

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

REPORT AND ORDER

Adopted: October 27, 2020

Released: October 27, 2020

By the Commission: Chairman Pai and Commissioner Rosenworcel issuing separate statements.

I. INTRODUCTION

1. In this Report and Order, we take the unopposed action of expanding our video description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year for the next four years. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), we find that the costs of expanding the video description regulations to DMAs 61 through 100 are reasonable for program owners, providers, and distributors. Our action today will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. In addition, we modernize the terminology in part 79 of the Commission’s rules to use the more common and widely understood term “audio description” rather than “video description.” Finally, we adopt our proposal to delete from the rules outdated references to compliance deadlines that have passed.

II. BACKGROUND

2. Audio description makes video programming 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.” 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 section 202 of the CVAA, the Commission adopted rules requiring certain television broadcast stations and multichannel video programming

1 Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv). Specifically, pursuant to the “continuing Commission authority” provision of the CVAA, the Commission has authority “to phase in the video description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.” Id.

2 Throughout the remainder of this document, we will use the term “audio description” instead of “video description.” See infra Section III.B (adopting our proposal to make this non-substantive terminology change).

3 We note that although the CVAA uses the term “video description” in this context, the Commission has long considered the terms “video description” and “audio description” to be synonymous. See, e.g., 47 CFR § 79.3(a)(3).

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).

distributors (MVPDs) to provide audio description for a portion of the video programming that they offer to consumers on television.<sup>6</sup>

3. Specifically, 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 60 television markets to provide 50 hours of audio-described programming per calendar quarter during prime time or on children’s programming,<sup>7</sup> as well as an additional 37.5 hours of audio-described programming per calendar quarter at any time between 6 a.m. and midnight.<sup>8</sup> In addition, 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, as well as 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.<sup>9</sup> The top five nonbroadcast networks currently subject to the audio description requirements are USA Network, HGTV, TBS, Discovery, and History.<sup>10</sup>

4. The CVAA required the Commission to submit two reports to Congress related to audio description. In the First Report, submitted to Congress in June 2014, the Bureau found that “[t]he

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<sup>6</sup> *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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 47 CFR § 79.3(b)(4). For purposes of the audio description rules, the top five national nonbroadcast networks include only those 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. *Id.* The list of the top five networks is updated every three years based on changes in ratings and was last updated on July 1, 2018 (remaining in effect until June 30, 2021). See *id.* 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. *Id.* § 79.3(b)(5)(i)-(ii).

<sup>10</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket 11-43, Order and Public Notice, 33 FCC Rcd 4915 (MB 2018). On October 7, 2019, the Media Bureau (Bureau) released an order that granted a limited waiver of the audio description rules with respect to USA Network for the remainder of the current ratings period ending on June 30, 2021, but it declined to grant a safe harbor from the audio description requirements for other similarly situated, top five nonbroadcast networks. 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, 34 FCC Rcd 9335 (MB 2019). As a condition of the waiver, USA Network must air at least 1,000 hours of described programming each quarter without regard to the number of repeats and must describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter. *Id.*

availability of [audio] description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and the industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules.”<sup>11</sup> The Bureau also found, however, that “consumers report the need for increased availability of and easier access to [audio]-described programming, both on television and online.”<sup>12</sup>

5. In the Second Report, submitted to Congress in October 2019, the CVAA required the Commission to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [audio-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.”<sup>13</sup> The Second Report stated that commenters did not offer “detailed or conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs.<sup>14</sup> It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the [audio] description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that ‘the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”<sup>15</sup>

6. The CVAA provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>16</sup> Accordingly, in April 2020, in accordance with the CVAA, the Commission proposed to expand its audio description regulations to an additional 10 DMAs per year for four years, thus covering DMAs 61 through 100, and it invited comment on whether the costs of such an expansion would be reasonable.<sup>17</sup> The Commission also sought to refresh the record on its 2016 proposal to revise its rules to use the newer and more commonly used term “audio description,” rather than “video description.”<sup>18</sup> Finally, the Commission proposed to delete outdated references in the audio description rules to compliance deadlines that had passed.<sup>19</sup> The *2020 Audio Description NPRM* elicited 11 comments and two replies,<sup>20</sup> all of which supported the Commission’s

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<sup>11</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report to Congress, 29 FCC Rcd 8011, para. 1 (MB 2014) (First Report).

<sup>12</sup> *Id.*

<sup>13</sup> 47 U.S.C. § 613(f)(4)(C)(iii)(IV), (VII).

<sup>14</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350 at 9362, para. 28 (MB 2019) (Second Report).

<sup>15</sup> *Id.* (quoting 47 U.S.C. § 613(f)(4)(C)(iv)(I)).

<sup>16</sup> 47 U.S.C. § 613(f)(4)(C)(iv).

<sup>17</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 35 FCC Rcd 4293 (2020) (*2020 Audio Description NPRM*). The Commission also proposed that in 2023, “the Commission will determine whether to continue expanding to an additional 10 DMAs per year, with any further expansion to be undertaken only following a future determination of the reasonableness of the associated costs.” *Id.* at 4299, para. 13.

<sup>18</sup> *Id.* at 4300-01, para. 17.

<sup>19</sup> *Id.* at 4301, para. 18.

<sup>20</sup> The commenters were: American Council of the Blind (ACB); Bill Graham (Graham), Rondez Green (Green); Marie Gutman (Gutman); Robert Kingett (Kingett); National Association of Broadcasters (NAB); Roy Samuelson

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proposals, including the expansion of audio description requirements to an additional 10 DMAs per year for four years until DMAs 61 through 100 are covered.

