

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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

COMMENTS OF QVC, INC.

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QVC, Inc. ("QVC"), by its attorneys, hereby files its comments on the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

The primary objective of QVC's television programming service is to promote the sale of products featured on the service. To achieve this objective, QVC provides its television audience with comprehensive information regarding the products being sold. Notably, QVC's on-air hosts and guests offer continuous audio descriptions of those products, including product sizes and dimensions, price, colors, possible uses, and availability of items being sold, as well as instructions for ordering products and obtaining additional information.

¹ In the Matter of Implementation of Video Description of Video Programming, NPRM, MM Docket No. 99-339, FCC 99-353 (rel. Nov. 18, 1999) ("Notice").

QVC is not the type of programming service that Congress or the Commission intended to be covered by the video description requirements. Section 713(g) of the Act defines video description as "the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue."² However, there are virtually no "natural pauses" in the QVC service. Rather, products featured on the QVC service are discussed and described on an ongoing basis, so that video description could not feasibly be implemented "without interfering with the original audio of [the QVC service],"³ contrary to congressional and Commission intent. In fact, because video description would overlap and therefore obscure the necessary product information being imparted by the program's original audio, video description would actually cause the very confusion for visually disabled persons that the Commission seeks to avoid.

Moreover, even if there were natural pauses in the QVC service so that the insertion of video description could be feasible, video description would not add value to the QVC service for persons with visual disabilities. Unlike a movie or a sitcom for which video description might be used to enable the visually disabled person to better understand the storyline of the program, this would not be the case with the QVC service. The actions by the host or guest which could be described (e.g., "host stands up," "host points to product," or "guest holds product") would not

² 47 U.S.C. § 613(g) (emphasis added).

³ See Report of National Coalition of Blind and Visually Impaired Persons for Increased Video Access, filed in MM Docket No. 95-176, WT Docket No. 96-198, at 5 (Feb. 7, 1997) ("Coalition Report").

"enhance[] understanding and enjoyment of [the] video program by providing verbal descriptions of essential visual elements"⁴

For these reasons, QVC requests that the Commission make clear in the order adopted in this proceeding that the video description requirements will not apply to the QVC service.

Addressing obvious candidates for exemption such as QVC in this proceeding -- as opposed to under the case-by-case approach suggested in the Notice -- is entirely justified. Putting off such determinations until after the order in this proceeding is released will merely impose additional costs and burdens on the Commission staff and individual program services with no corresponding public interest benefit. To the extent the Commission prefers to address exemptions for categories of services as opposed to individual programming services in this proceeding, QVC sets forth below a proposed rule that would satisfy this objective for home shopping services that meet certain criteria. This proposed rule closely tracks the narrowly defined class exemptions the Commission adopted in its closed captioning order.

QVC notes that an exemption for home shopping services is fully justified based on the results of the surveys of the visually disabled community relied on by the Commission in the Notice. These surveys demonstrate that there is little demand among visually disabled individuals to describe home shopping programming. For example, the *Who's Watching* surveys found that "Shopping Programs" ranked second to last in a list of program categories that visually disabled individuals said they would like described, barely edging out a catch-all category labeled "Other."⁵

⁴ See id.

⁵ See Letter from Larry Goldberg, Director, CPB-WGBH National Center for Accessible Media, to Meryl Icove, Director, FCC Disabilities Task Force 2, filed in MM Docket No. 99-339, (footnote continued...)

These survey results are entirely unsurprising given the inherent nature of home shopping services such as QVC as further described below.

II. THE QVC SERVICE IS ALREADY FULLY ACCESSIBLE TO PERSONS WITH VISUAL DISABILITIES.

QVC transmits live, unscripted, shop-at-home television programming 24 hours per day, 364 days a year, to over 70 million households. QVC programming is generally divided into program segments devoted to particular products, product lines, or types of product. Audio is virtually continuous throughout each program segment. During these segments, QVC hosts and guests introduce products to the television audience, present detailed descriptions, discuss potential uses, and explain the pertinent ordering information such as product item number, product price, available sizes, and the QVC toll-free telephone number. The program host will also engage in "on air" conversations with a program guest or with individuals who call in to the show.⁶ In short, all essential product information is conveyed orally -- and continuously -- during all QVC shows so that the QVC service is already fully accessible to persons with visual disabilities.⁷ This makes perfect business sense. QVC has every incentive to present its products

(...footnote continued)

at 26-27 (November 4, 1998) ("NCAM Letter") (reprinting survey results from *Who's Watching* report).

