

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF USA NETWORK

NBCUniversal, LLC (“NBCUniversal”) hereby submits these Reply Comments on behalf of its wholly owned non-broadcast programming network, USA Network (“USA” or the “Network”), to highlight unanimous record support for its request for a limited waiver of the Federal Communications Commission’s (“FCC” or “Commission”) video description rules, including critical support from advocates for the blind and visually impaired.¹

The initial comments confirm that it would be in the public interest for the Commission to grant a limited waiver for the current compliance period ending June 30, 2021,² as long as USA airs at least 1,000 hours of described programming each quarter without regard to repeats and video-describes at least 75 percent of any newly produced non-live programming that is aired between the hours of 6:00 a.m. and midnight per quarter. This

¹ See Request of USA Network for Limited Waiver of Video Description Rules, MB Docket No. 11-43 (filed May 3, 2019) (“Petition”).

² As noted in the Petition, this period is intended to coincide with the effective three-year compliance window during which the top five non-broadcast networks are subject to the video description requirements, based on their Nielsen ratings (i.e., July 1, 2018 – June 30, 2021). See 47 C.F.R. § 79.3(b)(4).

safe harbor would accommodate USA's successful programming model, which combines repeats (including marathons) of the most popular television programming with newly produced programming, while ensuring that viewers continue to benefit from a substantial – and increasing – amount of described programming.

As detailed in the Petition, USA is an industry leader in providing video-described programming for the benefit of blind and visually impaired viewers, averaging more than 1,600 hours of described programming each quarter in 2018 without regard to repeats.³ The FCC's restrictive repeat rule, however, allows only a small fraction of those hours to be credited toward compliance by counting only the first airing of a described episode and *one repeat* of that episode.⁴ This severe restriction on the number of eligible video-described hours presents special challenges for networks, such as USA, that do not air regularly scheduled children's programming and that build their programming schedules on a combination of repeats and new programming. These special circumstances warrant a departure from the Commission's rules, and a limited waiver will serve the public interest by creating incentives for USA to continue increasing its total amount of video description in both repeat and newly produced programming.⁵

³ See Petition at 8-9.

⁴ See 47 C.F.R. § 79.3(b)(4) (requiring covered MVPDs to provide a total of 87.5 hours of video description per calendar quarter on each channel on which they carry one of the top five national non-broadcast networks); *id.* § 79.3(c)(2) (“In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with video description no more than a total of two times on each channel on which it airs the program.”).

⁵ The Commission has the authority to waive a rule “for good cause shown.” 47 C.F.R. § 1.3. A waiver is appropriate “if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.” See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description*:

I. USA’S WAIVER REQUEST IS UNOPPOSED AND HAS EARNED SUPPORT FROM ADVOCATES FOR THE BLIND AND VISUALLY IMPAIRED.

Before filing its Petition, USA had multiple discussions with advocates for the blind and visually impaired representing the American Council of the Blind (“ACB”), National Federation of the Blind, and the American Foundation for the Blind, seeking their input and support for the proposed safe harbor conditions. Each of these organizations has expressed its support for USA’s request for a limited waiver. In that regard, we appreciate ACB’s comment that NBCUniversal “collaborated over the past year with ACB to develop the compromise terms of this petition for USA Network,” and that the Petition “recognizes the commitment of USA Network to audio described content, and has the potential to increase the amount of audio described content available to viewers of USA Network.”⁶

As ACB observes, “while USA Network airs more than 1,500 hours of described content each quarter, due to the preponderance of syndicated content and marathon airings, less than 10% of the audio description shown by USA Network is counted toward the FCC’s existing audio description requirements.”⁷ Under the proposed safe harbor, “USA Network would need to audio describe more than 1,000 hours of programming each quarter, nearly twelve-times the current requirement of 87.5 hours per quarter,” while also describing more than 75 percent of its covered original content. In light of these strong incentives for USA to

Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Memorandum Opinion and Order, 33 FCC Rcd. 5059 ¶ 3 (2018); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ ACB Comments at 2.

⁷ *Id.*

air a significant amount of described programming – both repeat and newly produced content – ACB’s members have unanimously adopted a resolution supporting USA’s waiver request.⁸

NCTA lends additional support to USA’s proposal, which “would provide much-needed flexibility to non-broadcast networks without diminishing the availability of video-described programming.”⁹ As NCTA points out, “there is now more video-described programming content available on linear channels and on-demand than ever before,” but the FCC’s repeat 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.”¹⁰ This limitation “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.”¹¹

NBCUniversal agrees with NCTA that any concern that networks might attempt to circumvent their video description obligations “by rerunning a limited catalog of video-described programming over and over” is unfounded, because networks compete vigorously for audiences, and “[t]here is no reason for the Commission to guard against a counterproductive programming strategy that no programmer would be likely to adopt.”¹² As NCTA notes, networks like USA “spend substantial sums to acquire and run repeats of

⁸ *Id.*

⁹ NCTA Comments at 3.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 3 n.7.

popular program series and movies – many of which are video-described – precisely because audiences *want* this type of programing.”¹³ USA’s proposed waiver conditions would meet that audience demand by maintaining a programming model that has proven highly successful with viewers, while making a substantial amount of described programming available to viewers with disabilities.

