

**Before the
Federal Communications Commission
Washington, D.C. 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)	
)	
)	

REPLY COMMENTS



ACA Connects – America’s Communications Association (“ACA Connects”) hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission”) Public Notice¹ seeking comment on recent developments in the video description marketplace to inform a report to Congress on the availability, use, benefits, and costs of video description. In these reply comments, ACA Connects notes that, as described by NCTA—The Internet & Television Association (“NCTA”), the industry has made significant strides on two issues raised in the Public Notice – the ability of MVPDs to pass through more than two audio tracks² and the availability of

¹ *Media Bureau Seeks Comment on Recent Developments in the Video Description Marketplace to Inform Report to Congress*, Public Notice, DA No. 19-40, MB Docket No. 11-43 (rel. Feb. 4, 2019).

² Public Notice, ¶ 9.

video described on-demand programming.³ ACA Connects supports the goal of ensuring that viewers who are blind or visually impaired have access to as much video described programming as possible, and is very pleased at the voluntary progress the industry has made to achieve this goal. ACA Connects asks, however, that the Commission bear in mind, and convey to Congress, both the difficult challenges historically faced by small cable operators in meeting obligations that are dependent on implementing new technologies and the hope that these challenges will shrink or be overcome as smaller operators invest and upgrade their systems.

Under the Commission's video description rules, an MVPD is required to pass through 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."⁴ The rule was qualified thusly to balance the competing benefits of both video description and other important uses of secondary audio streams, such as foreign language audio-tracks. In 2016, ACA Connects filed comments in response to a Notice of Proposed Rulemaking,⁵ in which we explained that, although some ACA Connects' members have reported that their headend equipment is already capable of receiving and passing through more than two audio streams, most existing customer premises equipment is not capable of processing more than one primary and one secondary audio stream.⁶ As a result, it would be

³ Public Notice, ¶ 11.

⁴ 47 C.F.R. § 79.3(b)(5).

⁵ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016).

⁶ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Comments of the American Cable Association at 5 (filed June 27, 2016) ("ACA Connects NPRM Comments").

prohibitively expensive for cable operators to deliver more than two secondary audio streams at this time, but to the extent that new navigation devices include that capability in the future, multiple audio streams will be made available to more viewers as legacy equipment is replaced.

In our reply comments⁷ in that same proceeding, ACA Connects explained that, for technical reasons, providing video description for on-demand programming is extremely difficult for MVPDs, as an on-demand programming asset is not delivered to MVPDs in the same manner as a linear programming stream – it is a separate asset that is sent in a different format, typically sent by an on-demand platform vendor, in a format that does not allow for secondary audio.⁸ If on-demand vendors were to offer their programming in an alternative format to accommodate video descriptions, it would likely require some MVPDs to reconfigure portions of their headend equipment in order to process and deliver that programming to viewers.⁹

In its comments in this proceeding, NCTA describes the significant progress that the industry has made on both of these issues. Specifically, NCTA observes that “the industry is working on evolutionary changes that will allow video description users to avoid the conflict with other users on that stream,”¹⁰ pointing out that the Society of

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Reply Comments of the American Cable Association (filed July 26, 2016) (“ACA Connects NPRM Reply Comments”).

⁸ Unlike linear programming, which contains separate video and audio streams, on-demand programming generally comes in a single data stream that integrates audio and video. ACA Connects Reply Comments at 4-5.

⁹ *Id.* As an alternative, on-demand programming vendors could offer an additional version of the same programming with video descriptions, but this could lead to consumer confusion and, since on-demand capacity is limited, could reduce the overall amount of programming that an MVPD makes available.

¹⁰ NCTA Comments at 9.

Cable Telecommunications Engineers has developed a recommended practice for carriage of multiple audio streams.¹¹ NCTA also states that “several cable programmers make their video-described content available for use on-demand.”¹²

ACA Connects is extremely pleased with the progress that the industry has made to address the existing limitations in providing multiple audio streams and on-demand programming with video description, and we expect that the industry will continue to move swiftly to develop and implement the technology necessary to meet the needs of multiple constituencies. Moreover, we are hopeful that, as such technology is developed and deployed by larger operators, it will become available to smaller operators at a reasonable cost.

