

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 )

REPORT TO CONGRESS

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By the Chief, Media Bureau:

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I. INTRODUCTION

1. The availability of video description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules. However, consumers report the need for increased availability of and easier access to video-described programming, both on television and online. In this Report to Congress (“*Report*”), the Media Bureau of the Federal Communications Commission (“FCC” or “Commission”), pursuant to its delegated authority,<sup>1</sup> presents these and additional findings on

<sup>1</sup> 47 C.F.R. § 0.283.

issues related to video description in video programming distributed on television (“television programming”) and video programming delivered using Internet protocol (“IP-delivered programming”),<sup>2</sup> as required by Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).<sup>3</sup>

2. Video description makes video programming<sup>4</sup> accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue,”<sup>5</sup> and is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio. The Commission reinstated rules in August 2011 requiring certain television broadcast stations and multichannel video programming distributors (“MVPDs”) to provide video description for a portion of the video programming that they offer to consumers on television.<sup>6</sup> According to the American Foundation for the Blind, there are more than 20 million Americans living with vision loss.<sup>7</sup> The Commission’s rules play a key role 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>8</sup>

3. In accordance with the CVAA, this *Report* addresses the status, benefits, and costs of video description in television programming and IP-delivered programming, as informed by consumer and industry experiences since the video description rules became effective, and presents the following findings:

#### *Video Description in Television Programming*

- Video description provides significant benefits to individuals who are blind or visually impaired by making key visual components of video programming accessible to them, which

<sup>2</sup> “Internet protocol” is defined as “includ[ing] Transmission Control Protocol and a successor protocol or technology to Internet protocol.” Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, § 206(5) (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). Video programming delivered using Internet protocol (“IP”) includes, but is not limited to, video programming that is available on the Internet. See *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, 796, ¶ 12 & n. 65 (2012) (“*IP Closed Captioning Order*”) (“All video programming that is available on the Internet is IP-delivered, but not all video programming that is delivered via IP is Internet programming. For example, programming may be delivered via IP using an entity’s private network. Such programming would be IP-delivered, but it would not be Internet programming.”). To the extent a multichannel video programming distributor (“MVPD”) uses IP to distribute its traditional managed video services to its MVPD customers within its service footprint, however, that service is subject to the existing video description rules that apply to MVPDs, notwithstanding the use of IP technology. See 47 C.F.R. § 79.3; *IP Closed Captioning Order*, 27 FCC Rcd at 796-97, ¶ 12.

<sup>3</sup> Pub. L. No. 111-260, § 202(a). See 47 U.S.C. § 613(f)(3).

<sup>4</sup> “Video programming” refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media. 47 U.S.C. § 613(h)(2); 47 C.F.R. § 79.3(a)(4).

<sup>5</sup> *Id.* § 79.3(a)(3). Video description is also referred to by some commenters as “audio description.” See, e.g., *infra* notes 38, 79.

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

<sup>7</sup> See American Foundation for the Blind, About Us, available at <http://www.afb.org/info/about-us/1>.

<sup>8</sup> *2011 Video Description Order*, 26 FCC Rcd at 11848, ¶ 1.

allows them greater independence and the ability to follow and understand television programs.

