

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Consumer and Governmental Affairs, Media, and ) GN Docket No. 21-140  
Wireless Bureaus Seek Comment on Commission’s )  
Fulfillment of the Twenty-First Century )  
Communications and Video Accessibility Act )

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

**I. Introduction and Summary**

The record in response to the above-captioned Public Notice<sup>1</sup> demonstrates that the Commission’s broadcast-related rules implementing the Twenty-First Century Communications and Video Accessibility Act<sup>2</sup> have successfully fulfilled the Act’s aim to “help ensure that individuals with disabilities are able to fully utilize communications services and better access video programming of enhancing both access to communications services and innovation.”<sup>3</sup> The National Association of Broadcasters (NAB)<sup>4</sup> supports the Commission’s continued efforts to implement the CVAA, which emphasizes collaboration among stakeholders and reasonable requirements that do not exceed its authority under the CVAA. Since the CVAA was adopted a decade ago, broadcasters have created systems and practices to improve access to video programming, not only to fulfill the FCC’s

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<sup>1</sup> *Consumer and Governmental Affairs, Media, and Wireless Bureaus Seek Comment on Commission’s Fulfillment of the Twenty-First Century Communications and Video Accessibility Act*, Public Notice, DA 21-05 (Apr. 7, 2021) (Public Notice).

<sup>2</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CVAA or the Act).

<sup>3</sup> S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010) (Senate Report).

<sup>4</sup> NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

requirements but as part of their commitment to serve as many viewers as possible.

Broadcasters have coordinated closely with the FCC and accessibility advocates on ways to improve access to television as the needs of viewers and technology evolved, and will continue to do so.

The record shows the success of these efforts, as no commenters express significant concerns about broadcasters' compliance with the closed captioning or audio description rules. Rather, disability advocates seek to expand the scope of the existing regulatory framework, primarily with respect to sources either outside the control of broadcasters or beyond the scope of the CVAA and the FCC's authority. Therefore, NAB respectfully submits that the FCC may not and should not impose additional accessibility regulations.

## **II. The FCC's Closed Captioning Rules are Working Effectively**

### **A. Modifications to the IP-Captioning Rules are Unwarranted**

The record shows that broadcasters have successfully implemented the FCC's rules governing closed captioning of IP-delivered video programming, which require captions on IP-delivered video programming that was previously published or exhibited on television with captions.<sup>5</sup> The rules apply to full-length programming<sup>6</sup> and video clips<sup>7</sup> that are posted on the website or app of a broadcaster or other video programming owner (VPO), as opposed to third-party websites, apps or platforms that are not owned, operated or authorized by a the

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<sup>5</sup> Comments of NAB, GN Docket No. 21-140, at 8-9 (June 7, 2021); 47 U.S.C. § 613(c)(2)(A).

<sup>6</sup> 47 C.F.R. § 79.4; *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) (2012 IP Order).

<sup>7</sup> 47 C.F.R. § 79.4(b)(2). *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010*, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (July 2014) (2014 IP Second Order).

VPO.<sup>8</sup> Broadcasters take steps to create high quality captions and send program files with captions of equivalent quality to video programming distributors (VPDs) that will redisplay the content.<sup>9</sup> No commenters express concerns with this process when the VPD is affiliated with the broadcaster.<sup>10</sup>

However, as part of their call for an “overhaul” of the FCC’s entire closed captioning regulatory regime,<sup>11</sup> the Advocacy Organizations urge the FCC to essentially eliminate the crucial distinction between such “first-party” platforms (e.g., a television station’s website), and third-party platforms that are not owned, operated or authorized by a broadcaster.<sup>12</sup> They state that many people watch video content, especially clips, on Facebook, YouTube and other social media and video sharing websites, and claim that captions are “frequently” unreliable.<sup>13</sup> The advocates ask the FCC to address these problems by amending certain technical standards to ensure that captions are inseparable from programming and require all entities involved in the chain of distribution of video programming to pass-through captions to third-party websites and apps.<sup>14</sup>

These requests ignore certain realities. Requiring broadcasters to ensure that their programming includes captions when later shown on unrelated, third-party outlets would

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<sup>8</sup> 2014 IP Second Order, 29 FCC Rcd at 8701-02.

<sup>9</sup> *Id.* at § 79.4(c)(1).

<sup>10</sup> Comments of Accessibility Advocacy and Research Organizations, GN Docket No. 21-140, at 34 (June 7, 2021) (Advocacy Organizations) (distinguishing between clips shown on “first-party” platforms and those shown on third-party platforms like Facebook and YouTube).

