

description rules that differ from the enforcement procedures for our closed captioning rules.<sup>124</sup> They contend that complaints should be submitted to a programming distributor before being filed with the Commission.<sup>125</sup> According to NCTA, "requiring the complainant to go to the video programming distributor first will allow the parties to more quickly and satisfactorily resolve the dispute."<sup>126</sup> NAB argues that there is no basis on which to adopt a different complaint procedure for the enforcement of video description rules than for closed captioning because "the record does not indicate that the existing closed captioning rules have been ineffective or inadequate."<sup>127</sup> AFB and NTVAC oppose the petitioners' request, arguing that obtaining information to contact programming distributors is too difficult for blind and visually impaired viewers.<sup>128</sup> NTVAC contends that "[i]t would be simpler and far more efficient for visually impaired viewers to have a single point of contact."<sup>129</sup>

41. We believe that viewers should try to resolve disputes with video programming distributors prior to filing a formal complaint with the Commission, as suggested by NAB and NCTA. We therefore amend our rules to require complainants to certify in formal complaints to the Commission, and distributors to certify in their answers, that they have attempted in good faith to settle disputes prior to filing formal complaints and answers with the Commission. We note that this result is consistent with our recently revised rules for filing formal complaints against common carriers.<sup>130</sup> Prior to or instead of filing a formal complaint, however, viewers may contact CIB either to attempt to resolve disputes by filing an informal complaint, or to obtain information about how to contact the programming distributor. We believe that these procedures will provide parties the opportunity to resolve disputes quickly and efficiently.

## 2. Clarification of "Technical Errors"

42. Our video description rules provide that, in evaluating whether a video programming distributor has complied with the requirement to provide video programming with video description, we will consider a showing that any lack of video description was *de minimis* and reasonable under the

<sup>124</sup> NAB Petition at 4-5; NCTA Petition at 12-14.

<sup>125</sup> NAB Petition at 5; NCTA Petition at 12-13.

<sup>126</sup> NCTA Petition at 13-14.

<sup>127</sup> NAB Petition at 5.

<sup>128</sup> AFB Response at 3; NTVAC Opposition at 9.

<sup>129</sup> NTVAC Opposition at 9.

<sup>130</sup> Amendment of Rules to be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, *First Report and Order*, 12 FCC Rcd 22497 (1997). We also followed these rules when we adopted rules to implement section 255 of the Act, which requires manufacturers of telecommunications equipment, and providers of telecommunications services, to make such equipment and provide such services in a manner that is accessible to persons with disabilities. See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, WT Docket No. 96-198, *Report and Order and Further Notice of Inquiry*, FCC 99-181 (rel. Sept. 29, 1999).

circumstances.<sup>131</sup> NAB asks the Commission to clarify that technical errors beyond an individual station's control will fall under the "reasonable circumstances" provision.<sup>132</sup> NAB explains, for example, that "if a station is ready and able to pass through to viewers described programming received from its network, but, due to technical difficulties beyond the station's control, the described programming is not properly received, then that 'lack of video description' should be deemed 'reasonable under the circumstances.'"<sup>133</sup> Stating that the Commission rarely faults a broadcaster or cablecaster for a temporary rule violation, NTVAC argues that a technical error should not be construed to include the lack of equipment to provide video descriptions, but that a technical error is "a temporary difficulty" that is "a short-term failure of equipment."<sup>134</sup>

43. We clarify that to be classified as a technical error, the problem must be beyond a station's control. In addition, the problem must be *de minimis* and reasonable under the circumstances. We will examine carefully, however, any showings ascribed to technical error to ensure that those instances are only a temporary difficulty, such as that caused by short-term failure of equipment, and not by a station unreasonably failing to pass-through the described programming supplied by its network.

#### F. Jurisdiction

44. In the *Report and Order*, we held that the Commission has the authority to adopt video description rules. We explained that sections 1, 2(a), 4(i), and 303(r) of the Act,<sup>135</sup> taken together, direct and empower the Commission to make available to all Americans a radio and wire communication service, and to make regulations to carry out this mandate, that are consistent with the public interest and not inconsistent with other provisions of the Act or other law.<sup>136</sup> In reaching this decision, we considered but rejected the arguments of commenters that video description rules would be inconsistent with other law, namely sections 624(f) and 713(f) of the Act,<sup>137</sup> as well as the First Amendment, and might also interfere with the rights of copyright holders.<sup>138</sup>

45. Petitioners raise the same arguments raised before in this proceeding. For example, petitioners suggest that analysis of the issue of our authority to adopt video description rules begins and ends with section 713(f) of the Act,<sup>139</sup> which instructed the Commission to "commence an inquiry . . . and

<sup>131</sup> *Video Description Report and Order*, 15 FCC Rcd at 15244, ¶ 33, and at App. B (setting forth the standards for assessing compliance with the video description rules to be codified at 47 C.F.R. § 79.3(c)(4)).

