

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)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the above-captioned Public Notice.² The Notice seeks comment on recent developments regarding video description to help inform a report the Commission is required to submit to Congress by October 8, 2019, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).³ The Commission’s report must address the current availability, use, benefits and costs of video description.

I. Introduction and Summary

Broadcasters continue to support the goal of the CVAA to enhance the ability of individuals who are blind or visually impaired to enjoy video programming, and have faithfully implemented the CVAA and Commission policies to provide video described programming.⁴ Television stations are leaders among communications providers in

¹ 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.

² *Media Bureau Seeks Comment on Recent Developments in the Video Description Marketplace to Inform Report to Congress*, Public Notice, MB Docket No. 11-43, DA 19-40 (Feb. 4, 2019) (Notice).

³ Pub. L. No. 111-260, 124 Stat. 2751 (2010); 47 U.S.C. § 613(f)(4)(C)(iii).

⁴ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, 29 FCC Rcd 8011, 8022 (2014).

providing accessible programming to Americans who are blind or visually impaired.⁵ Indeed, all of the networks subject to the rules voluntarily currently provide more described programming than mandated under the Commission's rules, and in some cases, substantially more. They provide a wide range of video described prime-time, children's and programming aired between 6:00 am and midnight, and make sure that consumers can easily identify their video described offerings. That said, NAB urges caution regarding the extension of the video description rules into additional designated market areas (DMAs) beyond the top 60, as the viewership and advertising revenues in those markets pale in comparison to larger ones, and the costs to implement video description may be unduly burdensome for some broadcasters.⁶

Finally, NAB reiterates that the CVAA does not authorize the Commission to take any regulatory action regarding programming delivered over Internet Protocol (IP), but only to collect and report relevant information. Implementing video description for IP-delivered content continues to face operational and technical obstacles that remain to be addressed.

II. Broadcasters Have Successfully Implemented Video Description

Pursuant to the Commission's rules implementing the CVAA, broadcasters were required to be in full compliance with the video description regulations beginning on July 1, 2012.⁷ The initial rules required television stations that are affiliated with one of the top four networks and are located in the top 25 DMAs to provide 50 hours per calendar quarter of video described prime-time or children's programming.⁸ On July 1, 2015, this obligation was

⁵ *Id.* at 8019.

⁶ 47 U.S.C. § 613(f)(4)(C)(iv)(I).

⁷ 47 C.F.R. § 79.3(c)(1).

⁸ *Id.* at § 79.3(b)(1); 47 U.S.C. § 613(f)(1) (reinstating earlier video description rules).

expanded to stations in DMAs ranked 26 to 60,⁹ and beginning on July 1, 2018, the required amount of video described programming increased to 87.5 hours per quarter.¹⁰ The additional 37.5 hours may be aired any time between 6 am and midnight.¹¹

Broadcasters have diligently met their video description obligations, even as those obligations have rapidly expanded over the years. They have initiated video description at additional stations as the rules extended into more DMAs, ramped up the amount of described programming as directed and even exceeded Commission requirements. They have also informed viewers on how to find such programming and worked to overcome the relevant technical and creative issues. Broadcasters are pleased to fulfill or even exceed the video description requirements, presuming the relevant costs remain reasonable as required under the CVAA.¹²

A. Amount and Type of Available Video Described Programming

The Notice seeks comment on the amount of video described programming that is available to consumers, and the types of content that are described.¹³ Each of the networks covered by the rules exceed the Commission's requirement of 87.5 hours per quarter of video described programming, with the actual amounts ranging up to 100 - 125 hours for some networks. One broadcaster explained that it is good business practice to provide video description on a substantial amount of new programming because it is difficult to predict

⁹ 47 C.F.R. § 79.3(b)(2); 47 U.S.C. § 613(f)(4)(C)(i-ii); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, 11849 (2011) (2011 Video Description Order)

¹⁰ 47 U.S.C. § 613(f)(4)(B); 47 C.F.R. § 79.3(b)(1).

¹¹ 47 C.F.R. § 79.3(b)(1); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 32 FCC Rcd 5692, 5970 (2017) (2017 Video Description Order).

