

adventure movie may contain so much action that an ongoing video description could not keep up with the action even if gaps in the dialogue existed.<sup>307</sup>

124. Similarly, other forms of programming already contain considerable narrative and, therefore, video description may be unnecessary. Play-by-play sports programming and talk shows are often cited by programmers as examples of programming which do not warrant video description.<sup>308</sup> However, several commenters on behalf of the visually disabled community argue that play-by-play does not sufficiently address the needs of people with visual disabilities. For instance, a play-by-play announcer excitedly interjecting "Wow did you see that?" does not provide information to a viewer with visual disabilities.<sup>309</sup> Other commenters suggest that video description is not necessary for sports if a comparable radio broadcast is available.<sup>310</sup> Still other commenters respond that a radio broadcast is only a substitute for video description if one assumes persons with visual disabilities were watching sports in isolation.<sup>311</sup> These commenters argue that a significant benefit of video description is that it allows people with visual disabilities to enjoy television programming in social situations and to interact with their sighted friends and family members.<sup>312</sup> Moreover, WGBH notes that even radio commentary is developed primarily with sighted people in mind and may omit information useful to people with visual disabilities.<sup>313</sup>

125. Finally, many stations already use the SAP channel for other purposes. The most common purpose cited is bilingual programming, with 4.7% of local stations reported to be using the SAP channel to provide second language programming to reach 28% of television households.<sup>314</sup> Other uses include local stations using the SAP channel to provide weather bulletins, news or the local farm report.<sup>315</sup> A number of stations carry another feed of their main audio channel on the SAP channel to avoid consumer confusion if the SAP channel were inadvertently selected.<sup>316</sup> Such uses usually serve larger communities and necessarily compete

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<sup>307</sup> ALTV Comments at 16.

<sup>308</sup> See, e.g., HBO Comments at 10-11.

<sup>309</sup> AFB Comments at 14.

<sup>310</sup> Smith Comments at 2.

<sup>311</sup> AFB Comments at 14.

<sup>312</sup> *Id.*

<sup>313</sup> WGBH Comments at 28.

<sup>314</sup> See, e.g., NBC Comments at 15-16; Audio Optic Comments at 1; NAB Comments at 12; HBO Comments at 10

<sup>315</sup> NAB Comments at 12-13.

<sup>316</sup> *Id.*

with video description.<sup>317</sup> Commenters indicate that to the extent that stations believe that the demand for such uses of SAP capabilities is greater than the demand for video description, they can be expected to preempt video description at least as long as SAP remains a comparatively limited resource and is not mandated by law or regulation.<sup>318</sup>

126. It appears that digital television may represent a solution to the problem of limited SAP capacity. Digital television allows video distributors to compress considerably more information within a given amount of bandwidth. Digital television may allow broadcasters to transmit several SAP like signals in conjunction with a program thereby permitting the consumer to choose between the conventional soundtrack, non-English language soundtracks or video description.<sup>319</sup> However, this would necessitate the consumer having a digital set-top box or digital television capable of accessing the digital video description.<sup>320</sup>

#### H. Statutory Considerations

127. Under Section 713(f), the Commission is required to assess appropriate methods and possible schedules for phasing video description into the marketplace.<sup>321</sup> We also are required to assess technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply and other relevant technical and legal issues.<sup>322</sup> In this section, we examine each of these matters.

128. Due to their limited experience with video description and the technical difficulties in providing the SAP with video description today, industry commenters generally assert that it

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<sup>317</sup> NBC Comments at 15; NAB Comments at 12.

<sup>318</sup> NAB Comments at 12-13. *See also* AFB Comments 15. WGBH notes however, that situations have arisen where a PBS program has both a video description and a Spanish language sound track available. To date, stations have either elected to air the one soundtrack most useful for their audience or have aired the program more than once with each sound track being made available on subsequent airing. WGBH Comments at 29.

<sup>319</sup> *See* CEMA Comments at 8-9; WGBH Comments at 29. Bell Atlantic asserts that it is already developing the infrastructure to allow the digital carriage of video description as an additional audio channel in its systems. Bell Atlantic Comments at 4.