<sup>132</sup> NAB Petition at 5-6.

<sup>133</sup> NAB Petition at 5-6.

<sup>134</sup> NTVAC Opposition at 5.

<sup>135</sup> These sections are codified at, respectively, 47 U.S.C. §§ 151, 152(a), 154(i), 303(r).

<sup>136</sup> *Video Description Report and Order*, 15 FCC Rcd at 15251-52, ¶¶ 54-55.

<sup>137</sup> These sections are codified at, respectively, 47 U.S.C. §§ 544(f), 613(f).

<sup>138</sup> *Video Description Report and Order*, 15 FCC Rcd at 15252-56, ¶¶ 56-66.

<sup>139</sup> DIRECTV Petition at 4-5; EchoStar Petition at 2-3; NAB Petition at 8-9; NCTA Petition at 2-3; see also A&E Comments at 4-6.

report to Congress” on video description, but not to make rules. Against the backdrop of section 713, petitioners contend that the Commission cannot rely on other provisions of the Act to make rules.<sup>140</sup> Petitioners also suggest that our rules are content-based, violating the First Amendment<sup>141</sup> and, as applied to cable operators, section 624(f) of the Act,<sup>142</sup> which does not permit the government to “impose requirements regarding the provision or content of cable services, except as expressly provided in [Title VI of the Act.]” Petitioners further suggest that our rules interfere with the rights of copyright holders.<sup>143</sup>

46. We addressed most of the statutory arguments petitioners raised at the *Report and Order* stage, and they have offered no reason for us to reconsider our conclusion. As discussed in detail in the *Report and Order*, sections 1.2(a), 4(i), and 303(r) make clear that the Commission’s fundamental purpose is to make available so far as possible to all Americans a radio and wire communication service, and it has the power to make rules to carry out this mandate that are consistent with the public interest, and not inconsistent with other law. Our video description rules further the public interest because they are designed to enhance the accessibility of video programming to persons with visual disabilities, but at the same time not impose an undue burden on the video programming production and distribution industries. Our video description rules are not inconsistent with sections 624(f) and 713(f) of the Act, the First Amendment, or copyright law. Our rules are not inconsistent with section 713(f), because that section neither authorizes nor prohibits a rulemaking on video description. Our rules are not inconsistent with section 624(f), because they do not require cable operators to carry any particular programming. Our rules are not inconsistent with the First Amendment, because they are content-neutral regulations, and satisfy the applicable test of serving an important government interest without burdening substantially more speech than necessary. Our rules are not inconsistent with copyright law because they do not violate any copyright holder’s rights.<sup>144</sup> In sum, as we explained in greater detail in the *Report and Order*, we believe that our video description rules further the very purpose for which the Commission was created – “to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service”<sup>145</sup> – and are within our power to

<sup>140</sup> DIRECTV Petition at 5; DIRECTV Reply at 7; EchoStar Petition at 7; MPAA Petition at 5-6; NAB Petition at 9-10; see also A&E Comments at 6-7.

<sup>141</sup> DIRECTV Petition at 7; DIRECTV Reply at 8; MPAA Petition at 7-8; see also A&E Comments at 8-12.

<sup>142</sup> NCTA Petition at 4-6.

<sup>143</sup> MPAA Reply at 2.

<sup>144</sup> We also reject EchoStar’s new argument that our rules are inconsistent with section 255 of the Act. EchoStar Petition at 7-8; EchoStar Reply at 1-2. Section 255 requires manufacturers of telecommunications equipment, and providers of telecommunications services, to make such equipment and services accessible to persons with disabilities, but only “if readily achievable.” 47 U.S.C. § 255. EchoStar suggests that our video description rules do not have a similar contingency. EchoStar Petition at 7-8; EchoStar Reply at 1-2. EchoStar also argues that the discrepancy between the “readily achievable” standard and our video description rules further suggests that we do not have authority to adopt such rules – Congress did not qualify the provision of video description because there was no access obligation to qualify in the first place. EchoStar overlooks, however, the fact that our video description rules contain procedures for waiver if compliance would create an undue burden. See 47 C.F.R. § 79.3(d).

