

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

■ 5. The authority citation for part 90 continues to read as follows:

**Authority:** 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 6. Effective December 30, 2020, revise § 90.1203 to read as follows:

**§ 90.1203 Eligibility.**

(a) Entities providing public safety services (as defined in § 90.523) are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band. All of the requirements and conditions set forth in § 90.523 also govern authorizations in the 4940–4990 MHz band.

(b) 4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this section. However, all applications in the band are limited to operations in support of public safety, except as provided in paragraph (c) of this section.

(c) Operations conducted pursuant to a license held by a State Lessor (as defined in § 90.1217), whether conducted by the State Lessor or its lessee(s), are not limited to operations in support of public safety. For purposes of subpart X of part 1 of this chapter, such lessees shall be deemed eligible and qualified as a licensee, notwithstanding paragraph (a) of this section.

■ 7. Delayed indefinitely, add § 90.1217 to read as follows:

**§ 90.1217 State Lessor.**

(a) The State Lessor shall have the authority to lease some or all of its 4.9 GHz band spectrum usage rights, including geographic areas licenses or permanent fixed sites individually licensed under § 90.1207, pursuant to subpart X of part 1 of this chapter, to any entity eligible to be a spectrum licensee under subpart X of part 1.

(b) In each state (as defined in § 90.7) one state entity holding a statewide license may be selected as a State Lessor.

(1) In states where there is only one state entity holding a statewide license, that licensee will be deemed the State Lessor.

(2) In states where there are multiple state entities holding a statewide license, one must be selected as the State Lessor if seeking to lease 4.9 GHz band spectrum use rights. This selection must be demonstrated through the inclusion of a letter, signed by all state entities holding a statewide license in that state, affirming the selection of a

State Lessor for that state, in any application to the Commission that requires demonstration of State Lessor Status, including FCC Form 608. If states with multiple state entities holding a statewide license are unable to reach an agreement affirming a State Lessor selection, the Commission will accept in the alternative a letter, signed by the elected chief executive (Governor) of that state, or his or her designee, affirming the selection of a State Lessor for that state.

(c) The State Lessor may assign its license to another state entity eligible for a statewide license.

(1) Any assignment application must be accompanied by a letter, signed by the elected chief executive (Governor) of that state, or his or her designee, affirming the selection of the assignee as the State Lessor for that state.

(2) Any assignment of the State Lessor's license must include all permanent fixed site authorizations obtained while a State Lessor. A licensee selected as the State Lessor may only assign its entire license and may not partition or disaggregate its license.

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 79**

[MB Docket No. 11–43; FCC 20–155; FRS 17215]

**Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission expands its video description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year for the next four years. This action is based on a finding that the costs of expanding the video description regulations to DMAs 61 through 100 are reasonable for program owners, providers, and distributors. In addition, the Commission modernizes the terminology in its rules to use the more common and widely understood term “audio description” rather than “video description.” Finally, the Commission adopts its proposal to delete from the rules outdated references to compliance deadlines that have passed.

**DATES:** Effective December 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, FCC 20–155, adopted and released on October 27, 2020. This document will be available via ECFS at <https://www.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Synopsis**

1. In this Report and Order, we take the unopposed action of expanding our video description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year for the next four years. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),<sup>1</sup> we find that the costs of expanding the video description regulations to DMAs 61 through 100 are reasonable for program owners, providers, and distributors. Our action in this document will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. In addition, we modernize the terminology in part 79 of the Commission's rules to use the more common and widely understood term “audio description” rather than “video description.”<sup>2</sup> Finally, we adopt our proposal to delete from the rules outdated references to compliance deadlines that have passed.

<sup>1</sup> Specifically, pursuant to the “continuing Commission authority” provision of the CVAA, the Commission has authority “to phase in the video description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”

<sup>2</sup> Throughout the remainder of this document, we will use the term “audio description” instead of “video description.”

2. Audio description<sup>3</sup> makes video programming<sup>4</sup> more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”<sup>5</sup> To access audio description, consumers generally switch from the main program audio to the secondary audio stream on which audio description is typically provided. In 2011, pursuant to section 202 of the CVAA, the Commission adopted rules requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming that they offer to consumers on television.