¹² 47 U.S.C. § 613(f)(4)(C)(iv)(I).

¹³ Notice at ¶ 7.

which shows will be successful and run an entire slate of episodes. Examples of video described programming include:

ABC: *The Goldbergs*, *Modern Family*, *Speechless*, *black-ish*, *America's Funniest Home Videos*, live awards and game shows, live Presidential Inauguration coverage, and additional children's programming.

CBS: *NCIS: Los Angeles*, *NCIS*, *NCIS: New Orleans*, *Lucky Dog*, *The Inspectors*, *Hope in the Wild*, additional prime-time and children's programming.

FOX: *Empire*, *Family Guy*, *The Gifted*, *Gotham*, *Lethal Weapon*, *The Masked Singer*, *The Passage*, *The Resident*, *The Simpsons*, *Star*, *Beat Shazam* and *MasterChef*.

NBC: *New Amsterdam*, *Chicago Fire*, *Will & Grace*, *Superstore*, *A.P. Bio*, *The Wiz Live!*, *Hairspray Live!*, the 2018 Winter Olympics and additional children's programming.

We also understand that at least two additional broadcast networks provide a meaningful amount of video described programming on a voluntary basis. For example, The CW airs a block of video described programming on Saturday mornings, including *Did I Mention Invention?*, *The Wildlife Docs*, *Trade School* and *Welcome Home*.¹⁴ PBS also carries many programs with video description, including *NatureCat*, *WordGirl*, *Cyberchase* and *Mister Rogers' Neighborhood*, and much of its general lineup, such as *American Masters*, *Frontline* and *NOVA*.¹⁵

The Notice also seeks comment on mechanisms used by covered entities to verify the amount of described programming they provide, and who selects the programming to be described.¹⁶ In general, programming representatives of the networks routinely review their schedules to confirm compliance with the quarterly requirements for first and second run programming, and track the additional airings of video described programming as second

¹⁴ The Audio Description Project (ADP), An Initiative of the American Council of the Blind (ACB), available at <http://acb.org/adp/tvschedule.html> (Last visited: Feb. 25, 2019).

¹⁵ See <http://acb.org/adp/articles/tvpbs.html>.

¹⁶ Notice at ¶ 7.

repeats and beyond. Some networks provide certification to their station affiliates that the network fulfills the video description rules. In all cases, the networks retain the editorial discretion to determine which programming will be video described. These decisions are typically made by a committee of programming representatives, sometimes in concert with staff who administer video description and closed captioning.

B. Consumer Access to Video Described Programming

The Commission seeks comment on how broadcasters and other entities subject to the rule inform consumers about which programs are video described.¹⁷ The Commission has not required that such programs be publicized in any specific manner, but only that such information must be provided in an accessible manner.¹⁸ Each of the four major networks clearly identifies video described programming on their websites:

- ABC: Video described programming is identified on a dedicated website: <https://abc.go.com/audio-description/>, and on the network’s main schedule of programming. The schedule is constantly updated to indicate video described programs. Viewers may visit <https://abc.go.com/schedule> and look for the icon .
- CBS: The video described program schedule is available as a “dynamic” webpage that provides precise schedule and episodic program listings by date and time. The E/I schedule airs at different times on the network’s various affiliates and these programs are listed in a “static” format on the same page: <https://www.cbs.com/video-description/>
- FOX: Video described programs are listed on a dedicated website: <https://www.fox.com/article/audio-description-5987a9810054d000205ff116/>.
- NBC: Video described programming is identified on the network’s main schedule of programming, which is constantly updated to indicate video described programs. Viewers may visit <https://www.nbc.com/schedule> and look for the icon .

Links to these listings and other useful information are also provided on the Commission’s webpage dedicated to video description: <https://www.fcc.gov/general/video->

¹⁷ *Id.* ¶ 8.

¹⁸ 2011 Video Description Order, 26 FCC Rcd at 11872.

[description](#). In addition, the listings are consolidated on the website of the Audio Description Project, an initiative of the American Council of the Blind.¹⁹ This website is frequently updated to reflect the networks' current video described offerings, and helpfully lists video described programming by both network and day/time.