<sup>145</sup> 47 U.S.C. § 151.

adopt because they are "not inconsistent with [the] Act"<sup>146</sup> and serve the "public convenience, interest, and necessity" and are "not inconsistent with law."<sup>147</sup>

### III. CONCLUSION

47. In this *Order on Reconsideration*, we reaffirm and modify rules to more precisely balance the interests between providing a benefit to a great number of visually impaired Americans without imposing an undue burden on the programming production and distribution industries. As we stated in the *Report and Order*, however, as industry and the public gain greater experience with video description, we hope that an increasing number of broadcast stations and MVPDs will provide video description, and those that do so will provide an increasing number of hours of video described programming.

### IV. PROCEDURAL MATTERS

48. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 403, and 405.

49. *Supplemental Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act (RFA),<sup>148</sup> the Commission has prepared a Supplemental Final Certification of the possible impact on small entities of the rules adopted in this *Memorandum Opinion and Order on Reconsideration*.<sup>149</sup> The Supplemental Final Certification is set forth in Appendix C.

### V. ORDERING CLAUSES

50. Accordingly, IT IS ORDERED that the petitions for reconsideration or clarification ARE GRANTED to the extent provided herein and otherwise ARE DENIED pursuant to Sections 1, 2(a), 4(i), 303(r), 307, 309, 310, 403, 405, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303(r), 307, 309, 310, 403, 405, 613, and Section 1.429(i) of the Commission's rules, 47 C.F.R. § 1.429(i).

51. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) & (j), 303(r), 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & (j), 303(r), 307, 308, 309, Part 79 of the Commission's rules, 47 C.F.R. Part 79, IS AMENDED as set forth in Appendix B.

52. IT IS FURTHER ORDERED that the rule amendments set forth in Appendix B that revise section 79.3 of the Commission's rules, 47 C.F.R. § 79.3, SHALL BECOME EFFECTIVE on April 1, 2002.

53. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order on*

<sup>146</sup> 47 U.S.C. § 154(i).

<sup>147</sup> 47 U.S.C. § 303(r).

<sup>148</sup> 5 U.S.C. § 601 *et seq.*

<sup>149</sup> 5 U.S.C. § 605(b).

*Reconsideration* in MM Docket No. 99-339, including the Supplemental Final Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

54. IT IS FURTHER ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**APPENDIX A****PETITIONS FOR RECONSIDERATION**

1. DIRECTV, Inc. (DIRECTV)
2. EchoStar Satellite Corporation (EchoStar)
3. Home Box Office (HBO)
4. Motion Picture Association of America, Inc. (MPAA)
5. National Association of Broadcasters (NAB)
6. National Cable Television Association (NCTA)
7. National Federation of the Blind (NFB)
8. Turner Broadcasting System, Inc. (TBS)

**COMMENTS IN SUPPORT OF THE PETITIONS**

1. A&E Television Networks (A&E)
2. League of United Latin American Citizens (LULAC)
3. National Council of La Raza (NCLR)

**OPPOSITIONS, PARTIAL OPPOSITIONS AND PARTIAL SUPPORT OF THE PETITIONS**

1. American Council of the Blind (ACB)
2. American Foundation for the Blind (AFB)
3. NCTA
4. National Television Video Access Coalition (NTVAC)
5. Media Access Group at the WGBH Educational Foundation (WGBH)

**REPLIES**

1. DIRECTV
2. EchoStar
3. HBO
4. MPAA

**APPENDIX B**  
**Rule Changes**

Part 79 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

**Part 79-CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING**

1. The authority citation for Part 79 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613

2. Section 79.3 is amended by
- (a) adding paragraph (a)(6);
  - (b) revising paragraphs (b)(2), (b)(3), (b)(4)(i), (b)(4)(ii);
  - (c) revising paragraphs (c)(2) and (c)(3);
  - (d) redesignating paragraph (c)(4) as paragraph (c)(5);
  - (e) adding new paragraph (c)(4);
  - (f) revising paragraph (d)(1);
  - (g) revising paragraphs (e)(1)(iv) and (e)(1)(v);
  - (h) adding paragraph (e)(1)(vi); and
  - (i) revising paragraph (e)(2).

The revisions read as follows:

**§ 79.3 Video description of video programming.**

\*\*\*\*\*

(a) \*\*\*

(6) Prime Time. The period from 8 to 11:00 p.m. Monday through Saturday, and 7 to 11:00 p.m. on Sunday local time, except that in the central time zone the relevant period shall be between the hours of 7 and 10:00 p.m. Monday through Saturday, and 6 and 10:00 p.m. on Sunday, and in the mountain time zone each station shall elect whether the period shall be 8 to 11:00 p.m. Monday through Saturday, and 7 to 11:00 p.m. on Sunday, or 7 to 10:00 p.m. Monday through Saturday, and 6 to 10:00 p.m. on Sunday.

