

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)¹ hereby responds to the Public Notice in the above-captioned proceeding.²

INTRODUCTION

The cable industry has been providing video description pursuant to the Commission’s rules for a little more than a year. In that relatively short time, the industry has quickly ramped up to offer a wide variety of video-described programs and to educate customers about how to access them. Accessibility will continue to improve as the Twenty-First Century Communications and Accessibility Act (“CVAA”) is fully implemented and as the marketplace continues to develop. Under the circumstances, the Commission should report to Congress that it would be premature to adopt more video description requirements.

I. VIDEO DESCRIPTION IN TELEVISION PROGRAMMING

Since July 1, 2012, cable systems (and other MVPDs) with 50,000 or more subscribers have been required to provide at least 50 hours per calendar quarter of prime time or children’s

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$200 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

² FCC, Public Notice, *Media Bureau Seeks Comment on Video Description in Video Programming Distributed on Television and on the Internet*, 28 FCC Rcd 9043 (2013) (“Notice”).

programming containing video description on each of the top five non-broadcast networks they carry.³ For these purposes, the Commission identified USA, Disney Channel, TNT, Nickelodeon, and TBS as the top five non-broadcast networks.⁴ The rules also obligate MVPDs of any size to “pass through” programming containing video description.⁵

Congress directed the Commission to make inquiries and report about issues related to video description in television programming two years after the completion of the phase-in of the reinstated rules – in other words, no later than July 1, 2014.⁶ As described below, the cable industry is working hard to ensure the successful roll-out of video-described programming.

A. The Cable Industry is Successfully Implementing the Reinstated Video Description Rules.

The cable industry has dedicated – and continues to dedicate – significant resources to the successful implementation of the reinstated video description rules. Reinstatement of the rules has required building libraries of programming and educating consumers, while addressing creative, technical, and logistical issues related to implementation.

In just over one year since the reinstated rules came into effect, programming networks subject to the rules are currently airing a wide variety of programming containing video description. Video-described programming available today meets many interests. For instance, children’s programming targeted to different age groups is provided with video description on Disney (*e.g., Mickey Mouse Clubhouse, Jessie, Good Luck Charlie, A.N.T. Farm*) and

³ See 47 C.F.R. § 79.3(b)(4).

⁴ *In re Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order, 26 FCC Rcd 11847 ¶ 12 (2011) (“*Video Description Order*”).

⁵ See *Video Description Order* ¶¶ 20-21. The video description rules also impose obligations on broadcasters. See *id.* ¶¶ 10-11, 20-21.

⁶ See 47 U.S.C. § 613(f)(3). In particular, the Act asks the Commission to report on the (1) “availability, use, and benefits of video description on video programming distributed on television;” (2) “technical and creative issues associated with providing such video description;” and (3) “financial costs of providing such video description for providers of video programming and program owners.” 47 U.S.C. § 613(f)(3)(A).

Nickelodeon (e.g., *Dora the Explorer*, *Bubble Guppies*, *SpongeBob SquarePants*, *Team Umizoomi*).⁷ TNT and TBS provide a diverse array of prime-time programming with video description, including *The Big Bang Theory*, *Castle*, *Hawaii Five-O*, *Law & Order*, and Tyler Perry's *For Better or Worse* and a selection of video-described movies, and USA likewise offers popular prime-time programming with video description, including *NCIS*, *Law & Order: SVU*, *Royal Pains*, *Covert Affairs*, *Graceland*, *Burn Notice*, and *Suits*.⁸ Although it is under no legal obligation to do so, Turner Classic Movies (TCM) televises a large selection of video-described movies, stating on its website that “[a]pproximately 100 of the films in the TCM library have been audio-described and more are currently being added to the list.”⁹ Moreover, additional selections of programming containing video description are provided on television by broadcasters consistent with the Commission’s rules.¹⁰ The amount of programming on television with video description will continue to increase over time.

