



October 25, 2016

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43; Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108

Dear Ms. Dortch:

On October 21, 2016, Ross J. Lieberman, Senior Vice President for Government Affairs, American Cable Association (“ACA”), Mary C. Lovejoy, Vice President for Regulatory Affairs, ACA, and the undersigned met with Mary Beth Murphy, Martha Heller, Diana Sokolow (via teleconference) and Maria Mullarkey (via teleconference) of the Media Bureau; Rosaline Crawford and Suzy Rosen Singleton (via teleconference) of the Consumer and Governmental Affairs Bureau; and Susan Aaron, of the Office of General Counsel, regarding ACA’s positions with respect to the proposals under consideration in the above-captioned proceedings implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).¹

ACA representatives began the meeting by reiterating the commitment of ACA member companies to provide access to their multichannel video programming distribution (“MVPD”) services to all of their subscribers, including those with hearing and vision disabilities.² What they ask of the Commission is to keep in mind that small and medium-sized providers generally have limited resources to devote to regulatory compliance, and lack leverage to compel their equipment manufacturers, software vendors, video programming suppliers and programming guide metadata providers to provide them with timely and cost-effective solutions for meeting regulatory obligations such as those proposed in the rulemakings under discussion.

¹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016) (“2016 Video Description NPRM”); *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 (filed Jun. 27, 2016) (“ACA Video Description Comments”); Reply Comments of the American Cable Association (filed Jul. 26, 2016) (“ACA Video Description Reply Comments”); *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015) (“2015 User Interface 2nd FNPRM”); *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Reply Comments of the American Cable Association (filed Mar. 7, 2016) (“ACA User Interface Reply Comments”).

² Most ACA members have ten or fewer employees, each of whom wears many hats within the organization. Moreover, it is not uncommon for ACA members to have only one dedicated customer service telephone number, or even one single telephone line that handles all incoming calls. Despite limited resources, smaller operators enjoy a reputation for superior customer service and individualized attention.

Video Description NPRM

During the meeting, ACA focused its remarks on three aspects of the Commission's proposals to expand video programming distributors' obligations with respect to providing video described programming: (i) a requirement that MVPDs designate a single point of contact for customer service issues related to video description; (ii) the potential requirement that video on demand ("VOD") programming include video description if it has been previously carried by that MVPD with video description; and (iii) a requirement that MVPDs provide a centralized list of programming that is available with video description. ACA also discussed the industry's progress in delivering multiple audio streams to consumers as a result of equipment upgrades and replacements, and absence of need for new regulations to further it. Lastly, ACA discussed the Commission's proposal that apparatus ensure that consumers are able to readily access user display settings for closed captioning.

Customer Service. While ACA appreciates the Commission's efforts to ensure that MVPDs respond in a timely manner to customer inquiries about the availability of or access to video description services, it asks that the Commission tread lightly in imposing prescriptive rules dictating who, what, when and how customer service should be provided by small and medium-sized MVPDs, particularly for smaller operators who need to retain maximum flexibility to determine how best to serve their customers.³ ACA noted that 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. It is also not uncommon for ACA members to have only one dedicated customer service telephone number, or one single telephone line that handles all incoming calls. Despite these limitations, ACA noted its members enjoy a reputation for superior customer service, which they use as a means of competitive differentiation. Moreover, ACA members' 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, and of course, some of them have hearing or vision impairments. Providing quality customer service is not just good business for these companies and their employees, but not serving their subscribers well reflects on them personally in their communities, and thus without the need for prescriptive rules set by the Commission, they are already fully committed to providing the best customer service to all their customers.

Given these circumstances, meeting participants explained that prescriptive customer service rules designed to ensure MVPDs are meeting their obligations to customers with disabilities are not be appropriate for a smaller operator. For example, requiring MVPDs to make available contact information for the receipt and handling of video description concerns raised by consumers is inappropriate for a cable system that has only one or a few incoming phone numbers and email addresses for handling customer service calls.⁴ The Commission need not and should not impose such a requirement on small MVPDs.

Moreover, it is unnecessary for the Commission to prescribe rules that require MVPDs to respond to and resolve their customers' questions regarding how to access video described programming within a set period of time – for example, like an inflexible obligation to return a call

³ See ACA Video Description Comments at 10-11.

