

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER AND PUBLIC NOTICE

Adopted: February 28, 2024

Released: February 28, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant requests filed on behalf of Fox News Channel,1 ESPN,2 and
MSNBC3 for exemption from the Commission’s audio description rules applicable to the top five national
nonbroadcast networks. We conclude that Fox News, ESPN, and MSNBC provide less than 50 hours per
calendar quarter of prime time programming that is not live or near-live and we therefore grant their
requests. We also provide notice of changes to the list of top five national nonbroadcast networks subject
to the audio description requirements based on changes in ratings, accounting for the granted requests for
exemption. Beginning July 1, 2024, the top five national nonbroadcast networks will be HGTV,
Hallmark, TLC, TNT, and TBS.

II. ORDER

A. Background

2. Audio description makes video programming4 more accessible to individuals who are
blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s
key visual elements into natural pauses between the program’s dialogue.”5 To access audio description,
consumers generally switch from the main program audio to the secondary audio stream on which audio
description is typically provided. In 2011, pursuant to the Twenty-First Century Communications and

1 Request of Fox News Network, LLC for Exclusion from List of Top Five National Nonbroadcast Networks
Subject to Audio Description Rules, MB Docket No. 11-43 (filed Dec. 29, 2023) (Fox News Request).

2 Request of ESPN, Inc. for Further Exemption from List of Top Five Non-Broadcast Networks, MB Docket No. 11-
43 (filed Jan. 18, 2024) (ESPN Request). The Request was filed jointly by The Walt Disney Company and ESPN,
which is 80 percent owned by The Walt Disney Company. Id. at 1 & n.3.

3 Request of MSNBC for Further Exemption from the List of Top Five Nonbroadcast Networks Subject to Audio
Description Requirements, MB Docket No. 11-43 (filed Dec. 22, 2023) (MSNBC Request). NBCUniversal, LLC,
which wholly owns MSNBC, filed the Request on behalf of MSNBC. Id. at 1. See also Supplement to Request of
MSNBC for Further Exemption from the List of Top Five Nonbroadcast Networks Subject to Audio Description
Requirements, MB Docket No. 11-43 (filed Feb. 16, 2024) (MSNBC Supplement).

4 “Video programming” refers to programming provided by, or generally considered comparable to programming
provided by, a television broadcast station but does not include consumer-generated media. 47 U.S.C. § 613(h)(2);
47 CFR § 79.3(a)(4).

5 Id. § 79.3(a)(3).

Video Accessibility Act of 2010 (CVAA),⁶ the Commission adopted rules requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming that they offer to consumers on television.⁷

3. Specifically, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or on children’s programming, and an additional 37.5 hours of audio description per calendar quarter at any time between 6 a.m. and midnight, on each of the top five national nonbroadcast networks that they carry on those systems.⁸ For the 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 audio description rules.⁹ In addition, the audio description rules currently require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top 100 television markets to provide 50 hours of audio-described programming per calendar quarter during prime time or on children’s programming,¹⁰ and an additional 37.5 hours of audio-described programming per

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847 (2011) (*2011 Audio Description Order*). See also 47 CFR § 79.3. In accordance with the CVAA, the *2011 Audio Description Order* reinstated with certain modifications the Commission’s audio description rules that the United States Court of Appeals for the District of Columbia Circuit previously had vacated due to its finding that the Commission had insufficient authority for its rules. See *Motion Picture Ass’n of America, Inc. v. Federal Communications Comm.*, 309 F.3d 796 (D.C. Cir. 2002).

⁸ 47 CFR § 79.3(b)(4). The list of the top five nonbroadcast networks is updated every three years based on changes in ratings and was last updated on July 1, 2021 (remaining in effect until June 30, 2024). See *id.*; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket 11-43, Order and Public Notice, 36 FCC Rcd 4849 (MB 2021) (*2021 Audio Description Exemption Order*). The rules also require MVPD systems of any size to pass through audio description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming. 47 CFR § 79.3(b)(5)(i)-(ii).

⁹ 47 CFR § 79.3(b)(4). See also *2011 Audio Description Order*, 26 FCC Rcd at 11854-55, paras. 12-15. “Live or near-live programming” is defined as programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor. 47 CFR § 79.3(a)(7). The *2011 Audio Description Order* explained that the Commission was adopting a proposal to “explicitly exclude from the top five any non-broadcast network that does not provide, on average, at least 50 hours per quarter of prime time nonexempt programming.” *2011 Audio Description Order*, 26 FCC Rcd at 11854, para. 12.

