

**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 )

**REPLY COMMENTS OF  
NEWS CORPORATION AND FOX NEWS NETWORK, LLC**

News Corporation (“News Corp.”) and Fox News Network, LLC (“Fox News”) respectfully submit these reply comments in response to the Commission’s Notice of Proposed Rulemaking concerning new video description rules.<sup>1</sup> As News Corp. and Fox News explained to the Commission via a letter submitted as part of the opening round of comments in this proceeding, Fox News qualifies for exclusion from the rules because it does not provide at least 50 hours per quarter of non-exempt (*i.e.*, non-live or non-near live) prime-time programming (as those terms have been defined in the *Notice*).<sup>2</sup> Given that ESPN, Inc. also filed comments notifying the Commission of an exclusion, which could result in Fox News otherwise being deemed to be subject to the new rules, News Corp. and Fox News hereby provide the Commission with the additional information sought in the *Notice* with respect to entities that believe they should be excluded from the “top five” national non-broadcast networks.

In the *Notice*, the Commission observed that it is statutorily directed to impose video description obligations on multichannel video programming distributors. The FCC

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<sup>1</sup> *In re Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43 (rel. Mar. 3, 2011) (the “*Notice*”).

<sup>2</sup> *See* Letter from Antoinette Cook Bush and Jared S. Sher to Marlene H. Dortch, Secretary, FCC, MB Docket No. 11-43 (dated April 28, 2011) (the “*Letter*”).

proposed to implement this directive by requiring the “top five”-ranked national non-broadcast networks to video describe certain programming. The Notice recognized, however, that Congress intended to exempt from the video description rules any non-broadcast network that provides a large amount of live or near live programming. Specifically, the Commission tentatively concluded that it should “exclude from the top five any non-broadcast network that does not provide, on average, at least 50 hours per quarter of prime-time non-exempt programming, i.e., programming that is not live or near-live.”<sup>3</sup>

The *Notice* indicated that any non-broadcast network that “believes it should be excluded from the top five due to an insufficient amount of nonexempt programming should provide notice in the Record before the close of the Comment period.”<sup>4</sup> News Corp. and Fox News submitted the *Letter* for this purpose and now provide additional supporting information to confirm that Fox News qualifies for exclusion from the rules.

Fox News is a 24 hour/day, 7 days/week cable- and satellite-delivered news network that reaches more than 98 million U.S. households. Fox News’ programming consists of a mix of newscasts, analysis and commentary featuring a variety of news anchors, correspondents, program hosts, and contributors who appear throughout the day. The overwhelming majority of Fox News’ daily weekday programming (17 hours per day, including the entire prime-time line-up) is live or near live,<sup>5</sup> originating either from the channel’s New York headquarters, its studios in Washington, D.C., or its correspondents around the world.

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<sup>3</sup> *Notice* at ¶ 12.

<sup>4</sup> *Id.*

<sup>5</sup> References to near live programming on Fox News are based on the definition proposed in the *Notice*. See *Notice* at ¶ 21 (defining near live as “programming performed and recorded less than 24 hours prior to the time it is first aired”).

As verified by the Declaration of Bill Shine, Fox News' Executive Vice President for Programming, attached hereto as Exhibit No. 1, Fox News airs live or near live content from at least 6 a.m. to 11 p.m. Monday through Friday.<sup>6</sup> Moreover, Fox News airs live or near live programming from at least 8 p.m. to 11 p.m. on Saturdays and for at least 1 (and sometimes more) of the 4 hours of prime-time on Sundays.<sup>7</sup> When circumstances warrant, such as for breaking news events, Fox News provides additional live coverage. Since its weekday prime-time programming line-up consists entirely of live or near live programming, and given that live or near live programming comprises a substantial portion of its weekend prime-time programming, Fox News does not provide, on average, at least 50 hours per quarter of non-exempt prime-time programming. In particular, even if Fox News aired three hours of non-exempt prime-time programming every Sunday per calendar quarter, it still would not reach the 50-hour threshold contemplated by the *Notice*.

Fox News' programming schedule varies very little from week to week. In fact, its weekday programming schedule has not changed (absent breaking news events) during the last 11 months. As a result, Fox News has maintained a single weekday programming schedule since July 2010 (and it has no current plans to change this schedule). A copy of the current weekday schedule, which shows that the network presents live or near live programming throughout prime-time, is attached as Exhibit No. 2. Also attached as a representative sample is Fox News' weekend programming schedule for the most recent weekend (May 21-22, 2011), which indicates that the network aired live or near live programming for 5 of the available 7

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<sup>6</sup> See Declaration of Bill Shine, Executive Vice President for Programming, Fox News Network, attached hereto as Exhibit No. 1.

<sup>7</sup> See *id.*

prime-time hours.<sup>8</sup> Collectively, these schedules corroborate the information contained in Mr. Shine's Declaration – namely, that Fox News does not air an average of at least 50 hours of non-exempt prime-time programming per quarter.<sup>9</sup>

In sum, because it airs predominantly live or near live programming during prime-time, and does not provide an average of 50 hours of non-exempt programming per quarter, Fox News qualifies for exclusion from the proposed new video description rules.

