Broadcast LAW BLOG

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FCC Releases Order Reinstating Television Video Description Rules

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Yesterday, the FCC released its Report and Order (available here) reinstating its "video description" rules, which require that certain broadcast stations and nonbroadcast networks provide audio narration of the action depicted in the video portion of the television programming. The Commission originally adopted such rules back in 2000, but they were subsequently vacated by the D.C. Court of Appeals for lack of sufficient authority. This past year, Congress rectified that lack of authority by enacting the Twenty-First Century Communications and Video Accessibility Act (CVAA), which was signed into law last October. DWT previously discussed the FCC's rulemaking to reinstate the video description rules back in March (available here), and has now released a further advisory on the newly adopted rules available here.

In a nutshell, the rules require large-market broadcast affiliates of the top four national networks, and cable operators and DBS providers with more than 50,000 subscribers, to provide programming with audio-narrated descriptions of a program's key visual elements, beginning mid-2012. While the FCC originally proposed to require full compliance by Jan. 1, 2012, the R&O pushes that date back six months, to July 1, 2012. Highlights of the reinstated video description rules are as follows:

- Broadcast affiliates of the top four national networks—ABC, CBS, Fox, and NBC—located in the top 25 television markets as determined by Nielsen as of Jan. 1, 2011, must provide 50 hours per calendar quarter of prime-time and/or children's programming with video descriptions.
- The list of the top 25 television markets are those determined by Nielsen as of Jan. 1, 2011. To the extent a station in a top 25 market becomes newly affiliated with a top-four network, it must start providing video description in the same manner as current ABC, CBS, Fox, and NBC affiliates in the top 25 markets, beginning no later than three months after finalizing the new affiliation agreement.
- Going forward, the video description requirements will extend to major network broadcast affiliates in the top 60 markets beginning July 1, 2015. Rankings for the top 60 markets at that time will be based on Nielsen ratings as of Jan. 1, 2015.
- Multichannel video programming distributors (MVPDs), including cable operators and DBS providers, with 50,000 or more subscribers must also provide 50 hours per calendar quarter of prime-time and/or children's programming with video descriptions, for each of the top-five Nielsen-rated nonbroadcast networks (see below), which presumably will be bound through affiliation agreements to aid MVPDs in meeting this

obligation. MVPDs that currently do not have 50,000 subscribers but later grow to that size have three months after doing so to come into compliance with the rules.

- The top five Nielsen-rated national nonbroadcast networks with enough non-exempt prime-time programming to provide 50 hours per calendar quarter of prime-time and/or children's programming with video descriptions are—at least initially—USA, Disney Channel, TNT, Nickelodeon, and TBS. ESPN and Fox News were not in the "top five" because they primarily air exempt "near live programming," i.e., programming recorded less than 24 hours before it is first aired, even though their ratings would otherwise rank them in the top five.
- **All broadcast stations, regardless of market size or affiliation, and all MVPDs, regardless of number of subscribers, must "pass through" video description** when such descriptions are provided by the program source and the station or MVPD has the technical capability to do so and that technical capacity is not being used for another purpose related to the programming (for example, if a station can offer only one secondary audio channel, which is already occupied by a Spanish language audio stream, the station is not required to bump the Spanish audio stream in order to pass through video descriptions). The "technical capability to do so" is defined as having "virtually all necessary equipment and infrastructure … except for items that would be of minimal cost," with the FCC anticipating that as equipment prices drop and older architecture is updated, more stations and MVPDs will become "technically capable" of passing through video descriptions.

For further details regarding the new video description rules, please see our complete advisory.