

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

To: The Commission

**REPLY COMMENTS OF THE
RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION**

The Radio-Television News Directors Association (“RTNDA”), by its attorneys and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R § 1.415, hereby submits its reply to the comments filed in response to the *Notice of Proposed Rulemaking* (“*Notice*”) in the above-captioned proceeding.¹ With more than 3,200 members, RTNDA is the world’s largest professional organization devoted exclusively to electronic journalism. RTNDA’s membership includes news executives in broadcasting, cable and other electronic media in more than thirty countries.

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¹ *In the Matter of Implementation of Video Description of Video Programming*, FCC 99-353 (rel. Nov. 18, 1999.)

I. SUMMARY

The record in this proceeding firmly supports the conclusion that news and public affairs programming should be exempted from any video description requirements. The format of news and public affairs programming is inherently ill-suited for video description, primarily because it is aural in nature and therefore already “self-described.” Indeed, several advocates dedicated to increasing media access for the blind and visually disabled declare that news programming is not the type of programming that generally needs to be narrated, a fact acknowledged by the Commission as well. Most importantly, however, placing video description requirements on news programming would constitute compelled speech, thus violating the First Amendment. Given the unconstitutional underpinnings of compelled video description of news programming, coupled with the lack of demand from the blind and visually-impaired audience for video description of news programming, RTNDA submits that the Commission create a blanket exemption for such programming from any video description requirements it seeks to impose.

II. DISCUSSION

A. News Programming Is Inherently Ill-Suited For Video Description

Because it is primarily aural in nature, there is no need for the FCC to mandate video description of news or public affairs programming. As stated by the Commission in its initial reports to Congress on the subject, lower priority should be given to programming that is primarily aural in nature, whereas higher priority should be afforded to programming where there is significant action not apparent to persons with visual disabilities. The Commission expressly cited newscasts and sports events as programming that is primarily aural in nature.² Its proposals are intended to provide for

² Notice at ¶ 14.

descriptions of settings and actions that are not otherwise reflected in the dialogue.³

News and public affairs programming is inherently word-intensive. The typical news program consists primarily of an anchor or correspondent directly addressing the television audience or conducting an interview, verbally reporting the news or event, or engaging in dialogue about the same. In the occasional and brief scene where there is no narration, a reporter will usually set up a video clip with an introduction of what the audience is about to see. To paraphrase the comments of C-Span Networks, there are very rarely pauses in the stream of words during which a video description of any usefulness could be inserted.

Indeed, several organizations whose goal is increasing accessibility of media to the blind and visually disabled disclaim any general need for video description of news or public affairs programming.⁴ For example, the Narrative Television Network (NTN), an organization founded by blind and visually impaired people to make movies and television programming accessible, comments that news, sports or talk programming do not generally need to be narrated for the visually impaired, and would not be considered priorities as more programming is made accessible.⁵ In addition, in suggesting that live news and sports be exempted from any video description requirement, the National Television Video Access Coalition echoes NTN's position, stating that news is a low priority for described programs because

³ Notice at ¶ 1.

⁴ The National Federation of the Blind ("NFB") does advocate video description of news. However, its arguments are limited to the specific needs of oral identification of speakers, access to information printed or flashed on the television screen, and other news captions. NFB suggests that the Commission encourage networks and other news programmers to do so orally, rather than mandating video description on the SAP channel. Comments on Notice of Proposed Rulemaking In the Matter of Video Description of Video Programming, MM. Docket No. 99-339, at ¶ 5 (filed Feb. 23, 2000).

⁵ Comment of the Narrative Television Network, MM Docket No. 99-339, at 3 (filed Feb. 22, 2000).

“news programs leave no space to insert descriptions.”⁶ And, finally, the WGBH Educational Foundation and its Media Access division, one of the country’s leading public broadcasters who considers increasing access to media for people with disabilities as one of its central missions, states that blind and visually impaired people clearly have indicated that video description of news or sports programs would be of far less interest or utility to them than description of dramas, comedies, movies and narrative documentaries.⁷

⁶ Comment of the National Television Video Access Coalition, MM. Docket No. 99-339, at 4 (filed Feb. 23, 2000).

⁷ Comments of The WGBH Education Foundation Media Access Division Regarding Notice of Proposed Rulemaking on Video Description, MM. Docket No. 99-339, at 17 (filed Feb. 23, 2000).

B. Video Description Requirements Constitute Forced Speech Violative of the First Amendment

The role of the journalist is typically that of a neutral bystander, showing no bias and supplying no editorial comment. In this respect, video description is antithetical to the function of the news media. Video description would force television journalists to make certain statements about video content. Requiring a reporter to describe a scene eliminates the editorial discretion to let the images speak for themselves and forces the reporter to make subjective observations. In fact, the National Federation of the Blind (“NFB”), America’s largest and most active organization of the blind, actually opposes a federal mandate requiring audio description of visual images in part because there is a lack of standards for narrators to follow in describing a program. One of the NFB’s chief complaints is that because of the highly subjective nature of video description, it, unlike closed captioning, requires the creation of a new product. According to the NFB, “its creators must make countless value judgments about what to describe, when to interrupt spoken dialogue or musical score, etc.”⁸

Forced description would constitute a form of governmentally mandated speech. As discussed by both the C-Span Networks and the National Association of Broadcasters in their initial comments in this proceeding, the proposed narration would alter the character of the original work and result in the creation of a new work of a qualitatively different character.

And, as is clearly laid out by the C-Span Networks, compelled speech is not permitted because “[t]he right of freedom of thought protected by the First Amendment against state action

⁸ Comments on Notice of Proposed Rulemaking In the Matter of Video Description of Video Programming, MM. Docket No. 99-339, at ¶ 3 (filed Feb. 23, 2000).

includes both the right to speak freely and the right to refrain from speaking at all.”⁹ Considering the character of news reporting, the unconstitutional nature of a video description requirement is heightened. “Where the subject of compelled speech is the discussion of governmental affairs, which is at the core of our First Amendment freedoms, the burden upon...[a speaker’s] rights...is unconstitutionally impermissible.”¹⁰

In this instance, the compelled speech is unnecessary and serves no substantial government purpose. Even if what the Commission believes it seeks is only a factual description of the video that accompanies a news report, the requirement fails to pass constitutional muster based on Supreme Court opinion holding that compulsion of *either* fact or opinion burdens protected speech.¹¹

⁹ *Lehnbart v. Ferris Faculty Assn.*, 500 U.S. 507, 516 (1991), quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

¹⁰ *Id.* at 522.

¹¹ *Riley v. National Freedom of the Blind*, 487 U.S. 781, 796 (1988) (emphasis added).

III. CONCLUSION

In its *Notice*, the Commission seeks to increase the availability of video description without imposing an undue burden on the television programming industry.¹² As applied to news and public affairs programming, however, any video description requirement would not only burden newscasters by infringing on their First Amendment rights, but also burden news programming in its entirety by forcing narration unnecessarily. Therefore, RTNDA respectfully submits that the Commission exempt news and public affairs programming from any video description requirements it decides to impose.

Respectfully submitted,

**THE RADIO-TELEVISION NEWS
ASSOCIATION**

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¹² *Notice* at ¶ 4.