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

REPLY COMMENTS OF THE NATIONAL FEDERATION OF THE BLIND

I. Introduction

The National Federation of the Blind ("NFB"), the largest and oldest nationwide organization of blind people, submits these reply comments in response to those filed by the National Cable and Telecommunications Association,[1] DIRECTV, LLC,[2] and the National Association of Broadcasters[3] ("the Commenters"). The Commenters report that they have met or exceeded the required hours of video-described programming delivered on broadcast television under the Twenty-First Century Communications and Video Accessibility Act ("CVAA"). The NFB is pleased with their conformance to the requirements required under the reinstated rules.

These reply comments will address the needed expansion of requirements to video programming delivered using Internet Protocol ("IP"). This reply will also urge the Commission, in their report to Congress, to request authority to extend the video description requirements to video programming delivered over IP. Congress intended the video description requirements to be eventually expanded to IP-delivered video programming and, despite what was alleged in the filings of the Commenters, providing video description on IP-delivered video programming is technologically feasible.

[1] National Cable and Telecommunication Association Comments, MB Dkt. No. 11-43 (posted Sept. 5, 2013) ("NCTA's Comments").
[2] DIRECTV, LLC Comments, MB Dkt. No. 11-43 (posted Sept. 5, 2013) ("DIRECTV's Comments").
[3] National Association for Broadcasters Comments, MB Dkt. No. 11-43 (posted Sept. 7, 2013) ("NAB Comments").

II. With the Upward Trend of American Television Subscribers Switching to Watching Television Online, the Blind Will Be Left Behind Without Statutory Action.

The intersection of technology and communication has created an opportunity to expand the circle of participation – things that were traditionally inaccessible to a blind person can now be made accessible to all users, disabled or not. Unfortunately, the overwhelming majority of technological innovations are designed without accessibility in mind, and by the time regulations are implemented to close that digital divide, the mandated accessibility is retrofitted into a product and is, therefore not nearly as good as it could have been had it been voluntarily considered during the design phase. Following this trend, content producers of video programming have moved forward with delivering videos via IP without considering blind users. These producers have predictably lagged behind, and without video description of IP-delivered video programming, the blind are left out of cultural discourse, community development, and access to entertainment.

a. Video Description for IP-delivered Video Programming Is a Civil Rights Issue.

The Bureau of Labor Statistics estimates on an average day, 96% of the population engages in a leisure activity, and watching television accounts for about half of that time—2.8 hours per day.[4] Another 2012 study actually found an even higher result, with Americans over the age of two spending more than thirty-four hours a week watching television.[5] Accordingly, the CVAA recognized blind consumers' right of access to this programming and called for video description. The Commission noted the increasing effect television had on shaping individuals' opinions and culture and recognized the challenge in watching television for millions of disabled

[4] American Time Use Survey Summary, Bureau of Labor Statistics (June 20, 2013) available athttp://www.bls.gov/news.release/atus.nr0.htm

[5] http://www.nydailynews.com/entertainment/tv-movies/americans-spend-34-hours-week-watching-tv-nielsen-numbers-article-1.1162285#ixzz2iDbjc66V

Americans.[6] The Commission's comments recognize the benefits that video description would give to individuals with disabilities. Using the same reasoning, video description should be implemented on broadcasts over the Internet for those societal benefits.

The CVAA and the Commission's inquiry recognize the rapid expansion of video programming onto the Internet. As video programming over IP becomes more common and central to communication, recreation, and fundamental participation in American life, it becomes equally critical that blind people are secured a right of access to that programming as well.

b. There Has Been Rapid Growth in the Number of Americans Watching Video Programming on the Internet in Recent Years.

As technology has evolved in recent years, the Internet has become a source to watch television on services like Netflix, Hulu Plus, and iTunes.[7] Video programming delivered over IP, produced by professionals and amateurs, comprises an ever-growing aspect of modern life; from YouTube, which reaches more Americans ages 18-34 than any cable network,[8] to Netflix, whose Emmy winning original series "House of Cards" drew the attention of a significant portion of their 29.93 million streaming subscribers (a subscriber base that surpasses that of HBO),[9] IP-delivered video programming continues to expand its reach in the U.S. Of American television subscribers, 3.74 million have "cut the cord," transitioning from traditional television subscriptions to watching only online from 2008-2012, with 1.08 million making the switch in 2012 alone.[10] By the end of 2013, the total number will increase to 4.7 million American

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[6] Notice of Proposed Rulemaking, "Implementation of Video Description of Video Programming," DA 99-353 (rel. Nov.18, 1999). Report and Order, "Implementation of Video Description of Video Programming," DA 99-353 (rel. Aug.7, 2000).
[7] http://news.cnet.com/8301-1023_3-57409182-93/netflix-hulu-drive-u.s-consumers-to-cut-cable-cord/
[8] Statistics, YOUTUBE http://www.youtube.com/yt/press/statistics.html (last visited Oct. 20, 2013).
[9] *Netflix 4Q 2012 Earnings Show 2 Million User Surge In Subscriber Base*, ASSOCIATED PRESS, Jan. 23, 2013, *available at* http://www.huffingtonpost.com/2013/01/23/netflix-4q-2012_n_2536643.html; Amol Sharma, *Subscribers Fuel Netflix Stock*, WALL ST. J., Oct. 22, 2013, at B1.
[10] The Convergence Consulting Group Ltd. "The Battle for the North American (US/Canada Couch Potato: Online & Traditional TV and Movie Distribution." P. 10

television subscribers cutting the cord and only watching television online. By 2014, fifty percent of Americans will watch digital television online.[11]