3. Specifically, the audio description rules currently require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top 60 television markets to provide 50 hours of audio-described programming per calendar quarter during prime time or on children’s programming, as well as an additional 37.5 hours of audio-described programming per calendar quarter at any time between 6 a.m. and midnight.<sup>6</sup> In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or on children’s programming, as well as an additional 37.5 hours of audio description per calendar quarter at any time between 6 a.m. and midnight, on each of the top five national nonbroadcast networks that they carry on those systems.<sup>7</sup> The top five

nonbroadcast networks currently subject to the audio description requirements are USA Network, HGTV, TBS, Discovery, and History.<sup>8</sup>

4. The CVAA required the Commission to submit two reports to Congress related to audio description. In the First Report, submitted to Congress in June 2014, the Bureau found that “[t]he availability of [audio] description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and the industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules.” The Bureau also found, however, that “consumers report the need for increased availability of and easier access to [audio]-described programming, both on television and online.”

5. In the Second Report, submitted to Congress in October 2019, the CVAA required the Commission to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [audio-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.” The Second Report stated that commenters did not offer “detailed or conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs. It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the [audio] description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine

description rules. The list of the top five networks is updated every three years based on changes in ratings and was last updated on July 1, 2018 (remaining in effect until June 30, 2021). The rules also require MVPD systems of any size to pass through audio description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.

<sup>8</sup> On October 7, 2019, the Media Bureau (Bureau) released an order that granted a limited waiver of the audio description rules with respect to USA Network for the remainder of the current ratings period ending on June 30, 2021, but it declined to grant a safe harbor from the audio description requirements for other similarly situated, top five nonbroadcast networks. As a condition of the waiver, USA Network must air at least 1,000 hours of described programming each quarter without regard to the number of repeats and must describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter.

that ‘the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”<sup>9</sup>

6. The CVAA provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.” Accordingly, in April 2020, in accordance with the CVAA, the Commission proposed to expand its audio description regulations to an additional 10 DMAs per year for four years, thus covering DMAs 61 through 100, and it invited comment on whether the costs of such an expansion would be reasonable.<sup>10</sup> The Commission also sought to refresh the record on its 2016 proposal to revise its rules to use the newer and more commonly used term “audio description,” rather than “video description.” Finally, the Commission proposed to delete outdated references in the audio description rules to compliance deadlines that had passed. The *2020 Audio Description Notice of Proposed Rulemaking (NPRM)* (85 FR 30917, May 21, 2020) elicited 11 comments and two replies, all of which supported the Commission’s proposals, including the expansion of audio description requirements to an additional 10 DMAs per year for four years until DMAs 61 through 100 are covered.

7. *Expanding the Number of Markets Subject to Audio Description Requirements.* We adopt our proposal to phase in the audio description requirements for an additional 10 DMAs each year for four years, beginning on the later of January 1, 2021, or the effective date of this Order. Commenters unanimously support the expansion of the Commission’s audio description rules to additional markets. As stated, the CVAA provides the Commission with authority for this phase-in, “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description

<sup>9</sup> Second Report (quoting 47 U.S.C. 613(f)(4)(C)(iv)(I)).

<sup>10</sup> The Commission also proposed that in 2023, “the Commission will determine whether to continue expanding to an additional 10 DMAs per year, with any further expansion to be undertaken only following a future determination of the reasonableness of the associated costs.”

<sup>3</sup> We note that although the CVAA uses the term “video description” in this context, the Commission has long considered the terms “video description” and “audio description” to be synonymous.

<sup>4</sup> “Video programming” refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media.

<sup>5</sup> 47 CFR 79.3(a)(3).

<sup>6</sup> The rules also require “[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through [audio] description when the network provides [audio] description and the broadcast station has the technical capability necessary to pass through the [audio] description, unless it is using the technology used to provide [audio] description for another purpose related to the programming that would conflict with providing the [audio] description.” 47 CFR 79.3(b)(3).