- Industry commenters report that they are working diligently to comply with the video description requirements for television programming, yet consumers who are blind or visually impaired perceive there to be a minimal amount of video-described programming available to them.
- Overwhelmingly, consumers who are blind or visually impaired desire an increased amount of video description in television programming.
- We believe that some of the concerns about the availability of program content with video description will be alleviated in the coming years. The obligation to provide 50 hours of video description expands to additional television markets in July 2015, which will lead to increased video description availability for a greater number of consumers. In addition, rules adopted in the Commission's emergency information proceeding will result in more video programming providers and distributors having the technical capability to provide and pass through a secondary audio stream, which is used for both video description and aural emergency information. Further, if the Commission determines that the need for and benefits of providing video description for television programming outweigh the technical and economic costs, the Commission has authority two years after the completion of this *Report* to increase the 50 hours per quarter requirement by up to 75 percent (*i.e.*, up to 87.5 hours per quarter, or roughly 7 hours per week).
- Consumers identify concerns regarding the availability of information about which television programs are video-described. In this *Report*, we encourage industry to coordinate with program guide developers to ensure that consumers are provided with current and accurate information about video-described programming and to promote the availability of websites and other outlets that provide such information.
- Consumers express frustration with the quality of customer support service for video description. In this *Report*, we urge covered entities to provide proper training and dedicated support so that their customer service representatives are able to answer consumer questions about accessing video description on the secondary audio stream.
- Consumers also identify technical problems with accessing video description services on consumer electronics equipment. The Commission recently adopted rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming to enable individuals with disabilities to access such programming more easily, which will go into effect in 2016. In the interim, we expect that MVPDs and manufacturers of digital apparatus and navigation devices will train their customer service representatives to assist consumers in accessing the secondary audio stream.
- The record reveals no significant issues with regard to the technical or creative aspects of creating, distributing, or viewing video description since the adoption of the rules, but we encourage industry to coordinate with consumer groups to address any technical and creative issues that may arise in the future.
- The costs of video description are consistent with the expectations of industry at the time of rule adoption, and covered entities do not indicate that the costs of video description have impeded their ability to comply with the video description rules.

#### *Video Description in IP-Delivered Programming*

- Video description for IP-delivered programming would provide significant benefits by making key visual components of such programming accessible to individuals with visual disabilities, which allows them greater independence and ability to follow and understand television programs.
- Industry commenters argue that there are currently technical challenges to imposing video description requirements in the context of IP-delivered programming. However, the comments of consumer group National Federation of the Blind ("NFB"), as well as recent

comments in the emergency information proceeding, reflect that some technologies have already been developed that could support a secondary audio stream for IP-delivered programming.

- Given the lack of detailed comment on this issue, we are currently without sufficient information to assess accurately the costs for video programming providers, distributors, and owners to provide video description in IP-delivered programming.
- Given the rapid growth in the number of Americans who consume video programming online and the benefits of video description for individuals who are blind or visually impaired, we will continue to monitor developments on this front, and we hope that industry will take the initiative to develop standards and work toward providing video description of IP-delivered programming.

## II. BACKGROUND

4. The Commission first adopted rules requiring video description of television programming in 2000.<sup>9</sup> At that time, the Commission noted that it had already adopted closed captioning rules to make television programming accessible to persons who are deaf or hard of hearing and explained that it was adopting video description rules to make this important medium more accessible to persons who are blind or visually impaired and “to bring the benefits of video description to the commercial video marketplace.”<sup>10</sup> After issuing reports to Congress on video description in accordance with Section 713 of the Communications Act of 1934, as amended (“Communications Act”),<sup>11</sup> the Commission implemented rules that required larger broadcast stations and MVPDs to provide video description on the top programming networks.<sup>12</sup> Soon after the rules’ initial adoption, the United States Court of Appeals for the District of Columbia Circuit vacated the rules on the ground that the Commission lacked sufficient authority to promulgate video description regulations.<sup>13</sup>

<sup>9</sup> *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230 (2000) (“*2000 Video Description Order*”), recon. granted in part and denied in part, *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1251 (2001).

<sup>10</sup> *2000 Video Description Order*, 15 FCC Rcd at 15231, ¶ 1.

<sup>11</sup> Section 305 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) added a new Section 713, Video Programming Accessibility, to the Communications Act, 47 U.S.C. § 613. See *Closed Captioning and Video Description of Video Programming: Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, Report, 11 FCC Rcd 19214, 19253-71, ¶¶ 94-142 (1996); *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, Fourth Annual Report, 13 FCC Rcd 1034, 1163-70, ¶¶ 258-71 (1998).

<sup>12</sup> *2000 Video Description Order*, 15 FCC Rcd at 15233, ¶ 6. See also *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Notice of Proposed Rulemaking, 14 FCC Rcd 19845 (1999). Specifically, the rules required: (i) affiliates of the top four commercial broadcast television networks in the top 25 markets to provide 50 hours of video description per calendar quarter during prime time or children’s programming; (ii) MVPD systems with 50,000 or more subscribers to provide 50 hours of video description per calendar quarter during prime time or children’s programming on each of the top five national nonbroadcast networks they carry; and (iii) any network-affiliated broadcast station and any MVPD, regardless of size, to pass through any video description received from a programming provider, if they have the technical capability to do so. *2000 Video Description Order*, 15 FCC Rcd at 15233, ¶ 6. The Commission intended to evaluate the efficacy of and consumer demand for video description to determine whether to expand the number of broadcast stations and MVPDs subject to the video description rules in the future, and expressed a “hope” that “[a]s the industry and the public gain greater experience with video description . . . more broadcast stations and MVPDs will provide video description, and those that do so will provide more hours of programming with video description.” *Id.* at 15239, 15244, 15256-57, ¶¶ 20, 32, 67.