With the number of Americans viewing video programming on the Internet increasing, the blind community is left behind. In drafting the CVAA Congress recognized the increasing trend to distribute video programming over IP, and therefore required reports about video description capabilities on Internet programming.[12] Currently Netflix and Hulu Plus, two of the most popular online providers of video programming, offer closed captions because they are required to by statute. Both sites do not offer video description programming and neither is likely to do so voluntarily without statutory requirements.[13]

Blind Americans need access to the same mainstream communication that is available to others, and Internet television providers will not do so until statutorily required. Though not achieving the same ends as video described television programming, some have responded by trying to crowd-source solutions to the lack of video description. A group of volunteer blind programmers who are offended by the lack of video description available online created Blindy.tv, a charitable website dedicated to providing blind Internet video consumers with audio-only television programming.[14] The organization exists not only to offer these services but also to raise awareness and push providers to include video descripted programming online because their site is not a replacement, but "is a type of audio-only TV ghetto."[15] Further examples

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[11] Jim Edwards, TV Will Reach 'Tipping Point' in 2014 As 50% of Americans Watch Online, Business Insider, 1 (April 2, 2013) available at http://www.businessinsider.com/tv-will-reach-tipping-point-in-2014-as-50-of-americans-watch-online-2013-4

[12] *Id*.

[13] *Robert Kingett, Internet TV for the blind*, DIGITAL JOURNAL, Jul. 27, 2013, *available at* http://digitaljournal.com/article/355326

[14] *About*, BLINDY.TV, *available at* http://blindy.tv/about (last visited October 17, 2013). With regards to its name which may seem offensive to the blind community, the organization states "[w]e aren't Blindy TV to offend you. We are Blindy TV because we are offended, and we think that you should be, too! Our best efforts leave us with something that sounds like TV, but is not"

[15] *Id*.

include the Smith-Kettlewell Video Description Research and Development Center and YouDescribe, an experimental web site that enables users to add their own video descriptions to YouTube and other user generated videos.[16] However, such third party solutions are not possible without the cooperation of content providers and the IP video distributors. The NFB urges the Commission to ask Congress to move swiftly and boldly to authorize video description requirements for IP-distributed programming. Without statutory requirements, it is likely blind consumers will be left behind as the rest of the country "cuts the cord" and transitions to IP-based video programming.

III. The Commission Should Urge Congress to Authorize Video Description for Video Programming delivered via IP.

The CVAA gives the Commission continued authority to issue additional regulations for programming on television.[17] The Commenters claim the CVAA does not authorize the Commission to implement video description requirements on the Internet because Congress did not explicitly grant this authority in the CVAA.[18] Congress intended for the Commission to gather data in order to make further rules to meet the CVAA's objective, mainly to ensure accessibility to technology for the disability community.[19]

In drafting the CVAA, Congress recognized the increasing trend to distribute video programming over IP, and therefore required reports about video description capabilities on Internet programming.[20] Congress intended the CVAA to promote accessibility of modern communication technology to disabled persons. Along with conducting inquiries into the

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[16] *VDRDC: The Smith-Kettlewell Video Description Research and Development Center*, http://www.vdrdc.org/ (last visited Oct. 16, 2013); YOUDESCRIBE, http://youdescribe.ski.org/rel/ (last visited Oct. 20, 2013)
[17] 47 U.S.C. § 613(f)(4).
[18] *See* NCTA's Comments at 9, NAB's Comments at 6-7.
[19] Congressional Report at 28. ("The Committee expects that these reports will form the basis of the Commission's subsequent rulemakings on these matters, but notes that the Commission retains the ability to adopt whatever requirements it sees fit to ensure the objectives of this Act are met.").
[20] *Id*.

availability, benefits, and costs of video description in television programming, Congress required the same inquiries for IP-delivered video programming.[21]

The CVAA's legislative history also expresses Congress's intent for the bill to expansively progress alongside technology and to potentially extend the Commission's authority to make such regulations in the future. In initial hearings, members of the Committee on Energy and Commerce discussed an overarching goal to avoid leaving people with hearing, speech, and vision disabilities behind the curve of technology.[22] The hearing included testimony describing the inability to participate adequately in family life as well as compete professionally because of the lack of accessibility to video description on television and on the Internet.[23] The bill was introduced to "ensure that individuals with disabilities have access to emerging IP-based communication and video programming technologies."[24]

Based on the cord-cutting data provided above that shows blind people will again be left behind the curve of technology, we urge the Commission to again be a leader for the disability community and encourage Congress to require video description on IP-delivered programming.

IV. Providing Video Descriptions on IP-Delivered Programming is Technically Feasible and the Burdens to the Industry Do Not Outweigh the Benefits to the Disabled Community.