Meanwhile, the cable industry has mobilized resources to help consumers utilize video description. Programming networks have publicized schedules of the content available with video description on their websites¹¹ and over the telephone.¹² The cable industry has

⁷ See Disney, *August Video Descriptive Episodes*, at <http://a.dolimg.com/en-US/disneychannel/media/tvschedule/index.html> (last visited Aug. 22, 2013); Nickelodeon, *NICK Audio Described Schedule*, at <http://www.nick.com/shows/tvschedule/audio-described> (last visited Aug. 22, 2013).

⁸ See TBS, *Schedule: August 2013*, at <http://www.tbs.com/schedule/video-described/> (last visited Aug. 22, 2013); TNT, *Schedule: August 2013*, at <http://www.tntdrama.com/schedule/video-described/> (last visited Aug. 22, 2013); USA Network, *Accessibility at USA Network*, at <http://www2.usanetwork.com/accessibility/> (last visited Aug. 22, 2013).

⁹ Turner Classic Movies, *Knowledge Base, TCM Support, Closed Captions/DVS*, at <http://www.tcm.com/contact-tcm.html> (last visited Aug. 22, 2013).

¹⁰ See 47 C.F.R. § 79.3(b)(1)-(3). Consumers may also find programming containing video description on DVD, at movie theaters, and through other sources. See, e.g., Media Access Group at WGBH, *DVS® on DVD*, at <http://main.wgbh.org/wgbh/pages/mag/dvsondvd.html> (last visited Aug. 22, 2013).

¹¹ See, e.g., Disney and Nick websites, *supra* note 7; TBS, TNT, and USA websites, *supra* note 8.

¹² See, e.g., USA website, *supra* note 8 (indicating that consumers can call (212) 664-7010); TCM website, *supra* note 9 (indicating that consumers can call (404) 885-5535 (select option 2) or use the TCM “NOW PLAYING guide,” available by calling (800) TCM-1002).

coordinated with entities that aggregate and publicize lists of programming containing video description, including the Commission.¹³ Some programmers are also using an on-screen icon – D))) – that enables sighted viewers to identify video-described programming for viewing companions who are blind or visually impaired.

Cable operators have engaged in training their customer service representatives to handle questions from consumers about how to access video description on a particular cable system. Cable companies provide such assistance both on the telephone, and in other fora, including by responding to subscriber inquiries received online.¹⁴ Operators have also been coordinating with broadcasters and programmers to resolve any video description-related issues that may arise. The cable industry welcomes further coordination with advocacy groups to ensure that consumers are aware of the video-described programming options available to them.¹⁵

Those companies subject to the video description requirements have expended considerable resources in creating programming with this additional feature. The typical costs to video-describe an hour of programming are roughly in line with what was anticipated by industry when the rules were adopted.

¹³ See FCC, *FCC Encyclopedia, Video Description*, at <http://www.fcc.gov/encyclopedia/video-description> (last visited Aug. 22, 2013); see also The Audio Description Project, *Video Described Shows*, at <http://www.acb.org/adp/tv.html> (last visited Aug. 22, 2013). The American Foundation for the Blind provides a search tool to locate programs containing video description by zip code, provider, and time period. See Am. Found. for the Blind, *Described TV Listings*, at <http://www.afb.org/tv.aspx> (last visited Aug. 22, 2013).

¹⁴ See, e.g., Charter, *How Do I Use Descriptive Video Service (DVS)?*, at <https://m.charter.com/views/Faq.aspx?q=How+do+I+use+Descriptive+Video+Service+%28DVS%29%3F&aid=4244&t=2> (last visited Aug. 22, 2013); Cox, *About Video Description Service*, at <http://ww2.cox.com/residential/centralflorida/support/tv/article.cox?articleId=0ee10800-c226-11e1-ffa6-000000000000> (last visited Aug. 22, 2013); Comcast, *Comcast Help and Support Forums*, at <http://forums.comcast.com/t5/Channels-and-Programming/How-do-I-setup-Descriptive-Video/m-p/1406593#M25862> (last visited Aug. 22, 2013).

