

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**REQUEST OF 21ST CENTURY FOX, INC. AND FOX NEWS NETWORK, LLC FOR  
EXCLUSION FROM LIST OF TOP FIVE NATIONAL NON-BROADCAST  
NETWORKS**

21st Century Fox, Inc. and Fox News Network, LLC (“Fox News”) hereby submit this instant request (“Request”) for the Federal Communications Commission (“FCC” or “Commission”) to exclude Fox News from the list of top five national non-broadcast networks subject to the Commission’s video description rules.<sup>1</sup> As discussed more fully below, Fox News qualifies for exclusion from the list because it does not provide, on average, at least 50 hours per quarter of non-exempt prime-time programming (*i.e.*, programming that is not live or near live), as defined by the Commission.<sup>2</sup>

The Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) and the Commission’s implementing rules require multichannel video programming distributors with 50,000 or more subscribers to provide, on a quarterly basis, 50 hours of video-described prime-time and/or children’s programming on each of the top five national non-

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<sup>1</sup> See 47 C.F.R. § 79.3. See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, *Report and Order*, 26 FCC Rcd 11847 (2011) (*Video Description Order*).

<sup>2</sup> “Live or near live programming” is defined as programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor. 47 C.F.R. §79.3(b)(4).

broadcast programming networks.<sup>3</sup> The top five are determined based on Nielsen ratings for a specified period and are assessed at three-year intervals, with the first update having occurred on July 1, 2015.<sup>4</sup> On January 12, 2018, the Media Bureau issued a Public Notice announcing the top ten national non-broadcast networks for purposes of the July 1, 2018 update to the video description requirements.<sup>5</sup> The Media Bureau called on any network that does not offer a sufficient amount of non-exempt programming – *i.e.*, a network that offers primarily live or near live programming – to file for exclusion from the list.<sup>6</sup>

Fox News sought exclusion from the list of top five networks subject to the rules in 2011 because it did not provide at least 50 hours per quarter of prime-time programming that was not live or near live.<sup>7</sup> The Commission granted the Fox News request.<sup>8</sup> Upon the first reassessment of network rankings in 2015, Fox News was not listed in the top five non-broadcast networks. It thus did not file a request for exclusion prior to the July 1, 2015 assessment date.

Fox News is a 24 hour/day, 7 days/week cable- and satellite-delivered news network that reaches approximately 90 million U.S. households. Fox News' programming consists of a blend of news coverage and analysis, opinion commentary, and in-depth reporting featuring a variety of news anchors, correspondents, program hosts, and contributors who appear throughout a given day's programming. The vast majority of Fox News' daily weekday programming

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<sup>3</sup> *Video Description Order*, 26 FCC Rcd at 11854 ¶12.

<sup>4</sup> 47 C.F.R. § 79.3(b)(4) (“[T]he top five networks are those determined by the Nielsen Company. . . 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. . .”).

<sup>5</sup> Media Bureau Announces National Nonbroadcast Network Rankings for Purposes of July 1, 2018 Update to Video Description Requirements, *Public Notice*, DA 18-42 (MB 2018).

<sup>6</sup> *Id.*

<sup>7</sup> See *infra* note 2. See also Letter from Antoinette Cook Bush and Jared S. Sher to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 11-43 (dated Apr. 28, 2011); Reply Comments of News Corporation and Fox News Network LLC, MB Docket No. 11-43 (filed May 27, 2011).

<sup>8</sup> *Video Description Order*, 26 FCC Rcd at 11855 ¶ 14.

(approximately 20 hours per weekday, including its entire prime-time line-up) is live or near live, originating from either Fox News' New York headquarters, its studios in Washington, D.C. or Los Angeles, California, or its correspondents around the world.

As reflected in the attached Declaration of Paula Firestone, Vice President of Program Operations at Fox News (attached hereto as Exhibit No. 1), Fox News airs live or near live content from at least 4 a.m. to 11:59 p.m. Monday through Friday.<sup>9</sup> Fox News also airs live or near live programming from at least 6 a.m. to 8 p.m. on Saturdays, and from at least 5 a.m. to 2 p.m. on Sundays. Where appropriate to cover breaking news or for other events, Fox News provides additional live coverage. Because its weekday prime-time schedule consists entirely of live or near live programming, and given that live or near live programming makes up a substantial portion of its weekend prime-time schedule, Fox News does not provide an average of at least 50 hours per quarter of non-exempt prime-time programming.