<sup>13</sup> *Motion Picture Ass’n of Am., Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

5. The CVAA was enacted on October 8, 2010 with the purpose of ensuring that individuals with disabilities are able to fully utilize modern communications services and equipment and to better access video programming.<sup>14</sup> As part of this legislation, Congress granted the Commission express authority to adopt video description rules for television programming and required periodic reports on issues related to video description.<sup>15</sup> As mandated by the CVAA,<sup>16</sup> the Commission reinstated the video description regulations that were previously adopted in 2000, with certain modifications.<sup>17</sup> The Commission observed that the “revised and reinstated rules will afford 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>18</sup>

6. The video description rules as reinstated in 2011 require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks and are located in the top 25 television markets to provide 50 hours per calendar quarter of video-described prime time or children’s programming.<sup>19</sup> Beginning July 1, 2015, affiliates of the top four television broadcast networks located in markets 26 to 60 will also be subject to this requirement.<sup>20</sup> In addition, 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 of the top five national nonbroadcast networks that they carry on those systems.<sup>21</sup> The nonbroadcast networks currently subject to these video description requirements are USA, the Disney Channel, TNT, Nickelodeon, and TBS.<sup>22</sup> Any programming initially aired with video description must include video description if it is re-aired on the

<sup>14</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010). See H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

<sup>15</sup> Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f). The CVAA also mandated that the Chairman of the Commission establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”), comprised of representatives from industry and consumer groups, which was directed to develop a report identifying performance objectives and technical capabilities and procedures for the provision of video description. Pub. L. No. 111-260, § 201(e)(2). The VPAAC submitted its report on video description to the Commission on April 9, 2012. See Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, available at <http://vpaac.wikispaces.com>. The portion of the report that addresses video description is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf> (“VPAAC Report: Video Description”).

<sup>16</sup> 47 U.S.C. §§ 613(f)(1)-(2).

<sup>17</sup> 47 C.F.R. § 79.3. See generally *2011 Video Description Order*. See also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011).

<sup>18</sup> *2011 Video Description Order*, 26 FCC Rcd at 11848, ¶ 1.

<sup>19</sup> 47 C.F.R. § 79.3(b)(1). See also *2011 Video Description Order*, 26 FCC Rcd at 11849, ¶ 4.

<sup>20</sup> 47 C.F.R. § 79.3(b)(2). See also *2011 Video Description Order*, 26 FCC Rcd at 11856, ¶ 16.

<sup>21</sup> 47 C.F.R. § 79.3(b)(4). See also *2011 Video Description Order*, 26 FCC Rcd at 11849-50, ¶ 4. For purposes of the rules, the top five national nonbroadcast networks are 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 prime time programming that is not live or near-live or otherwise exempt under the video description rules. 47 C.F.R. § 79.3(b)(4). See also *2011 Video Description Order*, 26 FCC Rcd at 11854-55, ¶¶ 12-15.

<sup>22</sup> *2011 Video Description Order*, 26 FCC Rcd at 11854, ¶ 12. The list of top five networks will be updated every three years for changes in ratings, and the first update will be on July 1, 2015 based on the ratings for the time period from October 2013 to September 2014. 47 C.F.R. § 79.3(b)(4). See also *2011 Video Description Order*, 26 FCC Rcd at 11857, ¶ 18.

same station or MVPD channel, unless the station or MVPD is using the technology for another program-related purpose.<sup>23</sup>