¹⁵ See, e.g., Am. Found. for the Blind, *Accessing Video Description, Step by Step*, at <http://www.afb.org/section.aspx?FolderID=2&SectionID=4&TopicID=521&DocumentID=6073> (last visited Aug. 22, 2013); Nat'l Center for Accessible Media, *Digital Television and Video Description: Service Continues, Consumer and Industry Efforts Required*, at http://ncam.wgbh.org/file_download/40 (last visited Aug. 22, 2013).

In these early stages of the provision of video-described programming, program networks in the main have been able to identify the optimal children’s and prime time programming to be described without running into creative roadblocks. However, we can anticipate that this will become more difficult over time, even if the amount of mandated video-described programming hours does not increase. As more prime time hours or children’s blocks are filled with library programming that contains video description, the rules inevitably will lead to programmers having less flexibility about which additional programming to describe. Operators are required to pass through all video descriptions, but can only “count” a single rerun of a video-described show toward the 50 hour threshold¹⁶ and can only “count” prime time or children’s programming.¹⁷ Moreover, even aside from the “counting” rules, some of the top five program networks air significant amounts of live programming during prime time – such as seasonal sporting events – that are not conducive to being described.¹⁸ All these factors will reduce programmers’ ability to work around potential creative problems.

* * *

In short, the cable industry is working hard to make sure that the roll-out of video description proceeds smoothly and successfully.

¹⁶ 47 C.F.R. § 79.3(c)(2).

¹⁷ 47 C.F.R. § 79.3(b)(4).

¹⁸ For this reason, we continue to believe that the Commission should amend its rules to include a categorical exemption from the 50 hour requirement if all non-exempt programming in a quarter that could count toward the requirement is video-described, even if it amounts to less than 50 hours. *See* NCTA Comments, MB Dkt. No. 11-43 at 16-17 (filed Apr. 28, 2011); *see also Video Description Order* ¶ 46 (acknowledging our concern, but declining to adopt a categorical exemption at this time). An exemption would be preferable to a case-by-case waiver, as it will provide the certainty necessary to ensure that programmers are not forced to artificially construct a program schedule simply to ensure a sufficient number of “describable” programming hours. Moreover, waivers impose unnecessary costs on the networks and burdens on the Commission – diverting resources that could be put to more productive uses.

B. The Commission Should Maintain Both “Program-Related Content” Exceptions.

Since their inception, the rules have been balanced to accommodate multiple uses of the second audio stream on which video description is typically located. The rules generally require cable operators and other MVPDs to pass through video description if technically capable, and to include video description in subsequent airings of a described program, except where the operator is using that capability “for another purpose related to the programming that would conflict with providing the video description.”¹⁹ NCTA previously showed both the legal and practical reasons why these exceptions should be part of the newly-reinstated video description rules.²⁰ To the extent the Commission desires to raise this issue in the context of its Report to Congress,²¹ it should report that both these exceptions remain important to cable operators’ and programmers’ ability to serve the needs and interests of multiple constituencies, including not only blind and visually impaired but also Spanish-speaking cable customers.

The Commission is well aware that MVPDs and some broadcasters typically can provide only one audio stream in addition to the main audio,²² and has underscored the consequences of eliminating the exemption:

Stations and systems would replace some other program-related content with video description to comply with the pass-through requirement, potentially depriving audiences, including in many instances non-English speaking

¹⁹ 47 C.F.R. §§79.3(b)(5), (c)(4).

²⁰ Section 202 of the CVAA amends Section 713 of the Communications Act to allow modifications to the reinstated video description regulations “*only as follows*,” and specifies those areas where additional exemptions, limitations or timetables could be adopted. Therefore, the Commission lacks statutory authority to limit exemptions that were part of the 2000 rules adopted on reconsideration. NCTA Comments at 4.

²¹ See Notice ¶ 5. The Notice does not indicate whether this aspect of the Inquiry will be included in the Report.