Fox News' programming schedule varies little from week to week, and though certain weekday and weekend programs have changed since Fox News was first excluded from the list of top five non-broadcast networks in 2011, nearly all of its prime-time schedule continues to consist of live or near live programming. Attached as Exhibit No. 2 are weekday and weekend prime-time schedules from Fall 2017, which are representative of the program schedules throughout the October 2016 – September 2017 time period covered by the Commission's July 1, 2018 update to the video description rules. These schedules demonstrate that Fox News presented nearly all live or near live programming during prime time, including weekend prime-time hours. As further detailed in the attached Declaration, the proportion of live/near live programming in the schedules is consistent with other programming periods in which Fox News

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<sup>9</sup> See Declaration of Paula Firestone, Vice President of Program Operations, Fox News Network, attached hereto as Exhibit No. 1 (Firestone Declaration).

did not air at least 50 hours of non-exempt prime-time programming per calendar quarter.<sup>10</sup>

In conclusion, Fox News should be excluded from the Commission's list of the top five national non-broadcast networks as it does not provide, on average, at least 50 hours of non-exempt programming per quarter.

Respectfully submitted,

21st CENTURY FOX, INC.  
FOX NEWS NETWORK, LLC

By: \_\_\_\_\_/s\_\_\_\_\_

John M. Beahn  
DLA Piper LLP (US)  
800 Eighth Street, NW  
Washington D.C. 20004

Their Attorney

March 9, 2018

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<sup>10</sup> The times identified here and in the Firestone Declaration are for the Eastern time zone. Because Fox News' programming is transmitted simultaneously in all time zones, some pre-recorded programming that airs after prime-time has ended on the East Coast appears during prime-time on the West Coast. In calculating its quantity of live and near live programming, Fox News treats as exempt any pre-recorded program that airs during prime-time on the West Coast if the program is a repeat of a show that airs live (or was recorded) earlier in the same day. See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2975, 2985 ¶21 (seeking comment on the definition of "live or near live" to include live or near live programming on the East Coast as well as repeats of such programming on the West Coast).


**EXHIBIT NO. 1**

## DECLARATION

I, Paula Firestone, hereby state as follows:

1. I am Vice President of Program Operations, Fox News Network, LLC ("Fox News").
2. I submit this Declaration in support of the Request of 21st Century Fox, Inc. and Fox News Network, LLC for Exclusion from List of Top Five Non-Broadcast Networks, dated March 9, 2018, in response to the Media Bureau's Public Notice announcing the national non-broadcast network rankings for purposes of the July 1, 2018 update to the video description requirements.
3. In my capacity as Vice President of Program Operations, I am familiar with the weekday and weekend programming schedules for Fox News.
4. Fox News distributes a single programming feed to all households in the United States, without regard to time zone. For example, Fox News programming that airs from 8 p.m. to 11 p.m. on the East Coast airs simultaneously from 5 p.m. to 8 p.m. on the West Coast. Similarly, programming that airs live from 6 p.m. to 7 p.m. from the West Coast will air simultaneously from 9 p.m. to 10 p.m. on the East Coast.
5. Fox News airs live or near live programming on weekdays at least from 4 a.m. to 11:59 p.m. Eastern time. Fox News airs live or near live programming on Saturdays at least from 6 a.m. to 8 p.m. Eastern time. Fox News airs live or near live programming on Sundays at least from 5 a.m. to 2 p.m. Eastern time. As circumstances warrant, Fox News may air additional live programming (i.e., for breaking news). Although certain programming changes from time to time, the vast majority of the Fox News prime-time schedule has been comprised of live or near live programming since at least 2011, and Fox News has no current plans to modify the proportion of live/near live programming on its schedule.
6. The programming schedule attached as Exhibit 2 is representative of the prime-time programming that Fox News aired from October 2016 to September 2017. The proportion of live/near live programming has not materially changed in subsequent periods.
7. Fox News does not on average air at least 50 hours of non-exempt prime-time programming.

I declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct. Executed March 9, 2018.