7. The rules also impose video description “pass through” obligations on all network-affiliated broadcast stations regardless of market size, and on all MVPDs regardless of the number of subscribers. Specifically, any broadcast station affiliated or otherwise associated with a television network must pass through video description when it is provided by the network, if the station has the technical capability necessary to do so<sup>24</sup> and if that technology is not being used for another purpose related to the programming.<sup>25</sup> Similarly, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.<sup>26</sup> Broadcasters and MVPDs were required to be in compliance with the video description requirements beginning on July 1, 2012,<sup>27</sup> and the rules permit covered entities to seek a full or partial exemption based on economic burden.<sup>28</sup>

8. The CVAA requires the Commission to submit a report to Congress within two years of phasing in the reinstated rules, discussing the status, benefits, and costs of video description in television and IP-delivered programming.<sup>29</sup> To inform the preparation of the report, the Media Bureau issued a Public Notice on June 25, 2013 (the “*Public Notice*”), inviting comments related to video description in television and IP-delivered programming.<sup>30</sup> The comments from industry, consumer groups, and individual consumers received in response to the inquiry are summarized herein and provide the basis for the information and findings presented in this *Report*.

9. In accordance with the CVAA’s mandate, Section III of this *Report* presents information and findings on the following issues related to the provision of video description in programming distributed on television:

- the availability, use, and benefits of video description on video programming distributed on television;
- the technical and creative issues associated with providing such video description; and
- the financial costs of providing such video description for providers of video programming and program owners.<sup>31</sup>

<sup>23</sup> 47 C.F.R. §§ 79.3(c)(3), 79.3(c)(4)(i)-(ii).

<sup>24</sup> A station or MVPD system is technically capable of passing through video description if it has virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost. *2011 Video Description Order*, 26 FCC Rcd at 11861, ¶ 27.

<sup>25</sup> 47 C.F.R. § 79.3(b)(3). *See also 2011 Video Description Order*, 26 FCC Rcd at 11850, 11858-59, ¶¶ 4, 20.

<sup>26</sup> 47 C.F.R. §§ 79.3(b)(5)(i)-(ii). *See also 2011 Video Description Order*, 26 FCC Rcd at 11850, 11858-59, ¶¶ 4, 20.

<sup>27</sup> *See 2011 Video Description Order*, 26 FCC Rcd at 11864, ¶ 34.

<sup>28</sup> 47 C.F.R. § 79.3(d). *See also 2011 Video Description Order*, 26 FCC Rcd at 11868, ¶ 43.

<sup>29</sup> Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(3). The phase-in of the reinstated video description regulations was completed on July 1, 2012 and, thus, this report must be completed by July 1, 2014.

<sup>30</sup> *See Public Notice, Media Bureau Seeks Comment on Video Description in Video Programming Distributed on Television and on the Internet*, 28 FCC Rcd 9043 (2013) (“*Public Notice*”).

<sup>31</sup> 47 U.S.C. § 613(f)(3)(A).

10. Although the regulations currently in place apply only to the provision of video description in television programming,<sup>32</sup> Congress also instructed the Commission to report on issues related to the provision of video description in IP-delivered programming. Thus, Section IV of this *Report* presents information and findings on “[t]he technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol.”<sup>33</sup>

11. Section V of this *Report* addresses other issues raised in response to the *Public Notice* seeking comment on video description, including the exception to the video description requirements when the technology used to provide video description – the secondary audio stream – is being used for other program-related services, as well as the lack of video description in Spanish language programming.

### III. VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON TELEVISION

12. As noted, Section 713(f)(3)(A) of the Communications Act, as added by the CVAA, directs the Commission to inquire about and report on the following specific issues related to video description in television programming: (i) the availability, use, and benefits of video description in video programming distributed on television; (ii) the technical and creative issues associated with providing such video description; and (iii) the financial costs of providing such video description for providers of video programming and program owners.<sup>34</sup> We address each of these issues below.