<sup>7</sup> For purposes of the audio description rules, the top five national nonbroadcast networks include only those that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime-time programming that is not live or near-live or otherwise exempt under the audio

regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”

8. The record confirms our conclusion that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable. The costs of adding description to television programming have held steady since 2017, indicating that the costs are at a level the Commission previously deemed “minimal.” Covered broadcasters already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size. As NAB acknowledges, stations in compliance with the requirement to deliver audible emergency information via the secondary audio stream “should be able to provide audio description without significant additional cost.”<sup>11</sup> Further, network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, which will mitigate any costs associated with the rule expansion.<sup>12</sup> For all of these reasons, we conclude that the costs of expanding the

<sup>11</sup> We note that the Commission asked in the *2020 Audio Description NPRM* whether we should account for the current coronavirus pandemic in evaluating the reasonableness of costs of expanding audio description requirements to markets 61 through 100. No commenters except NAB addressed this issue. Although NAB initially noted that concerns about costs to broadcasters are potentially exacerbated by the pandemic, it subsequently indicated, as described above, that the compliance costs were feasible.

<sup>12</sup> In addition, the First Report concluded that the costs of complying with the audio description requirements were consistent with industry’s expectations at the time the rules were adopted and had not impeded industry’s ability to comply, and the record for the Second Report did not alter that conclusion. The *2020 Audio Description NPRM* sought comment on several additional issues related to analyzing the costs, including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets 61 through 100 would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations. Commenters did not address these issues. Nonetheless, as explained herein, we believe the record provides sufficient information to determine, as required under the CVAA, that the costs of implementing the audio description regulations to program owners, providers, and distributors in the additional markets are “reasonable.”

audio description regulations to DMAs 61 through 100 are reasonable. To the extent a broadcaster finds itself in an unusual situation that makes the costs of compliance unreasonable, it may avail itself of the exemption procedures discussed below.<sup>13</sup> However, based on our expertise and the record compiled in this proceeding, we expect such instances to be exceedingly rare.

9. The significant benefits of expanding the audio description requirements to DMAs 61 through 100, when weighed against the minimal costs, further support expansion to these markets. Consumers desire an expansion of the audio description requirements outside the top 60 DMAs, and consumers who are blind or visually impaired and live in those markets will benefit from the increased video programming accessibility that the expansion will provide. In addition, the record indicates that consumers who are not blind or visually impaired and live in those markets also would benefit from the expansion, such as consumers with other sensory or cognitive impairments, individuals learning the language, and those who listen to video programming while multitasking. Commenters contend that the importance of access to news and entertainment programming during the current COVID-19 pandemic provides further evidence of the need for the expansion. Although commenters did not provide specific data on the amount of audio-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the audio description requirements to such DMAs, it is clear that any expansion of described programming in these additional markets will benefit consumers.<sup>14</sup>

<sup>13</sup> Although the Commission requested additional information regarding specific costs that broadcasters in DMAs 61 through 100 might face as a result of the proposed expansion, commenters generally did not provide detailed information on costs. Nor did they provide any information that undermines our conclusion regarding the reasonableness of costs.

<sup>14</sup> Nielsen data from 2020 indicate that expanding the audio description requirements to DMAs 61–70 on January 1, 2021, would cover more than an additional 4.22 million households, with more than an additional 3.63 million households covered by expanding to DMAs 71–80, more than an additional 3.25 million households covered by expanding to DMAs 81–90, and more than an additional 2.86 million households covered by expanding to DMAs 91–100. In total, expanding the video description rules from the top 60 DMAs to the top 100 DMAs would increase the share of TV households covered by these rules from 74 percent to 87 percent of TV households. See MediaTracks Communications, Nielsen DMA Rankings 2020, available at <https://mediatracks.com/resources/nielsen-dma-rankings-2020/> (last visited Aug. 21, 2020).