¹⁰ 47 CFR § 79.3(b)(1). See also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 32 FCC Rcd 5962 (2017) (*2017 Audio Description Order*) (increasing the amount of described programming that covered broadcast stations and MVPDs are required to provide). In 2020 the Commission expanded its audio description rules by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, concluding with the extension to DMAs 91 through 100 on January 1, 2024. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 35 FCC Rcd 12577, 12582, para. 10 (Oct. 27, 2020) (*2020 Audio Description Order*). In 2023, the Commission further expanded the audio description rules by continuing to phase them in for an additional 10 DMAs each year until all 210 DMAs are included. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report and Order, FCC 23-82, para. 12 (2023).

calendar quarter at any time between 6 a.m. and midnight.¹¹ The top five nonbroadcast networks currently subject to the audio description requirements are TLC, HGTV, Hallmark, History, and TBS.¹² As discussed below, Fox News, MSNBC, and ESPN have each previously received exemptions from these requirements.¹³

4. The rules provide that the list of top five nonbroadcast networks will update at three-year intervals to account for changes in ratings, and that the fourth triennial update will occur on July 1, 2024, based on the 2022 to 2023 ratings year.¹⁴ In anticipation of this update, the Media Bureau (Bureau) issued a Public Notice on November 30, 2023 announcing the top ten nonbroadcast networks for the 2022 to 2023 ratings year according to data provided by the Nielsen Company: Fox News, ESPN, MSNBC, HGTV, Hallmark, TLC, TNT, TBS, Discovery, and History.¹⁵ The Public Notice indicated that a program network could seek an exemption no later than 30 days after publication of the Public Notice, if it believed it should be excluded from the list of top five networks covered by the audio description rules because it does not air at least 50 hours of prime time programming per quarter that is not live or near-live or is otherwise exempt.¹⁶ Fox News, ESPN, and MSNBC filed timely requests for exemption from the list of top five nonbroadcast networks.¹⁷

B. Discussion

5. Based on the evidence presented in the record, we find that Fox News, ESPN, and MSNBC provide on average less than 50 hours per calendar quarter of prime time programming that is not live or near-live. We, therefore, exempt these three networks from the Commission's audio

¹¹ 47 CFR § 79.3(b)(1). *See also 2017 Audio Description Order*, 32 FCC Rcd at 5965, 5970, paras. 7, 15. The rules also require “[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.” 47 CFR § 79.3(b)(3).

¹² *See 2021 Audio Description Exemption Order*, 36 FCC Rcd at 4849, para. 1. In 2021, the Media Bureau released an order that granted a limited waiver of the audio description rules with respect to TBS through the three-year period ending on June 30, 2024. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, MB Docket No. 11-43, 36 FCC Rcd 12646 (MB 2021). As a condition of the waiver, for any quarter in which TBS cannot meet the hours threshold established by the audio description rules, TBS is required to: (1) air at least 1,000 hours of audio-described programming each quarter (and more than 1,400 hours of audio-described programming on average per quarter over the entire waiver period) without regard to the number of repeats, and (2) audio describe all newly-produced, non-live programming aired between 6:00 a.m. and 11:59 p.m. local time within three business days of its receipt from a production company. *Id.* at 12649, para. 8. Additionally, WarnerMedia (TBS's parent company) will provide audio description for 100 percent of newly-produced, non-live programming on commonly-owned networks, TNT and TruTV, aired between 6:00 a.m. and 11:59 p.m. local time within three business days of receipt. *Id.*

¹³ *See 2011 Audio Description Order*, 26 FCC Rcd at 11855, para. 14; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, 30 FCC Rcd 2071, 2073, para. 10 (MB 2015) (*2015 Audio Description Exemption Order*); *2018 Audio Description Exemption Order*; *2021 Audio Description Exemption Order*.

¹⁴ 47 CFR § 79.3(b)(4). *See also 2011 Audio Description Order*, 26 FCC Rcd at 11857, para. 18.

¹⁵ Public Notice, *Media Bureau Announces National Nonbroadcast Network Rankings for Purposes of July 1, 2024 Update to Audio Description Requirements*, MB Docket No. 11-43, DA 23-1119 (2023) (Public Notice).

¹⁶ *Id.* at 1. The Public Notice was published in the Federal Register on December 20, 2023. *See* Federal Communications Commission, *Audio Description: Preliminary Nonbroadcast Network Rankings*, Notice, 88 Fed. Reg. 88075 (Dec. 20, 2023). Accordingly, requests for exemption were due on January 19, 2024.

¹⁷ *See generally* Fox News Request, ESPN Request, and MSNBC Request.

description requirements applicable to the top five national nonbroadcast networks. In making our determination, we reviewed data pertaining to the six most recent calendar quarters submitted by each network and sample programming schedules.¹⁸ We also considered additional information each individual network submitted to support or explain aspects of each request, when available.