⁶ Upon request by the Commission, QVC would be happy to submit into the record a video tape containing a representative sample of QVC program segments. Alternatively, QVC invites the Commission to tune in to the QVC channel at any time to sample the service.

⁷ To the extent that any person may have additional questions about a featured product -- such as QVC's return policy, special ordering instructions, shipping deadlines, and methods of payment (e.g., Visa, Mastercard) -- such persons, both visually disabled and all others, can call QVC's toll-free number which is served at all times by QVC's highly trained customer service representatives. Additionally, all products are covered by QVC's unconditional 30-day return
(footnote continued...)

in ways that will be fully accessible to the widest possible audience, including the visually disabled audience, because all members of the television audience are potential customers of QVC products.

III. QVC IS NOT THE TYPE OF PROGRAMMING SERVICE CONGRESS OR THE COMMISSION INTENDED TO COVER WITH A VIDEO DESCRIPTION REQUIREMENT.

A. There Are Virtually No "Natural Pauses" In The Audio Of The QVC Programming.

Section 713(g) of the Communications Act defines video description as the description of "key visual elements" during "natural pauses" in the program's dialogue.⁸ Similarly, the Commission's Notice in the instant rulemaking repeatedly states that the intended purpose of video description is to fill in audio during the "natural pauses" in video programming,⁹ and this purpose is echoed in the two sets of video description proposals submitted by the visually disabled community and on which the Notice extensively relies.¹⁰ Moreover, as the Commission specifically concluded in its 1996 Video Accessibility Report, "[l]ower priority for video description should be given to programming that is primarily aural in nature"¹¹

(...footnote continued)

policy. Under this policy, a customer can return any QVC product for any reason within 30 days of receipt. QVC issues the customer either a refund or a credit on the customer's QVC account and also reimburses the customer for any expenses incurred in returning the item.

⁸ 47 U.S.C. § 613(g).

⁹ See, e.g., Notice at ¶ 1 and n. 1.

¹⁰ See Coalition Report at 5; NCAM Letter at 1.

¹¹ See Notice at ¶ 14 (citing Video Accessibility Report, 11 FCC Rcd. 19214, at ¶ 140 (1996)) (emphasis added).

As described above, there are virtually no "natural pauses" in the program audio of the QVC service. Rather, this service is, without question, "primarily aural" in nature. Attempting to insert video description into the QVC service would thus invariably overlap and obscure its original program audio. This is contrary to the intended purpose of video description, which is to describe key visual elements during natural pauses in the program's dialogue "without interfering with the original audio of a program or movie."¹² QVC is simply not the type of service to which Congress or the Commission intended video description requirements to apply.

B. Requiring QVC To Video Describe Its Programming Would Not Serve The Commission's Stated Policy Goal Of Avoiding Consumer Confusion, And Would Actually Create Such Consumer Confusion.

The fundamental policy goal behind the Commission's video description proposals is to help visually disabled individuals avoid the confusion and "difficulty of being able to follow the visual action in television programs."¹³ Imposing a video description requirement on the QVC service clearly would not serve this public policy goal. Through the continuous audio feed on the QVC service -- which tracks the visual presentation of the product on the screen -- QVC already ensures that all members of its television audience, including the visually disabled, can fully

¹² Coalition Report at 5 (emphasis added). Such interference with the original program audio is even more assured with live, spontaneous programming such as the QVC service.

¹³ See Notice at ¶ 1. As the National Coalition of Blind and Visually Impaired Persons for Increased Video Access noted in its 1997 Report to the Commission, video description "enhances understanding and enjoyment of a video program by providing verbal descriptions of essential visual elements, such as settings, actions, comparative size, gestures, body language, scene changes, graphics, subtitles, and costumes." Coalition Report at 5 (emphasis added).

appreciate and understand the visual action of the program.¹⁴ In fact, given that, as noted above, video description could not feasibly be implemented for the QVC service without interfering with the original audio of the program, video description would actually create confusion for visually disabled persons through the resulting cacophony of competing and overlapping voices.¹⁵

Finally, even if there were natural pauses in the QVC service so that the insertion of video description could be feasible, video description would not add value to the QVC service for persons with visual disabilities. In a movie or a sitcom, video description might be used to fill in natural audio pauses and thereby enable the visually disabled person to better understand the storyline of the program. By contrast, the actions by the QVC host or guest which could be described (e.g., "host stands up," "host points to product," or "guest holds product") would not "enhance[] understanding and enjoyment of a video program by providing verbal descriptions of essential visual elements"¹⁶

¹⁴ Stated another way, there is no "significant action not apparent to persons with visual disabilities" which could justify application of video description requirements. See In Re Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, Fourth Annual Report, 13 FCC Rcd. 1034, at ¶ 271 (1998) ("Fourth Annual Report").

