



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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*In this issue, link to information about*

*Developments:* [Commission Seeks Comment on Video Description Marketplace Help Desk to Assist with Television Rescanning Opens FCC's License Posting Requirement Eliminated](#)

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### FCC Seeks Comment on Video Description for Report to Lawmakers

The FCC issued a [Public Notice](#) (the “Notice”) earlier this week seeking comments regarding recent developments in the video description marketplace as it prepares a report that must be submitted to Congress this coming October. The FCC is required by law to let Congress know whether it believes the current video description rules should be extended to additional markets.

Broadcasters will recall that the FCC’s video description rules, which apply—albeit in different ways—to all television stations (including low-power TV stations), have been in effect for several years. (“Video description”—which is also known as “audio description”—is the insertion of audio-narrated descriptions of the “key visual elements” of a television program into natural pauses in the program’s dialogue.)

At a high level, the current video description rules require Big Four affiliates in the top 60 DMAs to provide at least 87.5 hours per calendar quarter of video-described programming. At least 50 of those hours must be during primetime and/or children’s programming; the other 37.5 hours may be any programming that airs between 6 a.m. and 11:59 p.m. All network-affiliated stations, including all Big Four and non-Big Four network affiliates, are required to “pass through”

video-described programming where they are “technically capable” of doing so (including on multicast channels that are affiliated with any network).

The Notice seeks comment on recent developments in the video description marketplace that may affect the FCC’s decision whether to extend the current rules—i.e., whether such an extension would impose reasonable (rather than excessive) costs upon program owners, providers, and distributors. Some of the issues on which the Notice seeks comment are:

- The types of described video programming that are available to consumers, including:
  - the amount of children’s and rerun programming being video-described, and
  - how much and what kind of video-described programming is being provided voluntarily;
- Consumer use of such programming, including:
  - the amount of video-described programming being watched,
  - how consumers are informed of which programs contain video description, and
  - whether there are available technological developments to enable equipment (of broadcasters, MVPDs and consumers) to handle more than two audio tracks;
- The costs to program owners, providers, and distributors of creating such programming, including:
  - whether the FCC’s prior estimate of the maximum cost of adding video description to an hour of programming (\$4,202.50) remains reasonable, or has increased, or whether consumer demand has driven down the cost of adding video description, and
  - on which entities such costs are generally allocated (the program owner, provider, or distributor);
- The potential costs to program owners, providers, and distributors in DMAs outside of the top 60 of creating video-described programming, including:
  - how much video-described programming is already available in DMAs outside the top 60,
  - whether demand for more video-described programming exists in such markets, and
  - whether the costs of providing video-described programming in such markets varies from the relevant costs in the top-60 markets.

Comments on the Notice are due on April 1, 2019, and reply comments are due on May 1, 2019. The Commission has to provide its report to Congress by October 8, 2019.

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## Repack Update: Commission Creates Consumer Help Center for TV Rescanning Assistance

The Commission [recently announced](#) that it is launching a special call center dedicated to helping viewers of repacked over-the-air TV stations rescan their TVs during the ongoing post-auction repack. As broadcasters know, more than 1,000 TV stations (including full-power, Class A, and low power stations) either have changed or will be changing frequencies due to the repacking of the television band. Although the actual channel numbers on consumers' sets won't change for most TV stations, a change in frequency impacts how a channel is received over the air by a TV receiver. So, consumers who watch free over-the-air television with an antenna will need to rescan their TV set each time a local station moves to a new frequency to be sure that the TV recognizes the new frequency when consumers tune in to that channel. (Viewers who subscribe to cable or satellite services do not need to take any action to continue receiving local channels.) The FCC's rules require full power and Class A (but not low power) television stations to make on-air announcements at least 30 days in advance of making the change.

The FCC's special call center will be staffed from 8:00 a.m. to 1:00 a.m. Eastern time, seven days a week. It can be reached toll-free by dialing 1-888-CALLFCC (1-888-225-5322) and pressing "6" to speak to a help desk representative. Stations that have been or will be repacked may wish to publicize the FCC's rescan call center for their viewers. In addition, the Commission also provides online information regarding the broadcast television transition and TV rescanning at [www.fcc.gov/TVrescan](http://www.fcc.gov/TVrescan), where viewers can insert their address using an interactive map to see the frequency change timeframe for most local channels.

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## FCC Eliminates License Posting Requirement

Another FCC rule bites the dust. Broadcasters can take down and recycle (or frame for history's sake!) their physical station licenses. That's because, effective February 8, 2019, the FCC has eliminated the requirement that a station's physical license, and any other instruments of authorization, must be posted in a conspicuous place at the principal control point of the transmitter (typically by affixing them to the wall or putting them in a binder). You'll recall that the Commission adopted a [Report and Order](#) in December 2018 that did away with such requirements; that Order takes effect February 8, upon its publication in the Federal Register.

The posting rules were originally adopted back around the time of the Great Depression (!); over time, the Commission expanded the rules to additional transmission services. The FCC determined that the regulations are outdated and no longer necessary because the vast majority of the information contained on posted licenses is now available in stations' online public inspection files.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Tim Nelson, Editor*

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