### III. DISCUSSION

#### A. Expanding the Number of Markets Subject to Audio Description Requirements

7. We adopt our proposal to phase in the audio description requirements for an additional 10 DMAs each year for four years, beginning on the later of January 1, 2021, or the effective date of this Order.<sup>21</sup> Commenters unanimously support the expansion of the Commission's audio description rules to additional markets.<sup>22</sup> As stated, the CVAA provides the Commission with authority for this phase-in, "based upon the findings, conclusions, and recommendations contained in the [Second Report]," "(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate."<sup>23</sup>

8. The record confirms our conclusion that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable.<sup>24</sup> The costs of adding description to television programming have held steady since 2017, indicating that the costs are at a level the Commission previously deemed "minimal."<sup>25</sup> Covered broadcasters already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size.<sup>26</sup> As NAB acknowledges, stations in compliance with the requirement to deliver audible emergency information via the secondary audio stream "should be able to provide audio description without significant additional cost."<sup>27</sup> Further, network affiliates in all DMAs are already required to pass through the audio description they receive via

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(Samuelson); Joel Snyder, PhD (Snyder); VITAC; D. M. Wiersig (Wiersig); and Martin Wilde (Wilde). The reply commenters were Access to Independence of Cortland County, Inc. (Access to Independence) and ACB.

<sup>21</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4296, para. 8.

<sup>22</sup> See, e.g., ACB Comments at 1; VITAC Comments at 1; Wilde Comments at 1; ACB Reply at 1; Access to Independence Reply at 2.

<sup>23</sup> 47 U.S.C. § 613(f)(4)(C)(iv).

<sup>24</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4296, para. 9. See ACB Comments at 1-2 (agreeing with the Commission's tentative conclusion that the costs of the expansion would be reasonable); NAB Comments at 1 ("[I]t is our understanding that implementing the Commission's proposal would not be unduly burdensome for most television stations in DMAs 61-100 that will be covered by the rules . . .").

<sup>25</sup> See Second Report, 34 FCC Rcd at 9361, paras. 23, 24 (indicating that the maximum cost of creating audio-described programming remains consistent with the Commission's 2017 estimate of \$4,202.50 per hour, while the cost of described pre-recorded programming can be as low as \$1,000 per hour); *2017 Audio Description Order*, 32 FCC Rcd at 5966, para. 9; ACB Comments at 2; NAB Comments at 2.

<sup>26</sup> See 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or video programming providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and requiring video programming distributors to ensure that the aural representation of emergency information gets passed through to consumers); NAB Comments at 3.

<sup>27</sup> Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, at 1, n.3 (Aug. 10, 2020) (NAB Aug. 10 *Ex Parte*). We note that the Commission asked in the *2020 Audio Description NPRM* whether we should account for the current coronavirus pandemic in evaluating the reasonableness of costs of expanding audio description requirements to markets 61 through 100. *2020 Audio Description NPRM*, 35 FCC Rcd at 4298, para. 11. No commenters except NAB addressed this issue. Although NAB initially noted that concerns about costs to broadcasters are potentially exacerbated by the pandemic, it subsequently indicated, as described above, that the compliance costs were feasible. See NAB Comments at 4-5; NAB Aug. 10 *Ex Parte* at 1-2.

a network feed,<sup>28</sup> which will mitigate any costs associated with the rule expansion.<sup>29</sup> For all of these reasons, we conclude that the costs of expanding the audio description regulations to DMAs 61 through 100 are reasonable. To the extent a broadcaster finds itself in an unusual situation that makes the costs of compliance unreasonable, it may avail itself of the exemption procedures discussed below.<sup>30</sup> However, based on our expertise and the record compiled in this proceeding, we expect such instances to be exceedingly rare.

9. The significant benefits of expanding the audio description requirements to DMAs 61 through 100, when weighed against the minimal costs, further support expansion to these markets. Consumers desire an expansion of the audio description requirements outside the top 60 DMAs, and consumers who are blind or visually impaired and live in those markets will benefit from the increased video programming accessibility that the expansion will provide.<sup>31</sup> In addition, the record indicates that

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<sup>28</sup> 47 CFR § 79.3(b)(3) (requiring network affiliated stations, including those outside the top 60 DMAs, 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”); *2011 Audio Description Order*, 26 FCC Rcd at 11850, para. 4 (noting that the pass-through requirement applies to any network-affiliated broadcast station, “regardless of its market size,” provided that the technical requirements are satisfied); Second Report, 34 FCC Rcd at 9362, para. 27; NAB Comments at 3.

<sup>29</sup> See, e.g., ACB Comments at 2. In addition, the First Report concluded that the costs of complying with the audio description requirements were consistent with industry’s expectations at the time the rules were adopted and had not impeded industry’s ability to comply, and the record for the Second Report did not alter that conclusion. See First Report, 29 FCC Rcd at 8032, para. 49. The *2020 Audio Description NPRM* sought comment on several additional issues related to analyzing the costs, including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets 61 through 100 would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations. *2020 Audio Description NPRM*, 35 FCC Rcd at 4298, para. 11. Commenters did not address these issues. Nonetheless, as explained herein, we believe the record provides sufficient information to determine, as required under the CVAA, that the costs of implementing the audio description regulations to program owners, providers, and distributors in the additional markets are “reasonable.”

<sup>30</sup> See NAB Comments at 3, n.11 (“NAB has explained that stations sometimes use their [secondary audio programming (SAP)] channel to carry foreign language programming instead of [audio] description, and certain challenges to broadcasting more than one additional audio service remain, including (1) additional equipment that some stations would need to install, (2) technical constraints of legacy analog TV receivers and some cable converter boxes, and (3) contracts that require networks to air a certain amount of Spanish language programming.”). Although the Commission requested additional information regarding specific costs that broadcasters in DMAs 61 through 100 might face as a result of the proposed expansion, commenters generally did not provide detailed information on costs. Nor did they provide any information that undermines our conclusion regarding the reasonableness of costs. See *2020 Audio Description NPRM*, 35 FCC Rcd at 4297-98, paras. 10-11 (seeking comment on a variety of issues related to the costs of the proposed expansion, including a request for “specific data on the costs that program owners, providers, and distributors would face if the Commission were to expand the [audio] description requirements to an additional 10 DMAs each year, until all DMAs up to market 100 are covered”).