#### A. Benefits, Availability, and Use of Video Description in Television Programming

13. In the *Public Notice*, the Media Bureau sought comment on the amount of video-described programming that is currently available to consumers on television, including both programming that is video-described by covered entities to comply with the Commission’s rules and programming that is video-described voluntarily, as well as the types of programming that are provided with video description.<sup>35</sup> The Media Bureau also solicited comment on whether the availability of video description is indicated in program guides or other sources and whether there is a common industry method to indicate that a particular program is video-described.<sup>36</sup> In addition, the Media Bureau asked for information on the extent to which consumers use video description services when viewing television programming and the benefits to consumers of such services, including whether the benefits extend to audiences without visual disabilities.<sup>37</sup>

14. **Benefits of Video Description.** Individual consumers who are blind or visually impaired describe how video description greatly enhances the experience of viewing video programming.<sup>38</sup> Many commenters appreciate this service because they no longer miss the visual elements of television programming, such as “expressions, scene changes, visual jokes, and even things like visual clues in a

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<sup>32</sup> The CVAA specifies that the reinstated video description regulations “shall apply to video programming . . . insofar as such programming is transmitted for display on television in digital format.” Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(2)(A).

<sup>33</sup> 47 U.S.C. § 613(f)(3)(B).

<sup>34</sup> *Id.* § 613(f)(3)(A).

<sup>35</sup> *Public Notice*, 28 FCC Rcd at 9045, ¶ 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See, e.g.*, Reply Comments of David M. Mayer at 1 (“Mayer Reply”) (stating that video description “has made the watching of television more enjoyable with others and by myself”); Reply Comments of Lisa D. Porter at 1 (“Porter Reply”) (“[I]t is such a wonderful joy to be able to watch something and not miss anything as it’s described to you.”); Reply Comments of Mary Sefzik at 1 (“Sefzik Reply”) (“Audio description enhances the TV watching experience for Americans with little or no vision.”); Reply Comments of Joe Sorenson at 1 (“Sorenson Reply”) (noting that video-described television is of great value to him and his wife, who are both blind).

murder mystery.”<sup>39</sup> Without video description, individuals who are blind or visually impaired miss these critical visual components and, thus, may not have a full understanding of the program.<sup>40</sup> One commenter explains that video description is beneficial to her because she is legally blind and can miss small visual details even though she can see the television, and the descriptions help make the program easier to follow and understand.<sup>41</sup>

15. Notably, consumers also say that video description allows them to be independent.<sup>42</sup> According to these commenters, they no longer need to rely on their sighted family members and friends to narrate the visual elements of television programming, and this also allows sighted family and friends to enjoy programming without having to describe it.<sup>43</sup> As commenter Ken Rodgers explains, he would occasionally ask a friend or family member to describe a television program for him, “but that often puts the responsibility onto someone else to provide me with what I may need but doesn’t allow that person to enjoy what is being watched.”<sup>44</sup> Rodgers declares that the “beauty of video description” is that “no one had to interrupt their own viewing pleasure to try to tell me what was going on as I could access that visual information independently.”<sup>45</sup>

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<sup>39</sup> Reply Comments of Adrienne Roy at 1 (“Roy Reply”). *See also* Reply Comments of Tracy Carcione at 1 (“Carcione Reply”) (“It used to be that I’d just hear exciting music and have to guess what was happening, but now I can hear how the good guys caught the bad guys, or about the significant looks exchanged by two characters, or how the good guy escaped from some impossible situation. It’s great!”); Reply Comments of Steve Fort at 1 (observing that the experience of watching President Obama’s inauguration with video description “on public television” “was truly magnificent” and afforded much greater information about what took place that otherwise would have been missed completely); Reply Comments of Judith E. Vido at 1 (“Vido Reply”) (stating that, with video description, “it is nice to be able to follow the action when many times the action is silently performed and has no dialogue to give one an indication of what’s happening”).

<sup>40</sup> *See* Reply Comments of Rhonda Hornbacher at 1 (“Hornbacher Reply”) (asserting that she enjoys video description immensely when she can access it, and that “[m]ost television shows are pointless to me unless I have description”); Mayer Reply at 1 (explaining that, before video description, “[t]here was much of the program that I would miss and I was not able to follow the program”); Reply Comments of Penny Reeder at 1 (“Reeder Reply”) (“[W]hen I try to watch independently and alone, I often miss out on critical components of the production, including visual characteristics and action that might be occurring in the background or even as an essential component of the presentation.”); Reply Comments of Anet M. Richmond at 1 (“Richmond Reply”) (“I miss a lot of what goes on when there isn’t characters speaking. I have to just try to figure it out myself or go without knowing.”).