Respectfully submitted,

NEWS CORPORATION  
FOX NEWS NETWORK, LLC

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Their Attorneys

May 27, 2011

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<sup>8</sup> Because Fox News airs such a small amount of prime-time programming that is not live or near live, it is not attempting to re-create for submission in the record schedules of its programming for additional weekday time periods (nor is it submitting additional weekend schedules). Should the Commission desire further information, or have any questions about Fox News' programming, Fox News would be happy to respond.

<sup>9</sup> The times identified here and in Mr. Shine's Declaration are for the Eastern time zone. Because Fox News' programming is transmitted simultaneously in all time zones, some pre-recorded programming that airs after prime-time has ended on the East Coast appears during prime-time on the West Coast. In calculating its quantity of live and near live programming, Fox News treats as exempt any pre-recorded program that airs during prime-time on the West Coast if the program is a repeat of a show that airs live (or was recorded) earlier in the same day. *See Notice* at ¶ 21 (proposing to exempt "near live" programming). For example, using this definition, Fox News would consider a repeat of the program *Geraldo At Large*, which aired from 10 p.m. to 11 p.m. on the West Coast on Saturday, May 21, 2011, as an exempt near live program because a live version of the same program aired from 7 p.m. to 8 p.m. on the West Coast that same day. (Exhibit No. 2 reflects that *Geraldo At Large* aired live from 10 p.m. to 11 p.m. on May 21, 2011, since the schedule reflects East Coast times.)

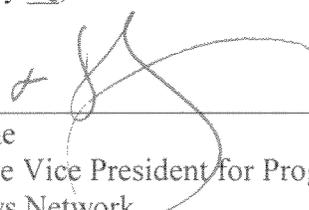
**EXHIBIT NO. 1**

## DECLARATION

I, Bill Shine, hereby state as follows:

1. I am Executive Vice President for Programming, Fox News Network (“Fox News”).
2. I submit this Declaration in support of the Reply Comments of News Corporation and Fox News, dated May 27, 2011, which respond to the Notice of Proposed Rulemaking in MB Docket No. 11-43 (the “*Notice*”).
3. In my capacity as Executive Vice President for Programming, I am familiar with the weekday and weekend programming line-ups for Fox News.
4. Fox News distributes a single programming feed to all households in the United States, without regard to time zone. Thus, for example, Fox News programming that airs from 8 p.m. to 11 p.m. on the East Coast airs simultaneously from 5 p.m. to 8 p.m. on the West Coast.
5. Fox News airs live or near live programming on weekdays at least from 6 a.m. to 11 p.m. Eastern time. Fox News airs live or near live programming on Saturdays at least from 8 p.m. to 11 p.m. Eastern time. Fox News airs live or near live programming on Sundays at least from 7 p.m. to 8 p.m. Eastern time. As circumstances warrant, Fox News may air additional live programming from time to time. Fox News has maintained this program schedule since at least July 2010 and has no current plans to change it.
6. Fox News does not, in any calendar quarter, air at least 50 hours of non-exempt prime-time programming. That is, in no quarter does Fox News’ prime-time line-up consist of at least 50 hours of programming that is not “live” or “near live” as those terms have been defined in the *Notice*.

I declare under penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct. Executed on May 25, 2011.

  
\_\_\_\_\_  
Bill Shine  
Executive Vice President for Programming  
Fox News Network  
1211 Avenue of the Americas  
New York, NY 10036

**EXHIBIT NO. 2**

# FOX NEWS

## Weekday Schedule (As of 7/10)

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| <b>Daytime Programming</b> |  |
|----------------------------|--|
| 6:00-9:00 a.m.             | <b>FOX &amp; Friends</b><br>Steve Doocy, Gretchen Carlson & Brian Kilmeade |
| 9:00-10:00 a.m.            | <b>America's Newsroom</b><br>Bill Hemmer & Martha MacCallum                |
| 10:00 -11:00 a.m.          | <b>America's Newsroom</b><br>Bill Hemmer & Martha MacCallum                |
| 11:00-12:00 p.m.           | <b>Happening Now</b><br>Hosts Jon Scott & Jenna Lee                        |
| 12:00-1:00 p.m.            | <b>Happening Now</b><br>Hosts Jon Scott & Jenna Lee                        |
| 1:00-2:00 p.m.             | <b>America Live with Megyn Kelly</b>                                       |
| 2:00-3:00 p.m.             | <b>America Live with Megyn Kelly</b>                                       |
| 3:00-4:00 p.m.             | <b>Studio B with Shepard Smith</b>   |

