

October 17, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 11-43, Report 3081

Dear Madam Secretary:

Pursuant to 47 CFR § 1.429(f), the National Federation of the Blind opposes the Petition for Partial Reconsideration filed by the NCTA¹ to the Federal Communications Commission's Video Description Expansion Order,² MB Docket No. 11-43.

As the Commission notes in the Video Description Expansion Order, "Television programming is a shared piece of American culture,"³ and "there is no reason to believe that those who are blind or visually impaired would not seek to access a medium of communications as central to American life and culture as television in the same way, and at the same rates, as other Americans."⁴ The National Federation of the Blind knows these sentiments expressed by the Commission are true. The ultimate goal of our organization is the complete integration of the blind into society on a basis of equality.⁵ Blind Americans have always enjoyed television like all other Americans, and the verbal description of action that is not apparent from sound effects and dialogue can increase our independent enjoyment of the medium. While additional video description rules for television programs may seem like a trivial matter to most, the lack of such description often acts as a social barrier for us when we are unable to discuss popular television programming with friends or coworkers. This is a fact that was not overlooked by the Commission in the release of this regulation: "As a result of increased video description requirements, persons who are blind or visually impaired will be able to engage more fully in television viewing, increasing their social inclusion within community life."⁶ For these reasons, the Commission rightly argues that the benefits of these additional regulations outweigh the cost of their implementation.^{7 8 9 10 11}

¹ Petition for Partial Reconsideration of NCTA – The Internet & Television Association, MB Docket No. 11-43 (September 11, 2017) (Petition).

² Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010. Published in the Federal Register, 82 Fed. Reg. 37345 (August 10, 2017) (Video Description Expansion Order).

³ Video Description Expansion Order (IV)(A)(7).

⁴ Video Description Expansion Order (IV)(A)(9).

⁵ <https://nfb.org/who-we-are>

⁶ Video Description Expansion Order (IV)(A)(7).

⁷ Video Description Expansion Order (III)(5).

⁸ Video Description Expansion Order (IV)(A)(6).

⁹ Video Description Expansion Order (IV)(A)(8).

¹⁰ Video Description Expansion Order (IV)(A)(9)

¹¹ Video Description Expansion Order (IV)(A)(11)

The National Federation of the Blind acknowledges and appreciates NCTA's agreement with the Commission regarding the benefits of video description for pre-recorded television programs, as stated in their petition.¹² We also appreciate the commitment to provide the requisite 87.5 hours per calendar quarter of appropriately described programming for blind Americans to enjoy. However, we disagree with the Petition's assertion that "the unduly restrictive repeat rule and the unworkable waiver process ... may discourage expansion of video-described program offerings."¹³ We cannot understand how a greater required number of hours of video-described programming would create anything less than more expansive and varied options for entertainment.

Understandably, the NCTA has chosen to focus their Petition on the non-broadcast networks, which they feel will have a harder time complying with the new rule due to the high volume of syndicated shows and series marathons on some of these networks.¹⁴ We do recognize that these non-broadcast networks may face greater challenges with the new regulation, and that programming adjustments will certainly need to be made, but we also recognize that the adjustments to the rule provided by NCTA in the Petition may not be the most effective route to take.

The Petition's first two proposed adjustments to "permit a program network to count repeats four times in addition to its original airing"¹⁵ and allow for "two showings during prime time ... [and] to count three more repeats in other day parts"¹⁶ is excessive. The top five non-broadcast networks are currently required to provide 50 hours of video-described programming during prime time per calendar quarter, including one re-airing of a first run program. Under the flexibility of the Commission's new regulation, the additional 37.5 hours of video-described programming per quarter can be aired any time between 6:00 a.m. and midnight.¹⁷ If the Petition's adjustments on this matter are adopted, what would stop a network from airing a first run program once during prime time and then three more times during periods of low viewership simply to meet the 87.5 hour requirement, while at the same time offering little to no other video-described programming? When spread out over the course of a calendar quarter, 87.5 hours is less than one hour of video-described programming per day. The idea that a single episode of an hour long program could be used to satisfy as much as five hours of that time is counterproductive, regardless of when that program airs during the day.

The Petition's third proposed adjustment to "allow the cycle for counting repeats to start over after a period of years,"¹⁸ is reasonable. We agree that after a period of time the networks should be able to re-air video-described programming and have it count toward the minimum hour requirement.

¹² Petition ¶ 2.

¹³ Id.

¹⁴ Petition ¶ 4.

¹⁵ Petition ¶ 12.

¹⁶ Id.

¹⁷ Video Description Expansion Order (IV)(B)(14)

¹⁸ Petition ¶ 12.

The Petition's proposed adjustment to "adopt a safe harbor so that a network ... be considered in compliance if it otherwise provides a substantial amount of video-described programming,"¹⁹ but is unable to provide the requisite hours of countable programming is open to the same type of manipulation as the first proposed adjustments. A network would be able to re-air the same video described content multiple times throughout a quarter and in time periods of low viewership simply to meet the requirement, while showing little to no other video-described content.

The Petition's final proposed adjustment to "permit compliance to be averaged across multiple quarters"²⁰ again leaves networks open to manipulate their programming lineups in order to satisfy the hour requirement in a short period of time. Even during the Summer Olympics, a time of year when live sports can be found almost all day, and nearly every day on broadcast and non-broadcast stations alike, it is only a two week period that occurs every four years. Rather than providing approximately one hour of video-described programming per day during that quarter of the year, the networks that carry the Olympic Games would still be well within compliance if they provided 90 minutes of video-described programming on every other day that is not being used to cover the games.

In conclusion, the National Federation of the Blind supports the Commission's regulations contained in MB Docket No. 11-43; FCC 17-88. They will certainly require changes and adjustments on the part of non-broadcast networks to be fulfilled, and those networks may even have to purchase a greater variety of syndicated video-described content, but as the Commission made abundantly clear, the benefits to millions of blind Americans far outweigh the minimal costs that will be incurred by the networks. Any real problems that may be contained within the regulation should be approached with a legitimate solution, and not a quick loophole to exploit in a path toward easy compliance. To that end, the National Federation of the Blind opposes NCTA's Petition for Partial Reconsideration.

Sincerely,



Mark A. Riccobono, President
National Federation of the Blind
200 East Wells Street
Baltimore, MD 21230

¹⁹ Petition ¶ 12.

²⁰ Id.