<sup>320</sup> WGBH Comments at 29-30 (recommending that the Commission require this capability be included in all digital televisions or set-top boxes.) *But see* WCA Comments at 9-10 (recommending that MMDS operators not be required to provide digital set-top boxes but rather to provide consumers wishing to receive video description with such boxes for an additional charge).

<sup>321</sup> 47 U.S.C. § 613(f).

<sup>322</sup> *Id.*

is premature to consider implementation of video description requirements.<sup>323</sup> Several commenters suggest that video description should be left to marketplace demands.<sup>324</sup> Some commenters suggest that as the population ages, market demand will ensure that video description will become more widely available.<sup>325</sup> Other commenters assert that as household penetration of SAP compatible televisions and VCRs increase, the marketplace can be expected to respond with increased product for the larger number of viewers with visual disabilities capable of receiving video described programs.<sup>326</sup>

129. Still other commenters, while recognizing a need for video description, urge various exemptions, such as certain kinds of programming where video description would be redundant or overly burdensome, and certain kinds of programmers or video distributors that might face undue hardship if required to provide video description service.<sup>327</sup> Among these suggested exemptions are sports programming, local access programming and programming that already consists primarily of a discussion or narrative.<sup>328</sup>

130. In marked contrast to industry commenters, persons who would substantially benefit from the availability of video description and organizations that serve people who are visually disabled urge that the service be broadened and made more generally available.<sup>329</sup> These commenters advocate a broad range of strategies from mandatory requirements<sup>330</sup> to strong economic incentives as well as various combinations of mandates and incentives.<sup>331</sup> While several commenters offered these suggestions, few offered any specifics regarding the implementation of such incentive programs.

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<sup>323</sup> See, e.g., NCTA Comments at 14, WCA Comments at 8-9; ALTV Comments at 16; HBO Comments at 12; SBCA Comments at 10-11. SBCA also suggests the Commission explore whether alternatives may exist to make television more accessible to people with visual disabilities but offers no specific proposals.

<sup>324</sup> See, e.g., HBO Comments at 11; CEMA Comments at 7; MPAA Comments at 9.

<sup>325</sup> CEMA Comments at 7.

<sup>326</sup> MPAA Comments at 9.

<sup>327</sup> See, e.g., ALTV Comments at 15; NAB Comments at 13.

<sup>328</sup> See, e.g., ALTV Comments at 15; NAB Comments at 13.

<sup>329</sup> See e.g., Coe Comments 7; Metropolitan Washington Ear Additional Comments at 1; AFB Comments 15.

<sup>330</sup> NTN Comments 8-9 (urging that reasonable requirements will allow both the industry and consumers to benefit); Pennsylvania Council of the Blind, Washington County Chapter Comments at 1; Washington Metropolitan Ear Comments at 10.

<sup>331</sup> See, Coe Comments 7; F&V at 7; Metropolitan Washington Ear Additional Comments at 1; AudioVision Comments at 2.

131. The American Council for the Blind ("ACB") urges that an increase in Federal funding is necessary to further the development of video description.<sup>332</sup> At the same time ACB contends that strict video description requirements should be applied across the industry, to producers, distributors and program providers.<sup>333</sup> According to the American Federation for the Blind ("AFB"), there is no justification for any blanket exemption for any class of programmer or distributor. Rather, AFB suggests that the Commission adopt an undue burden standard similar to the standard used for closed captioning.<sup>334</sup> Under such a standard, the Commission would be required to consider the nature and cost of adding video description, the impact on the provider or program owner, the financial resources of the program owner and the type of operations of the provider or program owner.<sup>335</sup> ACB recommends that in establishing standards, priorities and schedules for implementing video description requirements, the Commission should consult with an advisory board composed of consumers with visual disabilities, industry representatives and individuals with video programming experience.<sup>336</sup>

132. Washington Metropolitan Ear suggests that while the marketplace may ultimately provide widespread use of video description, a government mandate is necessary in order to develop the market for this service.<sup>337</sup> Washington Metropolitan Ear proposes that all program carriers be required to have the capability of relaying video description.<sup>338</sup> Noting that the library of video described programming currently available is limited, Washington Metropolitan Ear also proposes a five year phase in period before video description becomes a required part of most programming.<sup>339</sup>

133. In addition to addressing potential regulatory requirements, commenters propose various alternative means of expanding the availability of video description services. These proposals range from increased government funding to tax incentives.<sup>340</sup> In some cases, the positions of these commenters were somewhat contradictory. For instance, NTN argues that

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<sup>332</sup> ABC Comments at 3.

