

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF  
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association<sup>1</sup> files these comments in support of USA Network’s (“USA”) request for a limited waiver of the Commission’s video description rules.<sup>2</sup> The cable industry is firmly committed to furthering accessibility and providing video-described programming to assist blind and visually-impaired viewers, including video-described programming beyond that mandated by the Commission’s rules. But as NCTA has highlighted in the past,<sup>3</sup> the Commission’s current method for determining compliance with its rules is unduly restrictive and disadvantages popular non-broadcast networks whose program lineups rely in part on repeat airings of programming consumers know and love. USA proposes a reasonable and temporary waiver of the rules that would accommodate these successful program lineups while simultaneously encouraging the expansion of video-described offerings. The Commission should therefore grant USA’s Waiver Request.

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<sup>1</sup> NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks.

<sup>2</sup> Request of USA Network for Limited Waiver of Video Description Rules, Dkt. No. 11-43 (filed May 3, 2019) (“Waiver Request”).

<sup>3</sup> See, e.g., Petition for Partial Reconsideration of NCTA – The Internet & Television Association, Dkt. No. 11-43, at 2-4 (filed Sept. 11, 2017) (“NCTA Petition”).

## **DISCUSSION**

As NCTA recently detailed, there is now more video-described programming content available on linear channels and on-demand than ever before.<sup>4</sup> Cable networks, including but not limited to the top-five, air a significant quantity of programming with video description, including many hours exceeding those required by the Commission's rules.<sup>5</sup> But unfortunately, the Commission's rules obscure this reality by counting only a small subset of these video-described programs toward the Commission's 87.5 hours per quarter benchmark.

Under the current rules, program networks may count video description on a program only twice – at the first airing and for a single repeat. Accordingly, once a non-broadcast network has counted its one repeat of a video-described program towards compliance, the rules do not allow that network to ever count that same video-described program again towards compliance, no matter how many years have passed. This has the unfortunate consequence of disadvantaging non-broadcast networks – such as USA – that have invested in large and growing libraries of video-described programming with lasting audience appeal. The licensing agreements for these programs often span many years and permit multiple airings of the same program to allow networks to recoup their investments. So, although much of this programming is video-described, a typical non-broadcast network schedule that contains many popular repeats

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<sup>4</sup> See Comments of NCTA – The Internet & Television Association, Dkt. No. 11-43, at 2-6 (filed Apr. 1, 2019) (“NCTA Comments”).

<sup>5</sup> *Id.* (noting, among other things, that USA averaged more than 1500 hours of described programming each quarter in 2018; the Discovery Channel aired approximately 400 more hours of video-described programming than required during the first six months it was subject to the rules; and that most of the first run shows on TNT are video-described).

will quickly run out of programs that can count toward achieving compliance with the Commission's 87.5 hours requirement.

NCTA appreciates that the Commission adopted the repeat limitation out of concern that networks may attempt to meet their video description obligations by rerunning a limited catalog of video-described programming over and over.<sup>6</sup> This concern is unfounded. USA and similarly situated networks take their accessibility obligations seriously and, as discussed above, strive to exceed them. These program networks compete vigorously for audiences, and they spend substantial sums to acquire and run repeats of popular program series and movies – many of which are video-described – precisely because audiences *want* this type of programming. The success of USA's lineup amply demonstrates this fact.<sup>7</sup>

NCTA agrees that USA's proposed safe harbor – which would require video description of 1,000 total program hours each quarter without regard to repeats and at least 75% of any newly-produced non-live programming aired between 6 a.m. and midnight per quarter – would provide much-needed flexibility to non-broadcast networks without diminishing the availability of video-described programming. Indeed, the approach – which reflects numerous conversations with, and has the support of, advocates for the blind and visually-impaired – strikes a sensible

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<sup>6</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order, 32 FCC Rcd. 5962, ¶ 16 (2017).

<sup>7</sup> To be sure, a network that relied on what the audience perceived to be excessive repeats would not be able to attract or retain viewers. There is no reason for the Commission to guard against a counterproductive programming strategy that no programmer would be likely to adopt. NCTA therefore urges the Commission to act on its pending Petition for Partial Reconsideration, which among other things asks the Commission to modify its rules to allow the cycle for counting repeats to start over after a period of years. This small change would better account for the lasting appeal of many of these programs, the lengthy contract terms governing their exhibition, and children “aging up” into the audience demographic for certain repeat programming. See NCTA Petition at 4-5, 8. Advocates for the blind and visually-impaired also agree that allowing non-broadcast networks to “refresh” their counting of repeat programming is a sensible approach. See Opposition of National Federation of the Blind, Dkt. No. 11-43, at 2 (filed Oct. 18, 2017).

balance that will encourage the provision of *more* hours of video-described programming. The Commission should therefore act expeditiously to grant USA’s Waiver Request.<sup>8</sup>

### **CONCLUSION**

The cable industry cares deeply about serving its blind and visually-impaired customers, including by making available substantial amounts of video-described programming. USA’s proposed safe harbor would promote consumer access to even more video-described programming, and the Commission should therefore grant USA’s Waiver Request.

Respectfully submitted,

**/s/ Rick Chessen**

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<sup>8</sup> Although USA’s Waiver Requests asks only for a limited safe harbor for the period ending June 30, 2021, the Commission should consider adopting the safe harbor permanently, consistent with NCTA’s Petition and its June 15, 2018 *ex parte* in this proceeding. *See* NCTA – The Internet & Television Association *Ex Parte*, Dkt. No. 11-43, at 1-2 (filed June 15, 2018).