  
\_\_\_\_\_  
Paula Firestone  
Vice President of Program Operations  
Fox News Network, LLC  
1211 Avenue of the Americas  
New York, NY 10036

**EXHIBIT NO. 2**

**FOX NEWS WEEKLY PRIME-TIME SCHEDULE**  
**September 4, 2017 – November 5, 2017**

<b>Week Dates</b>	<b>Hours of non-exempt, prime-time programming</b>
September 4–10	0
September 11–17	3
September 18–24	3
September 25 – October 1	3
October 2–8	2
October 9–15	3
October 16–22	2
October 23–29	3
October 30 – November 5	3
<i>Total Hours of Non-Exempt Programming</i>	<b>22</b>



**Week of September 4–10, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 9/4	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Tuesday</b> 9/5	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Wednesday</b> 9/6	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Thursday</b> 9/7	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Friday</b> 9/8	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Saturday</b> 9/9	8pm	Fox Report	Live (Hurricane Irma)
	9pm	Justice with Judge Jeanine	Live
	10pm	America's News HQ	Live (Hurricane Irma)
<b>Sunday</b> 9/10	7pm	Fox Report	Live (Hurricane Irma)
	8pm	Fox Report	Live
	9pm	America's News HQ	Live
	10pm	America's News HQ	Live
<i>Number of hours toward quarterly total</i>			<b>0</b>

**Week of September 11–17, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 9/11	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Tuesday</b> 9/12	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Wednesday</b> 9/13	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Thursday</b> 9/14	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Friday</b> 9/15	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Saturday</b> 9/16	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 9/17	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>

**Week of September 18–24, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 9/18	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Tuesday</b> 9/19	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Wednesday</b> 9/20	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Thursday</b> 9/21	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Friday</b> 9/22	8pm	Tucker Carlson Tonight	Live
	9pm	The Five	Live
	10pm	Hannity	Near live
<b>Saturday</b> 9/23	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 9/24	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>

**Week of September 25 – October 1, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 9/25	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Tuesday</b> 9/26	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Wednesday</b> 9/27	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Thursday</b> 9/28	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Friday</b> 9/29	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	Fox News Tonight	Live
<b>Saturday</b> 9/30	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 10/1	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>

**Week of October 2–8, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 10/2	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Tuesday</b> 10/3	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Wednesday</b> 10/4	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Thursday</b> 10/5	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Friday</b> 10/6	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	Fox News Tonight	Live
<b>Saturday</b> 10/7	8pm	Watters' World	Live
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 10/8	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>2</b>

**Week of October 9–15, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 10/9	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Tuesday</b> 10/10	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Wednesday</b> 10/11	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Thursday</b> 10/12	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Friday</b> 10/13	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	Fox News Tonight	Live
<b>Saturday</b> 10/14	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 10/15	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>

**Week of October 16–22, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 10/16	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Tuesday</b> 10/17	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Wednesday</b> 10/18	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Thursday</b> 10/19	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Friday</b> 10/20	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	Fox News Tonight	Live
<b>Saturday</b> 10/21	8pm	Watters' World	Live
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 10/22	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>2</b>

**Week of October 23–29, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 10/23	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Tuesday</b> 10/24	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Wednesday</b> 10/25	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Thursday</b> 10/26	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	Fox News Tonight	Live
<b>Friday</b> 10/27	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	Fox News Tonight	Live
<b>Saturday</b> 10/28	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 10/29	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>



**Week of October 30 – November 5, 2017**

<b>Day</b>	<b>Time</b>	<b>Program</b>	<b>Program Type</b>
<b>Monday</b> 10/30	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
<b>Tuesday</b> 10/31	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
<b>Wednesday</b> 11/1	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
<b>Thursday</b> 11/2	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Live
	10pm	The Ingraham Angle	Live
<b>Friday</b> 11/3	8pm	Tucker Carlson Tonight	Live
	9pm	Hannity	Near live
	10pm	The Ingraham Angle	Live
<b>Saturday</b> 11/4	<b>8pm</b>	<b>Watters' World</b>	<b>Pre-taped</b>
	9pm	Justice with Judge Jeanine	Live
	<b>10pm</b>	<b>The Greg Gutfeld Show</b>	<b>Pre-taped</b>
<b>Sunday</b> 11/5	7pm	Fox Report	Live
	<b>8pm</b>	<b>Objectified</b>	<b>Pre-taped</b>
	9pm	Next Revolution with Steve Hilton	Live
	10pm	Fox News Sunday	Near live
<i>Number of hours toward quarterly total</i>			<b>3</b>