10. We therefore expand the audio description requirements to DMAs 61 through 70 as of the later of January 1, 2021, or the effective date of this Order.<sup>15</sup> This approach is necessary to ensure that the first compliance deadline does not occur prior to the Order’s effective date. The Commission’s audio description rules will extend to DMAs 71 to 80 on January 1, 2022, DMAs 81 to 90 on January 1, 2023, and DMAs 91 to 100 on January 1, 2024.<sup>16</sup>

11. We also adopt our proposal to base the extension to additional DMAs on an updated Nielsen determination of market rankings. The only commenter that addressed this issue, American Council of the Blind (ACB), supports the proposal, explaining that it “will help ensure that the greatest number of consumers can access audio-described programming.” We find that using updated Nielsen data will facilitate the efficient roll out of audio description obligations to more television households. Our approach is consistent with the Commission’s prior expansion of the rules from the top 25 markets to the top 60 markets. The audio description rules currently apply to stations “licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015.” The revised rules, as set forth in the Final Rules below, will apply to the relevant DMAs “as determined by The Nielsen Company as of January 1, 2020.” The updated figures will apply to determine the top 60 DMAs, as well as the phase-in for DMAs

<sup>15</sup> The *2020 Audio Description NPRM* proposed to expand the requirements to DMAs 61 through 70 as of January 1, 2021, to provide entities with sufficient time for compliance. While NAB initially requested that the expansion commence on October 1, 2021 for DMAs 61 through 70, it subsequently withdrew the request, indicating that it “share[s] the FCC’s goal of ensuring access to video programming” and will “support stations who are unable to meet the deadline on a case-by-case basis” rather than pursuing a blanket delay.

<sup>16</sup> We recognize that there will be less time between the adoption of the instant Order and the compliance deadline than there was when the Commission reinstated the audio description rules in 2011. However, we expect that less time should be needed to comply with the extension, given that covered broadcasters are already required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements. We note that no commenter has demonstrated that there would not be sufficient time to comply with audio description requirements in these additional DMAs. In any event, to the extent any broadcaster finds that it is unable to comply with the deadline, it may file an economic burden exemption petition in accordance with the processes found in section 79.3(d) or seek a waiver under section 1.3. We expect that stations in DMAs 71 through 100 will not need relief from the applicable compliance deadline since they should be aware of that deadline well in advance.

61 through 100. In the *2020 Audio Description NPRM*, we sought comment on the appropriate compliance deadline for stations in a DMA that was not in the top 60 markets as of January 1, 2015, but is in the top 60 markets as of January 1, 2020. Commenters did not address this issue. We expect any such station to come into compliance with the audio description rules by the compliance deadline for DMAs 61 through 70.<sup>17</sup>

12. We affirm our tentative conclusion in the *2020 Audio Description NPRM* that “[§§] 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the [audio] description rules to additional DMAs.” Specifically, § 79.3 of the Commission’s rules will continue to govern any petitions for exemption due to economic burden, and § 1.3 will continue to govern waivers of the Commission’s rules generally. The only commenter that addressed this issue, ACB, supports the proposal to use § 79.3(d) to govern any petitions for exemption due to economic burden, and explains further that this should apply “rather than adopting any other governing authority over petitions for exemption, such as section 1.3 of its rules, which allows for exemptions simply by a showing of ‘good cause.’”<sup>18</sup> Section 79.3(d) permits covered entities to petition the Commission for a full or partial exemption from the audio description requirements upon a

<sup>17</sup> We note that there is only a single market that was in the top 60 DMAs as of January 1, 2015, and is not in the top 60 DMAs as of January 1, 2020 (Little Rock-Pine Bluff, which moved from number 56 to number 62), and there is only a single market that was not in the top 60 DMAs as of January 1, 2015, and is in the top 60 DMAs as of January 1, 2020 (Ft. Myers-Naples, which moved from number 62 to number 53). Thus, Little Rock-Pine Bluff is currently subject to the audio description requirements because it was in the top 60 DMAs as of January 1, 2015, and it will remain subject to those requirements as the rules covering DMAs 61 through 70 go into effect. Ft. Myers-Naples is not currently subject to the requirements since it was in DMA 62 as of January 1, 2015, but it is now in DMA 53 and will become subject to the requirements as of the later of January 1, 2021, or the effective date of this Order, which is also when the rules extend to DMAs 61 through 70. Stations in the Ft. Myers-Naples DMA thus would have been subject to the same compliance deadline, even if we did not utilize updated Nielsen data, since they were previously in DMA 62.