²² See, e.g., Video Description Order ¶ 29; *In re Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 ¶ 14 (2013).

communities who use the second audio stream to receive Spanish-language programming, of a valuable service. Alternatively, stations and systems would provide the passed-through video description on an audio stream tagged [with the label for “Visually Impaired”] ‘VI,’ making it difficult, if not impossible, for the target audience to access it.²³

While the two audio stream system currently used by industry has obvious limitations, NCTA has demonstrated that this is the only way currently to serve legacy equipment.²⁴

As for the exemption from the “subsequent airing” rule, the Commission adopted this exemption to “reasonably accommodate[] competing uses of the SAP channel, such as providing programming that is accessible to Spanish-speaking viewers.”²⁵ The exemption remains as necessary – if not more so – to serve this purpose. Programmers are increasing the number of hours of Spanish language programming at the same time that they are providing significantly more video-described programming. Maintaining the exception from the “subsequent airing” rule is critically important to programmers’ ability to rerun the same program and serve a different audience with a different audio stream.

In time, new ways will develop that will enable cable operators and programmers to provide video description service to blind and visually impaired users on an audio stream in a manner that can avoid these potential conflicts. But these changes will be evolutionary. Under the circumstances, in light of the continuing potential for conflict, these exemptions should be maintained so operators and programmers can continue to use the second audio stream to serve multiple important purposes.

²³ *Video Description Order* ¶ 31.

²⁴ See NCTA Comments, MB Dkt. No. 12-107 (filed Dec. 18, 2012) at 8, 10-13; NCTA Comments, MB Dkt. No. 11-43 (filed Apr. 28, 2011) at 4-7.

²⁵ *In re Implementation of Video Description of Video Programming*, Memorandum Opinion & Order and Order on Reconsideration, 16 FCC Rcd 1251 ¶ 35 (2001).

II. VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET

The CVAA asks the Commission to explore and report to Congress on the various technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered over the Internet.²⁶ As the VPAAC Report put it in 2012, Internet streaming technologies are not “description ready.”²⁷ While some progress has been made, providing consumers with multiple audio streams in online video programming remains complex.

The VPAAC Report explained that to provide another audio stream containing video description in addition to the single audio stream presented today, “many streaming platforms, especially those that use adaptive bit-rate technologies, will have to be modified and add functionality to support incremental audio components needed to become capable of storage, serving, transport, and user selected playback of Video Description.”²⁸ New systems would have to be designed so that customers could choose between audio streams on a program-by-program basis.²⁹

Multiple additional changes would need to be made to be able to supply online providers with video-described programming in a format that supports alternate audio tracks. This would require upgrades to existing content management and encoding processes to pass through the second audio from television programming to different platform providers. Existing software used in conjunction with content delivery networks would also need to be modified to support

²⁶ 47 U.S.C. § 613(f)(3)(B).

²⁷ Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010 (Video Description), Apr. 9, 2012 at 28.

²⁸ *Id.* at 28.

²⁹ *Id.*

alternate audio streams. Other pieces of the puzzle would need to fall into place before a consumer could enjoy video-described programming online.³⁰ For example, customers would need devices that could toggle between different audio streams. The cable industry's experience with the provision of online captioned programming suggests that none of this will be easily achieved or inexpensive.

The ever-increasing number of platforms, devices, and methods of viewing video programming online has led to multiple different methods of encoding, security systems, and content distribution methods. Technology "gaps" outlined in the VPAAC report cited above are still present and limit the ability to provide incremental audio channels to online content. All these technical, logistical, and operational issues associated with the online environment would need to be overcome to ensure seamless access to a second stream of video-described programming.

Congress carefully circumscribed the Commission's authority in the area of video description. Congress chose not to grant the Commission authority to require online delivery of video description, instead providing only for this inquiry and report.³¹ The Commission should report that an online video description requirement would impose significant logistical and operational issues. Given the newness of the video description rules, and the technical challenges of providing two audio streams online, the Commission should report that it is premature to suggest any online video description obligations.

³⁰ The repackaging of content archives to include an additional audio stream containing video description would impose other significant costs as well.

³¹ *See Motion Picture Ass'n of America, Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002) (striking down attempt to adopt video description rules in absence of statutory rulemaking authority).

CONCLUSION

For the foregoing reasons, the Commission should report to Congress that significant progress is being made in the provision of video description to cable customers and that further legislation in this area would be unnecessary and premature.

Respectfully submitted,

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