<sup>333</sup> *Id* at 6.

<sup>334</sup> AFB Comments at 13.

<sup>335</sup> 47 U.S.C. § 613(e).

<sup>336</sup> ACB Comments at 8.

<sup>337</sup> Washington Metropolitan Ear Comments at 10. Washington Metropolitan Ear compares video descriptions to "many socially useful programs that turn out to be commercially remunerative (recycling, non discrimination, etc.)", in that a federal mandate may be required to "break the industry out of its rut."

<sup>338</sup> *Id*.

<sup>339</sup> *Id*.

<sup>340</sup> See, e.g., F&V Comments at 7; Metropolitan Washington Ear Additional Comments at 1.

video description is economically viable in the marketplace, while maintaining that increased government funding will be necessary to increase the availability of video description.<sup>341</sup> US West proposes that private sources and the marketplace should be the primary funding vehicles for video description.<sup>342</sup> To the extent that public funding is necessary, US West proposes that the money should come from a percentage of locally collected fees, such as cable franchise fees charged by local governments. US West further proposes that the government should provide additional resources to video production companies that insert video description into their programming, and also to those companies and individuals that provide private support, through the use of tax credits or deductions as applicable.<sup>343</sup>

134. Some industry commenters express concern that any video description requirement to be recommended or ultimately imposed should require the producer of the programming rather than the video distributor to include the descriptive narrative. These commenters argue that such a requirement is more efficient than requiring individual video distributors to provide the descriptive narratives.<sup>344</sup> Similarly, industry commenters urge that any requirements mandating that programming include video description be imposed only on a prospective basis.<sup>345</sup> These commenters argue that requiring video description of the enormous libraries of existing programming would be unduly onerous and impose an impossible burden on the industry.<sup>346</sup>

135. Several commenters address the issue of quality standards. These commenters believe that video description has an inherently subjective aspect and that the issue of quality is not as easily measured as in the case of closed captioning.<sup>347</sup> Whereas the quality of closed captioning can be described, at least in part, in terms of errors per hour of programming the quality of video description is, in large measure, a matter of the artistic choices made in developing a descriptive narrative such as what is described and how accurately the narrative conveys the experience enjoyed by a sighted viewer.<sup>348</sup> Nevertheless, these commenters are adamant that video description address the actual needs of persons with visual disabilities rather than the needs perceived by the sighted community. In order to ensure this, these commenters

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<sup>341</sup> NTN Comments at 7-8. NTN also favors "reasonable" requirements mandating video description. See ¶ 130 *supra*.

<sup>342</sup> US West Comments at 6.

<sup>343</sup> *Id.*

<sup>344</sup> *See, e.g.*, ALTV Comments 16; F&V Comments at 5.

<sup>345</sup> MPAA Comments at 11-13.

<sup>346</sup> *Id.*

<sup>347</sup> NTN at Comments 9; WGBH Comments at 29.

<sup>348</sup> *Id.*

urge that audience testing be required or that a standards board composed of persons with visual disabilities be created.<sup>349</sup>

136. Some commenters suggest that any regulatory action addressing video description should be on a parity with closed captioning.<sup>350</sup> AFB proposes that the standards for video description and closed captioning be the same, including appropriate undue burden tests.<sup>351</sup> Bell Atlantic suggests that the same considerations that are of concern in developing closed captioning standards must be addressed in recommending any regulations for video description.<sup>352</sup> WGBH suggests that video description in its present state should be treated in much the same way as closed captioning is currently treated on cable systems, that is, if it is part of the original program source it must be included if technically feasible.<sup>353</sup>

