

Furthermore, including HBO within the scope of the rules threatens its ability to offer the Spanish language audio service over the Secondary Audio Program (“SAP”) channel that serves an important cultural and community need.^{4/} On or before November 13, 2000, comments were submitted in response to HBO’s petition and various other petitions filed in this proceeding. Pursuant to Section 1.429 (g) of the Commission’s rules,^{5/} HBO files these reply comments to respond to and highlight some of the points made by other parties.

Of the 331 comments filed, not one specifically opposed the HBO Petition. Of the six parties that specifically mentioned HBO’s request, two pointed out that they had no objection,^{6/} and four expressly supported its adoption.^{7/} WGBH, a leading advocate for video description requirements throughout this proceeding indicated that it “agree[d] with HBO’s argument that using the measure of audience share was not likely the Commission’s intention and the Commission should grant HBO’s request to clarify its rules to state explicitly that ‘audience reach’ is the preferred measure to determine a covered entity.”^{8/} LULAC emphasized the “inconsistency between the Commission’s intent and the Commission’s action will affect

“Approximately 85 percent of the programming of HBO, the Movie Channel, and Showtime, and 50 percent of the programming of Encore, contain Spanish audio. We do not expect these networks to be among the top five nonbroadcast networks subject to our rules.”

Id. n.103 (internal citations omitted).

^{4/} HBO Petition at 4-5; LULAC Comments at 2-3.

^{5/} 47 C.F.R. § 1.429 (g).

^{6/} NVTAC Comments at 4 (“The Coalition has no objection to adjusting the rules so as to make clear that HBO is exempt based on the audience reach criterion”); AFB Comments at 2 (“AFB does not object to a rule modification which would clarify that HBO is exempt based on its assertion that change in terminology from the notice of proposed rulemaking to the report and order inadvertently placed it within the definition of a covered entity ranking among the top five cable networks”).

^{7/} WGBH Comments at 3 (noting that a “legitimate concern has been expressed by Home Box Office in its Petition for Clarification or Partial Reconsideration”); A&E Networks Comments at 8-12 (arguing that the video description rules violate HBO’s First Amendment rights); LULAC Comments at 4-5 (urging the Commission “not to deprive the large Spanish-speaking community of a resource they enjoy and use”); National Council of La Raza Comments at 1-3 (supporting the HBO Petition in order to “protect and facilitate the use of Spanish language audio over the SAP channel”).

^{8/} WGBH Comments at 3.

Spanish speaking viewers adversely” and urged that it be “corrected.”^{9/} The National Council of La Raza advocated that, “[b]ecause of the extensive Spanish language audio that HBO provides (approximately 94 percent of HBO’s prime time schedule), the Commission should revise its rules during this reconsideration process.”^{10/}

Some difference was expressed as to how to exempt HBO from the scope of the rules.^{11/} In its Petition for Clarification or Partial Reconsideration, HBO suggested three potential methods as to how the Commission could exempt HBO and protect its Spanish language audio service.^{12/} HBO takes no position as to the best method for the Commission to take because HBO believes that each would have the same practical effect of exempting only HBO from the requirements of the rules.^{13/} HBO wants to emphasize, however, its commitment to providing Spanish language audio over the SAP channel. HBO believes this service has such a high demand because it serves important cultural and community needs.

Therefore, HBO urges the Commission to adopt its Petition for Clarification of Partial Reconsideration in some form so that it can continue to provide this important service. As to this

^{9/} LULAC Comments at 4.

^{10/} National Council of La Raza Comments at 2.

^{11/} WGBH, NVTAC, and AFB all expressed reservations about granting an exemption that would be too broad. WGBH and AFB were concerned with exempting all networks with extensive Spanish language audio. WGBH Comments at 4; AFB Comments at 4. NVTAC shared this concern, and was also not convinced that premium channels should be excluded categorically. NTVAC Comments at 4. These concerns, however, may be moot because HBO would be the sole entity affected by the approval of any of the three alternative relief proposals in the HBO Petition.

^{12/} The three proposed methods were: (1) changing the definition of nonbroadcast networks covered by the rule to be “one of the top five national *non-premium* nonbroadcast networks, as defined by an average of the national audience share during prime time as determined by Nielsen Media Research, Inc. for the time period October 1999-September 2000”; (2) combining the “50 percent of MVPD household” test articulated in the *Notice of Proposed Rulemaking* with the top five nonbroadcast networks standard of the *Order*; or (3) exempting from the rules those networks that currently transmit a high percentage (such as 65 percent or more) of their prime time schedules with Spanish language audio using the SAP channel. HBO Petition at 6-7.

^{13/} Under all three proposed methods, HBO would be the only network currently within the scope of the rules to receive regulatory relief. This is appropriate, because of those networks only HBO currently provides extensive Spanish language programming and only HBO was expressly identified as a network whose practices the Commission did not mean to change.

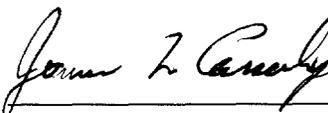
issue, HBO respectfully suggests that the Commission can and should act without delay. Any such delay would simply cost significant resources and cause confusion among Spanish-speaking viewers as HBO would have to plan to comply with the rule even though it may ultimately be exempted. There is no dispute that the inclusion of HBO within the rule as adopted was in error, and there is no reason for prolonging the uncertainty to which HBO and its Spanish-language viewers are currently subject.

CONCLUSION

For the forgoing reasons, HBO respectfully requests the Commission grant HBO's Petition for Clarification or Partial Reconsideration and amend the rules to avoid imposing video description requirements on HBO.

Respectfully submitted,

**HOME BOX OFFICE, a Division of
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CERTIFICATE OF SERVICE

The undersigned, Jeanette Jones, a secretary with the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., hereby certifies that this 22nd day of November, 2000, I have caused a true and correct copy of the foregoing **Reply to Responses to Petition for Clarification or Partial Reconsideration** of Home Box Office to be served via hand delivery or first-class mail:

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