

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the Media Bureau *Public Notice*² released in the above-captioned proceeding. The *Public Notice* seeks input to inform the Commission’s report to Congress on video description, as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),³ and NAB welcomes the opportunity to assist the Commission.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² *Media Bureau Seeks Comment on Video Description in Video Programming Distributed on Television and on the Internet*, Public Notice, MB Docket No. 11-43, DA 13-1438 (rel. June 25, 2013) (*Public Notice*).

³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010). Congress directed the Commission to commence the inquiries for the report “not later than 1 year after the completion of the phase-in of the reinstated regulations. . . .” 47 § 613(f)(3). Broadcasters and MVPDs were required to be in full compliance with the video description rules beginning on July 1, 2012. See *Video Description: Implementation of the Twenty-First Century Communications and Video*

As NAB previously has discussed, television broadcasters support the CVAA's goal of making broadcast television programming more accessible to people who are blind or visually impaired. Broadcast television networks and local broadcast stations have worked diligently to comply with the video description rules for televised programming. NAB is pleased to report that, in many cases, broadcasters are exceeding the regulatory threshold for the amount of video described programming per calendar quarter.

With respect to programming delivered via Internet Protocol (IP), NAB notes that the CVAA does not give the Commission authority to do anything more than report on video description for such programming. Moreover, as a practical matter, implementing video description in the IP context raises numerous technical challenges in the near term that counsel against imposing any requirements.

I. BROADCASTERS HAVE WORKED DILIGENTLY TO COMPLY WITH THE VIDEO DESCRIPTION RULES AND ARE EXCEEDING THE THRESHOLD REQUIREMENTS

The *Public Notice* seeks comment on a number of issues related to the availability, use, benefits, and costs of video description in television programming, as well as the technical and creative issues associated with providing such video description.⁴ NAB is pleased to share the following information in response to the Media Bureau's request:

Accessibility Act of 2010, Report and Order, 26 FCC Rcd 11847, 11864, ¶ 34 (2011) (*2011 Video Description Order*).

⁴ *Public Notice* at 3, ¶ 3. The CVAA directs the Commission to inquire about the following specific issues related to video description in television programming: The availability, use, and benefits of video description on video programming distributed on television; the technical and creative issues associated with providing such video

Amount of video-described programming that is currently available to consumers on television. The four major broadcast television networks currently are averaging more than the required 50 hours of video-described programming per calendar quarter, with the actual amount of video-described programming ranging from the high 50s to 88 hours per quarter. The wide range is due to a variety of reasons, including change of seasonal programming schedules, program ratings, and offerings intended to ensure that even in light of unanticipated developments, the 50-hour requirement is met.

Types of programming that are provided with video description. The 50-hour requirement covers prime time and children’s programming.⁵ To date, the majority of video-described programming has been prime time programming geared to general audiences. In addition to these programs, for the three major networks that distribute educational/informational (E/I) children’s programming to affiliated stations, most of that programming will also be video-described starting in the fall of 2013.

*Whether the availability of video description is indicated in program guides or other sources.*⁶ Each of the four major broadcast television networks identifies on its website programming available with video descriptions:

description; and the financial costs of providing such video description for providers of video programming and program owners. 47 U.S.C. § 613(f)(3)(A).

⁵ 47 C.F.R. § 79.3(b)(1) (requiring commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks and are located in the top 25 television markets to provide 50 hours per calendar quarter of video-described prime time or children’s programming).

⁶ In the *2011 Video Description Order*, the Commission declined to require that the availability of video description on certain programs be publicized in a certain manner. It indicated an expectation, however, that “programmers, stations, and systems will provide this information to viewers in an accessible manner, including on their websites and to companies that publish television listings information.” *2011 Video Description Order*, 26 FCC Rcd at 11871-72, ¶ 51.

- ABC: <http://abc.go.com/audio-description>
- CBS: <http://www.cbs.com/schedule/video-description/>
- FOX: Links to video-described shows on Fox can be found by clicking on an individual show's page (found most easily at the bottom of the homepage), then scrolling to the bottom of the show's page and clicking on the "Audio Description" link.
- NBC: Click on the programs on NBC's schedule; those described have an indicating icon, <http://www.nbc.com/schedule/>

The networks also provide audio/video description information to programming guides. For reasons of which the networks are unaware, however, this information appears not to be published regularly.