137. Several commenters suggest that emergency information provided using captioning across the bottom of the screen without audio is of special concern.<sup>354</sup> These commenters cite the public safety needs to provide both sighted people and persons with visual disabilities with important information.<sup>355</sup> AFB proposes that such information be given priority in any requirement implementation schedule that the Commission adopts.<sup>356</sup>

## I. Conclusion

138. In enacting Section 713 of the Act, Congress intended to ensure video accessibility to all Americans, including individuals with visual disabilities. Video description is an emerging service that currently enjoys only limited availability. Congress has directed the Commission to assess the appropriate methods and schedules for phasing video description into the marketplace and to address certain technical and quality standards issues. The present record on which to

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<sup>349</sup> See, e.g., Audio Optics Comments at 6 (recommending that audience testing ensure that video description is responsive to the needs of the sightless); ACB Comments at 7 (recommending that the Commission establish an advisory committee composed of blind consumers, individuals with experience in video programming, and industry representatives to establish standards).

<sup>350</sup> See, e.g., NTN Comments at 10.

<sup>351</sup> AFB Comments at 13-15.

<sup>352</sup> Bell Atlantic Comments at 3.

<sup>353</sup> WGBH Comments at 29. See also 47 C.F.R. § 76.62(c) (Manner of Carriage).

<sup>354</sup> See, e.g., Smith Comments at 1; AFB Comments at 16. See also Pennsylvania Council of the Blind citing school closing information, weather warnings, election results, sports scores and lottery numbers. See Petition to Revise Part 73.1250(h) of the rules (filed Feb. 23, 1996).

<sup>355</sup> *Id.*

<sup>356</sup> AFB Comments at 16.

assess video description, however, is limited, and the emerging nature of the service renders definitive conclusions difficult. Moreover, with the exception of the Metropolitan Washington Ear's proposal to phase in video description within five years,<sup>357</sup> commenters did not provide any guidance regarding the implementation of video description of video programming in terms of time frames, methods or standards. Nevertheless we believe that the development of rules for closed captioning, which is more widely available, can provide a useful model for the process of phasing in broadened use of video description. The nature and speed of the process for video description remains dependent on the resolution of certain technical, funding, legal and cost issues, as described below.

139. Many broadcast television stations are not yet equipped to transmit a SAP signal. These stations tend to be in smaller markets with a smaller economic base to support increased costs. Other MVPDs also currently do not transmit or decode a SAP signal. Advanced digital technologies, including specifically those used in broadcasting, direct broadcast satellites, MMDS ("wireless cable"), cable and wireline "open video systems" appear capable, when joined with digital receivers, of transmitting a separate channel. In particular, advanced digital television could make the distribution of additional audio channels feasible and thereby eliminate the conflict currently existing with other audio channel uses (e.g., second language). Any schedule for the full deployment of video description is dependent, in part, on the implementation of advanced digital technologies.

140. In addition to these technical problems, funding remains a fundamental issue that will effect any schedule for the widespread use of video description. Currently, given the costs involved, it appears unlikely that advertising support alone will be sufficient to fund this service. Irrespective of the level and source of funding, it appears desirable to phase in service over a period of years. We believe that initial requirements for video description should be applied to new programming that is widely available through national distribution services and attracts the largest audiences, such as prime time entertainment series. Over a period of several years, video description should be phased in for programming with more limited availability, including services distributed in limited areas, and programming that attracts smaller audiences, such as daytime shows. Lower priority for video description should be given to programming that is primarily aural in nature, including newscasts and sports events. Phasing in video description in this manner would follow the model of the development of closed captioning. A more specific schedule for increasing the availability of video description is dependent on the nature of the support mechanism selected. In this regard, Congress could consider increasing funding mechanisms for pilot programming and seed money for joint government/industry projects and could encourage the incorporation of video description in program production. Congress could use the development of closed captioning as a model for broadening video accessibility.

141. Additionally, there are certain legal issues, such as copyright matters, that remain unresolved and are likely to require a Federal reassessment of the applicability of existing laws.

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<sup>357</sup> See ¶ 132 *supra*.

The copyright issue might be resolved through private negotiation with respect to newly produced material as part of the initial production process. The law, however, may need to be clarified to permit the addition of descriptions without copyright owner approval to older, previously published programming by parties down the distribution chain from the original production process.

