

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

In the Matter of)	
)	
Video Description: Implementation)	MB Docket No. 11-43
of the Twenty-First Century Communications)	
and Video Accessibility Act of 2010)	
)	
Children’s Television Programming Rules)	MB Docket No. 18-202
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
To: The Media Bureau		

COMMENTS OF LITTON ENTERTAINMENT

Litton Entertainment (“Litton”), pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419), submits these Comments in the above-referenced proceedings in response to the Commission’s Public Notice, released February 4, 2019.¹ In support of these Comments, Litton submits:

I. INTRODUCTION

The *Video Description PN* “seeks comment on recent developments in the video description marketplace to inform a report to Congress required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)² on the availability, use, benefits, and costs of video description.” Video description is “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the

¹ *Media Bureau Seeks Comment On Recent Developments In The Video Description Marketplace To Inform Report To Congress*, DA 19-40, released February 4, 2019 (hereinafter “*Video Description PN*” or “*Public Notice*”). The *Public Notice* set the comment date as April 1, 2019. These Comments therefore are timely filed.

² 47 U.S.C. § 613(f)(1)-(2).

program’s dialogue.”³ The current rules now 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 per calendar quarter (3.85 hours per week) of video-described prime time or children’s programming, and to provide an additional 37.5 hours of video-described programming per calendar quarter (2.88 hours per week) at any time between 6 a.m. and midnight.⁴ The current rules also require “[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.”⁵ The *Public Notice* seeks comments in several areas, including: 1) The types of described video programming that are available to consumers; 2) Consumer use of such programming; 3) The costs to program owners, providers, and distributors of creating such programming; 4) The potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming; 5) The benefits to consumers of such programming; 6) The amount of such programming currently available; and 7) The need for additional described programming in designated market areas outside the top 60.⁶ Through these comments, Litton wishes to address certain aspects of these inquiries.

³ 47 CFR § 79.3(a)(3).

⁴ 47 CFR § 79.3(b)(1).

⁵ 47 CFR § 79.3(c).

⁶ *Public Notice*, ¶ 6.

II. DISCUSSION

A. Litton Entertainment Produces High Quality, Video-Described Children's Educational/Informational Programming

Litton Entertainment (“Litton”) is the preeminent producer of children’s educational and informational (“E/I”) programming in the United States. *All* of Litton’s currently-produced original programming (i.e., long-form, 30-minute episodic E/I programming) is shot in high definition, is closed-captioned, and contains video description. Litton currently provides three (3) hours of E/I programming to affiliates of ABC, CBS, NBC, as well as the CW and Telemundo networks; as such, Litton estimates that it provides video-described, age-appropriate E/I programming to viewers of more than 900 stations throughout the United States in markets of all sizes. Litton works with award winning teachers, top child psychologists & pediatricians, broadcasters, and other experts to develop and review its programming to make sure that it meets their highest standards and the definition of core E/I programming. Over the past 30 years, Litton has gained valuable insight into what is impactful television and what does not work in delivering a positive educational message to children, and specifically to teens.

Litton has received 50 Emmy nominations and won 15 Emmy awards (going head to head with all types of children’s programming, not just E/I content). Litton has won 46 Parents’ Choice Awards, 108 Telly Awards, and a variety of other accolades for its programming. By providing three hours of video-described children’s programming per week for ABC, CBS, and NBC, **Litton effectively provides 78% (3 of 3.85 hours per week) of the mandated amount of video-described programming for these network-affiliated stations** as part of its E/I offerings. It is Litton’s understanding that very few—if any—local stations generate their own video description for any programming, and, instead, that virtually all local stations rely on

program providers (like Litton) to provide video description within qualifying programming so that local stations merely have to pass-through the descriptions when the programming airs.

B. Video Description Is Uniquely Important When Available in Children's Educational/Informational Programming

The Commission has long found that video description is important to multiple viewing constituencies and is especially important to children. For example, in 2000, when the Commission first implemented a video description rule, the Commission observed that, in addition to the benefits of video description for visually impaired viewers (including children):

[A]t least one and a half million children between the ages of 6 and 14 with learning disabilities may benefit from video description. Because the medium has both audio description and visual appeal, it *has significant potential to capture the attention of learning disabled children and enhance their information processing skills*. Described video programming capitalizes on the different perceptual strengths of learning-disabled children, pairing their more-developed modality with their less-developed modality to *reinforce comprehension of information*.⁷

More than a decade later, when the FCC reinstated the video description rules following Congress' mandate in the CVAA, it again specifically noted the importance of providing video described programming to children:

