

FCC Video Description Rules to Take Effect July 1, 2012

September 2011

The Federal Communications Commission (FCC) has officially reinstated (with a few modifications) the video description rules that it initially adopted in 2000. While the rules officially take effect on October 8, 2011, as required by the Twenty-First Century Communications and Video Accessibility Act of 2010, the FCC is not requiring that broadcasters and multichannel video programming distributor (MVPD) systems begin full compliance until July 1, 2012.

Video description adds audio descriptions of a program's video elements during natural pauses in a program's dialogue. Under the new rules:

- ABC, CBS, NBC and Fox affiliates in the 25 largest Designated Market Areas must provide 50 hours of video-described prime time and/or children's programming each quarter;
- MVPD systems with more than 50,000 subscribers must provide 50 hours of video-described prime time or children's programming (targeted to children 16 years and younger) each quarter on the top five national non-broadcast networks they carry; and
- All broadcast stations affiliated with any network (including non-commercial stations) and all MVPD systems must pass through video description contained in programming that they carry as long as they have the technical capability to do so.

The 50-hour requirement only applies to a broadcast station's primary program stream, unless the station carries another top-four network on a secondary stream; in such case, the 50 hour requirement will also apply separately to the secondary stream. The same program

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can count up to two times toward the 50 hour quarterly requirement for each station or MVPD channel.

To determine the top 25 broadcast markets, the Commission will rely on Nielsen market rankings as of January 1, 2011. New ABC, CBS, NBC and Fox affiliates in those markets will have three months from the date their affiliation agreement is finalized to come into compliance. MVPD systems reaching the 50,000 subscriber threshold will also have a three month grace period to provide the requisite amount of video description.

The video description requirement will expand to ABC, CBS, NBC and Fox affiliates in the top 60 markets (based on Nielsen market rankings for 2014-2015) on July 1, 2015.

As explained above, the requirement to pass-through any video-described programming received applies to all network-affiliated broadcasters and all MVPD systems as long as the broadcaster or MVPD system has or can obtain with "minimal cost" the technical capability to support video description. However, broadcasters and MVPD systems are not required to pass-through video description if it would require the broadcaster or MVPD system to disrupt another program-related service (such as Spanish-language audio). Additionally, any program aired with video description must include video description when it is re-aired on the same station or MVPD channel.

The Commission said it would consider a petition to delay the rules for LPTV stations that have yet to transition to digital if the petitioners can demonstrate that compliance would be economically burdensome. Further, the Commission delayed the effective date of the rules for Mobile DTV until October 8, 2013.

The FCC did grant a request by the National Association of Broadcasters to adopt a "breaking news exemption." If video described programming is preempted for breaking news, a station or system may still count that programming toward its quarterly requirement. This is consistent with the Commission's practice regarding its "core" educational and informational children's programming requirement.

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**District of Columbia Bar pending, supervised by principals of the firm.*