142. Therefore, we believe that the best course is for the Commission to continue to collect information and monitor the deployment of video description and the development of standards for new video technologies that are likely to affect the availability of video description. We intend to seek additional information and data that will permit a better assessment of video description in conjunction with our 1997 report to Congress assessing competition in the video marketplace. This annual report is submitted to Congress in compliance with Section 628(g) of the Act, 47 U.S.C. 548(g). In the context of this report, the Commission will be able to gather and evaluate information regarding the deployment of SAP channels and digital technology that will enable video providers and programmers to include video description. Persons with disabilities and the video programming industries will be able to report to the Commission on any developments to coordinate efforts in new technology standard setting and funding mechanisms. In seeking more information, we intend to continue to focus on the specific methods and schedules for ensuring that video programming includes descriptions, technical and quality standards and other relevant legal and policy issues. Simultaneously, we will monitor the deployment of video description through voluntary efforts and the development of standards for new video technologies that will afford greater accessibility of video description. Based on a more complete record, we expect to be able to better assess those issues that were not fully addressed through this proceeding.

## V. ADMINISTRATIVE MATTERS

143. This *Report* is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403 and 613.

144. It is ORDERED that the Secretary shall send copies of this *Report* to the appropriate committees and subcommittees of the United States House of Representatives and United States Senate.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton  
Acting Secretary

## APPENDIX

List of CommentersComments

1. A&E Television Networks
2. ALDA/Potomac
3. Alexander Graham Bell Association for the Deaf, Inc.
4. Alliance for Community Media
5. Aloha State Association of the Deaf
6. American Academy of Audiology
7. American Foundation for the Blind
8. American Society for Deaf Children
9. Joan Andrews
10. Association of America's Public Television Stations
11. Association of Late-Deafened Adults
12. Association of Local Television Stations, Inc.
13. Atlanta Hears Chapter/Self Help for Hard of Hearing People
14. Audio Optics, Inc.
15. AudioVision, Inc.
16. Bell Atlantic
17. Boston Chapter of Self Help for Hard of Hearing People
18. Broward County Library Access Services
19. Dick Burkhalter
20. Burlington Chapter of North Carolina Association of the Deaf
21. Californians for Television Access
22. Cape Organization for Rights of the Disabled
23. Capital Cities/ABC, Inc.
24. Caption Database, Inc.
25. CaptionMax
26. Joan Cassidy
27. CBS Inc.
28. Barbara Liss Chertok
29. City of St. Louis Communications Division
30. Joe Clark
31. Mary Clepper
32. Laurence Anne Coe
33. Colorado Assistive Technology Project, DakotaLink (South Dakota Tech Act Project), Georgia Tools for Life, Hawaii Assistive Technology Training and Service, Iowa Program for Assistive Technology, Louisiana Assistive Technology Access Network, Maine Consumer Information and Technology Training Exchange (CITE), Maryland Technology Assistance Program, Massachusetts Assistive Technology Partnership, Minnesota System of Technology to Achieve

Results (STAR) Program, Missouri Assistive Technology Project, New Hampshire Technology Partnership Project, Oklahoma ABLE Tech, Oregon Technology Access Through Life Needs, Pennsylvania's Initiative on Assistive Technology, Rhode Island Assistive Technology Access Project, Texas Assistive Technology Partnership, WisTech (Wisconsin Assistive Technology Program)

