apply to MVPDs carrying USA, rather than to USA itself. As a result, the proposed waiver would apply to every covered MVPD nationwide, with respect to the channel on which it carries USA.

¹⁷ *Id.* at 3. See *supra* note 12 (any possible waiver would be granted to MVPDs, not to programmers).

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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