| <b>Evening Programming</b> |  |
|----------------------------|--|
| 4:00-5:00 p.m.             | <b>Your World with Neil Cavuto</b>           |
| 5:00-6:00 p.m.             | <b>Glenn Beck</b>                            |
| 6:00-7:00 p.m.             | <b>Special Report w/ Bret Baier</b>          |
| 7:00-8:00 p.m.             | <b>The FOX Report with Shepard Smith</b>     |
| 8:00-9:00 p.m.             | <b>The O'Reilly Factor</b>                   |
| 9:00-10:00 p.m.            | <b>Hannity</b>                               |
| 10:00-11:00 p.m.           | <b>On The Record with Greta Van Susteren</b> |
| 11:00 p.m.-12:00 a.m.      | O'Reilly Factor                              |
| 12:00-1:00 a.m.            | Hannity                                      |
| 1:00-2:00 a.m.             | On The Record w/Greta Van Susteren           |
| 2:00-3:00 a.m.             | Glenn Beck                                   |
| 3:00-4:00 a.m.             | Red Eye                                      |



# FOX NEWS CHANNEL PROGRAM SCHEDULE

Weekend of May 21 & 22, 2011

**Saturday**  
5/21/2011

**Sunday**  
5/22/2011

|              |  |
|--------------|--|
| 6:00-7:00a   | <p align="center"><b>Fox &amp; Friends Saturday</b><br/>host David Briggs, Ainsley Earhardt &amp; Clayton Morris</p> |
| 7:00-8:00a   |  |
| 8:00-9:00a   |  |
| 9:00-10:00a  |  |
| 10:00-11:00a | <p align="center"><b>Bulls &amp; Bears - (tape)</b><br/><b>Cavuto on Business - (tape)</b></p>                       |
| 11:00-12N    | <p align="center"><b>Forbes on Fox - (tape)</b><br/><b>Cashin' In - (tape)</b></p>                                   |
| 12N-1:00p    | <p align="center"><b>America's News HQ (DC)</b><br/>Host Uma Pemmaraju</p>   |
| 1:00-2:00p   | <p align="center"><b>America's News HQ</b><br/>Hosts Kelly Wright &amp; Jamie Colby</p>                              |
| 2:00-3:00p   | <p align="center"><b>The Journal Editorial Report</b><br/><b>Fox News Watch</b></p>                                  |
| 3:00-4:00p   | <p align="center"><b>FNR: Secrets of 9/11</b><br/>host Bill Hemmer</p>   |
| 4:00-5:00p   | <p align="center"><b>America's News HQ</b><br/>Hosts Gregg Jarrett &amp; Heather Childers</p>                        |
| 5:00-6:00p   |  |
| 6:00-7:00p   | <p align="center"><b>America's News HQ</b><br/>Host Rick Folbaum &amp; Arthel Neville</p>                            |
| 7:00-8:00p   | <p align="center"><b>Fox Report Saturday</b><br/>Host Harris Faulkner</p>  |
| 8:00-9:00p   | <p align="center"><b>Huckabee</b><br/>with Mike Huckabee</p>   |
| 9:00-10:00p  | <p align="center"><b>Justice with Judge Jeanine</b><br/>with Judge Jeanine Pirro</p>                                 |
| 10:00-11:00p | <p align="center"><b>Geraldo at Large</b><br/>with Geraldo Rivera</p>  |
| 11:00-12:00a | <p align="center">The Journal Editorial Report<br/>Fox News Watch</p>  |
| 12:00-1:00a  | <p align="center">Justice with Judge Jeanine<br/>with Jeanine Pirro</p>  |
| 1:00-2:00a   | <p align="center">Geraldo at Large<br/>with Geraldo Rivera</p>   |
| 2:00-3:00a   | <p align="center">RedEye<br/>with Greg Gutfeld</p>   |
| 3:00-4:00a   | <p align="center">From the Fox Files IV</p>  |
| 4:00-5:00a   | <p align="center">From the Fox Files II</p>  |
| 5:00-6:00a   | <p align="center">FNR: Secrets of 9/11<br/>host Bill Hemmer</p>  |

|              |  |
|--------------|--|
| 6:00-7:00a   | <p align="center"><b>Fox &amp; Friends Sunday</b><br/>host David Briggs, Molly Line &amp; Clayton Morris</p> |
| 7:00-8:00a   |  |
| 8:00-9:00a   |  |
| 9:00-10:00a  |  |
| 10:00-11:00a | <p align="center"><b>America's News HQ</b><br/><b>Housecall with Dr. Isadore Rosenfeld</b></p>               |
| 11:00-12N    | <p align="center"><b>America's News HQ</b><br/>Hosts Eric Shawn &amp; Jamie Colby</p>                        |
| 12N-1:00p    | <p align="center"><b>America's News HQ (DC)</b><br/>Host John Roberts</p>                                    |
| 1:00-2:00p   | <p align="center">Fox News Sunday<br/>with Chris Wallace (repeat)</p>  |
| 2:00-3:00p   |  |
| 3:00-4:00p   | <p align="center">FNR: Secrets of 9/11<br/>host Bill Hemmer</p>  |
| 4:00-5:00p   | <p align="center"><b>America's News HQ</b><br/>Hosts Gregg Jarrett &amp; Heather Childers</p>                |
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