Because older children with vision or other impairments can benefit from video description, the NPRM proposed to define children's programming in this context as programming directed at children 16 years of age and under. Commenters support this definition, agreeing that it would provide benefits "to a wide range of blind and visually impaired children." . . . We therefore adopt the proposal to define children's programming as programming directed at children 16 years of age and under, and, as noted above, to permit video described children's programming to count toward the 50 hour description requirement.⁸

⁷ *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230 (2000), ¶ 10 (emphasis added) (internal footnotes omitted), *vacated in part, reversed in part by Motion Picture Ass'n of Am. V. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

⁸ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, ¶ 53 (2011) ("2011 Video Description Order") (internal citations and footnotes omitted).

Commenters raised concerns in that proceeding, however, that the preemption of children's programming could undermine efforts to disseminate widely video described programming and could put stations at risk for non-compliance with the video description mandate.

In the children's television context, broadcasters must provide three hours per week of "core" educational and informational children's programming in order to receive expedited renewal of their licenses. Generally, if that program is preempted, it must be rescheduled, but we do not require that it be rescheduled if the preemption is for breaking news. In similar fashion, NAB suggests that we "allow video described programming to be preempted for breaking news and emergency information without negative consequences." In practice this would mean that if an unscheduled news bulletin interrupted an hour-long video described program, the station or system would still be allowed to count that program in its entirety toward the 50 hour quarterly requirement. We agree that this is a sensible exemption, and adopt it.⁹

After careful consideration, the Commission—as evidenced by the two passages quoted above—struck a careful balance between encouraging video description in children's programming while recognizing that such programming is not always available to viewers. This balance was struck within the context of the existing children's television rules, where E/I programming was all aired on a station's main channel, and most preemptions required rescheduling to a "fixed second home" within the current core 7:00 a.m. to 10:00 p.m. hours.

Finally, in 2017, when the Commission adopted the Report and Order increasing the number of hours of video described programming for certain entities to 87½ on a quarterly basis, the Commission *again* specifically acknowledged "the benefits of video description to children and individuals on the autism spectrum, because it can help with the development of vocabulary."¹⁰

⁹ *Id.* at ¶ 47 (internal citations and footnotes omitted).

¹⁰ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 32 FCC Rcd 5962 (2017), ¶ 11 (citing *Listening Is Learning, How Does Description Benefit Students Without Visual Impairments?*, http://listeningislearning.org/background_description-no-bvi.html).

Litton's incorporation of video description into all of its currently-produced children's E/I programming unquestionably promotes the policies underlying the Commission's video description rules and furthers the public interest performance of local television stations. And, children are not the only viewers who derive benefits from the video descriptions available in Litton's children's E/I programming. Adults who are blind or experience visual impairments but wish to share television viewing experiences with their children or grandchildren also benefit because the video description "enabl[es] millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation,"¹¹ which surely includes the ability of adults to better understand and foster discussions of Litton's program episodes with the children in their care and other family members and friends.

C. As the Commission Considers Changes to the Children's E/I Television Programming Rules, the Commission Should Carefully Evaluate the Public Interest Value Proposition Where Video Description Intersects with Children's E/I Programming and Report Its Findings to Congress

In MB Docket 18-202, the FCC has proposed potentially-significant changes to the Children's Television Rules.¹² Included in the *Children's Television NPRM* are a number of proposals that would negatively affect the ability of blind and visually impaired children to receive E/I programming with video descriptions. For example, the *Children's Television NPRM* has suggested that stations may be able to move some or all of their E/I programming to non-Big Four affiliated multicast channels that are not universally carried by MVPDs.¹³

¹¹ 2011 Video Description Order, at ¶ 1.

¹² See *Children's Television Programming Rules, Notice of Proposed Rulemaking*, FCC 18-93, released July 13, 2018 (hereinafter "*Children's Television NPRM*"). Because these comments reference, in part, children's E/I programming, Litton is also filing a copy of these comments in MB Docket 18-202.

¹³ *Id.* at ¶ 49.

In its Comments in that proceeding, Litton highlighted the impact of changes to the Children's Programming Rules and Litton's ability to continue to provide video description in its E/I programming:

Thus, the history of the regime governing video description, including statements made by the Commission as recently as last year, demonstrates that the Commission has consistently found video description services to be important in the context of children's programming and specifically in the context of learning and cognition by underserved and vulnerable viewers.

