Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	)))	MB Docket No. 11-43

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)[1] submits these comments in response to the above-captioned Notice of Proposed Rulemaking,[2] in which the Commission proposes to extend coverage of its video description rules into ten additional designated market areas (DMAs) each year for four consecutive years, beginning on January 1, 2021. As discussed below, it is our understanding that implementing the Commission's proposal would not be unduly burdensome for most television stations in DMAs 61-100 that will be covered by the rules, subject to the brief delay requested below.

America's television broadcasters continue to strongly support the goal of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to improve the ability of individuals who are blind or visually impaired to enjoy video programming.[3] Indeed, the Commission itself recently found that broadcasters have made significant progress in providing video described programming, in terms of both the variety and amount of such

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[1] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.
[2] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, MB Docket No. 11-43 (rel. Apr. 23, 2020) (Notice).
[3] Pub. L. No. 111-260, 124 Stat. 2751 (2010); 47 U.S.C. § 613(f)(4)(C)(iii).

programming.[4] From sitcoms to dramas, children's programming, sports and a growing amount of live content, the FCC cited consumer feedback that the greatly expanded diversity of video described programming has enriched their ability to enjoy video programming.[5] The Second Report also observed that all of the broadcast television networks that are subject to the rule go above and beyond the current quota, providing more described programming than the FCC requires, and in some cases substantially more.[6] The evidence of broadcasters' commitment to inclusion is clear, as all the covered networks have faithfully fulfilled and even exceeded their video description obligations, even as the FCC has continued to rapidly increase both the number of stations subject to the rules and the mandated amount of described programming.

The CVAA provides that, based upon the findings in the Second Report, the FCC may phase in the video description rules for up to an additional ten DMAs each year, if it determines that the costs of doing so are reasonable to program owners, providers and distributors.[7] In the Notice, the Commission tentatively concludes that such costs would be reasonable, for at least three reasons.

First, the costs of adding video description have held steady since 2017. Indeed, the Notice observes that these costs are consistent with the level of costs that the FCC previously found to be "minimal" when expanding the markets covered by the rules.[8]

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[4] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350, 9354-56 (2019) (Second Report).
[5] *Id*. at 9354.
[6] *Id*. at 9356.
[7] 47 U.S.C. § 613(f)(4)(C)(iv).
[8] Notice at ¶ 9.

Second, the FCC states that broadcasters to be covered by the video description rules in DMAs 61-100 are already required to have the technical capability to deliver a secondary audio stream in order to provide audible emergency information to consumers who are blind or visually impaired.[9] Since video description is also provided via the secondary audio programming (SAP) stream, the FCC assumes that broadcasters in compliance with this emergency access rule will also be able to comply with the video description requirements, without significant additional cost.[10]

Finally, the FCC notes that its rules already require all network affiliated stations, including those in DMAs 61-100, to pass through video description, if a network provides programming with description and the broadcast station has the technical capability to pass through the description.[11] Thus, according to the FCC, any costs to stations that already comply with this pass through obligation should be manageable.

NAB has no reason to doubt these conclusions, at least for most stations in DMAs 61-100 to be covered by the video description rules. That said, the FCC should not dismiss the substantial differences in viewership and advertising revenues of stations in DMAs 61-100 versus those in higher-ranked markets. Even though the costs of adding video

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[9] *Id*. at ¶ 10 citing 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and ensure that such emergency information is passed through to consumers).

[10] *Id*.

[11] *Id*. at ¶ 11 citing 47 CFR § 79.3(b)(3). NAB has explained that stations sometimes use their SAP channel to carry foreign language programming instead of video description, and certain challenges to broadcasting more than one additional audio service remain, including (1) additional equipment that some stations would need to install, (2) technical constraints of legacy analog TV receivers and some cable converter boxes, and (3) contracts that require networks to air a certain amount of Spanish language programming. NAB Comments, MB Docket No. 11-43, at 5-8 (Apr. 1, 2019).

description should be bearable for most stations, this may not be the case for all, particularly for independently-owned stations in midsized and smaller markets.

NAB also understands that it could be difficult for stations to accommodate the added cost of complying with the video description rules in their upcoming budgets, regardless of a station's financial means or size of the expense. Creating a budget is complicated and time-consuming. Stations must review and update cost assumptions, reflect new budget needs like capital expenditures and lock step salary increases, and consider myriad factors that impact future revenues, like the economy, increased competition and the slowing growth of retransmission consent fees.[12] Most broadcasters started the 2021 budget process months ago in order to complete their efforts well in advance of their next fiscal year. For some, reopening the process mid-stream to understand the implications of, and to absorb, the costs of adding video description starting on January 1, 2021 -- only a few months after the FCC completes this proceeding -- would be administratively burdensome. In addition, given that the budget cycles of many broadcasters do not run parallel with the calendar year, but instead from October 1st to September 30th, like the federal government, or some other period, it is our understanding that starting an unplanned new regulatory obligation in the middle, on January 1, 2021, could be problematic for some broadcasters.

Moreover, as the FCC is well aware, the ongoing economic downturn related to the COVID-19 pandemic has inflicted substantial economic harm on many broadcasters. Although local TV stations are experiencing higher than usual viewership as Americans have stayed home the past few months, the larger audiences have not translated into advertising

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[12] *See, e.g.*, http://www.nab.org/documents/newsRoom/pdfs/Growth_Retrans_Fees.pdf.

revenues. To the contrary, many of the businesses that local stations rely on for advertising revenue are facing unprecedented financial challenges, leading them to dramatically reduce or eliminate their advertising budgets. Although the gradual reopening of states should help to improve demand, the future is uncertain, with some predicting a downturn in the advertising market more severe than during the Great Recession.[13] The impact on broadcasters' financial well-being could be long-lasting.

Accordingly, NAB requests a brief delay of the FCC's proposed phase-in of the video description rules. NAB respectfully requests that the FCC should require implementation of its proposed expansion as of October 1, 2021, rather than its proposed January 1, 2021 deadline. This reasonable nine-month extension would provide TV stations the time needed to evaluate, incorporate and reflect the costs of video description in their budgets. Forcing stations to interrupt midstream or to re-open their budget process would be unwise and unnecessary. More importantly, a slight delay will allow broadcasters time to pivot onto more stable financial ground as the pandemic hopefully dissipates during the coming months. Although TV stations are optimistic that advertising revenues will eventually return to pre-pandemic levels, it is impossible to predict the pandemic's long-term impact on how local businesses reach and serve the needs of consumers. Overall, NAB submits that any perceived downside of such a brief extension is far outweighed by the concrete benefits to the covered stations of a longer runway before the cost of compliance with the video description rules hits their bottom line.

[13] NAB Comments, GN Docket No. 20-60, at 40-41 (Apr. 27, 2020).

Finally, NAB has no objections to the FCC's proposal to update the terminology it uses to reference video description or audio description in the rules and definitions, as described in the Notice.[14]

For the reasons stated above, NAB requests a brief delay in the FCC's proposal to extend the video description rules into additional markets.

Respectfully submitted,

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[14] Notice at ¶ 17.