<sup>31</sup> See Second Report, 34 FCC Rcd at 9357-58, 9362, paras. 15, 26; *2020 Audio Description NPRM*, 35 FCC Rcd at 4298, para. 12 (stating that it is “indisputable that [audio] description enhances the accessibility of video programming to consumers who are blind or visually impaired”); ACB Comments at 2 (stating that the Second Report’s conclusion that consumers who are blind or visually impaired would benefit from additional described video programming “is echoed by the individual comments compiled in Appendix A”); Graham Comments; Green Comments; VITAC Comments at 1; Wiersig Comments at 1; Wilde Comments at 1; Access to Independence Reply at 2. See also Second Report, 34 FCC Rcd at 9362, para. 28 (observing that the record informing the Second Report

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consumers who are not blind or visually impaired and live in those markets also would benefit from the expansion, such as consumers with other sensory or cognitive impairments, individuals learning the language, and those who listen to video programming while multitasking.<sup>32</sup> Commenters contend that the importance of access to news and entertainment programming during the current COVID-19 pandemic provides further evidence of the need for the expansion.<sup>33</sup> Although commenters did not provide specific data on the amount of audio-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the audio description requirements to such DMAs,<sup>34</sup> it is clear that any expansion of described programming in these additional markets will benefit consumers.<sup>35</sup>

10. We therefore expand the audio description requirements to DMAs 61 through 70 as of the later of January 1, 2021, or the effective date of this Order.<sup>36</sup> This approach is necessary to ensure that the first compliance deadline does not occur prior to the Order's effective date. The Commission's audio description rules will extend to DMAs 71 to 80 on January 1, 2022, DMAs 81 to 90 on January 1, 2023, and DMAs 91 to 100 on January 1, 2024.<sup>37</sup>

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“indicates that consumers seek expansion of the [audio] description requirements to DMAs outside the top 60, and it provides no basis for concluding that consumers would benefit less from [audio] description in those markets than in other areas”).

<sup>32</sup> See Kingett Comments; Samuelson Comments; Wilde Comments at 1.

<sup>33</sup> See ACB Comments at 1-2; Graham Comments.

<sup>34</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4299, para. 12.

<sup>35</sup> Nielsen data from 2020 indicate that expanding the audio description requirements to DMAs 61-70 on January 1, 2021, would cover more than an additional 4.22 million households, with more than an additional 3.63 million households covered by expanding to DMAs 71-80, more than an additional 3.25 million households covered by expanding to DMAs 81-90, and more than an additional 2.86 million households covered by expanding to DMAs 91-100. In total, expanding the video description rules from the top 60 DMAs to the top 100 DMAs would increase the share of TV households covered by these rules from 74 percent to 87 percent of TV households. See MediaTracks Communications, Nielsen DMA Rankings 2020, available at <https://mediatracks.com/resources/nielsen-dma-rankings-2020/> (last visited Aug. 21, 2020).

<sup>36</sup> The *2020 Audio Description NPRM* proposed to expand the requirements to DMAs 61 through 70 as of January 1, 2021, to provide entities with sufficient time for compliance. *2020 Audio Description NPRM*, 35 FCC Rcd at 4299, para. 13. While NAB initially requested that the expansion commence on October 1, 2021 for DMAs 61 through 70, it subsequently withdrew the request, indicating that it “share[s] the FCC’s goal of ensuring access to video programming” and will “support stations who are unable to meet the deadline on a case-by-case basis” rather than pursuing a blanket delay. See NAB Comments at 5; Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Aug. 18, 2020). See also ACB Comments at 2-3 (opposing any delay of the proposed deadline, arguing that “compliance with these requirements should not be difficult” and there is an urgent need for prompt expansion due to the importance of serving consumers who are blind or visually impaired during the pandemic); ACB Reply at 1.

<sup>37</sup> We recognize that there will be less time between the adoption of the instant Order and the compliance deadline than there was when the Commission reinstated the audio description rules in 2011. See *2011 Audio Description Order*, 26 FCC Rcd 11847 (released August 25, 2011, with a full compliance deadline of July 1, 2012). However, we expect that less time should be needed to comply with the extension, given that covered broadcasters are already required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements. See *supra* para. 8. We note that no commenter has demonstrated that there would not be sufficient time to comply with audio description requirements in these additional DMAs. In any event, to the extent any broadcaster finds that it is unable to comply with the deadline, it may file an economic burden exemption petition in accordance with the processes found in section 79.3(d) or seek a waiver under section 1.3. See *infra* para. 12. See also ACB Reply at 1. We expect that stations in DMAs 71 through 100 will not need relief from the applicable compliance deadline since they should be aware of that deadline well in advance.

11. We also adopt our proposal to base the extension to additional DMAs on an updated Nielsen determination of market rankings.<sup>38</sup> The only commenter that addressed this issue, ACB, supports the proposal, explaining that it “will help ensure that the greatest number of consumers can access audio-described programming.”<sup>39</sup> We find that using updated Nielsen data will facilitate the efficient roll out of audio description obligations to more television households. Our approach is consistent with the Commission’s prior expansion of the rules from the top 25 markets to the top 60 markets.<sup>40</sup> The audio description rules currently apply to stations “licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015.”<sup>41</sup> The revised rules, as set forth in Appendix A, will apply to the relevant DMAs “as determined by The Nielsen Company as of January 1, 2020.” The updated figures will apply to determine the top 60 DMAs, as well as the phase-in for DMAs 61 through 100. In the *2020 Audio Description NPRM*, we sought comment on the appropriate compliance deadline for stations in a DMA that was not in the top 60 markets as of January 1, 2015, but is in the top 60 markets as of January 1, 2020.<sup>42</sup> Commenters did not address this issue. We expect any such station to come into compliance with the audio description rules by the compliance deadline for DMAs 61 through 70.<sup>43</sup>

12. We affirm our tentative conclusion in the *2020 Audio Description NPRM* that “sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the [audio] description rules to additional DMAs.”<sup>44</sup> Specifically, section 79.3 of the Commission’s rules will continue to govern any petitions for exemption due to economic burden,<sup>45</sup> and section 1.3 will continue to govern waivers of the Commission’s rules generally.<sup>46</sup> The only commenter that addressed this issue, ACB, supports the proposal to use section 79.3(d) to govern any petitions for exemption due to economic burden, and explains further that this should apply “rather than adopting any other governing authority over petitions for exemption, such as section 1.3 of its rules, which allows for exemptions simply by a showing of ‘good cause.’”<sup>47</sup> Section 79.3(d) permits covered entities to petition the

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<sup>38</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4299, para. 14.