Why is this video description history important? Because the proposed rule changes would perversely result in less video-described children's programming and, more to the point, E/I children's programming. If the proposed rule changes are adopted and the economic model for producing high-quality E/I programming for children is deleteriously affected—and Litton provides persuasive evidence in these comments that it will be—producers of such programming will be forced to determine how to trim costs to continue to provide *any* new children's E/I programming. Because the FCC's video description rules require only Big Four network affiliates to air at least 87½ hours of video-described programming each calendar quarter on their Big Four-affiliated program streams, video description is likely the first accessibility service to be economically forced out of the children's E/I video production process. Why? Because a change in the rules to allow stations—including Big Four affiliates—to put all of their children's E/I programming on their multicast streams would mean that stations would no longer rely on video-described children's programming to meet their 87½ hour-per-quarter video description obligation because they would no longer air children's E/I programming on their primary stream. Consequently, the incentive will plummet for children's E/I program producers to commit a portion of a rapidly shrinking production budget to video description services, which will result in a much smaller amount of age-appropriate video-described content in the marketplace for children.

Furthermore, even if children's E/I programming producers such as Litton were able to magically maintain production budgets that included video description, the proposal to allow multicasting stations to air a total of three hours of E/I programming per week would necessarily result in far less age-appropriate video-described programming for children in the marketplace. For example, a Big Four-affiliated station that today airs three hours of Litton's video-described children's E/I programming on its primary channel and six more hours of Litton's video-described children's E/I programming on each of its two multicast channels (for a total of 9 hours of age-appropriate video-described children's E/I programming) would be allowed to reduce its video-described children's E/I programming to one-third that amount for a total of 3 hours per week, which could be broadcast on any program stream the station wishes, including a program stream that lacks the technical capability of passing through the embedded video description.

Finally, to the extent that the full-length program criterion is eliminated from the definition of core programming and stations begin airing short-form children's E/I programming, what is the likelihood that such interstitial material will be video described? Litton respectfully submits that the answer is "not likely." This perverse result may be a function of the law of unintended consequences, albeit one that will severely and negatively affect the amount of age-appropriate video described programming in the marketplace—programming that could not only educate and inform children but also provide cognitive benefits to the vulnerable population of children with learning disabilities.¹⁴

Litton believes these concepts remain as true today as they were six months ago when Litton filed its Comments in the Children's Television Rules proceeding.

III. CONCLUSION

In light of the contemporaneousness of the Commission's ongoing Children's Television Rules proceeding and the instant video description proceeding, Litton respectfully submits that the Commission should, as part of its report to Congress as mandated by the CVAA, carefully consider and address the impact any proposed changes to the Children's Television Rules would

¹⁴ Comments of Litton Entertainment in MB Docket 18-202, filed September 24, 2018, pp. 21-23. Litton further explained at page 4, footnote 12 of the Comments how both Congress and the FCC in the 1990s understood the economics of how quality children's programming could be produced, which now includes financing video description in such programming.

Congress made clear in the CTA that producers needed advertising dollars to support the production of quality children's educational programming. *See, e.g.*, H.R. 1677, Section 101 ("Congress finds that . . . (3) the financial support of advertisers assists in the provision of programming to children"). The FCC refused to adopt calls to limit stations' ability to underwrite children's programming through sponsorships. *1991 Report and Order*, ¶ 7 (concluding that sponsorships do not constitute commercial matter for purposes of the commercial limits unless the sponsors or products are promoted beyond the requirements for sponsorship ID under Section 317 of the Communications Act); *id.* at footnote 24 ("Indeed, we wish to encourage the sponsorship of educational and informational material"). *See also 1991 Reconsideration Order*, ¶ 31 (rejecting renewed calls to limit sponsorship and marketing efforts of children's programming: "We further agree with MPAA that such a rule would deter producers from employing marketing efforts necessary for a viable program and would stifle creativity by restricting the sources they could draw upon for stories and characters." (footnote omitted)); *id.* at ¶ 32 ("Indeed, the measures proposed by ACT/NABB would be so intrusive to the commercial and creative processes critical to the production of high quality children's programming that the ultimate goals of the Act could be frustrated.").

have on the amount of video described programming available to viewers, as well as whether the Children's Television Rule revisions that are ultimately adopted will impact the future ability of producers to bear the costs of providing video descriptions for new children's E/I programming.

Respectfully submitted,

LITTON ENTERTAINMENT

By: _____/s/_____

James E. Dunstan

Mobius Legal Group, PLLC

P.O. Box 6104

Springfield, VA 22150

Telephone: (703) 851-2843

Counsel to Litton Entertainment

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