II. ANY OTHER NETWORKS SEEKING TO RELY ON THE PROPOSED SAFE HARBOR WOULD FILE INDIVIDUAL REQUESTS.

NBCUniversal respects ACB’s view that “it is imperative that all non-broadcast pay-tv channels work with [advocates for the blind and visually impaired community] directly to expand the amount of available audio described programming,” and that ACB does not support expanding a safe harbor to cover all similarly situated networks.¹⁴ Consistent with ACB’s comments, NBCUniversal agrees that the grant of a limited waiver to USA, conditioned on the safe harbor criteria discussed in the Petition, would not automatically extend relief to other networks subject to the video description rules.¹⁵ Instead, any other network seeking to rely on the proposed safe harbor would file its own request demonstrating that it meets the relevant criteria and that a waiver would be in the public interest.¹⁶ The

¹³ *Id.* at 3.

¹⁴ See ACB Comments at 2 (stating that “other non-broadcast pay-TV channels have not collaborated with the disability community to understand the importance of audio description, nor have other non-broadcast pay-TV channels demonstrated the same commitment to producing audio described content as USA Network”).

¹⁵ The Commission should also consider adopting industry-wide relief by acting on NCTA’s pending Petition for Partial Reconsideration of its 2017 rule changes. See *Petition for Partial Reconsideration of NCTA – The Internet & Television Association*, MB Docket No. 11-43, at 2 (filed Sept. 11, 2017) (requesting that the Commission make “modest changes to the unduly restrictive repeat rule and adopt[] a safe harbor for covered networks that offer video description for a substantial portion of their programming”).

¹⁶ As noted in the Petition, USA’s limited waiver request is not intended to modify the separate

Commission would then consider each network's request under its general waiver authority, including an opportunity for public comment.¹⁷

We also emphasize that USA's proposed safe harbor sets a high bar that would not allow any network to shirk its responsibilities under the Commission's video description rules.

Advance coordination with advocates for the blind and visually impaired was essential in developing a proposal that would accommodate USA's successful programming model while providing meaningful assurance that viewers will continue to receive a significant amount of described programming. We therefore encourage any other network seeking a waiver to engage in similar outreach to understand the needs of viewers with disabilities and the importance of video description in making the programming that viewers enjoy accessible to all.

waiver standard set forth in the Commission's *2017 Order* expanding the video description hour requirements. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 32 FCC Rcd 5962 ¶ 18 (2017) (stating that the Commission "will look favorably upon waiver requests demonstrating that (1) [a]ll pre-recorded programming between 6 A.M. and midnight in the relevant calendar quarter is being described, even if not all of it can be counted toward the rules; and (2) [t]he petitioner commits to provide additional hours of video description in calendar quarters other than the one for which it is seeking the waiver, or commits to provide the additional hours of video description in the same calendar quarter but on an affiliated network"). Thus, any other programming network subject to the video description rules would have the option of filing a waiver request demonstrating that it also qualifies for the safe harbor criteria proposed by USA or pursuing case-by-case waivers under the standard set forth in the *2017 Order*.

¹⁷ *See* 47 C.F.R. § 1.3. Under standard FCC practice, we would anticipate that the Media Bureau would issue a Public Notice seeking comment on each such request before issuing a decision. *See Media Bureau Seeks Comment on USA Network's Petition for Limited Waiver of Video Description Requirements*, MB Docket No. 11-43, Public Notice, DA 19-563 (June 13, 2019).

CONCLUSION

USA's limited waiver request is unopposed in the record, has earned the support of advocates for the blind and visually impaired, and would serve the public interest. The Commission should grant the request promptly, consistent with the views expressed above. NBCUniversal appreciates this opportunity to comment, as well as the collaboration and support that advocates for viewers with disabilities have offered throughout the process of developing this proposal.

Respectfully submitted,

NBCUNIVERSAL, LLC

/s/ Angela Y. Ball

Margaret L. Tobey
Senior Vice President, Regulatory Affairs
Angela Y. Ball
Senior Counsel, Regulatory Affairs
NBCUniversal
300 New Jersey Ave., N.W.
Washington, D.C. 20001
(202) 524-6401
(202) 524-6413

Its Attorneys

July 26, 2019