<sup>39</sup> ACB Comments at 3.

<sup>40</sup> *2011 Audio Description Order*, 26 FCC Rcd at 11856, para. 16.

<sup>41</sup> 47 CFR § 79.3(b)(1).

<sup>42</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4299, para. 14.

<sup>43</sup> We note that there is only a single market that was in the top 60 DMAs as of January 1, 2015, and is not in the top 60 DMAs as of January 1, 2020 (Little Rock-Pine Bluff, which moved from number 56 to number 62), and there is only a single market that was not in the top 60 DMAs as of January 1, 2015, and is in the top 60 DMAs as of January 1, 2020 (Ft. Myers-Naples, which moved from number 62 to number 53). Thus, Little Rock-Pine Bluff is currently subject to the audio description requirements because it was in the top 60 DMAs as of January 1, 2015, and it will remain subject to those requirements as the rules covering DMAs 61 through 70 go into effect. Ft. Myers-Naples is not currently subject to the requirements since it was in DMA 62 as of January 1, 2015, but it is now in DMA 53 and will become subject to the requirements as of the later of January 1, 2021, or the effective date of this Order, which is also when the rules extend to DMAs 61 through 70. Stations in the Ft. Myers-Naples DMA thus would have been subject to the same compliance deadline, even if we did not utilize updated Nielsen data, since they were previously in DMA 62.

<sup>44</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4300, para. 15.

<sup>45</sup> 47 CFR § 79.3(d); *2020 Audio Description NPRM*, 35 FCC Rcd at 4299-300, para. 15.

<sup>46</sup> 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>47</sup> ACB Comments at 3. *See also* ACB Reply at 1. Although it does not provide specific information about the number of affected stations or costs, NAB generally asserts that stations in DMAs 61 through 100 may have smaller

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Commission for a full or partial exemption from the audio description requirements upon a showing that they are economically burdensome.<sup>48</sup> The CVAA also provides that if an expansion of the audio description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>49</sup> Although section 79.3(d) will apply to instances in which an entity seeks to demonstrate that the extension to additional DMAs is economically burdensome, we recognize that the CVAA specifically references *waivers* as a means of relief, which differs from the *exemptions* available under section 79.3(d). Accordingly, to the extent a broadcaster subject to the extension believes it needs relief due to some reason other than economic burden, it may seek a waiver under section 1.3.

13. Finally, we adopt our proposal to revisit expansion beyond the top 100 DMAs at a later date. Specifically, in 2023, the Commission will determine whether to continue expanding our audio description requirements to an additional 10 DMAs per year.<sup>50</sup> Any further expansion will be undertaken only following a future determination of the reasonableness of the associated costs. Although some commenters request that the Commission include DMAs beyond the top 100 in the extension at this time,<sup>51</sup> we find that consideration of the reasonableness of the costs for the smallest markets at the appropriate time will best enable us to consider the unique circumstances that may be applicable to them. Additionally, in 2023, we will have the additional benefit of having implemented the extension to DMAs beyond the top 60 and will be able to consider any additional information gleaned from that practical experience.<sup>52</sup>

#### **B. Modernizing Terminology**

14. We adopt our proposal to make a non-substantive amendment to the rules to substitute the term “audio description” for the term “video description” for purposes of part 79.<sup>53</sup> Commenters

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viewership and advertising revenues as compared to those in larger markets, compliance costs may be more burdensome for some stations in smaller markets to accommodate, and these costs may be arising in the middle of stations’ budget cycle. *See* NAB Comments at 3-4. As explained above, however, NAB concedes that stations in compliance with the requirement to deliver audible emergency information via the secondary audio stream already should be able to provide audio description without significant compliance costs. *See supra* para. 8.

<sup>48</sup> 47 CFR § 79.3(d). The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for audio description would be economically burdensome: (i) the nature and cost of providing audio description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the audio description requirements, and it evaluates economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3). In the First Report, the Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.” First Report, 29 FCC Rcd at 8033, para. 49.

<sup>49</sup> 47 U.S.C. § 613(f)(4)(C)(iv)(II).

<sup>50</sup> 2020 *Audio Description NPRM*, 35 FCC Rcd at 4299, para. 13.

<sup>51</sup> *See* ACB Comments at 2; Gutman Comments; Kingett Comments.

<sup>52</sup> We note that commenters raise additional issues that are outside the scope of this Order and thus not addressed here. Such proposals include those related to the availability of audio description online and in movie theaters, the accessibility of audio description, and the threshold for cable audio description requirements. *See* ACB Comments, Appendix at 9, 12; Graham Comments; Gutman Comments; Kingett Comments; Samuelson Comments; Wiersig Comments.