The Commission notes that video description is typically carried on the same secondary audio programming (SAP) channel as other audio services (e.g., foreign language programming), and therefore is sometimes unavailable for use for video description.²⁰ Both industry and the Commission's Disability Advisory Committee have considered ways to alleviate this problem;²¹ however, the available options remain limited. There continue to be technical challenges for stations to broadcast more than one additional audio service. Additional routing, encoding and other equipment would be required to be installed and tested at every television station to encode multiple SAP channels.²² On the consumer electronics side, many digital television receivers still lack the requisite user interface needed to enable viewers to easily select the SAP channel. In addition, legacy analog television receivers still used by a significant number of consumers are only able to select one SAP channel. Finally, NAB's understanding is that many existing cable converter boxes may not have the capability to provide multiple SAP channels, and some cable and satellite headends are not able to receive and process multiple SAP channels.

¹⁹ See *supra* note 15.

²⁰ Notice at ¶ 8.

²¹ Reply Comments of the National Association of Broadcasters, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43 (July 26, 2016) (2016 NAB Reply Comments), at 17.

²² We understand that Nielsen may be unable to track audience viewership of programming on SAP channels because the audio watermark is the same one used for the main channel. Massive capital investment would be needed to resolve this issue to allow measurement of SAP channels, and Nielsen may not have enough Source Identification (SID) numbers to assign new numbers to SAP channels for every broadcaster and cable network.

As technology has not yet evolved to resolve this conflict, the Commission must continue to balance the interests of blind and visually-impaired viewers against those of non-English speaking viewers. Further complicating this problem are long-standing affiliate or contractual obligations that may require the networks to broadcast a certain amount of Spanish language programming on the SAP channel. These broadcasters have less flexibility to provide additional video described programming.²³

The advanced audio features of Next Generation Television (ATSC 3.0) may provide a potential solution to these challenges. Video description in ATSC 3.0 may be provided by sending a collection of audio components; for example, a “Music and Effects” component, a “Dialog” component, and an appropriately labeled “Video Description” component, which would be mixed at the receiver. This would allow consumers to select their preferred dialog. Alternatively, a video description service component may be provided as a complete mix with the appropriate meta data label identification or mixed with only the same-language “Dialog” component. These advanced features of ATSC 3.0 would allow visually impaired individuals to receive descriptions along with a full surround sound or immersive mix²⁴

C. Costs of Providing Video Described Programming

The Commission’s estimate of \$4,202 to add video description to one hour of programming remains consistent with NAB’s understanding,²⁵ although some networks estimate costs of \$1,000 - \$2,000 to add video description to pre-recorded programming and much higher costs to describe live programming. Each of the networks self-funds all the video description costs for prime-time programming and programming aired 6:00 am to

²³ 2016 NAB Reply Comments at 17.

²⁴ See www.ATSC.org.

²⁵ Notice at ¶ 9.

midnight, while some networks obtain some children's programming from a self-funded third-party provider.

The Commission asks whether video description may allow broadcasters to reach a larger audience, and in turn generate additional advertising revenues that could offset some of these costs.²⁶ Broadcasters are unaware of any specific research that would quantify or corroborate this supposition, and Nielsen does not offer a way to measure viewers who are blind or visually-impaired. One network explains that, without proof of viewership, it has not been able to solicit advertisements targeted to this demographic. However, all the networks are pleased to provide video described programming as a valuable service to the millions of Americans who are blind or visually impaired, regardless of any return on investment.

D. The Commission Should Take a Cautious Approach to Extending the Video Description Rules to Additional Markets

The CVAA allows the Commission to apply the video description rules in up to ten additional DMAs each year starting on October 8, 2020, if its upcoming report to Congress shows that the costs of doing so are reasonable to program owners, providers and distributors.²⁷ As a preliminary matter, network affiliates typically receive programming via a network feed, and pass through the audio of any video described programming on their SAP channels, including some stations in markets below the top 60 that do so voluntarily. The compliance costs should be manageable for these broadcasters.