<sup>41</sup> Reply Comments of Marlene Mesot at 1 (“Mesot Reply”).

<sup>42</sup> *See* Reply Comments of Nicole Hugues at 1 (“Hugues Reply”) (“I really like the audio description because this way I can watch a show independently without having to rely on my family to describe visual elements to me.”); Mayer Reply at 1 (stating that video description “gives me the opportunity to enjoy the program without asking others to tell me [w]hat is happening on the screen”); Reeder Reply at 1 (noting that without access to video description, “if I want to watch something on TV that is described, I have to hope that someone else in my family might want to watch it along with me and describe what is happening on the screen”); Richmond Reply at 1 (explaining that without video description, she does not know what happens on a television program without asking someone who is watching with her or over the phone, and stating “I would like to be independent” by being able to have video description); Sefzik Reply at 1 (“It is so gratifying to be able to enjoy a movie with sighted family or friends without constantly asking questions.”); Vido Reply at 1 (“[N]ow I know what happens without having to call my friends to ask them.”).

<sup>43</sup> *See* Reply Comments of Gayle Yarnall at 1 (“Yarnall Reply”) (“My husband has spent decades describing television for me. . . . It is probably as helpful for him as it is for me to have audio description.”).

<sup>44</sup> Reply Comments of Ken Rodgers at 1 (“Rodgers Reply”).

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

16. Although the record largely does not address the benefits of video description for particular types of programming, one commenter notes that she appreciates video description for children's programming because she can understand the visual content in programs that her grandchildren watch, which can enhance discussions of those shows with young children.<sup>46</sup>

17. ***Availability of Video Description.*** Industry commenters report that they are working diligently to comply with the video description requirements. The National Association of Broadcasters ("NAB") states that covered broadcasters on average are exceeding the required 50 hour threshold for the amount of video-described programming per calendar quarter in many cases, "with the actual amount of video-described programming ranging from the high 50s to 88 hours per quarter."<sup>47</sup> NAB explains that the range in amounts is attributable to various factors, "including change of seasonal programming schedules, program ratings, and offerings intended to ensure that even in light of unanticipated developments, the 50-hour requirement is met."<sup>48</sup>

18. Though it does not provide numbers for the amount of video-described programming currently available on cable systems, the National Cable & Telecommunications Association ("NCTA") contends that "programming networks subject to the rules are currently airing a wide variety of programming containing video description."<sup>49</sup> NCTA notes that the cable industry has dedicated significant resources to the successful implementation of the video description requirements.<sup>50</sup> According to NCTA, this effort has involved building libraries of programming, educating consumers, and addressing creative, technical, and logistical issues.<sup>51</sup> NCTA projects that the amount of programming containing video description on television will continue to increase over time.<sup>52</sup>

19. DIRECTV, LLC ("DIRECTV") also describes the steps it has been taking to meet its video description obligations and to ensure the availability of video-described programming for its subscribers. DIRECTV reports that it has incorporated video description requirements into affiliation agreements with the top five nonbroadcast networks when these agreements have come up for renewal.<sup>53</sup> In addition, "[t]o the extent necessary, it has also reconfigured the spot beams used to retransmit broadcast programming to local markets to ensure that sufficient capacity has been allocated to accommodate a video description feed from the network affiliates carried in each market."<sup>54</sup>

20. Regarding the types of programming that are video-described, the record reflects that video description is offered predominately for prime time and children's programming, which is

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<sup>46</sup> See Reeder Reply at 1. In the *2000 Video Description Order*, the Commission explained that although video description is primarily designed to make television programming more accessible for children and adults with visual disabilities, other audiences may benefit from video description, including children with learning disabilities. See *2000 Video Description Order*, 15 FCC Rcd at 15234-35, ¶ 10 ("Because the medium has both audio description and visual appeal, it has significant potential to capture the attention of learning disabled children and enhance their information processing skills. Described video programming capitalizes on the different perceptual strengths of learning-disabled children, pairing their more-developed modality with their less-developed modality to reinforce comprehension of information."). See also *2011 Video Description Order*, 26 FCC Rcd at 11873, ¶ 53.

<sup>47</sup> Comments of the National Association of Broadcasters at 2-3 ("NAB Comments").

