



June 3, 2021

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: DA 21-405, GN Docket No. 21-140 – Update on Commission’s Fulfillment of the Twenty-First Century Communications and Video Accessibility Act

Dear Madam Secretary:

The National Federation of the Blind, the nation’s civil rights organization of the blind, appreciates the opportunity to provide comment on the Federal Communications Commission’s (“Commission”) fulfillment of the Twenty-First Century Communications and Video Accessibility Act (CVAA).

In our opinion, there is one section of the CVAA rules that needs significant updates. This is mostly due to the growth in popularity of online streaming and subscription services that has managed to outpace the current accessibility requirements of the law.

Title 47, Part 79, Section 79.3 – Audio Description of Video Programming

Paragraph (a)(2) should be amended so that the definition of “video programming provider” specifically includes streaming services and subscription channels like Netflix and HBO.

Paragraph (a)(5) should be amended so that the definition of “video programming distributor” specifically includes streaming services and subscription channels like Netflix and HBO.

Paragraph (b)(1) should also include paid subscription applications carrying content that is produced and distributed by commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC). For example: Peacock TV, a subscription service of NBC, has numerous original and purchased programming that currently does not offer audio description. The same can be said for Paramount+ affiliated with CBS, Disney+ affiliated with ABC, and Hulu affiliated with Fox.

Paragraph (b)(4) should be amended to include paid subscription channels such as HBO, Disney, etc., which have significant viewership but are not subject to the same requirements as non-paid

subscription channels meeting the description of the top five non-broadcast channels. For example, HBO and HBO Max currently have a combined 44.2 million subscribers.¹

Paragraph (b)(5) should be amended to require multichannel video programming distributors to provide multiple secondary audio programming (SAP) availability. Currently, only one SAP channel or track is required and audio description is sometimes prioritized as less important than Spanish simulcast for many programs. An example of this is *WWE Raw*, which airs on the USA Network and has audio description, but is often only available with a Spanish simulcast because Spanish is considered more important to viewership by the network.

A paragraph should be added to Section 79.3 of the rules to require streaming services and subscription channels to purchase described content when purchasing rights to distribute film and television programming from other distributors. Two specific examples include Netflix and HBO's acquisition of *Friends*, and the post-theatrical distribution of *The Hateful Eight*. *Friends* originally aired on NBC, complete with audio description. However, when Netflix, and eventually HBO, purchased the series distribution rights, audio description was not, and is still not, available. In 2015, the film *The Hateful Eight* was a major box office film where audio description was available for the theatrical release, but as with *Friends* now that the movie is available on Apple TV, Netflix, and Amazon Prime Video, the audio description is not included.

An additional paragraph should be added to Section 79.3 to create audio description quality standards. The Commission requested audio description quality standards be submitted by the Disability Advisory Committee in 2020. These are the most up-to-date standards for audio description available at the time of submission of these comments.

We thank you again for the opportunity to provide input in this important topic and we are available to provide clarification should you have any questions.

Sincerely,



Mark A. Riccobono, President
National Federation of the Blind

¹ Georg Szalai, Etan Vlessing, "HBO Max, HBO Reaches 44.2 Million Subscribers," *The Hollywood Reporter*, April 22, 2021, <https://www.hollywoodreporter.com/business/business-news/hbo-max-hbo-reaches-44-2-million-subscribers-4165569/>.