

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF CENTURYLINK

CenturyLink began as a telecommunications company over 80 years ago. More recently, with its acquisition of Qwest Communications International Inc., it is now the third largest telecommunications company in the United States. The company has a few existing wireline video service offerings including its Prism™ TV service in certain markets around the country and is planning to expand its Prism™ TV service, which has been launched in Fort Myers, Florida and Las Vegas, Nevada to other locations in 2011 and beyond. CenturyLink is and will be a new multichannel video programming distributor (MVPD) entrant in these markets. Prism™ TV delivers high-quality video content, a broad range of on-demand content and advanced interactive features over CenturyLink's managed two-way IP network and provides a competitive video experience to incumbent cable companies' video offerings. As it expands its offerings and brings video competition to more markets, CenturyLink supports access for people with disabilities and is committed to working with the Commission to fulfill the requirements of the Communications Act, as amended.

Like other MVPDs, CenturyLink submits that it is important from a public policy perspective that the Commission recognizes the limited role of MVPDs when it comes to video description and that it does not place undue burdens on MVPDs. Specifically, the Commission should reinstate its rules with the following limitations: (1) the requirement to do more than pass

through description should only be applied to individual *systems* with more than 50,000 subscribers; (2) the rules should retain the historical “other program-related service” exception, which was originally part of the technical capability limitation on the pass-through requirement; and (3) the rules should not place a regulatory obligation on MVPDs that they are unable independently to fulfill, for example because they do not control programming content.

As explained in the *Notice*,¹ and discussed in many of the Comments, the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA” or the “Act”)² requires the Commission to reinstate its video description regulations as amended.³ With respect to a new MVPD competitor such as CenturyLink, there are two primary requirements that the Commission will be reinstating:

- MVPDs with 50,000 or more subscribers must provide 50 hours per calendar quarter of video-described prime time and/or children’s programming on each of the top five non-broadcast networks that they carry⁴; and
- any MVPD, regardless of its number of subscribers, must “pass through” video description when a broadcast station or nonbroadcast network provides it, if it has the technical capability necessary to do so on the channel on which it distributes the broadcast station or nonbroadcast network programming.⁵

¹ *In the Matter of Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, FCC 11-36, Notice of Proposed Rulemaking, MB Docket No. 11-43 (rel. Mar. 3, 2011) (“*Notice*”).

² Pub. L. No. 111-260, § 202(a)(3), § 713(f)(1), 124 Stat. 2751 (2010).

³ CVAA § 202(a)(3), § 713(f)(1). The video description regulations were adopted in *Implementation of Video Description of Video Programming, Report & Order*, 15 FCC Rcd 15230 (2000) (“*DVS Report & Order*”), *recon.*, 16 FCC Rcd 1251 (2001) (“*DVS Recon Order*”).

⁴ *Notice* at 4.

⁵ *Id.* at 5 (citing 47 C.F.R. § 79.3(b)(4)).

As the Commission reinstates those rules, it should not expand them. Indeed, as NCTA explains, the Commission is limited in its ability to modify the rules by the plain language of the CVAA.⁶

With regard to the first requirement, CenturyLink agrees with NCTA that the requirement to do more than pass through description should only be applied to *systems* with more than 50,000 subscribers; it should not be applied to MVPDs with more than 50,000 subscribers where those subscribers are served by multiple systems, each with less than 50,000 subscribers.⁷ The technological and economic factors that underlie the choice of this threshold apply to local networks rather than combined functions that are performed on a holding company level.

With regard to the second requirement, CenturyLink joins NCTA and AT&T in calling on the Commission to retain the historical “other program-related service” exception, which was originally part of the technical capability limitation on the pass-through requirement. As AT&T explains:

an MVPD’s “technical capability” to pass through video description content should be determined in light of the bandwidth and other technological constraints of its transmission system. The Commission should recognize that MVPDs operate bandwidth-constrained systems that, depending on network architecture, may provide HD programming, On Demand services, an ever-increasing number of channels, home broadband Internet access, and VoIP services. Meeting customer demands for these service offerings presents substantial bandwidth demands upon an MVPD’s network, which would be further constrained if a third audio channel were required.”⁸

⁶ NCTA Comments at 4 (citing CVAA § 202(a)(3), § 713(f)(2)).

⁷ *Id.* at 3 n.6.

⁸ AT&T Comments at 3.

CenturyLink also agrees with AT&T that “the Commission should clarify that” . . . “MVPDs need only pass through video description content that is consistent with the bandwidth and other technological constraints of their distribution system.”⁹

Turning to the practical, technical, and legal challenges involved, the Commission must recognize that MVPDs will have to rely upon video programming providers to supply video descriptions. While this requirement will typically be addressed in the context of carriage agreement negotiations, CenturyLink agrees with AT&T that the Commission “should not skew this bargaining process by placing a regulatory obligation on MVPDs that they are unable independently to fulfill. MVPDs should be protected both from having to accept unreasonable terms from video programming providers, and from the failure of video programming providers to make available a sufficient amount of video-described content.”¹⁰

Verizon also highlights the issue of flexibility, writing that “any rules that the Commission adopts should reflect the important but limited role of video distributors like Verizon in providing video description to consumers. . . For example, the Commission asks about whether it should adopt quality standards as part of its video description rules, but no such rules could reasonably be applied to video distributors who have no opportunity to address quality concerns as it receives and then immediately distributes programming to consumers. At most, distributors should be required to take reasonable steps to pass on the video descriptions that they receive, as Verizon already does.”¹¹

⁹ AT&T Comments at 5.

¹⁰ *Id.* at 8.

¹¹ Verizon Comments at 2-3.

Finally, CenturyLink agrees with AT&T that “A multi-year reassessment interval coupled with a sufficient re-negotiation window should give MVPDs and content providers enough time to renegotiate their carriage agreements and ensure that their customers do not experience undue service interruptions.”¹²

CONCLUSION

As the Commission reinstates its video description rules, it should do so only with the following limitations: (1) the requirement to do more than pass through description should only be applied to individual *systems* with more than 50,000 subscribers; (2) the rules should retain the historical “other program-related service” exception, which was originally part of the technical capability limitation on the pass-through requirement; and (3) the rules should not place a regulatory obligation on MVPDs that they are unable independently to fulfill, for example because they do not control programming content.

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¹² AT&T Comments at 10.