

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission

REPLY COMMENTS



I. Introduction.

The American Cable Association (“ACA”) files these Reply Comments in support of the comments of the National Cable & Telecommunications Association (“NCTA”). Ensuring a smooth transition to video description warrants changes to several of the *Video Description NPRM’s* proposals.¹ Specifically, ACA supports NCTA’s recommendations that the Commission:

- Clarify that cable systems with 50,000 or more subscribers, not multichannel video programming distributors (“MVPDs”) with 50,000 or more subscribers, must provide the required video description;
- Retain the “program-related conflict” exemption;
- Retain the “technical capability” exception; and
- Delay the compliance deadline until the 4th quarter of 2012.

¹ *In the Matter of Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011) (“*Video Description NPRM*”).

About ACA. ACA represents nearly 900 independent cable companies that serve more than 7.6 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in 49 states and in a majority of congressional districts. The companies range from family-run cable businesses serving a single town to multiple-system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 2,000 subscribers.

I. The Commission should clarify that the video description rule only applies to *cable systems* that serve over 50,000 or more subscribers.

ACA supports NCTA's request that the Commission clarify that only cable systems that serve over 50,000 or more subscribers must provide 50 hours of video description per calendar quarter on each of the top five national non-broadcast networks during prime time or on children's programming.²

As stated by NCTA, the Commission's original video description rules applied to ***cable systems*** with more than 50,000 subscribers.³ In contrast, the *Video Description NPRM* describes the proposed rule as "MPVDs that serve 50,000 or more subscribers."⁴ This significant change in the description of entities subject to the requirement is proposed despite language in the *Video Description NPRM* stating that the Commission proposes to "reinstate [the pass-through] rule without revision."⁵ Moreover, the Twenty-

² *Video Description NPRM*, Comments of the National Cable & Telecommunications Association at 3, n.6. (filed Apr. 28, 2011) ("*NCTA Comments*").

³ *In the Matter of Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, ¶ 27 (2000) ("The per-channel costs for MVPDs also suggest that the cut-off for 'larger MVPDs' should be based on cable system size, not MSO size....We have decided to apply our rules to systems with more than 50,000 subscribers.").

⁴ *Video Description NPRM*, ¶ 6.

⁵ *Id.*, ¶ 14.

First Century Communications and Video Accessibility Act (“CVAA”) directs the Commission to reinstate its video description rules with certain modifications.⁶ These modifications do not include altering the 50,000 cable system threshold.

Clarifying the 50,000 threshold would minimize disruption and confusion among small cable operators, and ACA urges the Commission to do so.

II. The Commission should retain the “program-related conflict” exemption.

Retaining the “program-related conflict” exemption would reduce potential compliance costs for small and medium-sized cable operators. ACA supports retaining this exemption.

NCTA, AT&T, and the National Association of Broadcasters (“NAB”) all highlight technological reasons why the Commission should retain the “program-related conflict” exemption. As described by NCTA, much of the infrastructure for distributing video programming in digital replicates the two channel analog world.⁷ Because of this, “[c]able set-top boxes and headend equipment are only able to process two audio streams...In addition, cable operators are required to provide some measure of analog service to millions of customers.”⁸ Consequently, many MVPDs may not be able to effectively provide a third digital audio stream.⁹ Digital-to-analog converter boxes also

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, at Title II, § 202(a).

⁷ *NCTA Comments* at 4.

⁸ *Id.* at 5.

⁹ *Video Description NPRM*, Comments of AT&T at 3 (filed Apr. 28, 2011) (“The Commission should preserve the “other program-related service” exception to the pass through requirement because, as a practical matter, MVPDs may not be able to effectively provide a third digital audio stream in all cases.”).

are limited to two audio program channels.¹⁰

The consensus among these commenters is clear: the Commission should retain the “program-related conflict” exemption. Many ACA members, especially those serving rural and hard-to-reach areas, provide analog broadcast service (by converting the digital signal to analog) to their subscribers. Many ACA members also continue to re-use legacy set-top boxes. As noted by NAB, these set-top boxes cannot provide more than two audio channels to subscribers. Not retaining the “program-related conflict” exemption risks imposing significant burdens on smaller cable operators. Consequently, the Commission should retain the “program-related conflict” exemption.

III. The Commission should retain the “technical capability” exception.

ACA supports NCTA’s comments requesting that the Commission retain the “technical capability” exception. The Commission must continue to recognize that some cable operators may not have the technical capability necessary to pass through video description.

NCTA notes that the Commission has previously defined “technical capability” to mean that the broadcast station or MVPD “have virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.”¹¹ Consequently, the Commission should not revisit the question of how to determine whether an MVPD has the technical capability necessary to pass through video description. For small cable operators with limited financial and administrative resources, the “minimal cost”

¹⁰ *Video Description NPRM*, Comments of The National Association of Broadcasters at 4 (filed Apr. 28, 2011) (“[D]ue to the limitations of some MVPDs, as well as the over 100 million legacy analog television receivers connected to digital-to-analog converter boxes, many consumers are limited to only two audio program channels.”).

¹¹ *NCTA Comments* at 7.

standard provides an easy to define standard. These small operators do not need to use their limited resources to determine whether their systems are technically capable of passing through video description. As stated succinctly by Verizon, “the Commission should refrain from adopting unworkable new regulations that impose obligations on distributors that they are not in a position to satisfy.”¹² The Commission should therefore retain the “minimal cost” standard.

IV. The Commission should delay the compliance deadline until the 4th quarter of 2012.

ACA supports NCTA’s recommendation that the Commission should relax its scheduled compliance timeline. Specifically, ACA supports NCTA’s proposal to begin monitoring compliance in the 4th quarter of 2012.¹³

Relaxing the scheduled compliance timeline will help ensure a smooth roll-out of video description. The Commission must still review the record in this proceeding and release an order implementing important components of the rules. This includes a list of top five non-broadcast networks and any changes to the Commission’s proposed exemptions. Once the list is complete, small cable operators will have only a few months to come into compliance with the pass-through requirements.

For these reasons, the Commission should move its effective date to the 4th quarter of 2012.

¹² *Video Description NPRM*, Comments of Verizon on Video Description at 1-2 (filed Apr. 28, 2011).

¹³ *NCTA Comments* at 13.

V. Conclusion.

ACA supports NCTA's comments. The Commission should clarify that cable systems with 50,000 or more subscribers must provide the required video description, retain the "program-related conflict" and "technical capability" exceptions, and delay the pass-through compliance deadline until the 4th quarter of 2012.

Respectfully submitted,

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May 27, 2011