<sup>18</sup> Although it does not provide specific information about the number of affected stations or costs, NAB generally asserts that stations in DMAs 61 through 100 may have smaller viewership and advertising revenues as compared to those in larger markets, compliance costs may be more burdensome for some stations in smaller markets to accommodate, and these costs may be arising in the middle of stations’ budget cycle. As explained above, however, NAB concedes that stations in compliance with the requirement to deliver audible emergency information via the secondary audio stream already should be able to provide audio description without significant compliance costs.

showing that they are economically burdensome.<sup>19</sup> The CVAA also provides that if an expansion of the audio description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.” Although § 79.3(d) will apply to instances in which an entity seeks to demonstrate that the extension to additional DMAs is economically burdensome, we recognize that the CVAA specifically references *wavers* as a means of relief, which differs from the *exemptions* available under § 79.3(d). Accordingly, to the extent a broadcaster subject to the extension believes it needs relief due to some reason other than economic burden, it may seek a waiver under § 1.3.

13. Finally, we adopt our proposal to revisit expansion beyond the top 100 DMAs at a later date. Specifically, in 2023, the Commission will determine whether to continue expanding our audio description requirements to an additional 10 DMAs per year. Any further expansion will be undertaken only following a future determination of the reasonableness of the associated costs. Although some commenters request that the Commission include DMAs beyond the top 100 in the extension at this time, we find that consideration of the reasonableness of the costs for the smallest markets at the appropriate time will best enable us to consider the unique circumstances that may be applicable to them. Additionally, in 2023, we will have the additional benefit of having implemented the extension to DMAs beyond the top 60 and will be able to consider any additional information gleaned from that practical experience.<sup>20</sup>

<sup>19</sup> The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for audio description would be economically burdensome: (i) The nature and cost of providing audio description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the audio description requirements, and it evaluates economic burden with regard to the individual outlet. In the First Report, the Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.”

<sup>20</sup> We note that commenters raise additional issues that are outside the scope of this Order and thus not addressed here. Such proposals include those related to the availability of audio description

14. *Modernizing Terminology.* We adopt our proposal to make a non-substantive amendment to the rules to substitute the term “audio description” for the term “video description” for purposes of part 79. Commenters nearly universally support this terminology change.<sup>21</sup> The term “audio description” is used by other Federal agencies, in television and movie listings, and by the Worldwide Web Consortium. We are concerned that the Commission’s use of an inconsistent term, “video description,” may be confusing both for consumers and industry. In 2019, both ACB and the Commission’s Disability Advisory Committee advocated for the use of the term “audio description,” which ACB and NAB had proposed to the Commission as early as 2011.

15. Since the Commission’s definition of video description already references both “video description” and “audio description,” modernizing the terminology as discussed herein does not change the substance of any regulations.<sup>22</sup> Although the underlying statute uses the term “video description,” we reiterate our statement in the *2020 Audio Description NPRM* that we have authority to update our terminology as part of our “continuing authority” to regulate audio description. Modernizing our terminology to use the more common and widely understood phrase “audio description” is consistent with other instances in which agencies have made non-substantive modifications to regulations to reflect newer terminology, even if the pertinent statute itself may not have been amended. Accordingly, we revise our rules as reflected in the Final Rules below to use the term “audio description” rather than “video description.”

16. *Technical Update to the Rules.* Finally, we adopt our proposal to delete from the audio description rules the outdated references in § 79.3(b)(1) and (4) to the compliance deadlines of July

online and in movie theaters, the accessibility of audio description, and the threshold for cable audio description requirements.

<sup>21</sup> In addition, NAB indicates that it does not object to this terminology change. Only a single consumer whose position was included in the appendix to the ACB Comments indicates that “video description” is a more accurate term because the video is what is being described. We remain persuaded that the Commission should use the more commonly accepted term, “audio description,” which is logical given that the description is provided via audio.