6. *Fox News*. We grant Fox News' request that the Commission exclude Fox News from the list of top five national nonbroadcast networks subject to the Commission's audio description rules because it does not provide, on average, at least 50 hours per quarter of non-exempt prime time programming.¹⁹ The Commission previously excluded Fox News from the list of top five networks in the 2011, 2018, and 2021 triennial updates of covered nonbroadcast networks, because Fox News did not provide at least 50 hours per quarter of prime time programming that is not live or near-live.²⁰ Fox News explains that it is a "24 hours/day, 7 days/week cable- and satellite-delivered news network," and its "programming consists of a blend of news coverage and analysis, opinion commentary, and in-depth reporting featuring a variety of news anchors, correspondents, program hosts, and contributors."²¹ Fox News contends that "[b]ecause its weekday prime-time schedule consists entirely of live or near live programming, and given that live or near live programming makes up a substantial portion of its weekend prime-time schedule, Fox News does not provide an average of at least 50 hours per quarter of non-exempt prime time programming."²² To support its request for exemption, Fox News reviewed programming line-ups for six quarters, from April 1, 2022, through September 30, 2023.²³ Over the six-quarter period, Fox News averaged 37.8 hours of non-exempt programming during prime time.²⁴ Additionally, Fox News submitted illustrative programming schedules from each quarter reviewed to demonstrate that it presented nearly all live or near-live programming during prime time, including weekend prime time hours.²⁵ After reviewing the record, the Bureau finds that Fox News has not aired, on average, at least 50 hours of non-exempt prime time programming per quarter. Accordingly, we find that Fox News is excluded from the list of top five nonbroadcast networks and exempt from the Commission's audio description requirements applicable to the top five national nonbroadcast networks.

7. *ESPN*. We grant ESPN's request that the Commission extend its existing exclusion from the list of top five national nonbroadcast networks subject to the audio description requirements because it does not provide, on average, at least 50 hours per quarter of prime time non-exempt programming.²⁶ The Commission previously excluded ESPN from the list of top five nonbroadcast networks when it reinstated the audio description rules in 2011, and the Bureau did so again during the 2015, 2018, and 2021 triennial updates of covered nonbroadcast networks, based on a determination that ESPN did not provide at least

¹⁸ In its *2021 Audio Description Exemption Order*, the Bureau specified that it would examine at least six consistent calendar quarters worth of programming data and representative programming schedules in future triennial reviews of national nonbroadcast network rankings. *2021 Audio Description Exemption Order*, 36 FCC Rcd at 4852, n.20.

¹⁹ Fox News Request at 3 & Exh. 2.

²⁰ *2011 Audio Description Order*, 26 FCC Rcd at 11855, para. 14; *2018 Audio Description Exemption Order*, 33 FCC Rcd at 4919, para. 9; *2021 Audio Description Exemption Order*, 36 FCC Rcd at 4852, para. 6.

²¹ Fox News Request at 2.

²² *Id.* at 3 & Exh. 1 (declaration of Robert Osinoff, Senior Manager of Program Operations for Fox News Network, LLC). Fox News explains that it airs live or near-live content from at least 5 a.m. to 11:59 p.m. Eastern time Monday through Friday, from at least 6 a.m. to 8 p.m. on Saturdays, and from at least 6 a.m. to 2 p.m. on Sundays. *Id.* Fox News also provides additional live coverage "[w]here appropriate to cover breaking news or for other events." *Id.* at 3.

²³ *Id.* at Exh. 2.

²⁴ *Id.*

²⁵ *Id.* at Exh. 3.

²⁶ ESPN Request at 1.

50 hours per quarter of prime time programming that is not live or near-live.²⁷ ESPN contends that given its mixture of live and near-live programming, it “is exactly the type of network that the CVAA intended to exempt” from audio description regulation.²⁸ ESPN explains that its programming “contain[s] a mixture of live sporting events, live studio sports reporting shows, and replays of very-recently taped studio sports programs,” featuring college football, college basketball, the NBA, the NFL, and MLB, among others.²⁹ In particular, ESPN reviewed its programming for the past twelve quarters and found that, on average, it aired 22.6 hours per quarter of non-exempt programming during prime time.³⁰ ESPN also submitted illustrative programming schedules from July 2023 through October 2023 to provide additional details with respect to the predominately live and near-live content of its programming schedule.³¹ After reviewing the record, the Bureau finds that ESPN has not aired, on average, at least 50 hours of non-exempt prime time programming per quarter. Accordingly, we find that ESPN is excluded from the list of top five nonbroadcast networks and exempt from the Commission’s audio description requirements applicable to the top five national nonbroadcast networks.