<sup>53</sup> 2020 *Audio Description NPRM*, 35 FCC Rcd at 4300-01, para. 17.



nearly universally support this terminology change.<sup>54</sup> The term “audio description” is used by other federal agencies,<sup>55</sup> in television and movie listings,<sup>56</sup> and by the Worldwide Web Consortium.<sup>57</sup> We are concerned that the Commission’s use of an inconsistent term, “video description,” may be confusing both for consumers and industry.<sup>58</sup> In 2019, both ACB and the Commission’s Disability Advisory Committee advocated for the use of the term “audio description,”<sup>59</sup> which ACB and NAB had proposed to the Commission as early as 2011.<sup>60</sup>

15. Since the Commission’s definition of video description already references both “video description” and “audio description,” modernizing the terminology as discussed herein does not change the substance of any regulations.<sup>61</sup> Although the underlying statute uses the term “video description,” we reiterate our statement in the *2020 Audio Description NPRM* that we have authority to update our terminology as part of our “continuing authority” to regulate audio description.<sup>62</sup> Modernizing our terminology to use the more common and widely understood phrase “audio description” is consistent with other instances in which agencies have made non-substantive modifications to regulations to reflect newer

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<sup>54</sup> See ACB Comments at 1 (noting that the proposal “has overwhelming support from ACB’s nationwide membership, as represented by the individual comments compiled in Appendix A”); Graham Comments (explaining that the term “audio description” “accurately describes what is happening and is not tied to one media source”); Kingett Comments; Samuelson Comments; Snyder Comments at 2-3; VITAC Comments at 1; Wilde Comments at 1; Access to Independence Reply at 1. In addition, NAB indicates that it does not object to this terminology change. NAB Comments at 6. Only a single consumer whose position was included in the appendix to the ACB Comments indicates that “video description” is a more accurate term because the video is what is being described. ACB Comments, Appendix at 11. We remain persuaded that the Commission should use the more commonly accepted term, “audio description,” which is logical given that the description is provided via audio.

<sup>55</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4301, para. 17 (indicating that the Commission’s search had not revealed any other federal agency that uses the term “video description”); ACB Comments at 1; Snyder Comments at 3, 4-5 (indicating that the term “audio description” is used by the National Park Service, the Department of Health and Human Services, the Department of the Interior, the Smithsonian Institution, the Social Security Administration, the Department of Defense, the Department of Veterans Affairs, the National Institutes of Health, the Center for Disease Control and Prevention, and the National Endowment for the Arts, and citing an ACB resolution indicating that the FCC is the only federal government agency that uses the term “video description”).

<sup>56</sup> Snyder Comments at 4 (quoting the ACB’s resolution).

<sup>57</sup> ACB Comments at 1.

<sup>58</sup> See *2020 Audio Description NPRM*, 35 FCC Rcd at 4301, para. 17; ACB Comments at 1 (“This small change will have a profound impact on consumers’ ability to search for and identify the availability of spoken description for the visual elements of video”); Snyder Comments at 4-5.

<sup>59</sup> See Snyder Comments at 4; Wilde Comments at 1; *2020 Audio Description NPRM*, 35 FCC Rcd at 4300-01, para. 17; Recommendation of the Federal Communications Commission Disability Advisory Committee Described Audio TV Listings Working Group at 3 (adopted Sept. 24, 2019), MB Docket No. 12-108 (Sept. 26, 2019), available at <https://www.fcc.gov/ecfs/filing/109260918804199>.

<sup>60</sup> *2020 Audio Description NPRM*, 35 FCC Rcd at 4300, para. 17 (citing *2011 Audio Description Order*, 26 FCC Rcd at 11875, para. 58).

<sup>61</sup> See 47 CFR § 79.3(a)(3) (using both terms together to define the nature of the description); *2020 Audio Description NPRM*, 35 FCC Rcd at 4300, para. 17; ACB Comments, Appendix at 11 (containing a consumer request that the Commission clarify that video description and audio description are the same thing). Consistent with our proposal, because the current definition in the Commission’s rules treats the terms “video description” and “audio description” as synonymous, we will retain the statutory term “video description” in the definition while using the more commonly understood term “audio description” elsewhere in the rule. *2020 Audio Description NPRM*, 35 FCC Rcd at 4301, para. 17.

<sup>62</sup> *Id.* (also stating that “[u]pdating the terminology does not implicate any limitation contained in the statute, nor does it make any substantive change to the rules”) (footnote omitted); 47 U.S.C. § 613(f)(4).

terminology, even if the pertinent statute itself may not have been amended.<sup>63</sup> Accordingly, we revise our rules as reflected in Appendix A to use the term “audio description” rather than “video description.”

### C. Technical Update to the Rules

16. Finally, we adopt our proposal to delete from the audio description rules the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015, and July 1, 2018, which have passed.<sup>64</sup> No commenter addressed this issue, and we find that it is an appropriate update to our rules to reflect the passage of time.

## IV. PROCEDURAL MATTERS

17. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>65</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Report and Order. The FRFA is set forth in Appendix B.

18. *Paperwork Reduction Act.* The Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520).<sup>66</sup> In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

19. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

20. *Additional Information.* For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

## V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 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**.

22. **IT IS FURTHER ORDERED** that part 79 of the Commission’s rules, 47 CFR part 79, **IS AMENDED** as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the date of publication in the Federal Register.

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<sup>63</sup> 2020 Audio Description NPRM, 35 FCC Rcd 4301, para. 17 (citing as an example <https://www.federalregister.gov/documents/2013/08/01/2013-18552/change-in-terminology-mental-retardation-to-intellectual-disability>).

<sup>64</sup> 2020 Audio Description NPRM, 35 FCC Rcd at 4301, para. 18.

<sup>65</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>66</sup> The Commission will file a non-substantive modification to the information collection that contains section 79.3 (OMB 3060-1148), and to the information collection that contains sections 79.105 and 79.106 (OMB 3060-0967), to indicate the change in terminology from “video description” to “audio description.” The non-substantive modification for OMB 3060-1148 also will clarify that the audio description requirements have been extended to DMAs 61 through 100.

23. **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.

24. **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).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**Final Rules**

For ease of review, the final rules set forth below show amendments in **bold/underline** (for additions) and ~~strikethrough~~ (for deletions).