Costs of video description incurred by program owners and video programming providers and distributors, including broadcast affiliates. The costs of providing video description for televised programming can vary.⁷ On the low end, producing a video-described version of a program may cost around \$2,500 per program hour. Because some costs are fixed regardless of the length of a program, half-hour programs generally cost more than 50 percent of the per-hour cost for an hour-long program – typically about \$1,525 for 30 minutes. Thus, costs for every hour of video-described half-hour shows begin around \$3,050 per hour. In some cases, an hour of video-described programming may cost as much as \$4,100. These higher costs are

⁷ The costs listed here are limited to the production of video-described programming, which generally occurs at the network level, and do not include the \$25,000-\$50,000 cost to outfit a local broadcast station to pass through video-described programming or the additional costs of updating feeds to MVPD systems.

attributable to requirements to use SAG-AFTRA signatories and talent, in addition to standard voiceover artists.⁸

The *Public Notice* also asks whether the Commission should revisit the need for an exception to the video description pass-through requirements and to the requirements applicable to subsequent airings of programs when the technology used to provide video description is being used for other program-related content.⁹ The Commission suggested in 2011 that eliminating the exception might lead covered entities to replace other program-related content, such as foreign language audio, with video description on the single secondary audio stream or, alternatively, to provide video description on a third audio stream tagged in a particular manner (e.g., visually impaired), which could make it difficult for consumers to access.¹⁰

There remains no basis at the present time to eliminate the exception. As NAB explained in its initial comments on the *2011 Video Description NPRM*, the exception remains necessary in the near term to ensure that program diversity is not lost as a result of the conflict between use of the secondary audio channel for video description

⁸ In addition, as NAB previously has explained, applying video description to video programming takes considerable time. It may take up to seven days to create a single hour of video description and marry it to the programming. Vendors may receive preliminary scripts and recordings of unfinished versions of programs, but they will not finalize description scripts until receipt of the final air masters (nor should they, given the need to avoid any conflict with program dialogue or other important audio). Indeed, provision of video description necessitates alterations in the entire program production process. NAB Video Description Comments, MB Docket No. 11-43 (filed Apr. 28, 2011) at 9-10 (NAB Comments).

⁹ *Public Notice* at 4, ¶ 5. See 47 C.F.R. §§ 79.3(c)(3)-(4) (requiring certain television stations and MVPDs to include video description on subsequent airings for programs that have already aired with video description, “unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description”).

¹⁰ *2011 Video Description Order*, 26 FCC Rcd at 11863, ¶ 31.

versus Spanish-language audio.¹¹ Although future technological developments may alleviate this issue, there is no other solution in the current two-channel environment. Moreover, television broadcasters are exceeding the threshold requirement for the amount of video-described programming, even with the exception in place. Thus, there is no reason to remove the exception.

II. THE COMMISSION CANNOT IMPOSE VIDEO DESCRIPTION REQUIREMENTS ON IP-DELIVERED PROGRAMMING

The CVAA directs the Commission to inquire into and report on the technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using IP.¹² As the Commission is aware, however, the CVAA does *not* authorize the adoption of any video description rules for IP-delivered programming.¹³ The Media Bureau notes that the Commission’s video description requirements “do not apply to IP-delivered video programming that is not otherwise an MVPD service”¹⁴ – nor can they, absent new action from Congress. In enacting the CVAA, Congress was focused on reinstating the video description rules previously authorized for traditional television and setting forth a detailed schedule for a market-based rollout of televised video description. Its focus on IP-delivered programming for video description purposes was limited to a request for a report on its costs, benefits,

¹¹ NAB Comments at 20-21.

¹² 47 U.S.C. § 613(f)(3)(B); *Public Notice* at 4, ¶ 6.

¹³ See 47 U.S.C. § 613(f)(4)(A) (specifically limiting the FCC’s authority to issue “additional” video description “regulations” to programming that “is transmitted for display on television”).

¹⁴ *Public Notice* at 5, ¶ 6.

and technical feasibility. Under these circumstances, the Commission may not presume additional authority.¹⁵

Moreover, developing and deploying a secondary IP audio stream presents tremendous technical challenges. At present, there is very limited capability to consistently and reliably deliver a secondary audio stream in linear programming viewed via IP. Nor is there sufficient equipment or software to reliably support the many and ever-evolving IP devices, such as laptops, smartphones, tablets or desktop computers, or other IP based applications, in a multichannel audio environment. In time, the ultimate goal is for the entire web-based ecosystem to develop innovative and new means by which video programming can be more accessible to those with visual disabilities. The Commission, however, should not prematurely impose rigid regulations that could stifle developments such as voice-activated messaging, touch screens, or emerging text-to-speech applications, which could enhance the consumer experience for accessing both programming and emergency information. While broadband increasingly is becoming a platform for video delivery, the Commission should not lose sight of its nascent nature. Attempting to impose technical requirements now for the provision of IP-delivered programming with video description would force the Commission to choose a solution before the industry has even had a chance to develop standards, as discussed below. Any such regulation thus would hinder, not spur, innovations in the accessibility of online video delivery.

