

**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 AMERICAN CABLE ASSOCIATION**

The American Cable Association (“ACA”) hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.<sup>1</sup> ACA represents approximately 750 smaller cable operators and other multichannel video program distributors (“MVPDs”), including incumbent telephone companies and municipal utilities, most of whom serve smaller communities and rural areas. In aggregate, these operators provide service to close to seven million subscribers, but the vast majority of ACA members serve fewer than 5,000 subscribers, and half serve fewer than 1,000 subscribers.

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<sup>1</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016) (“NPRM”).

Most ACA member companies operate with ten or fewer employees. These employees live and work in the communities they serve. For these operators, customers are not merely numbers on a spreadsheet – they are neighbors, friends, and family. Thus, ACA members take their customer service obligations very seriously, and are dedicated to ensuring that every subscriber, including those who are blind or visually impaired, has access to the full video programming experience, over equipment they maintain and provide to subscribers. Available evidence indicates they serve their blind and vision impaired subscribers well, despite their lack of control over the video-programming ecosystem, particularly with regard to the delivery of video description, as there have been few, if any, video description complaints lodged against smaller providers.

On the whole, the Commission’s video description program appears to be achieving statutory goals. In its 2014 Report to Congress on *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010* (“2014 Report”), the Commission noted that “[t]he availability of video description on television programming has provided substantial benefits to those who are blind or visually impaired.”<sup>2</sup> It also recognized that when the Commission’s video description rules came into effect in 2012, the cable industry “mobilized resources to help consumers utilize video description,”<sup>3</sup> including by “training customer service representatives to handle questions from consumers about how to access video description on a particular cable system.”<sup>4</sup> In the 2014 Report, the Commission observed

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<sup>2</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, 29 FCC Rcd 8011 (2014), ¶ 1 (“2014 Report”).

<sup>3</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Comments of the National Cable & Telecommunications Association at 3 (filed Sep. 4, 2013).

<sup>4</sup> *Id* at 4.

that the cable industry “appears to have largely complied with their responsibilities under the Commission’s 2011 rules,”<sup>5</sup> while also noting some concerns about the availability of information about which television programs are video-described, as well as frustration with the quality of customer support service for video description.

While the implementation of new technologies and services is never seamless, the Commission has recognized, and ACA agrees, that overall the introduction and expansion of video described programming has been successful “in affording better access to television programs for individuals who are blind or visually impaired, ‘enabling millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation.’”<sup>6</sup> Given the apparent success of the existing video description program, and the continuing voluntary efforts on the part of industry to improve service and make video description more widely available, the Commission must carefully evaluate the need for additional requirements, and the burdens on smaller operators they may entail. The NPRM seeks comment on a number of proposals designed to “expand the availability of, and support consumer access to, video described programming.”<sup>7</sup>

ACA limits its discussion in these comments to three main topics: (i) the industry's voluntary movement toward making accessible more than two audio streams per channel; (ii) the increased availability of information on scheduled programming that contains video description; (iii) and recent improvements in customer service with respect to video described programming. ACA believes that industry trends toward improved availability of information about video described programming and improved customer support obviate the need for any

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<sup>5</sup> 2014 Report, ¶ 1.

<sup>6</sup> *Id.*, ¶ 2, quoting *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, ¶ 1 (2011) (“2011 Order”).

<sup>7</sup> NPRM, ¶ 1.

new rules, although, if the Commission does adopt any new requirements on MVPDs with respect to video described programming, the deadline for small operators to comply with those rules should be December 20, 2018, to align with the existing deadlines for small operators and small systems to comply with the Commission's rules regarding audibly accessible video programming guides and menus.

### **Availability of Multiple Audio Streams**

The Commission's video description rules currently require broadcast stations and MVPD systems that serve 50,000 or more subscribers to provide video description for a portion of the video programming that they offer to consumers; all MVPD systems are required to pass through covered video described programming on the broadcast stations and nonbroadcast programming they provide, provided they have the technical capability and that technology is not being used for another purpose related to the programming.<sup>8</sup> In practice, most MVPDs have the technical capability of offering both a primary and secondary audio stream,<sup>9</sup> and when a programmer delivers a program containing an audio stream with video description, that stream is passed through over the operator's secondary audio stream for that program, so long as the

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<sup>8</sup> Specifically, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. 47 C.F.R. § 79.3(b)(4). MVPD systems of any size must pass through video description on channels carrying each broadcast station they carry and on covered nonbroadcast programming if the channel on which the MVPD distributes the programming "has the technical capability necessary to pass through the 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." 47 C.F.R. § 79.5(b)(5)(i)&(ii).