The Commission must be realistic, however, about how soon small operators will be able to implement any new technologies. As the Commission has previously recognized, smaller MVPDs “generally lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment,” and typically rely on the research and development efforts of larger operators with respect to deploying new equipment and services to consumers.¹³ Moreover, the Commission understands that smaller MVPDs often cannot obtain access to new technological solutions at the same time as larger operators.¹⁴ In other words, major

¹¹ *Id.* at 9-10.

¹² NCTA Comments at 8.

¹³ *Accessibility of User Interfaces, and Video Programming Guides and Menus; 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*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 114 (2013).

¹⁴ See TiVo Inc.’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii), etc., MB Docket No. 12-230, etc., Memorandum Opinion and Order, 27 FCC Rcd 14875

technological advancements are generally initiated by larger operators, but over time smaller operators are often able to adapt these new technologies into their own systems.¹⁵ There is good reason to hope that this will be true with respect to the availability of multiple audio streams and video described on-demand programming.

Sometimes, however, the technologies deployed by larger operators cannot be easily incorporated into smaller operators' systems, and so they must find other ways to keep up with changing customer expectations or new regulatory mandates. For example, when small operators sought to comply with the Commission's rules related to the Accessibility of User Interfaces, and Video Programming Guides and Menus, they found that the solutions adopted by larger operators were largely proprietary in nature and/or were implemented as part of a network upgrade, and thus could not be applied to legacy systems.

In this particular case, most small cable operators have nonetheless been able to comply with the Commission's rules related to audibly accessible navigation devices using solutions that were unforeseen at the time the rules were adopted. For instance, some smaller operators had made significant investments in their systems, which had the added benefit of allowing them to fully meet the rule's obligation. Other providers were able to largely comply with the Commission's rules by using a retail version of a

¶ 17 ("small cable operators have, in the past, experienced difficulty obtaining compliant devices in the same time frame as larger operators") (2012) ("TiVo Waiver Order").

¹⁵ For example, in the TiVo Waiver Order proceeding, where new technologies would have to be developed to satisfy navigation device requirements placed on cable operators, the Commission extended by 18 months the deadline for cable operators to deploy two-way HD set top boxes that support home networking functionalities, and for cable operators with 400,000 or fewer subscribers extended the deadline by 21 months – an additional 3 months.

solution developed by a third party retailer of navigation devices.¹⁶ Additionally, those small operators who were granted an exemption should be able to comply with the Commission's rules as they upgrade their systems to offer digital channels and broadband service.

ACA Connects is hopeful that small operators will eventually be able to adapt the video description solutions discussed by NCTA to their own networks at a reasonable cost, so as to provide blind and visually impaired subscribers with the greatest amount of video described linear and on-demand programming possible. Even if those solutions cannot be applied to legacy systems, however, there is every reason to believe that over time operators will be able to provide those capabilities as their systems are upgraded and legacy equipment is replaced.

ACA Connects therefore suggests that, in its report to Congress, the Commission explain that smaller MVPDs generally lack the market power and resources to drive independently the development of technical solutions, and generally rely on the research and development efforts of larger operators with respect to offering such solutions to consumers. Moreover, smaller operators often cannot obtain access to new technologies at the same time as larger providers. The Commission should also describe the advances made by larger operators with respect to video descriptions, as reported by NCTA, and explain that smaller operators are hopeful they will be able to implement these solutions with no more than reasonable effort. At the same time, the

¹⁶ Unfortunately, the only audibly accessible navigation devices available to most small providers do not provide a total solution for all operators. The Commission therefore granted a Petition for Waiver filed by ACA Connects that exempts one small class of operators from the requirements entirely, and relieves another small class of the accessibility obligations as they related to on-demand programming functions. *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Memorandum Opinion and Order, 33 FCC Rcd 11049 (2018).

Commission should explain that solutions developed by and for large operators are increasingly proprietary, and not always available to small and mid-sized operators. That said many smaller operators are upgrading their systems, which may afford them the opportunity to adopt innovative solutions that are not designed to be compatible with only one individual operator's networks.

Respectfully submitted



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