<sup>22</sup> Consistent with our proposal, because the current definition in the Commission’s rules treats the terms “video description” and “audio description” as synonymous, we will retain the statutory term “video description” in the definition while using the more commonly understood term “audio description” elsewhere in the rule.

1, 2015, and July 1, 2018, which have passed. No commenter addressed this issue, and we find that it is an appropriate update to our rules to reflect the passage of time.

17. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Report and Order. In summary, the Report and Order expands the video description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year for the next four years. In addition, the Order modernizes the terminology in part 79 of the Commission's rules to use the more common and widely understood term "audio description" rather than "video description." Finally, it adopts the Commission's proposal to delete from the rules outdated references to compliance deadlines that have passed. The action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613. The types of small entities that may be affected by the action fall within the following categories: Television Broadcasting, Wired Telecommunications Carriers, Cable and Other Subscription Programming, Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation Standard), Cable System Operators (Telecommunications Act Standard), and Direct Broadcast Satellite (DBS) Service.

18. The projected reporting, recordkeeping, and other compliance requirements include phasing in the audio description requirements for an additional 10 DMAs each year for four years, beginning on the later of January 1, 2021 or the effective date of the Order. The extension to additional DMAs will be based on an updated Nielsen determination, with the revised rules applying to the relevant DMAs as determined by the Nielsen company as of January 1, 2020. The order also makes two changes that will not have any impact on small entities or others. First, it revises the Commission's rules to substitute the term "audio description" for the term "video description" for purposes of part 79. Second, it deletes outdated references in § 79.3(b)(1) and (4) to compliance deadlines that have passed. The SBA did not file comments.

19. In considering the impact on small entities, the Commission emphasizes that the extension of the audio description requirements to DMAs 61

through 100 is based on a cost-benefit analysis. Specifically, the Commission concludes that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable. In addition, the Commission states that the significant benefits of expanding the audio description requirements to DMAs 61 through 100, when weighed against the minimal costs, further support expansion to these markets.

20. Further, the Commission has adopted certain proposals that will ease burdens on broadcasters that are small entities, as well as other broadcasters. First, to the extent any station in DMAs 61 through 100 finds that it is unable to comply with the expansion due to economic burden, it may file a petition for an exemption due to economic burden in accordance with § 79.3(d). Stations may also seek a waiver under section 1.3. Additionally, although the Commission has authority to extend the audio description requirements to 10 additional DMAs per year until all DMAs are covered, it has only extended the requirements to DMAs 61 through 100 at this time. In 2023, the Commission will determine whether to continue expanding its audio description requirements to an additional 10 DMAs per year. This approach will ensure that any further expansion is undertaken only following a future determination of the reasonableness of the associated costs outside DMA 100. The Commission finds that consideration of the reasonableness of the costs for the smallest markets at the appropriate time will best enable it to consider the unique circumstances that may be applicable to them. Additionally, in 2023, the Commission will have the additional benefit of having implemented the extension to DMAs beyond the top 60 and will be able to consider any additional information gleaned from that practical experience.

21. *Paperwork Reduction Act.* The Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520).<sup>23</sup> In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with

<sup>23</sup> The Commission will file a non-substantive modification to the information collection that contains § 79.3 (OMB 3060–1148), and to the information collection that contains §§ 79.105 and 79.106 (OMB 3060–0967), to indicate the change in terminology from "video description" to "audio description." The non-substantive modification for OMB 3060–1148 also will clarify that the audio description requirements have been extended to DMAs 61 through 100.

fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

22. *Ordering Clauses.* Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, this Report and Order *is hereby adopted*.

23. *It is further ordered* that part 79 of the Commission's rules, 47 CFR part 79, *is amended* as set forth in the Final Rules below, and such rule amendments shall be effective thirty (30) days after the date of publication in the **Federal Register**.

24. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

25. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 79

Communications equipment,  
Television broadcasters.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

#### PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

- 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

- 2. Amend § 79.2 by revising paragraph (b)(5) to read as follows:

#### § 79.2 Accessibility of programming providing emergency information.

\* \* \* \* \*

(b) \* \* \*

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all

other programming on the secondary audio stream, including audio description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

\* \* \* \* \*

■ 3. Amend § 79.3 by revising the section heading and paragraphs (a)(3), (b) introductory text, (b)(1), (3), and (4), (b)(5)(i) through (ii), (c)(2) and (3), (c)(4)(i) and (ii), (c)(5), (d)(1), (d)(2) introductory text, (d)(2)(i), (d)(3), (10), and (11), (e)(1) introductory text, and (e)(3)(i) and (ii) to read as follows:

**§ 79.3 Audio description of video programming.**

(a) \* \* \*

(3) *Audio description/video description.* The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

\* \* \* \* \*

(b) *Audio description requirements.* The following video programming distributors must provide programming with audio description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2020, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 2021, and on January 1 each year thereafter until January 1, 2024, the requirements of this paragraph (b)(1) shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 2020, as follows: On January 1, 2021, the requirements shall extend to DMAs 61 through 70; on January 1, 2022, the requirements shall extend to DMAs 71 through 80; on January 1, 2023, the requirements shall extend to DMAs 81 through 90; and on

January 1, 2024, the requirements shall extend to DMAs 91 through 100;

\* \* \* \* \*

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under this part. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009–September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013–September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016–September 2017; and so on; and

(5) \* \* \*

(i) Must pass through audio description on each broadcast station they carry, when the broadcast station provides audio description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; and

(ii) Must pass through audio description on each nonbroadcast network they carry, when the network provides audio description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide

audio description for another purpose related to the programming that would conflict with providing the audio description.

(c) \* \* \*

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with audio description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with audio description, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(4) \* \* \*

(i) Has aired a particular program with audio description on a broadcast station it carries, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; or

(ii) Has aired a particular program with audio description on a nonbroadcast network it carries, it is required to include audio description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with audio description, the Commission will consider showings that any lack of audio description was de minimis and reasonable under the circumstances.

(d) \* \* \*

(1) A video programming provider may petition the Commission for a full or partial exemption from the audio description requirements of this section,

which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with audio description would be economically burdensome. The term "economically burdensome" means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for audio description would be economically burdensome:

(i) The nature and cost of providing audio description of the programming;

(3) In addition to the factors in paragraph (d)(2) of this section, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternative that might constitute a reasonable substitute for the audio description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the audio description requirements.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the audio description requirements.

(1) A complainant may file a complaint concerning an alleged violation of the audio description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). A complaint must include:

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance.

The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets the audio description requirements of this section if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the audio description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing audio description in excess of its requirements.

4. Amend § 79.105 by revising the section heading and paragraphs (a)(1) and (b)(3)(i) to read as follows:

§ 79.105 Audio description and emergency information accessibility requirements for all apparatus.

(1) The transmission and delivery of audio description services as required by § 79.3; and

(3)(i) Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the audio description and emergency information requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

5. Amend § 79.106 by revising the section heading and paragraph (b) to read as follows:

§ 79.106 Audio description and emergency information accessibility requirements for recording devices.

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of audio description signals

and emergency information (as that term is defined in § 79.2) such that viewers are able to activate and de-activate the audio description as the video programming is played back on a picture screen of any size.

6. Amend § 79.107 by revising paragraph (a)(4)(viii) to read as follows:

§ 79.107 User interfaces provided by digital apparatus.

(viii) Configuration—audio description control. Function that allows the user to enable or disable the output of audio description (i.e., allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

7. Amend § 79.108 by revising paragraph (a)(2)(vi) to read as follows:

§ 79.108 Video programming guides and menus provided by navigation devices.

(vi) Configuration—audio description control. Function that allows the user to enable or disable the output of audio description (i.e., allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

8. Amend § 79.109 by revising paragraph (a)(2) to read as follows:

§ 79.109 Activating accessibility features.

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using internet protocol, with built-in audio description capability must ensure that audio description can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in § 76.1200 of this chapter.