<sup>11</sup> *Id.* at 22-46.

<sup>12</sup> *Id.* 34.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

place broadcasters in an impossible situation.<sup>15</sup> The Advocacy Organizations themselves concede that the video distribution system to such outlets is “complex and lengthy.”<sup>16</sup> It involves long chains between broadcasters and the public of which broadcasters are generally not even fully aware. Indeed, the number and variety of such platforms are virtually limitless, and most have no agreement or relationship with broadcasters.<sup>17</sup> Broadcasters often have no control or even knowledge of where their video programming and clips are reshown online,<sup>18</sup> and no way of knowing if a clip was re-posted by a third-party directly from their own website or another location. Also, broadcasters often do not know if the caption file associated with the video clip properly plays after an unknown platform re-posts it. Furthermore, many third party distributors have vastly greater size than TV stations with the leverage to dictate the terms under which they distribute content. In addition, neither broadcasters nor the FCC would have a clear remedy against a third-party distributor if a clip does not retain captions, since monitoring for uncaptioned content online is essentially impossible for broadcasters and FCC jurisdiction over online platforms is uncertain. Given these obstacles, proposals to shoulder broadcasters with responsibility for ensuring the captioning of video programming distributed on third-party platforms are misplaced.

#### **B. Complaints Regarding Closed Captions of Televised Programming are Unfounded**

The Advocacy Organizations briefly allege quality problems with the closed captioning of television programming and renew their request for metrics to assess the quality of live

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<sup>15</sup> NAB Comments at 9.

<sup>16</sup> Advocacy Organizations Comments at 34.

<sup>17</sup> *Id.*

<sup>18</sup> Reply Comments of NAB, MB Docket No. 11-154, at 2-5 (Nov. 3, 2014).

captions.<sup>19</sup> NAB remains opposed to these proposals, which are under consideration in a pending Petition for Rulemaking.<sup>20</sup> First, evidence provided by NAB members, as well as the FCC's own data, show that the number of consumer complaints about captioning has actually dropped in recent years. Moreover, this drop has occurred despite an increase in the amount of captioned programming and the growth of social media, station websites and other methods that make it easy for viewers to share their concerns.<sup>21</sup> Broadcasters take seriously their commitment to ensure the presence and quality of captions and have implemented systems to monitor for mistakes and quickly address consumer feedback.<sup>22</sup>

Second, the FCC already rejected the exact same request for quality metrics in 2014, after consideration of a substantial record,<sup>23</sup> and the organizations do not provide any new information to justify a reversal of that decision. The Commission found that, rather than metrics, an approach based on specific best practices is the most effective way to ensure the quality of captions without unduly burdening video programming providers.<sup>24</sup> NAB has also described several real-world challenges to implementing quality metrics, such as how to define what constitutes an error, how to account for inadvertent mistakes beyond a

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<sup>19</sup> Advocacy Organizations Comments at 37-38.

<sup>20</sup> Petition for Declaratory Ruling and/or Rulemaking of TDI, et al., RM-11848, CG Docket No. 05-231 (July 31, 2019).

<sup>21</sup> Opposition of NAB, RM-11848, CG Docket No. 05-231, at 7-8 (Oct. 15, 2019) (NAB Opposition); Comments of NCTA, RM-11848, CG Docket No. 05-231, 8-9 (Oct. 15, 2019) (NCTA Caption Comments).

<sup>22</sup> NAB Comments at 8.

<sup>23</sup> *Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 05-231, 29 FCC Rcd 2221, 2264-66 (2014) (2014 Caption Quality Order); NCTA Caption Comments at 3 (noting more than 1,600 comments and letters in the FCC record).

<sup>24</sup> 2014 Caption Quality Order, 29 FCC Rcd at 2257.

broadcaster's control and the burden of forcing stations to monitor all of its programming for caption quality.<sup>25</sup>

### III. Broadcasters Have Improved the Quality and Availability of Audio Description

The record shows the success of the FCC's rules implementing audio description pursuant to the CVAA.<sup>26</sup> Broadcasters have fulfilled, and often exceeded the FCC's obligations even as those obligations have increased in recent years. They also provide easy-to-find listings of programming that is described, monitor for compliance and voluntarily describe a growing amount of live and on-demand programming and programming on a wider array of device platforms.<sup>27</sup> The FCC itself recognized these achievements in a 2019 report to Congress noting the "significant progress in the variety and amount of audio-described programming available" to consumers.<sup>28</sup>

Nevertheless, some accessibility advocates push the FCC to mandate even more hours of described programming,<sup>29</sup> increase the number of markets where description is

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<sup>25</sup> NAB Opposition at 10-12.

