

FCC Expands Audio Description Requirements to All Television Markets

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On October 17, 2023, the Federal Communications Commission (FCC or Commission) unanimously adopted a Second Report and Order (Order) that will expand the Commission's audio description mandate to television stations in all Nielsen Designated Market Areas (DMAs) by 2035. Under the FCC's new rule, stations in certain markets are required to provide audio-described programming as soon as January 1, 2025.

We have provided additional detail on the Order below.

Background

Audio description benefits persons who are blind or visually impaired by inserting narration for non-dialogue scenes during natural pauses in a program's dialogue. Television stations subject to the audio description requirement must provide 50 hours of audio-described programming per calendar quarter during prime time or children's programming, in addition to 37.5 hours per calendar quarter between 6:00 a.m. and 11:59 a.m. local time.

The FCC originally applied its audio description requirements to stations in the top 60 DMAs. In 2020, the Commission adopted a phased expansion of these rules that extended (and will continue to extend) audio description requirements to 10 additional markets each year from 2021 through 2024.

In March 2023, the FCC proposed to continue expanding its audio description requirements to the remaining DMAs.

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The requirement only applies to stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC). Network affiliates in all DMAs are required to pass through the audio description they receive via a network feed.

Expanding Audio Description to All DMAs

In the Order, the FCC adopted its March 2023 proposal to phase in the audio description requirements to all 210 DMAs by 2035. Specifically, the FCC will expand the requirement to DMAs 101 through 110 on January 1, 2025, and will continue with 10 additional DMAs annually until January 1, 2035.

While the Commission's audio description rules currently utilize Nielsen's January 1, 2020, DMA rankings, the FCC will base its extension to additional DMAs on Nielsen's DMA rankings as of January 1, 2023. This will push back the deadline for the Paducah-Cape Girardeau-Harrisburg and Cedar Rapids-Waterloo-Iowa City-Dubuque DMAs while accelerating the deadline for the Chattanooga and Charleston DMAs given the respective changes in their market ranks.

In expanding the mandate, the FCC determined that the costs of audio description for smaller markets are reasonable based on broadcasters' existing infrastructure and equipment. Ultimately, the FCC reasoned that expanding the audio description mandate would not only benefit blind or visually impaired consumers, but also consumers with sensory or cognitive impairments or language barriers, or consumers who listen to video programming while multitasking. To address concerns regarding economic burdens or other challenges, the FCC affirmed that broadcasters and MVPDs can use existing exemption and waiver procedures for relief.

For additional information, please contact one of the attorneys listed on this alert or the Wiley attorney who regularly handles your FCC matters.

Stephanie Rigizadeh, a Law Clerk in the Telecom, Media & Technology practice, contributed to this alert.