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## President Signs the 21st Century Communications and Video Accessibility Act, Creating Wide-Ranging Video Programming Accessibility Requirements Intended to Assist Those with Disabilities

by Lauren Lynch Flick and Scott R. Flick

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*Law requires reinstatement and eventual expansion of FCC's television Video Description rules, and mandates implementation of closed captioning of television programming distributed via Internet.*

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Last week, Congress passed the Twenty-First Century Communications and Video Accessibility Act of 2010 (the "Act") which, among other things, reinstates the FCC's former Video Description rules for television broadcasters, extends closed captioning of video programming to the Internet, and requires the FCC to examine methods of increasing the accessibility of emergency information. The President signed the bill today, October 8, 2010.

The Act is designed to update the Communications Act to account for the many new technologies available in today's marketplace and to assure that they are accessible to persons with hearing or vision impairment. The Act outlines a decade-long timetable for the submission of various reports by a new advisory committee to the FCC, and then by the FCC to Congress, and the implementation of further regulations based on the findings of those reports. When fully implemented, the Act will require that specific amounts of digital television programming contain video descriptions, that certain video programming distributed via the Internet contain closed captions, and that consumer electronics devices contain features to promote accessibility and be hearing aid compatible. We have summarized the Act's requirements in three phases below.

### **Phase 1: Reinstated Video Description Requirements and Establishment of Advisory Committee**

The Act requires that the FCC reinstate its former Video Description rules for digital programming only. The FCC is required to have its new rules in place on **October 8, 2011**, although it is permitted to then implement those rules on a phased-in basis. The former rules required that affiliates of the Top Four broadcast networks in the Top 25 markets and the Top Five national nonbroadcast networks provide video descriptions in at least 50 hours of prime time or children's programming during each calendar quarter. The FCC's former rules were vacated by the United States Court of Appeals for the D.C. Circuit in 2002.

The FCC must now reinstate those requirements, but will first undertake a rulemaking proceeding to update the rules to reflect the current list of the Top 25 television markets and the Top Five national non-broadcast networks, establish a phase-in schedule, and identify the first quarter in which compliance will be required. The Act provides that the rules will not apply to live or “near-live” programming. Therefore, the FCC’s rulemaking must also define “near-live” programming. In addition, the FCC must establish a process by which specific video programmers can seek a waiver of the video description requirements on the basis of economic hardship to the programmer. The FCC may also exempt certain classes of programming, services or equipment from the rules on the basis that compliance will cause economic hardship.

The Act also requires that by **December 7, 2010**, the FCC establish a Video Programming and Emergency Access Advisory Committee. That Committee must meet by April 2011 and will have six months to identify and report to the FCC on a recommended phase-in schedule for closed captioning of video programming delivered using Internet Protocol, as well as technical and performance requirements and any additional regulations necessary to effectuate such a captioning requirement. The Act requires the FCC to revise its rules within six months of receiving the Advisory Committee’s report to require that digital broadcast television programming aired after the effective date of the rule change contain closed captions when delivered via Internet Protocol (if it was captioned when broadcast).

The Advisory Committee will then have until **April 2012** to identify and report to the FCC on the inclusion of emergency information and video descriptions in video programming delivered via Internet Protocol. The Advisory Committee must make policy and technical recommendations aimed at effectuating the inclusion of emergency information and video descriptions in such video programming, including addressing compatibility between video programming and devices that receive and display the programming, as well as the accessibility of user interfaces, on-screen text menus, and navigation devices to those with disabilities.

### **Phase 2: Extension of Video Description Requirements and Creation of Emergency Information Regulations**

By **October 8, 2016**, the FCC is required to have phased-in its video description requirements for markets 26 through 60. The Act also authorizes the FCC to increase the number of hours of programming that must contain video descriptions to 87.5 hours per quarter in **2017**.

Specifically, once the phase-in period for the reinstated video description requirements in the Top 25 markets has ended, the FCC must commence a one-year inquiry into, and report to Congress on, the availability, use, and benefits of video description on broadcast television and Internet-delivered programming as well as the financial, technical and operational costs of providing those descriptions. Based on the results of that study and report, the Commission must establish a phase-in schedule for applying the video description requirements to markets 26 to 60. The Commission may exempt certain markets where it deems an exemption appropriate. Two years after that report is submitted (approximately **April 2017**), the FCC may determine that the benefits of video description outweigh the costs and expand the video description requirement to 87.5 hours of programming per quarter.

In addition, within one year of receiving the Advisory Committee’s report (approximately **April 2013**), the Commission must complete a rulemaking proceeding identifying methods of making emergency information (information about a current emergency that is intended to promote the protection of life, health, safety or property) accessible and to establish rules requiring video programming providers, distributors and owners to provide emergency information in an accessible manner.

### Phase 3: Report to Congress; Extension of Video Description Requirements to Additional Markets

By **October 8, 2019**, the FCC must make a detailed report to Congress addressing the types and amount of video-described programming available to consumers, consumers' use of that programming, the costs of providing that programming, the costs of requiring video description outside the Top 60 markets, and the benefits to consumers of that expansion in video description, as well as the need for additional video-described programming outside the Top 60 markets.

After **October 8, 2020**, and taking into account the FCC's conclusions in its report to Congress, the Commission may establish a phase-in schedule to extend video description requirements to markets outside of the Top 60, at a rate of no more than ten markets per year. To do so, the FCC must first make a finding that the costs of providing video descriptions in those markets are reasonable. The Commission may also grant waivers of such video description requirements as it deems appropriate.

### Summary

We anticipate that readers will see considerable action by the FCC in the short term in response to the Act. Specifically, the FCC's Chairman must create the Advisory Committee by **December 7, 2010**. The FCC must also commence a rulemaking proceeding to reinstate the FCC's former Video Description rules, as well as update them in the manner required by the Act.

- For the Top Five national cable/satellite networks and the Top Four broadcast network affiliates in the Top 25 markets, the phase-in for the video description requirement of 50 hours of prime time or children's programming per quarter will begin on **October 8, 2011**.
- By **April 2012**, the phase-in of the requirement that broadcast television programming containing closed captions include those captions when being delivered via Internet Protocol (including on stations' websites) will commence.
- By **April 2013**, the Commission must have created new rules regarding the inclusion of accessible emergency information in video programming.
- By no later than **October 8, 2016**, the phase-in of the video description requirement will have ended for stations in the Top 60 markets.
- Beginning in **2017**, the FCC may increase the quarterly Video Description requirement from 50 hours to 87.5 hours.
- After **October 8, 2020**, the phase-in of video description requirements may begin for stations outside the Top 60 markets.

Should you have questions concerning the Video Description rules, or the Twenty-First Century Communications and Video Accessibility Act of 2010 in general, please contact any of the attorneys in the Communication Practice Section.

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