<sup>48</sup> *Id.* at 3.

<sup>49</sup> Comments of the National Cable & Telecommunications Association at 2 ("NCTA Comments").

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 3.

<sup>53</sup> Comments of DIRECTV, LLC at 2 ("DIRECTV Comments").

<sup>54</sup> *Id.* Spot beams allow satellite transmissions to be focused on a specific area within the footprint of the satellite, enabling DBS providers to deliver local channels to precisely defined areas.

consistent with the regulatory requirements. NAB states that “[t]o date, the majority of video-described programming has been prime time programming geared to general audiences.”<sup>55</sup> In addition, some of the educational/informational (“E/I”) children’s programming aired by broadcast stations contains video description.<sup>56</sup> NCTA reports that “[v]ideo-described programming available today meets many interests,” including children’s programming that targets various age groups on Disney and Nickelodeon, and a diverse array of prime time programming on TNT, TBS, and USA, as well as the video-described programming offered by broadcast networks.<sup>57</sup> NCTA also notes that, in addition to the top five nonbroadcast networks that are subject to the video description requirements, Turner Classic Movies distributes a large selection of video-described movies, even though it is not legally required to do so.<sup>58</sup> In addition, we note that Public Broadcasting Service (“PBS”) stations offer video description in children’s programming and other content on a voluntary basis.<sup>59</sup>

21. Notwithstanding efforts by industry to comply with the video description requirements, some consumer commenters voice frustrations about what they perceive to be a nominal amount of video-described programming available to them. For example, Ken Rodgers expresses that he is grateful for the many programs offering description, but emphasizes the number of programs that do not offer video description services, including movies that have a known description track available.<sup>60</sup> Elizabeth Morgan “very much enjoy[s]” being able to access video-described programs on television, but says that “there are only 5 or less TV networks that offer these programs and their described programs are lacking, I’m lucky if I get to watch 1 audio described program a month.”<sup>61</sup> Gayle Yarnall estimates that about one out of four shows that she watches is video-described.<sup>62</sup> Rhonda Hornbacher is “very pleased” that video description is available on more television programs because most shows are “pointless” to her without it.<sup>63</sup> However, Hornbacher states that “[w]e simply are not getting an adequate amount of description nor easy access to that programming.”<sup>64</sup> Alex Hall refers to “[t]he state of described television programming” as, “in a word, dismal,” and contends that blind consumers have “very little choice when it comes to described entertainment” as “[d]escribed movies and TV shows are rarely available to watch on broadcast or on-demand TV.”<sup>65</sup>

22. Comments filed by consumers who are blind or visually impaired resoundingly express a desire to see a greater amount and variety of programming with video description available on television.<sup>66</sup> For example, Elizabeth Morgan would like to have more programs with video description on

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<sup>55</sup> NAB Comments at 3.

<sup>56</sup> *See id.* (noting that “for the three major networks that distribute educational/informational (E/I) children’s programming to affiliated stations, most of that programming will also be video-described starting in the fall of 2013”).

<sup>57</sup> NCTA Comments at 2-3.

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *See* American Council of the Blind, The Audio Description Project, Video Described Shows, *available at* <http://acb.org/adp/tv.html#shows> (noting that PBS “[o]ffers description of many children’s shows and some adult programming, including Downton Abbey”).

<sup>60</sup> Rodgers Reply at 1-2.

<sup>61</sup> Reply Comments of Elizabeth Morgan at 1 (“Morgan Reply”).

<sup>62</sup> Yarnall Reply at 1.

<sup>63</sup> Hornbacher Reply at 1.

<sup>64</sup> *Id.*

<sup>65</sup> Reply Comments of Alex Hall at 1 (“Hall Reply”).