(b) \*\*\*

(2) Television broadcast stations that are affiliated or otherwise associated with any television network, must pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description:

(3) Multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers, as of September 30, 2000, must provide 50 hours of video description per calendar quarter during prime time or on children's programming, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks, as determined by Nielsen Media Research, Inc., for the time period

October 1999-September 2000, that reach 50 percent or more of MVPD households; and

(4) \* \* \*

(i) must pass through video description on each broadcast station they carry, when the broadcast station provides video description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description; and

(ii) must pass through video description on each nonbroadcast network they carry, when the network provides video description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

(c) \* \* \*

(2) Programming with video description that has been previously counted by a broadcaster or MVPD toward its minimum requirement for any quarter may be counted one additional time toward that broadcaster's or MVPD's minimum requirement for the same or any one subsequent quarter.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with video description, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

(4) Once an MVPD as defined under paragraph (b)(3) of this section:

(i) has aired a particular program with video description on a broadcast station they carry, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description; or

(ii) has aired a particular program with video description on a nonbroadcast station they carry, it is required to include video description with all subsequent airings of that program on that same nonbroadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

\* \* \* \* \*

(d) \* \* \*

(1) A video programming provider may petition the Commission for a full or partial exemption from the video description requirements of this section, which the Commission may grant upon a finding that the requirements will result in an undue burden.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) the specific relief or satisfaction sought by the complainant;

(v) the complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability); and

(vi) a certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged.

(2) The Commission will promptly forward complaints satisfying the above requirements to the video programming distributor involved. The video programming distributor must respond to the complaint within a specified time, generally within 30 days. The Commission may authorize Commission staff either to shorten or lengthen the time required for responding to complaints in particular cases. The answer to a complaint must include a certification that the video programming distributor attempted in good faith to resolve the dispute with the complainant.

## APPENDIX C

**Supplemental Final Regulatory Flexibility Analysis Certification**  
*Memorandum Opinion and Order on Reconsideration*

The Regulatory Flexibility Act (RFA)<sup>150</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>151</sup> The *Notice of Proposed Rulemaking (Notice)* in this proceeding proposed rules to provide video description on video programming to ensure the accessibility of video programming to persons with visual impairments.<sup>152</sup> The *Report and Order* adopted rules requiring broadcasters and other video programming distributors to provide video description and to make emergency information more accessible to visually impaired viewers.<sup>153</sup>

In an abundance of caution, the Commission published an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice*.<sup>154</sup> even though the Commission was reasonably confident that the proposed rules would not have the requisite "significant economic impact" on a "substantial number of small entities." The IRFA sought written public comment on the proposed rules. No written comments were received on the IRFA, nor were any general comments received that raised concerns about the impact of the proposed rules on small entities. Because the Commission believed the rules adopted in the *Report and Order* would have a negligible effect on small businesses, the Commission published a Final Certification that the rules adopted in that order would not have a significant economic impact on a substantial number of small entities.<sup>155</sup>

The *Memorandum Opinion and Order on Reconsideration* amends certain rules adopted in the *Report and Order*. The Commission amends its rules to define the top five nonbroadcast networks as those that are ranked in the top five as defined by national audience share and that also reach 50 percent or more of MVPD households. The amended rules allow broadcast stations and MVPDs to count previously aired programming one time toward quarterly requirements. Once a broadcast station or MVPD subject to the video description rules has aired a particular program with video description, only subsequent airings of that program by that broadcast station or MVPD on the same network or channel must contain the video description. Under both this "subsequent airing" rule and the "pass-through" rule,

<sup>150</sup> The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 11- Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>151</sup> *See* 5 U.S.C. § 605(b).

<sup>152</sup> In the *Matter of Video Description of Video Programming, Report and Order*, MM Docket No. 99-339, *Notice of Proposed Rulemaking*, 14 FCC Rcd 19845 (1999) (*Notice*).

<sup>153</sup> In the *Matter of Video Description of Video Programming, Report and Order*, MM Docket No. 99-339, 15 FCC Rcd 15230 (2000) (*Report and Order*).

<sup>154</sup> *Notice*, 14 FCC Rcd at 19862-69.

<sup>155</sup> *Report and Order*, 15 FCC Rcd at 15265.

broadcast stations and MVPDs may now use the SAP channel to provide services other than video description, as long as those services, such as foreign language translations, are program-related. The rule amendments allow programming providers, in addition to programming distributors, to file waivers for exemptions. The rule amendments adopt a definition of "prime time" and clarify the definition of "technical error" for purposes of determining compliance with the rules. These amendments only affect large entities as discussed in the Final Certification included in the *Report and Order*.<sup>156</sup> No small entities will experience an economic impact as a result of these amendments.

