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

In the Matter of: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010	MB Docket No. 11-43

JOINT COMMENTS OF DIRECTV, INC. AND DISH NETWORK, L.L.C.

DIRECTV, Inc. ("DIRECTV") and DISH Network L.L.C. ("DISH") (together, the "DBS Providers") hereby comment on the Commission's proposals for reinstituting its video description rules to provide the blind and visually impaired with greater access to television programming.[1] To that end, the DBS Providers agree that the Commission should reinstate its original rules without changes (other than those mandated by the statute[2]). In these Comments, the DBS Providers: (1) endorse the Commission's proposal to reinstate the "SAP exception" to the pass-through requirements; and (2) describe two minor implementation issues arising from the new rules.

I. The Commission Should Reinstate the SAP Exception.

When it first promulgated the original video description rules, the Commission imposed a general requirement that broadcasters and multichannel video programming distributors ("MVPDs") pass through video description data to viewers. At that time, however, the

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[1] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, FCC 11-36 (rel. Mar. 3, 2011) ("*NPRM*").

[2] *See* Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) ("CVAA").

Commission also created an exception to that general requirement, allowing entities that were using the secondary audio program ("SAP") channel for other, program-related purposes to continue doing so.[3] Because the SAP channel cannot be used for more than one service at a time, the Commission created this "SAP exception" so that broadcasters and MVPDs that were transmitting, for instance, foreign language translations of programming would not have to stop providing that service in order to pass through video description.[4] Now, ten years later, the Commission seeks comment on whether digital transmission technology has rendered that exception unnecessary. As discussed below, neither the passage of time nor the digital transition has had a measurable effect on the DBS Providers' technological constraints, and the exception should be retained.

The limited capacity on the spot-beams with which DBS operators provide local programming is a matter of record. The Commission recently confirmed "serious technical difficulties" faced by satellite carriers in retransmitting the signals of thousands of local broadcast stations throughout the country.[5] It found that "the capacity used for local channels is separate from the capacity used for national channels and the two are generally not interchangeable."[6] It "recognize[d] that satellite carriers face unique capacity, uplink, and

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[3] *Implementation of Video Description of Video Programming, Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd. 1251 (2001) ("*Video Description Reconsideration Order*").

[4] *Id*, ¶ 15.

[5] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd. 5351, ¶ 8 (2008).

[6] *Id*. ¶ 11.

ground facility construction issues" in connection with offering local service.[7] It noted that, if faced with onerous carriage requirements, satellite carriers might be "forced to drop other programming, including broadcast stations now carried in HD pursuant to retransmission consent, in order to free capacity," or might be "inhibited from adding new local-into-local markets."[8] Thus, the Commission recognized that it had a duty to "implement . . . statutory requirements in light of the severe technical limitations faced by satellite carriers."[9]

Consistent with the limited capacity available for satellite delivery of broadcast programming, the DBS Providers have designed their systems to include only a single secondary audio channel. As DIRECTV described in its comments on the Commission's original video description proposal, if it were required to simultaneously carry video description and Spanish-language audio, it "could be required to make major modifications to its system in order to comply with the proposed rules, and incur potentially millions of dollars in expenses to do so."[10] In that same proceeding DISH (then EchoStar) explained that "video description requirement[s] could also entail costly adjustments to [DISH's] uplink operations," because of, among other things, the need to purchase new decoders and demodulators and the significant additional

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[7] *Id.* ¶ 7.

[8] *Id.* ¶ 8 (citations omitted).

[9] *Id.* In this regard, we note that the proposed reinstated rules provide a blanket exception to the pass-through requirement when "the channel on which the MVPD distributes the programming of the broadcast station [lacks] the technical capability necessary to pass through the video description." Proposed 47 C.F.R. § 79.3(b)(4)(i). The Commission should establish that, for the purposes of the reinstated rules, the spot beam on which a satellite carrier distributes programming is the "channel" to be examined for "technical capability."

[10] Comments of DIRECTV, Inc., MB Docket No. 99-339, at 8 (filed Feb. 23, 2000) ("2000 DIRECTV Comments").

bandwidth needed to support an additional audio channel.[11] Both DBS Providers continue to carefully match the design of each spot beam to the location and needs of each local market, enabling them to maximize the spectral efficiency of their systems and thus maximize the number of markets served and the amount of programming provided. Thus, the DBS Providers' capacity constraints remain essentially unchanged, and the SAP exception is as important to both DBS Providers' subscribers now as it was then.

Nor has the digital transition diminished the importance of the SAP exception to the DBS Providers. As DIRECTV explained in 2000, DBS has been an all-digital platform from the beginning. Because the DBS Providers have always digitized every broadcast signal they carry, any distinction between analog and digital transmission is irrelevant to DBS operators.[12]

In 2000, the Commission acknowledged the technological limitations on MVPDs' ability to pass-through multiple audio channels.[13] In the intervening decade, nothing has changed that would allow DBS providers to transmit more than one supplementary audio service at a time. Accordingly, the Commission should adopt its proposal to maintain the SAP exception.

II. The Commission Should Be Aware of Two Minor Implementation Issues.

The DBS Providers wish to briefly note two implementation issues for the Commission's consideration. First, roughly 500,000 of DIRECTV's oldest set-top boxes will be unable to create a "video description" menu. DISH anticipates facing a similar issue with certain of its older set-top boxes. These boxes will all be capable of passing through video description in

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[11] Petition for Reconsideration of EchoStar Satellite Corporation, MB Docket No. 99-339, at 9 (filed Oct. 11, 2000).

[12] 2000 DIRECTV Comments at 14.

[13] *Video Description Reconsideration Order*, ¶ 15.

compliance with the Commission's rules. They will, however, have to associate video description with one of the languages in the "language" menu (*e.g.*, Portuguese, French). Both DBS Providers will set up a system to help ensure that the relatively few owners of these older boxes know how to activate video description and will train its customer service representatives accordingly.

Second, the DBS Providers will require some notification that video description is present in order to pass it through. Such notification cannot occur using the Program System Information Protocol ("PSIP"), however, as both DBS Providers position material that broadcasters place in the PSIP using their own technology, optimized for satellite delivery.[14] As an alternative, the DBS Providers propose that programmers identify programming with video description in the same manner that they now identify programming with closed captioning. Both DIRECTV's and DISH's systems will be able to respond accurately to such cues.

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[14] *See* Reply Comments of DIRECTV, Inc. in Response to Third Further Notice of Rulemaking, CS Docket No. 98-120, at 3-4 (filed Mar 17, 2008) (describing DIRECTV's proprietary technology); Reply Comments of DISH Network, L.L.C. in Response to Third Further Notice of Rulemaking, CS Docket No. 98-120, at 3 (filed Mar. 17, 2008) (arguing that there is no need to impose on MVPDs the PSIP protocol that broadcasters use, because DISH has invested in its own programming guide information, channel placement solutions, closed captioning, and parental control systems).

Respectfully Submitted,

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April 28, 2011