The Federal Communications Commission amends 47 CFR part 79 to read 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 § 79.2 by revising paragraph (b)(5) to read as follows:

**§ 79.2 Accessibility of programming providing emergency information.**

\* \* \* \* \*

(b) \* \* \*

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including ~~video~~**audio** description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

\* \* \* \* \*

3. Amend § 79.3 by revising the heading and paragraphs (a)(3), (b) introductory text, (b)(1), (3), and (4), (b)(5)(i) through (ii), (c)(2) and (3), (c)(4)(i) and (ii), (c)(5), (d)(1), (d)(2) introductory text, (d)(2)(i), (d)(3), (10), and (11), (e)(1) introductory text, and (e)(3)(i) and (e)(3)(ii) to read as follows:

**§ 79.3 ~~Video~~**Audio** description of video programming.**

(a) \* \* \*

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

\* \* \* \* \*

(b) ***Audio description requirements.*** The following video programming distributors must provide programming with ~~video~~**audio** description 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,~~**2020**, must provide 50 hours of ~~video~~**audio** description per calendar quarter, either during prime time or on children's programming, and, ~~beginning July 1, 2018,~~**37.5** additional hours of ~~video~~**audio**

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 **previously unaffiliated** 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. **On [INSERT THE LATER OF JANUARY 1, 2021 OR THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], and on January 1 each year thereafter until January 1, 2024, the requirements of this paragraph (b)(1) shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 2020, as follows: on [INSERT THE LATER OF JANUARY 1, 2021 OR THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], the requirements shall extend to DMAs 61 through 70; on January 1, 2022, the requirements shall extend to DMAs 71 through 80; on January 1, 2023, the requirements shall extend to DMAs 81 through 90; and on January 1, 2024, the requirements shall extend to DMAs 91 through 100;**

\* \* \* \* \*

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through ~~video~~-**audio** description when the network provides ~~video~~-**audio** description and the broadcast station has the technical capability necessary to pass through the ~~video~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of ~~video~~-**audio** description per calendar quarter during prime time or children's programming, and, ~~beginning July 1, 2018,~~ 37.5 additional hours of ~~video~~-**audio** 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~~ **this part**. 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

(5) \* \* \*

(i) Must pass through ~~video~~-**audio** description on each broadcast station they carry, when the broadcast station provides ~~video~~-**audio** 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~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description; and

(ii) Must pass through ~~video~~-**audio** description on each nonbroadcast network they carry, when the network provides ~~video~~-**audio** description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the ~~video~~-**audio** description, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description.

(c) \* \* \*

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with ~~video~~-**audio** 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.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with ~~video~~-**audio** description, it is required to include ~~video~~-**audio** description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description.

(4) \* \* \*

(i) Has aired a particular program with ~~video~~-**audio** description on a broadcast station it carries, it is required to include ~~video~~-**audio** description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description; or

(ii) Has aired a particular program with ~~video~~-**audio** description on a nonbroadcast network it carries, it is required to include ~~video~~-**audio** description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide ~~video~~-**audio** description for another purpose related to the programming that would conflict with providing the ~~video~~-**audio** description.

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

(d) \* \* \*

(1) A video programming provider may petition the Commission for a full or partial exemption from the ~~video~~-**audio** description requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with ~~video~~-**audio** description would be economically burdensome. The term “economically burdensome” means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for ~~video~~-**audio** description would be economically burdensome:

(i) The nature and cost of providing ~~video~~-**audio** description of the programming;

\* \* \* \* \*

(3) In addition to these factors **in paragraph (d)(2) of this section**, the petitioner must describe any other factors it deems relevant to the Commission’s final determination and any available alternative that might

constitute a reasonable substitute for the ~~video~~-**audio** description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

\* \* \* \* \*

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

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

(e) \* \* \*

(1) A complainant may file a complaint concerning an alleged violation of the ~~video~~-**audio** description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). A complaint must include:

\* \* \* \* \*

(3) \* \* \*

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets ~~our video~~-**the audio** description requirements **of this section** if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the ~~video~~-**audio** description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing ~~video~~-**audio** description in excess of its requirements.

\* \* \* \* \*

4. Amend § 79.105 by revising the heading and paragraphs (a)(1) and (b)(3)(i), to read as follows:

**§ 79.105 ~~Video~~-**Audio** description and emergency information accessibility requirements for all apparatus.**

(a) \* \* \*

(1) The transmission and delivery of ~~video~~-**audio** description services as required by §79.3; and

\* \* \* \* \*

(b) \* \* \*

(3)(i) ~~Achievable~~—Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the ~~video~~-**audio** description and emergency information requirements of this section pursuant to §1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

\* \* \* \* \*

5. Amend § 79.106 by revising the heading and paragraph (b) to read as follows:

**§ 79.106 ~~Video~~-**Audio** description and emergency information accessibility requirements for recording devices.**

\* \* \* \* \*

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of ~~video~~-**audio** description signals and emergency information (as that term is defined in §79.2) such that viewers are able to activate and de-activate the ~~video~~-**audio** description as the video programming is played back on a picture screen of any size.

\* \* \* \* \*

6. Amend § 79.107 by revising paragraph (a)(4)(viii) to read as follows:

**§ 79.107 User interfaces provided by digital apparatus.**

(a) \* \* \*

(4) \* \* \*

(viii) ~~Configuration—Video~~-**audio** ~~D~~**description** ~~C~~**control**. Function that allows the user to enable or disable the output of ~~video~~-**audio** description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains ~~video~~-**audio** description, and from the secondary audio stream back to the main audio).

\* \* \* \* \*

7. Amend § 79.108 by revising paragraph (a)(2)(vi) to read as follows:

**§ 79.108 Video programming guides and menus provided by navigation devices.**

(a) \* \* \*

(2) \* \* \*

(vi) ~~Configuration—Video~~-**audio** ~~D~~**description** ~~C~~**control**. Function that allows the user to enable or disable the output of ~~video~~-**audio** description (*i.e.*, allows the user to change from the main audio to the



secondary audio stream that contains ~~video~~audio description, and from the secondary audio stream back to the main audio).

\* \* \* \* \*

8. Amend § 79.109 by revising paragraph (a)(2) to read as follows:

**§ 79.109 Activating accessibility features.**

(a) \* \* \*

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, with built-in ~~video~~audio description capability must ensure that ~~video~~audio description can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in §76.1200 of this chapter.

\* \* \* \* \*

## APPENDIX B

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in this proceeding.<sup>2</sup> The Federal Communications Commission (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.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. In the Report and Order (Order), we take the unopposed action of expanding our video description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year for the next four years. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),<sup>4</sup> we find that the costs of expanding the video description regulations to DMAs 61 through 100 are reasonable for program owners, providers, and distributors.<sup>5</sup> Our action today will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. In addition, we modernize the terminology in part 79 of the Commission's rules to use the more common and widely understood term "audio description" rather than "video description."<sup>6</sup> Finally, we adopt our proposal to delete from the rules outdated references to compliance deadlines that have passed.

**B. Legal Basis**

3. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613.

**C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

4. No comments were filed in response to the IRFA.

**D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply**

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<sup>1</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 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 35 FCC Rcd 4293, 4310-4317 (2020) (NPRM).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv). Specifically, pursuant to the "continuing Commission authority" provision of the CVAA, the Commission has authority "to phase in the video description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate." *Id.*

<sup>5</sup> As explained below, to the extent any station in DMAs 61 through 100 finds that it is unable to comply with the expansion due to economic burden, it may file a petition for an exemption due to economic burden in accordance with section 79.3(d), and stations may also seek a waiver under section 1.3.

<sup>6</sup> Throughout the remainder of this document, we will use the term "audio description" instead of "video description." See Report and Order Section III.B (adopting our proposal to make this non-substantive terminology change).

5. 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.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> 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.<sup>10</sup>

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>11</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>12</sup> 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 \$41.5 million or less in annual receipts.<sup>13</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than \$25 million.<sup>14</sup> Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

7. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1374.<sup>15</sup> Of this total, 1,282 stations (or 94.2%) had revenues of \$41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388.<sup>16</sup> The Commission does not compile and 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.

8. We note, however, that in assessing whether a business concern qualifies as “small”

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<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> *Id.* § 601(6).

<sup>9</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>10</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>11</sup> *2012 NAICS Definitions* (NAICS Code 515120).

<sup>12</sup> *Id.*

<sup>13</sup> 13 CFR § 121.201 (2012) (NAICS Code 515120).

<sup>14</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>15</sup> Press Release, FCC, Broadcast Station Totals as of December 31, 2019 (rel. Jan. 3, 2020), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2019>.

<sup>16</sup> *Id.*

under the above definition, business (control) affiliations<sup>17</sup> 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 define or quantify 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.

9. There are also 387 Class A stations.<sup>18</sup> Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations.<sup>19</sup> Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

10. *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.”<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *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.<sup>23</sup> The SBA size standard for this industry establishes as small, any company in this category which has

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<sup>17</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

<sup>18</sup> See *supra* note 16 (Broadcast Station Totals).

<sup>19</sup> See *id.*

<sup>20</sup> U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017)

<sup>21</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>22</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTtype=table).

<sup>23</sup> See U.S. Census Bureau, 2012 NAICS Definitions, “515210 Cable and other Subscription Programming”, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.515210#>.

annual receipts of \$41.5 million or less.<sup>24</sup> According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year.<sup>25</sup> Of that number, 319 operated with annual receipts of less than \$25 million a year.<sup>26</sup> Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

12. *Cable Television Distribution Services.* Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined 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.”<sup>27</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>28</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>29</sup> Thus, the majority of these firms can be considered small.

13. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also 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.<sup>30</sup> Industry data indicate that there are 4,600 active cable systems in the United States.<sup>31</sup> Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard.<sup>32</sup> In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer

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<sup>24</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ4, Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 515210, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515210).

<sup>26</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have receipts of \$38.5 million or less.

<sup>27</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012>.

<sup>28</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>29</sup> *Id.*

<sup>30</sup> 47 CFR § 76.901(d). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266 *et al.*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>31</sup> The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Oct. 25, 2016).

<sup>32</sup> S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com/> (Dec 2019). [The five cable operators all had more than 400,000 basic cable subscribers.](#)

subscribers.<sup>33</sup> As stated above, 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.<sup>34</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

14. *Cable System Operators (Telecommunications Act Standard)*. The Act also contains a size standard for a small cable system operator, 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.”<sup>35</sup> There are approximately 49,011,210 cable video subscribers in the United States today.<sup>36</sup> Accordingly, an operator serving fewer than 490,112 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.<sup>37</sup> Based on available data, we find that all but five incumbent cable operators are small entities under this size standard.<sup>38</sup> 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 million, 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. Most recent available data also indicate that there are 188 cable antenna relay service (CARS) licensees.<sup>39</sup> The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

16. *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.<sup>40</sup> The SBA determines that a wireline

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<sup>33</sup> 47 CFR § 76.901(c).

<sup>34</sup> See FCC, *Cable Operations and Licensing System (COALS)*, [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Oct. 25, 2016).

<sup>35</sup> 47 U.S.C. § 543(m)(2). See also 47 CFR § 76.901(e).

<sup>36</sup> See SNL Kagan, *Multichannel Industry Benchmarks*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks> (last visited Jan. 14, 2020).

<sup>37</sup> See 47 CFR § 76.901(e).

<sup>38</sup> See SNL Kagan, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (last visited Jan. 14, 2020).

<sup>39</sup> August 24, 2017, report from Media Bureau staff based on data contained in COALS, [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>40</sup> See U.S. Census Bureau, *2017 North American Industry Classifications System (NAICS) Definitions*,

(continued...)

business is small if it has fewer than 1,500 employees.<sup>41</sup> Economic 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.<sup>42</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.<sup>43</sup> DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that, in general, DBS service is provided only by large firms.

