

ALERT

# April 18 Deadline for Comments on NPRM to Reinstate Video Description Rules

March 18, 2011

The Notice of Proposed Rulemaking (NPRM) that would adopt video description rules for certain television programming has now been published in the *Federal Register*, triggering the following comment deadlines: Comments are due on **April 18** and Reply Comments on **May 17**.

Video description adds audio descriptions of the program's video elements during natural pauses in a program's dialog. The proposed rules include three primary elements:

- ABC, CBS, NBC and Fox affiliates in the twenty-five largest Designated Market Areas (DMAs) would be required to offer video description on fifty hours of prime time or children's programming each quarter;
- Multichannel video programming distributors (MVPDs) with more than 50,000 subscribers would be required to provide fifty hours of prime time or children's programming each quarter on the top five national non-broadcast networks they carry; and
- All broadcast stations and MVPDs would be required to pass through video description contained in programming that they carry as long as they have the technical capability to do so.

Live and "near live" programming would be exempt from the video description rules.

The FCC adopted similar rules in 2000, but the United States Court of Appeals for the District of Columbia Circuit struck them down shortly thereafter, finding that the Commission lacked authority to adopt the rules. Congress sought to rectify this in the Twenty-First Century Communications and Video Accessibility Act of 2010, which requires

## Authors

Kathleen A. Kirby  
Partner  
202.719.3360  
kkirby@wiley.law  
Ari Meltzer  
Partner  
202.719.7467  
ameltzer@wiley.law

## Practice Areas

Media  
Telecom, Media & Technology

the Commission to reinstate its video description rules.

The NPRM seeks comment on, among other things, the procedure for determining the twenty-five largest markets, the date for expanding the video description rules to the top sixty markets, the procedure for determining the top five national non-broadcast networks, and criteria for exempt "near live" programming.

Cable networks that believe they should be excluded from the top five national non-broadcast network requirement because they do not provide enough non-exempt programming must provide notice in the record before the close of the comment period. Parties can then challenge that determination in their reply comments.

The proposed rules would take effect January 1, 2012.

If you would like additional information, please contact one of the attorneys listed below or the Wiley Rein attorney who regularly handles your FCC matters.

\*Not admitted to the District of Columbia Bar, supervised by principals of the firm.