<sup>26</sup> 47 U.S.C. § 613(f)(1); 47 C.F.R. § 79.3.

<sup>27</sup> NAB Comments at 3; NCTA Comments at 6.

<sup>28</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Second Report to Congress, MB Docket No. 11-43, 34 FCC Rcd 9350, 9357 (2019) (Second Report).

<sup>29</sup> Comments of American Foundation for the Blind (AFB), GN Docket No. 21-140, at 2 (June 7, 2021). The CVAA capped the FCC's authority to raise the initially mandated amount of described programming at 75%, from 50 to 87.5 hours per quarter. 47 U.S.C. § 613(f)(4)(B). The FCC did so in 2017, rendering AFB's request moot. 47 C.F.R. § 79.3(b)(1). Congress would have to provide the FCC additional authority to further increase this figure.

required,<sup>30</sup> impose quality standards,<sup>31</sup> compel multiple secondary audio streams<sup>32</sup> and require that IP-based streaming services audio describe their programming.<sup>33</sup>

NAB, has detailed the limits on the FCC's authority to impose audio description quality standards.<sup>34</sup> The CVAA directed the FCC to reinstate the audio description rules that were previously vacated by the D.C. Circuit Court of Appeals,<sup>35</sup> and allowed the FCC to amend the rules in only certain respects, including changing the required number of hours of described programming and the number of television markets where the rules apply after a cost-benefit analyses.<sup>36</sup> Adopting audio description quality standards would exceed the FCC's statutory authority under the CVAA, and also raise First Amendment concerns.<sup>37</sup> For

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<sup>30</sup> AFB Comments at 2; Comments of American Council of the Blind (ACB), GN Docket No. 21-140, at 1 (June 7, 2021). Pursuant to the CVAA, the FCC recently extended the audio description requirements to covered stations in ten additional DMAs each year for the next four years. The FCC rejected requests to extend the obligations into additional markets, stating that it will revisit the matter in 2023, at which time the FCC will consider the reasonableness of the costs to implement audio description in smaller markets. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-43, 35 FCC Rcd 12577, 12584 (2020); 47 C.F.R. § 79.3(b)(1).

<sup>31</sup> AFB Comments at 2; Comments of National Federation of the Blind (NFB), GN Docket No. 21-140, at 2 (June 7, 2021); ACB Comments at 2.

<sup>32</sup> AFB Comments at 2; NFB Comments at 2;

<sup>33</sup> AFB Comments at 2; NFB Comments at 1; ACB Comments at 1.

<sup>34</sup> NAB Comments at 6-7.

<sup>35</sup> *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F. 3d 796, 805 (D.C. Cir. 2002).

<sup>36</sup> 47 U.S.C. §§ 713(f)(1)-(2).

<sup>37</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 2975, 2989 (2011); U.S. CONST. amend. I; 47 U.S.C. § 326.

example, it would be inappropriate for the FCC to influence the subjective, creative decisions of audio description writers by requiring that certain elements in a scene be highlighted.<sup>38</sup>

There are also certain technical obstacles to providing multiple secondary audio services, which would allow viewers to access either audio description and other audio like foreign language translations programming.<sup>39</sup> The challenges include installing and testing additional routing, encoding and other equipment at every television station, the inability of some digital television receivers to allow viewers to easily select among multiple secondary audio services and the inability of some existing cable systems and converter boxes to provide multiple audio services.<sup>40</sup> Simply imposing a requirement to provide multiple audio streams would burden industry with a task that is currently infeasible.

Regarding expansion of the audio description rules to online video programming, NAB has explained that the CVAA specifically limits the FCC's authority to require description to video programming that is exhibited on television, and not IP-delivered programming.<sup>41</sup> Moreover, like IP-captioning, broadcasters often have no relationship with third-party platforms that redistribute their programming and therefore cannot ensure that the audio description of their programming is retained when redisplayed online. In addition, there are technical challenges that prevent the provision of multiple secondary audio streams in IP-delivered content.<sup>42</sup> At bottom, the question of audio description of IP-programming appears

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<sup>38</sup> These obstacles were referenced in a recent recommendation of the FCC's Disability Advisory Committee, which set forth resources and guidance for composing audio description, available [here](#).

<sup>39</sup> NAB Comments at 5.