However, NAB understands that some stations in small and midsized markets may need to purchase additional equipment or otherwise invest in facilities to implement video description. For example, not all broadcasters have a SAP channel, and the costs of

²⁶ *Id.*

²⁷ 47 U.S.C. § 613(f)(4)(C)(iv).

introducing a SAP channel can include the acquisition of an encoder with available audio channels and related licensing fees, a solution to ensure that audio is always available on the SAP channel with audio processing, decoders, hardware for test-to-speech translation of emergency information and audio processing software to comply with the CALM Act.²⁸

Although exact figures are difficult to confirm, such expenses could be significant to some broadcasters, particularly independent stations in small and midsized markets.

The Commission should also consider the limited audiences and advertising revenues available to stations in smaller and midsized markets, which are much smaller than those of stations in larger markets.²⁹ The average advertising revenue for television stations in the top ten DMAs is more than 5 ½ times that of stations in markets 51-100, and almost nine times the revenue of stations in markets 101-150.³⁰ The Commission itself has recognized acknowledged the “hardship” for “broadcasters in smaller markets, who generally have more restricted revenue opportunities.”³¹ Moreover, as the Commission is well-aware, the explosion of broadband Internet and other technologies have dramatically impacted the media marketplace in recent years, especially television stations in small and midsized markets.³²

²⁸ Commercial Advertisement Loudness Mitigation (“CALM”) Act, Public Law 111-311, 124 Stat. 3294 (2010); 47 U.S.C. 621).

²⁹ Comments of the National Association of Broadcasters, MB Docket Nos. 14-50, 09-182, 07-294, and 04-256 (Aug. 6, 2014) at 56-57.

³⁰ *Id.* at Attachment D (2013 figures).

³¹ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Third Report and Order and Third Further Notice of Proposed Rulemaking, CS Docket No. 98-120, 22 FCC Rcd 21064, 21092 (2007) at n. 192.

³² *2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, MB Docket No. 18-349, FCC 18-179 (Dec. 13, 2018) at ¶ 2.

Extending the video description rules into additional markets could require some stations to devote a substantial portion of their limited resources to compliance, and lead to difficult decisions whether to reduce news and other highly valued programming that is expensive to produce. Accordingly, the Commission should carefully consider the financial wherewithal of stations in small and midsized markets to implement video description, as the costs of doing so may be unreasonable, in violation of the CVAA prerequisite for extending the rules into additional markets.³³

III. The Commission May Not Impose Video Description Requirement on IP-Delivered Programming

The Commission requests updated information related to the issues, costs and benefits regarding the provision of video description of video programming distributed on the Internet.³⁴ As a threshold matter, it is well-settled that the CVAA only authorizes the Commission to issue additional video description rules for video programming that is transmitted for display on television, and not for IP-delivered programming.³⁵ However, it may collect information.

There continue to be operational challenges to deploying multiple secondary audio streams in IP-delivered content. The universe of IP devices on which video programming continues to rapidly grow and evolve, including smartphones, tablets, laptops, desktop computers, watches, automobile applications, and other devices still on the drawing board, but the technology and software needed to dependably support the selection of a secondary

³³ 47 U.S.C. § 613(f)(4)(C)(iv).

³⁴ Notice at ¶ 12.

³⁵ Comments of the National Association of Broadcasters, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43 (Sep. 4, 2013) (2013 NAB Comments) citing 47 U.S.C. § 613(f)(4)(A).

audio stream on these devices do not appear to have advanced significantly. Unlike broadcasting, no single standard exists for creating, encoding, delivering and selecting multiple audio tracks in an IP-delivered program. Moreover, the variety video encoders and players of IP-delivered content and operating systems raise additional hurdles to efficient video description of IP-delivered video programming.

More information is needed before any concrete steps are considered, as well as a substantial amount of time for industry to adapt. That said, NAB is aware that the upcoming ATSC 3.0 digital broadcast standard may hold some promise in as much as it provides for delivery of content over IP in addition to over-the-air. However, considerable development work is needed before this is realized.

IV. Conclusion

NAB appreciates the opportunity to help inform the record on which the Commission will base its upcoming report for Congress on video description.

Respectfully submitted,



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