<sup>9</sup> The NPRM incorrectly states that "all stations and MVPDs now have [the capability to deliver secondary audio], because of the requirement to provide audible emergency information to persons who are blind or visually impaired, which is accomplished by means of a secondary audio stream." NPRM, ¶ 6, n. 16. In 2015 the Commission granted a waiver extending the deadline for compliance with that requirement until June 12, 2018 for certain analog-only cable systems.

secondary audio stream is not being used for another purpose related to that programming.

The NPRM seeks comment “on the state of the marketplace with respect to the use of multiple audio streams.”<sup>10</sup> The NPRM explains that in first implementing the video description rules, the Commission recognized that “video description was ... likely to be provided on the same audio stream as other alternate audio uses, like foreign language audio tracks,”<sup>11</sup> but also expected that “at some point in the near future, due to voluntary upgrades and equipment obsolescence, broadcasters, MVPDs, and the installed base of consumer equipment will be sufficiently advanced to handle a video description audio track that does not conflict with any other program-related service.”<sup>12</sup>

Although the rules at present require that MVPDs pass through video description only when the secondary audio capability is not being used for another purpose related to the programming, the industry nonetheless is moving voluntarily to the delivery of more than two audio streams per channel, in order to make programming accessible to the widest possible audience. Many ACA members have reported that although their headend equipment is already capable of receiving and passing through multiple audio streams, most legacy set-top boxes are not capable of processing more than one primary and one secondary audio stream. Nonetheless, as legacy customer premises equipment is retired and replaced over time, multiple audio streams will be made available to more viewers. These advancements will not only benefit those who rely on video described programming, but may also make popular programming available to viewers in a variety of other foreign languages.

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<sup>10</sup> NPRM, ¶ 38.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, citing 2011 Order, ¶ 31.

## Programming Guide Information

The NPRM asserts that “some consumers report difficulty in finding information in programming guides, which for many remain the primary source of information about their viewing options,” and asks a series of questions about whether and how video description information is made available to viewers.<sup>13</sup> Information about the availability of video described programming is more accessible today than ever before. ACA members report that most program guide services do provide information on the availability of video description, using the Descriptive Video Service trademark, “DVS,” to signify when video description is available on a particular program. In addition, information about video described programming is widely available from numerous other sources. For example, individual programmers often provide lists and schedules of video described programming on their websites, and the Commission itself maintains a web page with links to those programmers’ schedules.<sup>14</sup> Further, disability advocates such as the American Council for the Blind,<sup>15</sup> the American Foundation for the Blind<sup>16</sup> also provide detailed schedules of described TV listings.

Nonetheless, the NPRM expresses concern that information on the availability of video description may not always be included in the programming guides, and seeks comment on whether a requirement that distributors consistently provide notice when a program is going to be described would make guide services more likely to include that information in guides.<sup>17</sup>

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<sup>13</sup> *Id.*, ¶ 32.

<sup>14</sup> Federal Communications Commission, Video Description, <https://www.fcc.gov/general/video-description> (last visited Jun. 27, 2016).

<sup>15</sup> American Council of the Blind, The Audio Description Project, <http://www.acb.org/adp/tv.html#shows> (last visited Jun. 27, 2016).

<sup>16</sup> American Foundation for the Blind, Described TV Listings, <http://www.afb.org/tv.aspx> (last visited Jun. 27, 2016).

<sup>17</sup> NPRM, ¶ 32.

Additionally, the NPRM asks whether MVPDs should be required to “create an easily accessible list of described video programming.”<sup>18</sup> Neither of these proposals are likely to resolve whatever inadequacies remain with respect to the availability of information on video described programming and for that reason, should not be pursued.