<sup>40</sup> *Id.*

<sup>41</sup> 47 U.S.C. § 613(f)(4)(A).

<sup>42</sup> NAB Comments at 7.



to be technically complex, invokes First Amendment concerns and requires more information before any new rules in this area are considered.<sup>43</sup>

#### **IV. Collaboration is More Effective than Enforcement for Ensuring and Improving Accessibility to Video Programming**

The Accessibility Organizations fault the FCC for engaging in “little public enforcement” of its accessibility rules and urge the FCC to take actions that more widely publicize the consequences for violating the FCC’s requirements.<sup>44</sup> The organizations seem to equate eye-catching displays of enforcement with more vigorous enforcement. To that end, they push the FCC to proactively monitor for accessibility problems in all communications services under its jurisdiction.<sup>45</sup>

Such an approach would be counter-productive and unnecessary. Providers already have strong business incentives to ensure access to their services,<sup>46</sup> especially broadcasters that face increasing competition from a plethora of well-funded new sources for video programming.<sup>47</sup> Moreover, as the Accessibility Organizations concede, the CVAA emphasized stakeholder collaboration as the preferred approach for identifying accessibility priorities, developing policies and ensuring compliance.<sup>48</sup> In that spirit, NAB has been an active member of the Commission’s various advisory groups on disability issues from the start, from the Video Programming and Accessibility Advisory Committee established in the

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<sup>43</sup> NAB is aware that some streaming platforms have begun to voluntarily provide some audio description in spite of these challenges.

<sup>44</sup> Accessibility Organizations Comments at 56.

<sup>45</sup> *Id.* at 57.

<sup>46</sup> Comments of Consumer Technology Association (CTA), GN Docket No 20-140, at 6 (June 7, 2020).

<sup>47</sup> *2020 Communications Marketplace Report*, GN Docket No. 20-60, 36 FCC Rcd 2945, 3077-3083 (2020).

<sup>48</sup> Accessibility Organizations Comments at 55.

CVAA<sup>49</sup> to the ongoing Disability Advisory Committee (DAC). These committees have been remarkably successful venues for convening industry and disability representatives to forge consensus recommendations to the FCC on the full gamut of accessibility issues, many of which had led directly to Commission inquiries or regulations. These efforts have been especially useful regarding new and evolving technologies.

Finally, NAB submits that the Accessibility Organizations' call for active monitoring is ill-conceived. The FCC has recognized that such monitoring unnecessarily strains resources for the FCC.<sup>50</sup> Instead, the Commission has wisely established complaint procedures that "allow mistakes to be corrected and patterns of noncompliance to be addressed."<sup>51</sup> For example, consumers may choose from among multiple avenues to resolve captioning, including reaching out to stations directly through the "immediate concerns" contact listed on their website as well as through the FCC's informal complaint process. Television stations are able to work collaboratively with consumers through both pathways to identify the issue and, in many cases, resolve it quickly by either checking their own systems or working with the consumer to troubleshoot any potential equipment configuration issues. As NCTA states, the FCC's complaint process serves as an effective "early warning system" that allows the FCC, industry and consumers to identify and resolve potential problems.<sup>52</sup> This troubleshooting approach has proved efficient for isolated issues while also enabling the

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<sup>49</sup> CVAA § 201(a).

<sup>50</sup> 2014 Caption Quality Order, 29 FCC Rcd at 2259.

<sup>51</sup> NCTA Comments at 3.

<sup>52</sup> *Id.* at note 7.

FCC to appropriately deal with any patterns of noncompliance.<sup>53</sup> Accordingly, NAB sees no need for further enforcement efforts or regulations.

## V. Conclusion

The record illustrates that the Commission's broadcast-related accessibility rules have successfully implemented the CVAA's dual goals of promoting accessibility to communications services and equipment while supporting technology innovation. Broadcasters have demonstrated their commitment to ensuring access to their video programming, and fully intend to further enhance the ability of persons with disabilities to enjoy their service as technology continues to evolve. NAB also submits that the FCC's current approach to accessibility improvement and enforcement, which emphasizes collaboration, should be retained as the most efficient way to identify and rapidly resolve any accessibility gaps or glitches. Accordingly, NAB respectfully submits that no additional obligations are necessary at this time.

Respectfully submitted,



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<sup>53</sup> 47 C.F.R. § 79.1(e) (responsibility for and determination of compliance with the captioning rules); *Id.* at § 79.3(e) (complaint procedures under audio description rules).