⁴ In some cases, very small cable operators will have a single phone number for handling both customer service and general business related calls.

within 24 hours. These operators already understand the importance of responding to and resolving their customers' general technical questions regarding leased equipment, including those related to accessibility features, and the benefit of doing so as soon as possible. It is particularly inappropriate for the Commission to impose a rigid one-size-fits-all requirement on all MVPDs with respect to the timeframe in which any video description customer service issue must be resolved. Unlike large MVPDs, many small operators are not equipped to take general service calls over the weekend,⁵ and therefore may not be able to return a customers' call until the next business day, which could be a Monday or Tuesday, depending on holidays. An inflexible obligation to respond to a call within 24 hours, for example, would require the operator to change its regular business hours. Moreover, depending on the matter, a large MVPD with tens of thousands of customer service representatives (some with very specific expertise in handling certain categories of issues) is likely better able to respond to and resolve any issue within a set period of time than a smaller MVPD facing a particular type of customer problem for the first time.⁶ In such cases, providers must be afforded some flexibility. While ACA does not believe new customer service rules are warranted, should the Commission disagree, any new requirements should preserve the flexibility of smaller MVPDs by requiring only that they respond to customer inquiries and requests for video description assistance in a reasonably prompt manner, taking into account factors such as the time of day/day of the week when the inquiry is received and the relative size and resources of the provider.⁷

Video Described VOD Programming. ACA representatives stressed that a requirement to provide video description with VOD programming over QAM infrastructure would be extremely burdensome for smaller operators with limited resources,⁸ especially in the face of declining video revenues. ACA also observed that the record does not demonstrate the need for a video description requirement for VOD offerings.⁹ They also noted that many ACA members see no long term business case in offering VOD and are reducing their investments in VOD programming as demand for MVPD VOD service overall is declining in the face of online alternatives, such as Netflix and Hulu.¹⁰ Among ACA members who believe there is a business case, these operators are spending

⁵ Some ACA members can receive after hours' emergency phone calls.

⁶ ACA representatives reiterated that while a small provider can generally respond to a customer inquiry at the time of the call or within 24 hours, it may not be able to resolve every issue within that time, particularly if the issue is a more complex one that requires consultation with a device manufacturer or a truck roll to the customer premises. See ACA Video Description Comments at 10.

⁷ For this purpose, ACA recommends that the Commission use the 400,000 subscribers or fewer cut-off that it used in implementing the CALM Act and uses for other similar purposes. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, ¶ 37 (2011).

⁸ In most cases, VOD programming, unlike linear programming, is delivered from the programming vendor in a single data stream that integrates video and audio. This makes it impossible to remove a primary audio stream and replace it with a secondary audio stream. Moreover, smaller providers have little or no ability to influence the decisions of programming vendors to provide programming with video description. Even if vendors were to change the format in which VOD programming is delivered to enable secondary audio, some MVPDs might be required to reconfigure portions of their headend equipment. Because delivering VOD with secondary audio is so difficult, the only way to offer video description with VOD programming would be to produce multiple versions of the same program. This could lead to significant customer confusion, and frustration. See ACA Video Description Reply Comments at 4-5.

⁹ *Id.* at 4.

¹⁰ See Bernie Arnason, *Evolution Digital Serves Up IP VOD, Hoping Small Video Providers Will Take the IP Leap*, TELECOMPETITOR (Feb. 9, 2016, 7:50 AM) <http://www.telecompetitor.com/evolution-digital-serves-up-ip-vod-hoping-small-video-providers-will-take-the-ip-leap/> ("Some [MVPDs] even question whether VOD can be viable, given the growing penetration of OTT content – there is some 'is the genie

their limited resources on new equipment and software that facilitates their migration from a legacy QAM to Internet Protocol (“IP”) VOD service,¹¹ where offering video descriptions for VOD programming is easier to implement.¹² ACA noted that imposing new video description obligations on operators offering VOD programming over QAM infrastructure would inevitably result in many small MVPDs ceasing to offer VOD services, and mid-sized MVPDs delaying their migration to IP VOD, a platform that is more friendly to customers with hearing disabilities.