Finally, under the rule amendments, consumers may bring informal complaints to the Commission at any time, but must include in a formal complaint to the Commission a certification that they have tried to resolve a dispute with the distributor prior to filing the complaint. In addition, distributors are required to make similar certifications in their answers. These amendments to the rules are created to attempt to resolve issues prior to filing a formal complaint. The Commission believes that requiring these certifications is necessary to assure a smooth process to address outstanding issues in a timely and efficient manner. The burden imposed by the inclusion of these certifications is nominal for both consumers and distributors because it will require no more than a single statement to be added to the initial formal complaint and its answer. These amendments will not have a significant economic impact on a substantial number of small entities.

The Commission therefore certifies, pursuant to the RFA, that the rule amendments adopted in the present *Memorandum Opinion and Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including a copy of this Supplemental Final Certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act.<sup>157</sup> In addition, the Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including a copy of this Supplemental Final Certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, a copy of the *Memorandum Opinion and Order on Reconsideration* and this Supplemental Final Certification will be published in the Federal Register.<sup>158</sup>

<sup>156</sup> *Report and Order*, 15 FCC Rcd at 15265.

<sup>157</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>158</sup> See 5 U.S.C. § 605(b).

**DISSENTING STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH****In the Matter of Implementation of Video Description of Video Programming,  
MM Docket No. 99-339, Memorandum Opinion and Order on Reconsideration**

I dissented from the original Report and Order's adoption of video description rules because I was unable to read the Communications Act as authorizing such regulations. *See* Statement of Commissioner Harold W. Furchtgott-Roth, Concurring in Part and Dissenting in Part, *In the Matter of Implementation of Video Description of Video Programming*, MM Docket No. 99-339, *Report and Order*, 15 FCC Rcd 15230 (2000). Accordingly, I agree with those commenters who seek reversal of that Order on grounds of lack of jurisdiction, *see supra* at ¶ 45, and I dissent from today's action to the contrary.

###

Federal Communications Commission

FCC 01-7

**DISSENTING STATEMENT OF COMMISSIONER MICHAEL K. POWELL**

In The Matter of Implementation of Video Description of Video Programming, MM Docket No. 99-339,  
*Memorandum Opinion and Order on Reconsideration*

Inasmuch as I share my colleagues' desire to improve access to communications services for the disability community, I cannot support the above-captioned *Order* concerning video description of video programming.

As I noted in my separate statement to the original *Order*, I thoroughly wish that I could support the expansive implementation of video description rules that the Majority is pursuing.<sup>1</sup> However, I continue to believe that Congress spoke to the video description issue in Section 713(f) of the Communications Act of 1934, and purposely limited our authority to studying the issue and reporting to Congress. Since Section F of this *Order* re-affirms the Majority's view that it can promulgate video description rules under its various ancillary jurisdiction provided, in large measure, by Sections 4(i) and 303(r) of the Communications Act, I dissent to this *Order*.

I personally cannot read the law conveniently, even for so worthy a constituency.

---

<sup>1</sup> To be clear, while I disagree with the Majority about its use of ancillary jurisdiction as a basis for this rulemaking generally, I continue to support that portion of the original *Order* that provides for emergency text information in audio form because I believe that the promotion of safety of life and property is within the scope of the specific authority provided by the Communications Act and the Commission's various rules. See *In The Matter of Implementation of Video Description of Video Programming*, MM Docket No. 99-339, FCC 00-259, *Report and Order* (July 21, 2000) (Separate Statement of Michael K. Powell, Commissioner, Federal Communications Commission) [available on the World Wide Web at <http://www.fcc.gov/commissioners/powell/>].

Federal Communications Commission

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Video Description of ) MM Docket No. 99-339  
Video Programming )

ERRATUM

Adopted: February 21, 2001

Released: February 21, 2001

By the Chief, Mass Media Bureau:

This *Erratum* revises the amended rules set forth in Appendix B of the *Memorandum Opinion and Order on Reconsideration* in MM Docket No. 99-339, FCC 01-7 to clarify how parties may count reruns to satisfy their fifty-hour quarterly compliance requirements. Specifically, section 79.3 of the Commission's rules is revised as set forth in the appendix to this *Erratum*.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

---

**Federal Communications Commission**

---

**APPENDIX**

Part 79 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

**Part 79-CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING**

1. The authority of Part 79 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613

2. Section 79.3 is amended by revising paragraph (c)(2) to read as follows:

**§ 79.3 Video description of video programming.**

\*\*\*\*\*

(c) \*\*\*

(2) In order to meet its fifty-hour 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. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter.