

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

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

The National Federation of the Blind hereby petitions the Federal Communications Commission for re-consideration of its final rule concerning video description of video programming. The Commission in issuing its proposed rule was apparently unaware that description of prime-time shows is a mere portion of the overall issue concerning access to television for the blind. The comments received by the Commission raised the rest of the issue: description of information printed on the television screen and not voiced and the priority of devoting resources to information and/or to entertainment. Though the issue was fully raised in comment, the Commission ignored the broader issue and finalized its proposed rule without ever giving the public the chance to participate fully and fairly in a review of the entire issue.

In this petition, the National Federation of the Blind urges the Commission to act responsibly and in accordance with the law by reconsidering its final rule; finding that the rule was not in accord with the breadth of the issue as revealed by the comments; rescinding the final rule; and beginning the proceeding again to embrace and fully review

the entire issue of access to television for the benefit of the blind. Without a new beginning, the process which brought about the final rule stands as a stark example of how not to conduct federal rulemaking since it was characterized by rigid refusal to address forthrightly new matter raised by the public and by rigid adherence to the belief that whatever the Commission proposed must have been right regardless of comments.

BASIS FOR RECONSIDERATION

1. The Commission's final rule is fundamentally flawed.

When considering the issuance of a proposed rule requiring voiced description for television, the Commission responded to one body of interest representing advocates for video description. These advocates urged the Commission to require description of prime-time television shows. In this petition, this will be referred to as "described entertainment." There is undeniable support for described entertainment among blind people and advocates on behalf of the blind. However, described entertainment is not the only issue involving access to television for the blind.

The Commission must have been unaware that there was any other issue involving access to television, since its proposed rule dealt exclusively with described entertainment. The existence of another profound issue involving access came to light through public comment, but the Commission failed to adopt an adequate response. In brief, the

Commission gave priority to described entertainment over requiring information printed on the screen to be accessible. This will be referred to as "accessible information." This failure to address half of the issue--accessible information--with an equal priority to described entertainment results in a final rule which is fundamentally flawed.

2. The Commission was unaware of the lack of access of the blind to information printed on the screen.

Study of the proposed rule leads to the inescapable conclusion that the Commission was unaware of the other profound issue concerning television and the blind--that is, the need for accessible information. Had the Commission been aware of this part of the total issue of accessibility, it would surely have included accessible information in the proposed rule.

It is inconceivable that the Commission would have known about both issues--described entertainment and accessible information--but decided that described entertainment should have priority over accessible information. That would imply that the Commissioners are interested primarily in entertainment and do not appreciate the importance of assuring full access for blind people to emergency, health, safety, and citizenship information. We conclude instead that the Commission was unaware of the need for accessible information.

3. The process of public comment on the proposed rule brought its flaw to light.

Through public comments, the Commission learned of the need for accessible information. The National Federation of the Blind and many other individual commenters brought this to light, pointing out that accessible information is fundamental to effective television viewing. The comments referred to information scrolled across the bottom of the television screen without interrupting the ongoing program. This information includes hazardous warnings and other emergency information; local and national news bulletins; information from both local and national advertisers; phone numbers for health and safety information printed on the screen and not voiced; and citizenship information such as the identities of speakers on regular and special news programs printed at the bottom of the screen and not voiced.

One example: a blind viewer is watching a prime-time program while a thunderstorm rages outside. Suddenly the television beeps. The blind viewer does not know whether a new thunderstorm watch is being issued for the local area, whether a tornado has been spotted 100 yards away, or whether an international figure has just been assassinated. The only information is a "beep" while sighted viewers may be running for their lives.

Another example: a nightly news show introduces a tape by saying that one of the presidential candidates spoke today about an issue, but not naming the candidate. When the tape rolls, the news show identifies the speaker by printing his name at the bottom of the screen. Other voices then support or criticize the first speaker. At the conclusion of

the tape the news anchor takes a commercial break. This transaction often takes place without any of the speakers being identified by voice. The blind person watching the news is left to wonder, never knowing who said what. That same viewer will be voting in a few weeks without having access to the same information available to others.

All of these needs for accessible information were brought to the Commission's attention during the public comment period on the proposal to mandate described entertainment. At that point, the appropriate response in the public interest would have been to rescind the proposed rule and start the process again with the entire issue on the table. Instead of doing this, the Commission proceeded doggedly to finalize the proposed rule on described entertainment. As part of that process, the Commission apparently concluded that the need for accessible information had to be addressed. This led to insertion of a section on emergency information in an attempt to appear responsive to the weight of serious public comments. However, the substance of the provision which was included in the final rule is *not* responsive and definitely not an effective solution. In fact, it appears to be more of an afterthought than a serious attempt to deal with a genuine issue.

4. There is no disagreement about the importance of voicing information printed on the screen.

In general, the Commission received two types of comments in response to the proposed rule on described entertainment. These were comments urging the Commission to construct a meaningful rule on accessible information and other comments simply

urging adoption of the proposed rule but not opposing a rule on accessible information.

While some commenters supporting accessible information urged that it holds a much higher priority in our nation's life than described entertainment, no commenters supporting described entertainment opposed a mandate to require accessible information as well.

In fact, as the discussion evolved within the formal comment process and around the nation, supporters of described entertainment came to support both described entertainment and accessible information. Like the Commission, they had not thought through the implications of adopting a rule on described entertainment without also giving equal or greater priority to accessible information. No one interested opposes having a meaningful rule on accessible information. Some just want it in addition to described entertainment, and some want it first. However, since the Commission in its proposal had been unaware of the issue of accessible information, it was compelled either to finalize the rule on described entertainment and end the matter there or to begin again, issuing a proposed rule covering described information and going through another comment period.

In the provisions of its final rule, the Commission casually recognized a bit of its dilemma and tried to cover the problem with a small addition addressing emergency information scrolled across the screen. Anecdotal information suggests that this attempt by the Commission occurred because the issue came to light only at the last minute--very shortly before the adoption of the final rule--even though the comments had dealt fully with it months before. When the Commission realized that the accessible information issue was serious, it grabbed for a Band-Aid solution by placing a requirement in the final

rule that any emergency information scrolled across the screen must be accompanied by a "beep." How does that make the information accessible? The fact that it does not seems to be of no consequence to the Commission.

5. The Commission's proposed rule made no mention of accessible information, placing inclusion of accessible information outside of the scope of the final rule.

The Commission's hasty response during this rule-making makes clear why Congress enacted the Administrative Procedures Act and why the Act requires public comment. The inclusion of a small section which improperly addresses emergency warnings and does not fully address the need for accessible information renders the entire rule-making procedure and outcome invalid.

6. The Commission's choice of described entertainment over accessible information is a misperception of the need coupled with an offensively meaningless solution to address it.

A. In commenting on the proposed rule, many blind individuals made an honest and good-faith effort to inform the Commission about their genuine needs and deficits as television viewers. Among the issues raised were the following: frustration with lack of access to health or safety information, including the failure to verbalize addresses or telephone numbers; the helpless feeling of blind viewers who do not know the identity of a speaker on the national news; and the fear of blind viewers who hear a "beep" but do not

know the reason for it. Blind people made all these points to convince the Commission to rescind its proposed rule and start again.

The response? A rule to "encourage" verbalizing of information printed on the screen, coupled with a mandate for a "beep" in the case of hazardous conditions. Blind people who commented on the need for accessible information are insulted by the Commission's shallow response to "encourage" accessible information but to mandate described entertainment.

B. Information printed on the screen comes from a variety of sources: local stations; local advertisers; network broadcasts; national advertisers; and numerous advertising and programming production companies, etc. From the short shrift which the Commission gave to accessible information, it is obvious that the Commission did not undertake a serious effort to learn the implications, limitations, and possibilities which exist to address this issue. When the issue was raised in comments, the Commission ducked.

Instead of re-opening the proceeding and airing the entire issue of accessible information and its relationship to described entertainment fully and fairly, the Commission took the position that it could resolve the matter merely by encouraging broadcasters to verbalize information and requiring them to identify hazardous warnings with a "beep." This not only gives short shrift to the blind, but also treats the television industry as though it would naturally oppose a rule on accessible information just as it was assumed to oppose described entertainment.

No one knows. Would the industry oppose an effort to accompany on-screen

information with spoken words? With Commission prodding, an inexpensive solution might be found and implemented. Once the issue is fully raised, the industry might find the solution itself. Based, on the current state of the record, however, we will never know.

7. A single proceeding is the only way to address the entire issue of access for the blind since described entertainment and accessible information may use some of the same resources and technology and may also compete for them.

If the final rule is left as is, the Commission itself, the television industry, and any new technology will essentially be devoted to the provision of described entertainment. This is so because described entertainment is now a mandate as opposed to accessible information, which is merely "encouraged." By the time anyone gets around to thinking about accessible information--truly the more urgent need-- the available resources will already be committed elsewhere. Procedures established for described entertainment will have priority over accessible information because the Commission's mandate favors described entertainment. Therefore, emergency, health, safety, and citizenship information will be crowded out by described entertainment which, under the Commission's rule, takes priority. In fact, the chance that accessible information will ever be addressed as a serious issue is in doubt, especially since the industry is now required to use resources for described entertainment. Both parts of the overall television-access issue must be considered together so that priorities for resources can be established at one time rather than in an incremental and haphazard manner.

Respectfully submitted,

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National Federation of the Blind