

FCC Issues NPRM to Reinstate Video Description Rules

March 2011

After a 10-year hiatus, the Federal Communications Commission's (FCC's) video description rules are poised for a comeback. Prior to its Open Meeting on March 3, 2011, the FCC issued an Notice of Proposed Rulemaking (NPRM) to adopt video description rules for certain television programming.

Video description adds audio descriptions of the program's video elements during natural pauses in a program's dialog. Under the proposed rules, ABC, CBS, NBC and Fox affiliates in the 25 largest Designated Market Areas (DMAs) would be required to offer video description on 50 hours of prime time or children's programming each quarter. Multichannel video programming distributors (MVPDs) with more than 50,000 subscribers would have the same requirement for the top five national non-broadcast networks they carry.

Additionally, all broadcast stations and MVPDs would be required to pass through video description contained in programming that they carry as long as they have the technical capability to do so. Live and "near live" programming would be exempt from the video description rules.

FCC Chairman Julius Genachowski said the rules "will do for people who are blind or visually impaired what closed captioning has done for people who are deaf or hard of hearing."

The FCC adopted similar rules in 2000, but the United States Court of Appeals for the District of Columbia Circuit struck them down shortly thereafter, finding that the Commission lacked authority to adopt the rules. Congress sought to rectify this in the Twenty-First Century Communications and Video Accessibility Act of 2010, which requires the Commission to reinstate its video description rules.

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The NPRM seeks comment on, among other things, the procedure for determining the 25 largest markets, the date for expanding the video description rules to the top 60 markets, the procedure for determining the top five national non-broadcast networks, and criteria for exempt "near live" programming.

Cable networks that believe they should be excluded from the top five national non-broadcast network requirement because they do not provide enough non-exempt programming must provide notice in the record before the close of the comment period. Parties can then challenge that determination in their reply comments.

Comments are due 30 days after the NPRM is published in the *Federal Register*, with reply comments due 30 days later.

The proposed rules would take effect January 1, 2012.

*District of Columbia Bar (pending, supervised by principals of the firm)