¹⁵ The visually disabled community fully recognizes the greater difficulties associated with video describing live programs. See Coalition Report at 11 ("We recognize that describing live shows presents more of a challenge than describing prerecorded programs."); NCAM Letter at 27 (noting that "provision of live description on either a local or national level would be impractical in the first years of enhanced description services"). The fact that QVC is both live and continuously aural in nature underscores the infeasibility associated with the implementation of video description for this service.

¹⁶ See Coalition Report at 5.

C. The Surveys Referenced In The Notice Indicate That There Is Little Interest Among The Visually Disabled Community In Requiring Video Description For Home Shopping Services.

The proposals in the Notice are largely based upon surveys of the visually disabled community. The Commission also cited to these survey results in its previous reports on video description, specifically in the context of defining what types of programming should receive the highest priority for video description.¹⁷

While these surveys indicate a strong preference in the visually disabled community for describing dramas and mysteries, nature and science programs, news and information, and comedies,¹⁸ they also illustrate that there is little demand among the visually disabled community to describe home shopping programming. Notably, for example, the *Who's Watching* surveys found that "Shopping Programs" ranked second to last in a list of program categories that visually disabled individuals said they would like described, barely surpassing a catch-all category labeled "Other."¹⁹

¹⁷ Fourth Annual Report at ¶ 271. The National Center for Accessible Media in its recent report to the Commission also cited to the *Who's Watching* survey results. See NCAM Letter at 26-27.

¹⁸ See NCAM Letter at 26-27 (reprinting 1997 survey results from *Who's Watching* report prepared by the American Foundation for the Blind); Fourth Annual Report at ¶ 271 ("In *Who's Watching*, survey results showed that dramas or mysteries, nature or science, news and information, comedies, and music programs or videos topped the lists of television programs that respondents would like to have described.").

¹⁹ See NCAM Letter at 26-27 (reprinting survey results from *Who's Watching* report).

* * *

Based on the foregoing, QVC respectfully urges the Commission to exempt the QVC service from any video description requirements it may adopt. This exemption would be entirely consistent with congressional intent. Even assuming arguendo that Congress intended for the Commission to impose video description requirements on video programmers,²⁰ it also clearly intended that the Commission refrain from applying such requirements to certain programming services. Section 713(f) of the Act, which the Commission references as a possible basis for jurisdiction,²¹ directs the Commission to define the types of video programming "for which video descriptions would apply."²² If Congress had not intended for the Commission to adopt exemptions from video description requirements for certain services, it would not have directed the Commission to define those services for which such proposed requirements "would apply."²³

IV. AN EXEMPTION FOR THE QVC SERVICE AND OTHER APPROPRIATE SERVICES SHOULD BE INCORPORATED INTO THE REGULATIONS ADOPTED IN THIS PROCEEDING.

Exemptions for certain video programming services should be incorporated into the regulations adopted in this rulemaking proceeding. By incorporating such exemptions into its

²⁰ QVC makes no judgment here as to whether Section 713 or any other provision of the Communications Act gives the Commission the authority to impose video description regulations on the video industry.

²¹ See Notice at ¶ 38.

²² 47 U.S.C. § 613(f).