Programming Guide Metadata. On the question of how consumers can best figure out what video described programming is available, ACA representatives reiterated ACA’s position that a centralized repository of information about available video described programming that is maintained by the Commission would be more useful than lists maintained by individual MVPDs and more consistent with the positions of the American Council of the Blind and American Foundation for the Blind.¹³ Given the fact that the Disabilities Advisory Committee (“DAC”) is currently considering recommendations on this issue, ACA recommended that the Commission refrain from taking any action until after the DAC has made its recommendations,¹⁴ or at least come up with an efficient

out of the bottle’ thinking, with regards to trying to compete with OTT with a VOD solution. Some smaller video providers are content with allowing customers to get VOD content from the likes of Netflix, Amazon, and Vudu, among others. Some even encourage it, through bundling of OTT services. A growing number of video operators are turning to other platforms like Roku, delivering local broadcast channels to an app on the STB, and marrying that local content with existing OTT VOD content. Roku just announced a new hybrid box that they say better integrates linear and OTT content, by providing a customizable home screen.”).

¹¹ See *id.* (“Evolution Digital hopes to bridge the divide for smaller video operators who want to offer IP VOD, but have legacy network limitations. Video distribution is clearly moving towards IP, but the transition is expensive and difficult, particularly if you lack scale.... According to Evolution, their new eVUE-TV platform offers an IP VOD solution that a video provider can layer on their existing QAM infrastructure, or launch as a standalone service. It offers VOD content including movies, cable TV network programming, and premium subscription content, delivered via IP as an app to a set-top-box or mobile device.... Evolution touts e-VUE-TV as a lower cost IP VOD solution for video providers who don’t want to build their own VOD capability.”).

¹² See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC at 2 (filed Oct. 20, 2016) (explaining that technical issues arising with VOD video description will be resolved as the cable industry migrates to an all-IP service, as VOD assets can be stored on a server with many different audio tracks in an all-IP environment).

¹³ ACA Video Description Comments at 9. The American Council of the Blind (“ACB”) explained in its comments that it currently relies on a wide variety of sources to collect information on video described programming, and “it would be a benefit to have a single repository for information on currently available audio-described video content.” *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Comments of the American Council of the Blind at 3 (filed Jun. 23, 2016). ACB’s position is echoed by its 2016 Resolution, which states: “Be it further resolved that this organization ask the FCC to encourage and support the establishment of a centralized supplemental resource listing all audio-described content, including content made available in movie theaters, on DVDs, or through Internet streaming services.” Requiring individual MVPDs to provide this information would not resolve difficulties that persons with vision disabilities have experienced in obtaining information about video described programming. *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 Council of the Blind at 4 (filed Jul. 25, 2016).

¹⁴ It is also likely that many of the issues discussed in the NPRM will be resolved once the accessible user guides rule has been implemented by larger operators. See *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*

solution that does not require hundreds of small and medium-sized MVPDs to each compile an identical or near identical list of video described programming that is available on each of their systems.

Multiple Audio Streams. ACA representatives also discussed the issue of whether the industry will be able to deliver multiple audio streams as a result of equipment upgrades and replacements, thus making it easier to enable video description. Consistent with its comments, ACA reiterated that the industry is voluntarily moving towards the capability of delivering multiple audio streams, and MVPDs have market incentives to adopt such technologies, so there is no need for new requirements that MVPDs must provide multiple audio streams to accommodate both video description and foreign language programming.¹⁵ Currently, the Video Description Working Group of the Disability Advisory Committee is working toward a recommendation in this area. ACA reiterated its position that the Commission should allow the Working Group to complete its work and give providers the opportunity to implement these changes on a voluntary basis.

User Guide 2nd FNPRM – Closed Captioning Settings

The final topic discussed was the Commission's proposal to require ready consumer access to display settings for closed captioning for apparatus covered by the Television Decoder Circuitry Act ("TDCA").¹⁶ ACA representatives reiterated their view that neither the CVAA nor the TDCA provide the Commission with authority to impose mandates regarding accessibility of display settings for closed captioning on user interfaces.¹⁷

The TDCA, codified at Communications Act Sections 303(u) and 330(b), requires that television receivers and other apparatus contain circuitry to decode and display closed captioning, and directs that the Commission's "rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming."¹⁸ In the past, the Commission has interpreted the decoder mandate to rest solely on television and apparatus manufacturers.¹⁹ For example, the existing closed captioning decoder requirements under Sections 79.101-103 of the Commission's Rules apply by their terms solely to apparatus, and require that manufacturers install "built-in closed captioning decoder circuitry" into the devices they

and Video Accessibility Act of 2010, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) ("2013 User Interface Order").

¹⁵ ACA also reviewed the technical challenges that cable operators must overcome, and explained why these barriers are best addressed through the marketplace rather than through regulation. See ACA Video Description Comments at 5.