First, programmers and program guide services make the business-to-business decision to include information about the availability of video description in an MVPD’s program guide. MVPDs, particularly smaller MVPDs, are merely buyers of the information that is available for purchase. The programmers, on their own, determine which individual programs will be made available with video description, and on their own, decide whether to share this information with MVPD program guide services.<sup>19</sup> It would appear that any concerns the Commission has regarding these parties efforts to publicize the presence of video description are best addressed directly with the networks and program guide services. A requirement that distributors consistently provide notice when a program is going to be described unfairly places a significant burden on the party with the least knowledge of and control over this information. Such a requirement would force MVPDs to use commercial contracts to require programmers to give such information to MVPD program guide services, and to require MVPD program guide services to include this information in the services they provide to MVPDs. Not only is such a requirement unnecessary given the existing availability of such information to consumers, but it is unproductive when imposed on smaller MVPDs. The Commission has rejected this approach in other contexts, in large part because it recognized that it is unreasonable to require MVPDs,

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<sup>18</sup> *Id.*

<sup>19</sup> The NPRM questions whether networks provide information about video description to program guide services, and if not, why not. *Id.* In addition, it asks, if networks do provide that information to program guide services, whether the program guide services choose to include that information in the guides, and if not, why not. *Id.*

particularly smaller MVPDs, to negotiate contractual provisions to ensure that third parties take the necessary steps to ensure that the MVPD is meeting its regulatory obligation when the mechanism for compliance with that obligation is outside the MVPDs' direct control.<sup>20</sup> Not only do small MVPDs not have the leverage necessary to influence the decisions of programmers, they do not have the leverage over MVPD program guide services to make them obtain and include information about the availability of video described programming.<sup>21</sup>

Second, requiring MVPDs to create an “easily accessible list of described video programming” again places the burden of providing such information on the entity that is least well-suited to do so. In order to compile such a list, MVPDs would need to rely entirely on the programmers to provide the requisite information. For smaller MVPDs in particular, maintaining such a list would require the MVPD to contract with programmers to provide this information to them, which as stated above, is not realistic. Alternatively, a smaller MVPD would be required to monitor the constantly changing programming schedules of every programmer that provides video description and then post that information for their customers, which would be both highly burdensome and duplicative of – and not any better than – information already available from

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<sup>20</sup> In its NPRM on the Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, the Commission had proposed that MVPDs would “remain responsible for noncompliance with the regulations required by the CALM Act where the program source fails to deliver content in compliance” with the required standard. The NPRM suggested that MVPDs could “negotiate for indemnification clauses in their content contracts in the event the content provider fails to follow” the standard. *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Notice of Proposed Rulemaking, 26 FCC Rcd 8281, ¶ 24 (2011). This approach was ultimately rejected for the reasons explained above. *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, ¶ 33 (2011), *citing* Comments of the American Cable Association at 26-27 (filed Jul. 28, 2011); *see also Closed Captioning of Video Programming*, Second Report and Order, 31 FCC Rcd 1469, ¶ 39 (2016) (noting that disparities in negotiating power would leave some distributors unable to negotiate contractual arrangements obligating video programmers to provide certifications necessary to meet the distributors' regulatory obligations).

<sup>21</sup> The Commission has recognized that small operators generally do not dictate equipment features to manufacturers. *Basic Service Tier Encryption*, Report and Order, 27 FCC Rcd 12786, ¶ 21 (2012). The same is true with respect to programming guide providers.



other sources. A much better solution would be for the Commission itself to continue maintaining a resource that directs consumers to the individual schedules provided by the programmers, as it does currently.

### **Dedicated Customer Service Contacts**

Citing to the 2014 Report which details instances where “consumers would call their provider for help with video description and, after spending “many hours on the phone with ill-informed customer services representatives,” ultimately discover that “not one person knew what [the consumer] was talking about,” the NPRM seeks comment on whether customer service has improved since then, and proposes to require covered entities provide contact information for a person or office with primary responsibility for accessibility compliance issues to consumers who have questions about the availability of and access to video description services, or who request technical support.<sup>22</sup>

As a threshold matter, it appears that many of the customer service issues described in the 2014 Report have improved substantially. According to the Commission’s own publicly available data, there have been very few consumer complaints filed with respect to video description since 2014.<sup>23</sup> Although the available data only goes back to November of 2014, it is clear that there is a downward trend in the number of complaints filed. Beginning in May of 2015, the FCC has never received more than three informal complaints related to Video Description in a single month. Over the past 12 months, the FCC has received an average of two complaints per month. Even the American Council for the Blind acknowledges that MVPDs

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<sup>22</sup> NPRM, ¶ 33.