34. Consumer Action Network
35. Frank P. Corsica
36. Corporation for Public Broadcasting
37. Jeannette Costa
38. Council of Organizational Representatives
39. Deaf Counseling, Advocacy and Referral Agency
40. Disability Law Center, Inc.
41. Sally Dodge
42. Gerald Dominick
43. Anna Dresner
44. Kathy Dunn
45. EEG Enterprises, Inc.
46. Electronic Industries Association, Consumer Electronics Manufacturing Association
47. David S. Evans
48. F&V Channel, L.L.C.
49. Fairfax Cable Access Corporation
50. Mary Ann Foohey
51. Gallaudet University's Technology Assessment Program
52. Dan Glisson
53. Stuart and Marilyn Gopen
54. Great River Valley Chapter of the Coalition of Citizens with Disabilities in Illinois
55. Mildred D. Helyer
56. Home Box Office
57. Lillian and Glenn E. Hoshauer
58. Inclusive Technologies
59. Jerald M. Jordan
60. Lansing School District
61. League for the Hard of Hearing
62. Willis J. Mann, Telecommunications Access Program, Maryland Department of General Services
63. Massachusetts Commission for the Deaf and Hard of Hearing
64. MCAHI
65. Media Captioning Services
66. Metropolitan Washington Ear, Inc. (Comments and Additional Comments)
67. Sandra Miller
68. Motion Picture Association of America, Inc.
69. JoAnn M. Myers
70. Narrative Television Network

71. National Association of Broadcasters
72. National Association of the Deaf
73. National Broadcasting Company, Inc.
74. National Cable Television Association, Inc.
75. National Captioning Institute
76. National Congress of Jewish Deaf/Jewish Deaf Congress, Inc.
77. National Federation of the Blind of Idaho
78. Lucille E. Nestler
79. Lee Nettles
80. Frank L. Neuhauser
81. North Carolina Association of the Deaf, Inc.
82. North Carolina Department of Human Resources, Division of Vocational Rehabilitation Services
83. Northern Virginia Resource Center for Deaf and Hard of Hearing Persons
84. Ohio Educational Telecommunications
85. Pennsylvania Society for the Advancement of the Deaf, Inc.
86. Richard Pokrass
87. Public Broadcasting Service
88. Barbara H. Putney
89. Recording Industry Association of America
90. Regional Audio Information Services Ent.
91. Rochester Recreation Club for the Deaf, Inc.
92. Satellite Broadcasting and Communications Association
93. Schwartz, Woods & Miller on behalf of Ball State University, Connecticut Public Broadcasters, Inc., Detroit Educational Television Foundation, Educational Television Association of Metropolitan Cleveland, Fifteen Telecommunications, Inc., Long Island Educational Television Council, Inc., Louisiana Educational Authority, Maryland Public Broadcasting Commission, Metropolitan Board of Public Education, Mississippi Authority for Educational Television, New Jersey Public Broadcasting Authority, Oregon Public Broadcasting, University of New Hampshire, Window to the World Communications, Inc., University of North Carolina Center for Public Television, WJCT, Inc.
94. Self Help for Hard of Hearing People, Inc.
95. Celia Conlon Shepard
96. D.A. She
97. Louis M. Smith
98. South Carolina Association of the Deaf
99. Bernard J. Sussman
100. Telecommunications for the Deaf, Incorporated
101. U S West, Inc.
102. VITAC
103. Washington County Chapter, Pennsylvania Council of the Blind
104. Weather Channel
105. Charles C. Webster

106. WGBH Educational Foundation
107. Wireless Cable Association International

Reply Comments

1. A&E Television Networks
2. American Council for the Blind
3. American Foundation for the Blind
4. Association of Local Television Stations, Inc.
5. Dick Burkhalter
6. Caption Colorado, Inc.
7. Division of Services for the Deaf and Hard of Hearing
8. Encore Media Corporation
9. Home Box Office
10. Independent Cable & Telecommunications Association
11. International Cable Channel Partnership, Ltd.
12. Liberty Sports, Inc.
13. Maryland Association of the Deaf
14. Metropolitan Washington Ear, Inc.
15. Mid-Hudson Valley Civic Association of the Deaf
16. Motion Picture Association of America, Inc.
17. National Association of the Deaf
18. National Black Deaf Advocates
19. National Cable Television Association, Inc.
20. OpTel, Inc.
21. Herbert L. Pickell, Jr.
22. Rhode Island Association of the Deaf, Inc.
23. Sonny Access Consulting
24. Sunbelt South Tele-Communications, Ltd.
25. Gary Tomlinson
26. Virginia Association of the Deaf, Inc.
27. VITAC
28. Washington State Association of the Deaf
29. Delbert A. Wheeler
30. Wilson Association of the Deaf
31. Wireless Cable Association International, Inc.
32. Wisconsin Association of the Deaf