¹⁵ See *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F.3d, 796, 801 (D.C. Cir. 2002) (“[a]n agency may not promulgate even reasonable regulations that claim a force of law without delegated authority from Congress.”) (*cf.* with CVAA’s specific directive to “require the provision of *closed captioning* on video programming delivered using Internet protocol.” 47 U.S.C. § 613(c)(2)(A) (emphasis added)).

For purposes of the Commission's required report to Congress, NAB provides the following information regarding the technical and operational issues involved with providing video descriptions for IP-delivered video programming:

Lack of a standard for selecting among audio tracks associated with an Internet video program. At the present time, the main technical hurdle is lack of a single standard for selection among audio tracks in an Internet delivered program. The ATSC digital broadcast standard defines a method to encode and simultaneously transmit over the air a video stream with multiple audio streams (e.g., English, Spanish, and video description). Consumers can then select on their television receiver which audio stream they would like to hear. The ATSC broadcast standard has a single audio compression standard (Dolby AC-3). In contrast, there is no common technical standard in the Internet environment for encoding and signaling to the consumer which streams are available or for the consumer to select.¹⁶ The problem is further complicated by a

¹⁶ As the VPAAC Report describes the industry position, "Internet streaming technologies used for content distribution will have to add features to move to a state of being 'Description Ready.' Many streaming platforms, especially those that use adaptive bit-rate technologies, will have to be modified and add functionality to support the incremental audio component(s) needed to become capable of storage, serving, transport, and user selected playback of Video Description. Currently, many streaming systems have the limitation of "packaging" one video with one audio stream as the final asset for serving to customers. Today, the *one audio* approach is the primary audio for delivery over the sometimes-bandwidth-constrained Internet pipe. Enabling a user's selection of Video Description would require new system designs – so that the end-user could select Video Description on an asset-by-asset basis with the server sending the proper video and selected audio to each user. Once new system designs are deployed, their already packaged content archives will have to be re-packaged before being capable of adding the Video Description 'tracks' that may have been transmitted via broadcast or other means. Even presuming the Video Description tracks are 'as-aired' in a previous exhibition, the repackaging of the content archives is a significant work effort." Second Report of the Video Programming Accessibility Advisory Committee on

diversity of video encoders and players that are not compatible with each other, as well as a variety of device operating systems on which each video player must be able to run. On top of that, rather than a single standard for audio compression on the Internet, there are more than half a dozen.

The challenges of implementing IP captioning caution against rushing to require IP video description. From an operational perspective, industry is now focused on compliance with the IP captioning rules, some of which have yet to go into effect. Many companies are already challenged to meet the current delivery volume and timeline requirements for captioned programs. In addition, while many programs already have closed captioning files, the production effort for generating video-described content that can be operationalized and supported across multiple video players is still unknown, since common specs and technical requirements do not exist. Moreover, without a single industry standard or safe harbor, covered entities undoubtedly will develop proprietary handling methods. Among other complications, this could hinder a visually impaired user's ability to activate the service within a player environment.

Congress appropriately chose to limit the Commission's consideration of video description of IP-delivered programming to a report. Policymakers would need substantially more information about video description in the IP context before considering requirements in this area, and industry then would need a substantial amount of time to comply. At a minimum, the Commission would need to consult with

the Twenty-First Century Communications and Video Accessibility Act of 2010, Video Description (Apr. 9, 2012) at 27 (*VPAAC Video Description Report*), available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

the VPAAC, which previously “was not able to fully explore the topic of delivery of video description over the Internet” and whose members diverged on issues such as the extent of technology development and what programming could be provided over the Internet with description.¹⁷

III. CONCLUSION

NAB welcomes the opportunity to provide this information to the Commission as it prepares the required report to Congress. Consistent with the CVAA, we urge the Commission to continue focusing on implementation of IP captioning and to refrain from considering adoption of IP video description rules.

Respectfully submitted,

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¹⁷ VPAAC Video Description Report at 27-28.