8. *MSNBC*. We grant MSNBC’s request that the Commission extend MSNBC’s existing exemption from the list of top five national nonbroadcast networks subject to the audio description requirements because it airs, on average, fewer than 50 hours of non-exempt prime time programming.³² The Bureau previously excluded MSNBC from the list of top five nonbroadcast networks during the 2018 and 2021 triennial updates of covered nonbroadcast networks, based on a determination that MSNBC did not provide at least 50 hours per quarter of prime time programming that is not live or near-live.³³ MSNBC contends that its programming offers “around-the-clock substantially live news coverage, including breaking news, commentary, and live interview programs.”³⁴ MSNBC also airs live or near-live prime time programming.³⁵ To support its request for exemption, MSNBC reviewed its recent prime time programming line-ups for six quarters, from April 1, 2022, through October 31, 2023.³⁶ MSNBC submits that over the six-quarter period, it averaged only 24.3 hours of non-exempt programming during prime

²⁷ *2011 Audio Description Order*, 26 FCC Rcd at 11855, para. 14; *2015 Audio Description Exemption Order*, 30 FCC Rcd at 2073, para. 9; *2018 Audio Description Exemption Order*, 33 FCC Rcd at 4917-18, para. 7; *2021 Audio Description Exemption Order*, 36 FCC Rcd at 4854-55, paras. 9-11. In 2011, the Commission made this determination based on ESPN’s comments, which indicated that “ESPN does not provide, on average, at least 50 hours per quarter of prime-time non-exempt programming,” as well as a supporting affidavit and illustrative programming schedules. *2011 Audio Description Order*, 26 FCC Rcd at 11855, para. 14. The Bureau made this determination based on similar supporting evidence in 2015 and 2018. See *2015 Video Description Exemption Order*, 30 FCC Rcd at 2073, para. 8; *2018 Audio Description Exemption Order*, 33 FCC Rcd at 4917-18, para. 7. In 2021, the Commission made this determination based on similar supporting evidence, excluding the first and second quarters of 2020 due to cancellations of live sporting events due to COVID-19. *2021 Audio Description Exemption Order*, 36 FCC Rcd at 4854-55, paras. 9-11.

²⁸ ESPN Request at 3.

²⁹ *Id.*

³⁰ *Id.* at Attach. A. (declaration of Maria Kirby, Vice President, Government Relations, for the Walt Disney Company).

³¹ *Id.* at Attach. B.

³² MSNBC Request at 1-2.

³³ *2018 Audio Description Exemption Order*, 33 FCC Rcd at 4918, para. 8; *2021 Audio Description Exemption Order*, 36 FCC Rcd at 4853, para. 7.

³⁴ MSNBC Request at 3.

³⁵ *Id.*

³⁶ *Id.*

time.³⁷ Additionally, MSNBC submitted programming schedules for non-exempt prime time programming from March 28, 2022 to September 24, 2023, and supplemented with sample programming schedules for the week of December 4, 2023 to December 10, 2023.³⁸ After reviewing the record, the Bureau finds that MSNBC has not aired, on average, at least 50 hours of non-exempt prime time programming per quarter. Accordingly, we find that MSNBC is excluded from the list of top five nonbroadcast networks and exempt from the Commission's audio description requirements applicable to the top five national nonbroadcast networks.

III. PUBLIC NOTICE

9. *Top Five Nonbroadcast Networks.* In the Public Notice announcing the national nonbroadcast network rankings for purposes of the July 2024 update to the audio description requirements, the Bureau indicated that it would provide notice of any resulting revisions to the list of top five networks after evaluating requests for exemption.³⁹ Thus, we hereby announce that, as a result of the exemptions we grant to Fox News, MSNBC, and ESPN and our review of Nielsen ratings for the 2022 to 2023 ratings year, the top five nonbroadcast networks that will be subject to the audio description requirements as of July 1, 2024 are: HGTV, Hallmark, TLC, TNT, and TBS.⁴⁰ MVPD systems that serve 50,000 or more subscribers must provide 87.5 hours of audio description per calendar quarter on channels carrying each of these networks.⁴¹

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and sections 0.61, 0.283, and 79.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, 79.3, this Order **IS ADOPTED**.

11. **IT IS FURTHER ORDERED** that, pursuant to section 79.3 of the Commission's rules, 47 CFR § 79.3, the requests filed by Fox News, MSNBC, and ESPN for exemption from the Commission's audio description rules **ARE GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

³⁷ *Id.* at Attach. (affidavit of Angela Y. Ball, Vice President, Regulatory Affairs, for NBCUniversal).

³⁸ *Id.*; MSNBC Supplement at 4-10.

³⁹ Public Notice, DA 23-1119 at 2.

⁴⁰ Although History is no longer in the top five nonbroadcast networks, we encourage it to continue providing audio description for its programming, which will increase access by persons who are blind or visually impaired.

⁴¹ *2017 Audio Description Order*, 32 FCC Red at 5962, para. 1.