²³ See also Fourth Annual Report at ¶ 271 ("With respect to Congress' request for a definition of programming for which video descriptions would apply, we believe that priority should be given to programming where there is significant action not apparent to persons with visual disabilities.") (emphasis added).

rules, the Commission will reduce the number of discrete cases it will have to adjudicate under the ad hoc "undue burden" procedures proposed in the Notice.²⁴ By contrast, if the Commission declines to address the merits of exemptions in this proceeding, it will impose unnecessary and unjustified costs and administrative burdens on both Commission staff and all affected parties. The Commission recognized these inefficiencies in considering whether to adopt rule-based exemptions for certain video programmers in the closed captioning context:²⁵

In the alternative, we could allow video service providers or owners to petition for exemptions as part of more widely applicable rulemakings. To the extent that rules of general applicability could be adopted to address exemptions for broader classes of programming or providers than what fall within our general exemptions, this may be more efficient and less cumbersome than individual petitions for waiver. This could conceivably result in fewer proceedings since the result of one rulemaking could be applied to many different situations and would be applicable to all similarly situated video providers.²⁶

Finally, to the extent the Commission prefers to address exemptions for categories of services as opposed to individual programming services in this rulemaking proceeding, QVC sets

²⁴ See Notice at ¶ 33. Moreover, it is doubtful whether a sufficient number of adequately trained video describers exist to accommodate the tremendous amount of new description work that could be generated by any new rules the Commission may adopt. By granting exemptions to certain program services in this proceeding, the Commission will facilitate a more efficient allocation of the limited video description resources.

²⁵ Of course, the Commission ultimately did address such rule-based exemptions in the closed captioning order.

²⁶ See In Re Closed Captioning and Video Description of Video Programming, NPRM, 12 FCC Rcd. 1044, at ¶ 100 (1997) (emphasis added). While QVC recognizes that the Notice proposes initially to apply its video description rules only to a relatively "narrow" class of programming -- prime time and children's programming -- it respectfully submits that this proposal is overinclusive. Application of the rules to this class of programming, without the concomitant adoption of appropriate exemptions, will presumably mean that the rules apply to the "prime time" delivery of the QVC service which, for the reasons discussed above, is unjustified.

forth below a proposed rule that would satisfy this objective for home shopping services that meet certain defined criteria:

(a) *Exempt programs and providers.* For purposes of determining compliance with this section, any video programming or video programming provider that meets the following criteria shall be exempt from the Commission's video description requirements:

(1) *Home shopping services.* Video programming or portions of video programming: (i) which consists of the display and promotional description of consumer products that can be ordered by the public while the products are being presented on television or later via telephone, mail order, or online; and (ii) for which the key visual elements of the program are described through an audio feed that also provides important product information such as, for example, price, sizes and dimensions, colors, possible uses, and availability of items being sold.

This proposed rule is reasonable in that it is both narrowly tailored and tracks the class exemptions that the Commission adopted in the closed captioning context.²⁷ As the Commission stated in its Closed Captioning Order:

[T]here are certain specific classes of situations where captioning would be difficult or technically infeasible, would not add significantly to the information that is already available visually, would create severe logistical problems, or the economic support for the programming is inherently fragile. In such cases, we find that the benefits of captioning will not offset the economic burden that would be imposed by a captioning requirement. These situations we address through the adoption of a limited number of specific category exemptions.²⁸

²⁷ See, e.g., 47 C.F.R. § 79.1(d)(4) (exempting video programming or portions of video programming "for which the content of the sound track is displayed visually through text or graphics (e.g., program schedule channels or community bulletin boards)."); Closed Captioning Order, 13 FCC Rcd 3272, at ¶ 149 (1997) ("Closed Captioning Order")("We also exempt from captioning requirements video programming for which the content of the sound track is substantially and materially displayed visually through text or graphics").

²⁸ Closed Captioning Order at ¶ 145 (emphasis added).

Similarly, video description of the QVC service (and other home shopping services meeting the definition set forth above) clearly "would be difficult or technically infeasible" and "would create severe logistical problems" -- because there are no natural audio pauses in the QVC service in which to insert video description -- and "would not add significantly to the information that is already available [aurally]" -- because QVC's continuous audio feed already provides all the necessary information, and, even if there were natural pauses in the QVC service, a description of the host's and guest's actions would not add value to the QVC service for persons with visual disabilities. Accordingly, the Commission should pursue the same reasonable approach here as it did in the closed captioning context and "address [these situations] through the adoption of a limited number of specific category exemptions" in its video description rules.²⁹

²⁹ The Notice recognizes that the closed captioning rules provide a "useful model" for the Commission's video description efforts. See Notice at ¶ 14.

V. CONCLUSION

Based on the foregoing, QVC respectfully urges the Commission to exempt the QVC programming service and/or the category of home shopping services, as defined herein, from any video description requirements it may adopt in this proceeding.

Respectfully submitted,

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