Extending the video description requirements to IP-delivered video programming is the appropriate and logical next step for the Commission. Commenters claimed "there is very limited capability to consistently and reliably deliver a secondary audio stream in linear

[21] 47 U.S.C. § 613(f)(4).
[22] *H.R 3101, Draft Legislation Enhancing Access to Broadband Technology and Services for Persons with Disabilities*, 110th Cong. 2 (2008) (statement of Rep. Markey, Chairman, H. Subcommittee on Telecommunications and the Internet).
[23] *Id.* at 8-10 (statement of Russell Harvard, Coalition of Organizations for Accessible Technology); 42-43 (statement of Jamaal Anderson, Atlanta Falcons); 58 (statement of Sergeant Major Jesse R. Acosta, U.S. Army).
[24] H.R. Rep. No. 111-563 (2010) [hereinafter *Congressional Report*].

programming viewed via Internet Protocol,"[25] and that "providing consumers with multiple audio streams in online video programming remains complex."[26] These statements are false. HTML5 is the emerging standard for web based interaction and has built-in capability for multiple audio streams. Major search engines, social networking sites, and many Fortune 500 companies have adopted this standard, and there is no reason that providers of IP-delivered video programming should not also embrace HTML5.

In fact, while HTML5 is the most mature and readily available technology for video description, it is not even the only possible option for providing accessible video services. The technologies currently being used for video distribution on the web (SilverLight, Flash, etc.) are readily adaptable to the inclusion of description, and additionally, there are pre-existing web-based video players that utilize HTML5 and allow for switching between separate audio tracks. Most providers are choosing to use a streaming technology that does not have this capability. This choice is not a technical barrier as the Commenters purport, but rather a business decision.

Additionally, Commenters have listed synchronization of multiple bit-rate streams as a technical challenge to video description of Internet programming, but that is also a red herring. When a video is delivered online, there is a video stream and an audio stream. If video description is imbedded into the existing audio stream and a program is created to identify which video is being played (much like programs exist to constantly allow programmers to know what time it is), synchronization is easy. Although this new program would have to be created, it calls for utilization of pre-existing technology. The success and feasibility of this program is not dependent on whether or not the programming has multiple bit-rates.

[25] NAB's Comments at 7.
[26] NCTA's Comments at 8.

The Smith-Kettlewell Video Description Research and Development Center ("VDRDC") has been experimenting with crowd sourcing to produce third party descriptions.[27] The VDRDC has built a system for description that mixes the streams at the browser level, allowing a third party to create a description that is then synchronized with the video during play back by the user. The VDRDC's program provides meaningful access for blind and low vision Internet users utilizing pre-existing technology, and is successful despite the fact that video creators did not plan for description. This system illustrates not only a desire for online video description for the blind, but also the technological capacity to provide it in innovative and cost effective ways. The technical barriers posed by the Commenters stand in stark contrast with technology and systems that are already utilized by programmers.

Third party description is not the only approach to description for online videos; in fact, it may not even be the best approach. The best approach would call for creators of video content and the disseminators of the content (in this case, broadcasters and website operators) to embrace video description. This would include the aforementioned solutions like utilizing HTML5, or investing in a program that will imbed video description into the audio stream. This investment will not happen without incentive. Once the supposed "technical barriers" mentioned by the Commenters are removed, new excuses or problems will likely arise. That is the very nature of technology, which is why accessibility cannot be achieved successfully unless emerging solutions are embraced immediately, and implemented at the very early stages of design.

The CVAA mandates accessibility to provide incentives and flexibility for innovation, and to avoid requirements that are too burdensome or unachievable for manufacturers. Because technology already exists to provide video description for programming delivered via IP and

[27] VDRDC: The Smith-Kettlewell Video Description Research and Development Center, http://www.vdrdc.org/ (last visited Oct. 16, 2013).

because providers of Internet videos are not embracing that technology, it is only appropriate for the Commission to expand the video description requirements to online video programming now.

V. Conclusion

With fifty percent of Americans shifting to watching television exclusively on the Internet, blind consumers will be left behind without legislation requiring video description for IP-delivered programming. The CVAA calls for the Commission's inquiry into video description for IP-delivered programming because Congress anticipated the trend toward non-television based access to video programming. Today, modern communication technology enables many Americans to watch video programming on the Internet while systematically excluding blind individuals. An extension of the video description requirements is not only morally appropriate, but also necessary to ensure accessibility in Internet video programming.

Furthermore, the technology exists to provide description for IP-delivered video programming. The Industry Commenters' misrepresentation of the state of that technology should indicate to the Commission that there is no intent or current investment in providing video description for IP-delivered video programming that is not mandated. The CVAA's requirements must evolve with modern communication technology. Because of our Nation's commitment to providing accessibility so as to promote full engagement and participation, the Commission should urge Congress to mandate the use of existing technology to make IP-delivered video programming accessible to blind and low-vision consumers. The NFB strongly urges the Commission to protect the civil right of access and ask Congress to extend video-description requirements to IP-delivered video programming.

Sincerely,

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NATIONAL FEDERATION OF THE BLIND