

**REPLY COMMENTS OF THE  
AMERICAN FOUNDATION FOR THE BLIND**

**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	)	

**Prepared by:  
Mark Richert, Esq.  
Director, Public Policy  
American Foundation for the Blind  
1660 L St., N.W., Ste. 513  
Washington, DC 20036  
Ph: (202) 469-6833  
Email: [MRichert@afb.net](mailto:MRichert@afb.net)  
May 26, 2011**

The American Foundation for the Blind (AFB) is pleased to offer these brief reply comments concerning the above-captioned rulemaking. After literally decades of advocacy on the part of people with vision loss whom today number well over 25,000,000 adult Americans, individuals who are blind or visually impaired are finally going to be provided meaningful access to television and cable programming. Sadly, the story line of the historic saga to secure video description includes episodes of excuse making, foot dragging, misinformation, and out-and-out warfare through litigation by the broadcast, motion picture, and cable industries. As the cause has evolved, however, discrete actors within these industries have also voluntarily assumed some responsibility for the provision of video description and, most recently with the enactment of the Twenty-First Century Communications and Video Accessibility Act (CVAA), negotiated extensively in good faith with the disability community to craft clear legal requirements which, when fully and properly implemented, will benefit millions of viewers experiencing significant vision loss.

In general, we are pleased to express our strong support for the commentary during the initial comment period for this docket offered by our colleagues from the American

Council of the Blind and especially from the WGBH National Center for Accessible Media. These comments are an accurate reflection of our views with respect to the array of specific topics about which the Commission seeks input in the NPRM. We would like to raise a few points to supplement the comment of our colleagues and to respond in broad brush fashion to some industry comment as well.

First, some industry comments urge the Commission to draw out the timeline for implementation of the reinstated video description rules arguing that even more time is needed to ramp up to compliance. Some of these entities also urge the Commission to countenance delays through a variety of waiver and exemption processes. The record for this docket needs to include two responses. First, it is simply not to be believed that additional time is needed to comply with the upcoming reinstatement of the description requirements. The truth is that the push for video description has been a long and well known effort. The Commission is not now proposing rules about which there is not a substantial body of technical, economic, demographic, and other data to inform compliance. Even if we ignore the decades of advocacy, negotiation, various legislative vehicles, previous Commission rulemaking a decade ago, and even highly publicized litigation to overturn such modest rules, the signing into law on October 8, 2010, of an unambiguous expectation that description is to be provided should be all the notice necessary. Putting it another way, setting the January 1, 2012 start date for the description regulations will, on top of decades of both advocacy for and experience with the provision of description, afford effected entities with an additional fifteen months to do the modest gearing up that some may have to do to be prepared to offer description. This having been said, we recognize that sometimes unforeseen practical circumstances can arise that thwart even the best of good intentions. We would therefore urge the Commission to only entertain calls for additional time to comply that thoroughly document both the specific barriers experienced by a given entity and the timeline and concrete measures that the entity intends to observe and undertake to overcome such barriers. Any such calls should be met with nothing more than a three-month allowance of additional time beyond which the effected entity will be held strictly accountable for the completion of the logistical, technical or other matters that the entity needs to resolve.

Secondly, we urge the Commission not to shy away from the exercise of the Commission's clear ancillary jurisdiction to supplement the letter of the new law and to ensure the new law's effectiveness. For example, while the CVAA speaks in terms of the major national broadcasters and the top five non-broadcast networks, there are many instances in which the provision of video description currently does and should occur in the noncommercial video programming context. In particular, we want to ensure that public broadcasting will continue to fill its unquestionable role as a premier provider of video described culturally significant, children's, educational and other programming. In these tenuous economic times, we fear that investment in description of programming in the noncommercial context may be at risk, and we urge the Commission to exercise ancillary jurisdiction to ensure that such programming be expected, to the maximum extent legally appropriate, to serve the public interest through the continued provision of quality video description. Indeed, the primary focus of the CVAA's mandates is to ensure the availability of the most popular programming with description. While programming

offered by PBS is frequently well known and popular, almost by definition, PBS is categorically unable to compete with commercial broadcast networks. Yet, the PBS commitment to video description has consistently put commercial networks to shame which have presumptively deeper pockets to voluntarily offer described programming. Nevertheless, we believe the Commission's ancillary jurisdiction should be exercised to further the public interest in accessible programming which, though it may lack overall market popularity, is offered as a public service.

We also believe that it may be appropriate for the Commission to undertake an analysis of the role of video programming which, though initially developed for a commercial purpose, may be repurposed for educational use. Putting it differently, publicly funded elementary, secondary, and post-secondary schools have obligations under federal law to ensure the accessibility of both traditional and multimedia materials required for use by students. We urge the Commission to consider ways in which video programming otherwise within the Commission's jurisdiction should be expected to be accompanied with description when such programming makes its way to the classroom. Moreover, the use of low power broadcast, cable, or other delivery systems within the Commission's reach should also be conditioned on the provision of video description as a public service when such systems are specifically employed in the educational context. Surely the Commission's ancillary jurisdiction gives it authority to protect the ability of children, youth, and young adults with vision loss to receive an education on terms of equality with other students when the actual or virtual airwaves are involved. Particularly given Congress's grant of authority to the Commission in the CVAA to undertake a variety of inquiries concerning video description, we are persuaded that the Commission has broad latitude in exploring and proposing a host of video description-related expectations in the future.

Finally, we offer a few comments concerning the identification of the top five non-broadcast networks. Our colleagues from the American Council of the Blind and WGBH have proposed that, once a given network has been shown to have achieved a top five ranking, such network's video description obligations should continue even if, subsequently, the network loses such status. We agree and again assert our belief that the Commission's ancillary jurisdiction provides the Commission the flexibility needed to apply the video description expectations in this way. The simple reality is that consumers of video programming are not nearly as interested in this or that network as they are in specific programming offered by such networks. We would therefore urge the Commission to preserve the continuity of described programming's availability by maintaining the application of description obligations to any network once it achieves "top five" status. Indeed, we believe the plain language of the newly created section 713(f)(2)(B) permits the Commission to make modifications to the reinstated Report and Order along these lines. Section 713(f)(2)(B) Provides that, "The Commission shall update the list of the top 25 designated market areas, the list of the top 5 national non-broadcast networks that have at least 50 hours per quarter of prime time programming that is not exempt under this paragraph, and the beginning calendar quarter for which compliance shall be calculated." This provision does not speak in terms of the ending calendar quarter for which compliance shall be calculated. We believe the intent of

Congress was to ensure that the most popular network programming would include video description. Further, we also believe that Congress did not construct the Commission's regulatory authority in this area to be based solely upon frequently fluctuating market conditions. All parties, consumers, networks, and the Commission, must be able to rely upon the consistent application of rules over an extended period of time and not merely within intervals of a calendar quarter or even a year or two. In any event, while we assert that section 713(f)(2)(B) affords the Commission the authority to set up, as it were, a one-way ratchet, we also urge the Commission to apply its ancillary jurisdiction so as to ensure that viewers with vision loss can enjoy consistent access both to the most popular video programming and to programming that is offered in the public interest irrespective of market popularity.