<sup>23</sup> Federal Communications Commission, CGB-Consumer Complaints Data, <https://opendata.fcc.gov/Consumer-and-Government-Affairs/CGB-Consumer-Complaints-Data/3xyp-aqkj> (last visited Jun. 27, 2016).

have generally been responsive to customer inquiries, stating on its website that “[l]ots of people are reporting success after contacting their local cable or satellite provider for help!”<sup>24</sup>

ACA does not object in principle to providing easily identifiable contact information that customers may use to communicate with their providers about accessibility issues.<sup>25</sup> However, it is essential that the Commission continue to allow small MVPDs maximum flexibility to determine how best to serve their customers. Unlike large operators with millions of subscribers who have customer service departments with thousands of representatives, and subdivisions with employees focused on individual areas of customer service, such as sales, retention, billing, tech and accessibility, most ACA members have ten or fewer employees that run the entire company, including their customer service, and these employees, including the President, each serve multiple and overlapping roles within the company, including customer service responsibilities. Moreover, it is not uncommon for ACA members to have only one dedicated customer service telephone number, or even one single telephone line for the entire company that handles all incoming calls. This in no way indicates that such companies are not committed to ensuring that blind or visually impaired customers receive the best possible service, or provide any worse service than the largest companies. In fact, many smaller MVPDs rely on superior customer service as a means of distinguishing themselves from their larger

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<sup>24</sup> American Council of the Blind, The Audio Description Project, <http://www.acb.org/adp/tv.html#shows> (last visited Jun. 27, 2016).

<sup>25</sup> As ACA has previously observed, the Twenty-First Century Communications and Video Accessibility Act does not authorize the Commission to impose a requirement that covered entities provide contact information for a person or office with primary responsibility for accessibility compliance issues to consumers who have questions about the availability of and access to video description services, or who request technical support. See *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*, MB Docket No. 12-107, Comments of the American Cable Association at 1-2 (filed July 23, 2013).

competitors.<sup>26</sup> Indeed, of the numerous consumer complaints cited in the 2014 Report,<sup>27</sup> not a single one involved an ACA member, suggesting that ACA members are providing more than adequate service in accommodating the needs of their blind and visually impaired customers. The Commission should generally tread lightly in imposing prescriptive rules that dictate who, what, when and how customer service should be provided by smaller MVPDs. The customer service related rules proposed in this rulemaking seem unnecessary for smaller MVPDs, and certainly rules that apply to smaller MVPDs should reflect the huge organizational differences between a small MVPD serving a few hundred subscribers and a large MVPD serving more than 25 million.

### **Compliance Deadlines**

Finally, the NPRM seeks comment on the timing for implementing any rule changes with respect to consumer access and customer service.<sup>28</sup> The Commission should align the compliance deadlines for small MVPDs to comply with any new customer service rules with the existing deadline of December 20, 2018 for compliance with the Commission's rules on audio accessible video programming guides and menus. On this date, MVPDs with 400,000 or fewer subscribers (as of year-end 2012), and MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers (as of year-end 2012) must comply with the requirements of section 79.108 of the Commission's

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<sup>26</sup> For example, ACA member MCTV describes its customer service philosophy thusly: "We know you have a lot of choices when it comes to entertainment, so we try to do things differently at MCTV. We strive to go the extra 'smile' every day by treating our customers the way we'd want to be treated. It's the little things – like answering phones quickly and fixing problems the same day – that set us apart." MCTV, About Us, <http://www.mctvohio.com/about-us> (last visited Jun. 27, 2016).

<sup>27</sup> 2014 Report, ¶ 29, n. 95.

<sup>28</sup> NPRM, ¶ 34.

rules.<sup>29</sup> The Commission's audible guide rules require MVPDs that lease or sell navigation devices to ensure that the on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming are audibly accessible in real time upon request by individuals who are blind or visually impaired, and also provide on their official Web sites the contact information for a "specific person, office or entity" to whom requests for information about accessible devices can be made.<sup>30</sup> Given the proximity of the compliance deadline of the existing requirement and the proposed new requirements, it would help to minimize confusion and administrative costs for their compliance deadlines to align.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mary C. Lovejoy".

Mary C. Lovejoy

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<sup>29</sup> 47 C.F.R. § 79.108(b).

<sup>30</sup> 47 C.F.R. § 79.108(d)(1).

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June 27, 2016