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

17. The rule changes discussed in the Report and Order affect reporting, recordkeeping, or other compliance requirements. Specifically, the Order will affect compliance requirements by expanding the number of markets subject to the audio description rules by phasing in the audio description requirements for an additional 10 DMAs each year for four years, beginning on the later of January 1, 2021 or the effective date of the Order. The extension to additional DMAs will be based on an updated Nielsen determination, with the revised rules applying to the relevant DMAs as determined by the Nielsen company as of January 1, 2020. The order also makes two changes that will not have any impact on small entities or others. First, it revises the Commission's rules to substitute the term "audio description" for the term "video description" for purposes of part 79. Second, it deletes outdated references in section 79.3(b)(1) and (4) to compliance deadlines that have passed.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

18. 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 and reporting requirements under the rule for such 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."<sup>44</sup>

19. At the outset, we emphasize that the extension of the audio description requirements to DMAs 61 through 100 is based on a cost-benefit analysis. Specifically, the Commission concludes that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable. The Commission explains that the costs of adding description to television programming have held steady since 2017, indicating that the costs are at a level the Commission previously deemed "minimal." The record also indicates that stations in compliance with the requirement to deliver audible emergency information via the secondary audio stream should already have the equipment and infrastructure needed to deliver a secondary audio stream containing audio description. Costs will be further mitigated by the fact that network affiliates in all DMAs are already required to pass through the audio description they

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<http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (2012 NAICS Definitions) (NAICS Code 517110).

<sup>41</sup> 13 CFR § 121.201 (2012) (NAICS Code 517110).

<sup>42</sup> See U.S. Census Bureau, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>43</sup> See *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, FCC 18-131, 2018 WL 6839365, at \*20, paras. 50-51 (Dec. 26, 2018).

<sup>44</sup> 5 U.S.C. § 603(c)(1)-(4).

receive via a network feed. In addition, the Commission states that the significant benefits of expanding the audio description requirements to DMAs 61 through 100, when weighed against the minimal costs, further support expansion to these markets.

20. Further, the Commission has adopted certain proposals that will ease burdens on broadcasters that are small entities, as well as other broadcasters. First, to the extent any station in DMAs 61 through 100 finds that it is unable to comply with the expansion due to economic burden, it may file a petition for an exemption due to economic burden in accordance with section 79.3(d). Stations may also seek a waiver under section 1.3. Additionally, although the Commission has authority to extend the audio description requirements to 10 additional DMAs per year until all DMAs are covered, it has only extended the requirements to DMAs 61 through 100 at this time. In 2023, the Commission will determine whether to continue expanding its audio description requirements to an additional 10 DMAs per year. This approach will ensure that any further expansion is undertaken only following a future determination of the reasonableness of the associated costs outside DMA 100. The Commission finds that consideration of the reasonableness of the costs for the smallest markets at the appropriate time will best enable it to consider the unique circumstances that may be applicable to them. Additionally, in 2023, the Commission will have the additional benefit of having implemented the extension to DMAs beyond the top 60 and will be able to consider any additional information gleaned from that practical experience.

**G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules**

21. None.

**H. Report to Congress**

22. 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.<sup>45</sup> 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.<sup>46</sup>

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<sup>45</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>46</sup> See *id.* § 604(b).



**STATEMENT OF  
CHAIRMAN AJIT PAI**

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

This month, we are celebrating the 10th anniversary of the 21<sup>st</sup> Century Communications and Video Accessibility Act (CVAA). Earlier in October, at an event the FCC held to mark the occasion, I observed that we should commemorate this anniversary not only with words, but with deeds. We meet that mark here.

The CVAA has improved the lives of many blind and visually impaired Americans by providing them access to television programming through audio description. Audio description involves a narrator describing a program's visual elements during pauses in the program's dialogue. (*Spoiler alert*: For example, this is how the nursing home scene is audio described in the Season 4 finale of *Breaking Bad*: "Gus steps out of the room. He pauses and fixes his tie. Nurses run up and discover a gaping hole in Gus' face, charred and bloody exposed flesh, and a garish empty eye socket on the right side of his face. Gus collapses." *End spoilers*.) Currently, the Commission's regulations require major television broadcasters in the nation's top 60 television markets to provide a certain amount of audio described programming. And three years ago, under my leadership, we increased that amount by 75%.

Today, exercising the authority provided to us by the CVAA, we go even further, expanding our rules to require major broadcasters in more markets to provide audio described programming. Specifically, over the next four years, our audio description requirements will cover an additional 10 television markets per year. So, in 2021, our rules will cover television markets 61 to 70. In 2022, our rules will cover markets 71 to 80. And so on, until our nation's top 100 markets are covered by 2024.

I want to thank the Commission staff whose work has helped improve the lives of their fellow Americans: from the Media Bureau, Michelle Carey, Maria Mullarkey, Michael Scurato, Diana Sokolow, and Sarah Whitesell; from the Consumer and Governmental Affairs Bureau's Disability Rights Office, Diane Burstein, Suzy Rosen Singleton, and Will Schell; from the Office of Communications Business Opportunities, Belford Lawson; from the Office of Economics and Analytics, Eugene Kiselev, Kim Makuch, and Andrew Wise; and from the Office of General Counsel, Susan Aaron and David Konczal.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

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

It was ten years ago this month that the Twenty-First Century Communications and Video Accessibility Act became the law of the land. I remember the day the bill was signed. That's because I was in the room, deep in the audience, present because I had the privilege of working on this legislation when I served as counsel to the United States Senate Committee on Commerce, Science and Transportation.

The glory of that day stays with me even now. That's because this legislation was a big deal. It built on the foundation of the Americans with Disabilities Act and helped pry open opportunity in the digital age, by expanding access to technology for millions with disabilities.

There's another reason that the glory of that moment lingers. At the signing ceremony, I sat near Stevie Wonder, who had helped champion this legislation. This was a good day.

But what's better still, is that the Federal Communications Commission is still at it. A decade in, and we are still using this law to expand access and improve opportunities for those with disabilities. Today, in fact, we are extending the agency's audio description requirements to an additional 10 markets every year for the next four years. What does this mean? This technology makes video accessible to individuals who are blind and visually impaired by inserting narrative descriptions of key visual elements in television programming. So with audio description, those with vision loss no longer miss facial expressions, visual jokes, or critical scene changes. It makes more video content available to more of us and builds on the groundwork laid by the Twenty-First Century Communications and Video Accessibility Act. As a result, it has my full support.