

ALERT

FCC Issues NPRM to Reinstate Video Description Rules

March 4, 2011

The Federal Communications Commission (FCC or Commission) issued a Notice of Proposed Rulemaking (NPRM) on March 3, 2011 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.

The proposed rules include three primary elements:

- 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 be required to provide 50 hours of prime time or children's programming each quarter on the top 5 national non-broadcast networks they carry; and
- 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.

The FCC adopted similar rules in 2000, but the U.S. 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 5 national non-broadcast networks and criteria for exempt "near live" programming.

Cable networks that believe they should be excluded from the top 5 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.

The proposed rules would take effect January 1, 2012.

Comments are due 30 days after the NPRM is published in the Federal Register, with reply comments due 30 days later. We will alert our clients once those dates have been established.

*Not admitted to the District of Columbia Bar, supervised by principals of the firm.