¹⁶ See 2015 User Interface 2nd FNPRM, ¶ 33; 47 U.S.C. § 303(u)(1) (requiring that "apparatus designed to receive or play back video programming transmitted simultaneously with sound" contain circuitry to decode and display closed captioning).

¹⁷ See ACA User Interface Reply Comments at 2-5 (TDCA); *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*, MB Docket Nos. 12-108 and 12-107, Reply Comments of the American Cable Association at 6-7 (filed Mar. 20, 2014) (CVAA).

¹⁸ 47 U.S.C. § 303(u)(1); 2016 User Interface 2nd FNPRM, ¶ 34.

¹⁹ See, e.g., *Closed Captioning Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 15 FCC Rcd 16788 (2000). Video programming distributors were originally subjected solely to pass-through obligations under Section 713.

manufacture before sale, whether in the form of hardware, software, or a combination of both.²⁰ Moreover, the existing digital television closed captioning decoder rule that requires an option for viewers to choose closed captioning settings – Section 79.102(t) – only applies to manufacturers. Despite the fact that these TDCA obligations have not previously been imposed on MVPDs, all MVPD customers have benefited from these rules because, since the rules became effective many years ago, MVPDs have deployed set-top boxes with these required functions to their customers.

With regard to ensuring the accessibility of closed captioning display settings, ACA explained the Commission need not, cannot, and should not impose these obligations on MVPDs. Given that the Commission has satisfied statutory goals previously by imposing TDCA-related obligations solely on television and apparatus manufacturers, it need not now, impose new accessibility to closed captioning display settings obligations on MVPDs.²¹ Nonetheless, the Commission legally cannot.²² Finally, the Commission should not impose these requirements on MVPDs, particularly smaller MVPDs, because doing so would impose unreasonable burdens, including new compliance obligations on parties that have no control or influence over the features and functions contained within the set-top boxes they deploy to their customers.

ACA representatives stressed that, should the Commission nonetheless require MVPDs to ensure the ability of consumers to readily access closed captioning display settings, it should make clear as to precisely what is expected of MVPDs in terms of compliance with such a mandate.²³ In order to lessen the burden of new rules, at a minimum, the Commission should make clear that any new obligation on MVPDs only applies to navigation devices purchased after a certain future date, and not to any existing devices in their customers' home or in their existing inventory. Furthermore, since MVPDs with 400,000 or fewer subscribers lack the leverage with vendors that they must rely upon to ensure compliance with such an obligation,²⁴ the Commission should grant these MVPDs at least 18 months more time to come into compliance beyond that afforded manufacturers and larger MVPDs.²⁵

²⁰ See 47 C.F.R § 79.103(a) Note 1. Note 2 of that rule makes clear that the requirement places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before January 1, 2014.

²¹ 2016 User Interface 2nd FNPRM, ¶ 34.

²² Had the Commission possessed such authority under the TDCA, it likely would have utilized it in the past.

²³ ACA notes the rulemaking fails to provide any notice of what would be required of MVPDs.

²⁴ See 2013 User Interface Order, ¶ 115.

²⁵ Given that MVPDs with more than 400,000 and fewer than one million subscribers also lack leverage, the Commission should entertain individual waiver requests from such MVPDs for a limited extension of time to comply, if a requesting operator can demonstrate that it attempted in good faith to comply with the new rules by the extended deadline, but that it could not feasibly do so. Such a showing should include a detailed factual statement describing the steps the operator has taken to comply with the new rule's requirements, an estimate of how long it will take the operator to comply, supported by appropriate documentation, and a corroborating affidavit by an officer or director of the operator, pursuant to Section 1.16 of the rules. 47 C.F.R. § 1.16. The Commission should delegate to the Media Bureau authority to consider such requests. This proposed waiver process for individual requests for a limited extension of time to comply is based upon a similar waiver process that the Commission has made available to operators with more than 400,000 subscribers and fewer than two million subscribers concerning compliance with obligations contained in a 2013 Report and Order in which the Commission adopted accessibility rules for "digital apparatus and navigation devices used to view video programming." See 2013 User Interface Order, ¶ 117, n.469.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Barbara Esbin

cc: Mary Beth Murphy
Martha Heller
Maria Mullarkey
Diana Sokolow
Rosaline Crawford
Suzy Rosen Singleton
Susan Aaron