<sup>66</sup> *See, e.g.,* Reply Comments of Mary Hiland at 1 (“Hiland Reply”) (stating that she “would very much like to have more audio description offered”); Hornbacher Reply at 1 (“Even more television programs need to have

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a variety of networks.<sup>67</sup> Christine Cook requests that the Commission seek Congressional approval to expand access to video description for individuals who are blind or visually impaired, noting that “50 hours quarterly is not acceptable.”<sup>68</sup> Marlene Mesot would like video description to be made as widely available as closed captioning.<sup>69</sup> Adrian Spratt argues that “current content requirements are ludicrously limited to a tiny fraction of programming” and that “[t]he goal must be to incentivize entertainment providers to make [video description] a regular component of broadcasting.”<sup>70</sup> Perla Kohs emphasizes that, as she continues to lose vision, she is “increasingly excluded from access to information and entertainment that helps to maintain my ability to be an informed, active citizen,” and asks the Commission to expand access to video description on television.<sup>71</sup>

23. Some consumers complain that they are unable to receive video-described programming on certain broadcast stations and MVPD systems,<sup>72</sup> though it is difficult to discern from the record

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description.”); Reply Comments of Joseph Lamperis at 1 (“Lamperis Reply”) (requesting an increase of video description in television programming, “which could benefit myself as well as other visually impaired people”); Porter Reply at 1 (“I would love to see the day when everything is described.”); Reeder Reply at 1 (stating that she enjoys video description and suggesting that it should be available on all kinds of programming, particularly HBO series and children’s programming, and also on DVDs and Netflix); Rodgers Reply at 2 (stating that the Commission should require more video-described programming on television, including all movie channels, broadcast sports, and television shows); Sorenson Reply at 1 (explaining that because he does not live in a top 25 television market, his access to video-described programming is “limited,” and stating that video description should “be expanded and demanded by law in other markets”); Reply Comments of Byron Sykes at 1 (“Sykes Reply”) (“As with anything of value like [video description], I would like more of it if at all possible.”).

<sup>67</sup> Morgan Reply at 1. Morgan also states that it would “be nice to have some audio described programs on the family networks so that I can watch TV with younger family members, such as the ABC Family channel, Disney Channel, Sci Fi etc.” *Id.* As noted, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per quarter during prime time or children’s programming on each of the top five national nonbroadcast networks that they carry, which includes the Disney Channel. *See supra* ¶ 6.

<sup>68</sup> Reply Comments of Christine Cook at 1 (“Cook Reply”).

<sup>69</sup> Mesot Reply at 1.

<sup>70</sup> Comments of Adrian Spratt at 2 (“Spratt Comments”). Spratt suggests that the Commission could survey entities that do video description and take steps to promote competition and reduced costs. *Id.*

<sup>71</sup> Reply Comments of Perla Kohs at 1 (“Kohs Reply”).

<sup>72</sup> *See* Sefzik Reply at 1 (describing frustrations with being unable to receive video description on DIRECTV and AT&T U-verse); Reply Comments of Linda Faust at 1 (contending that, to her knowledge, Brighthouse does not provide video description, except occasionally on the Turner Classic Network channel, and stating that she is “really disappointed that there isn’t more”); Carcione Reply at 1 (stating that it is “frustrating to see in the TV listings that a show I want to watch has descriptions, and then not be able to get them anyway” on her Cablevision service); Reply Comments of Michael Sedmak at 1 (“Sedmak Reply”) (stating that he has been unable to access any video-described content through his cable provider, Comcast of Fort Collins, Colorado); Reply Comments of Blake Sinnett at 1 (“Sinnett Reply”) (“[Comcast] didn’t appear to send the [video] description sub channel even though the local stations were broadcasting it.”); Reply Comments of Jim East at 1 (“East Reply”) (indicating that his cable provider, Cox Communications in Gainesville, Florida, has not provided video-described programming); Richmond Reply at 1 (stating that her cable provider, Cox Communications in Westerly, Rhode Island, does not have video-described television programming); Reply Comments of Jeff Mihelich at 1 (“Mihelich Reply”) (“Sometimes it seems like DIRECTV doesn’t pass the [video] description through to my TV.”); Reply Comments of Anne M. West at 1 (“West Reply”) (stating that a DISH Network representative informed her that DISH does not provide video description “through the alternate channels on their system,” which instead “are used for different languages”); Reply Comments of Myra Brodsky at 1 (“Brodsky Reply”) (“I have Time Warner, and audio description on my TV is non existent.”); Hall Reply at 1 (explaining that “I have left the [SAP] on for months now, and have yet to hear one word of description for any program on any channel” on his Time Warner Cable service). *See also* Reply Comments of Audley Blackburn at 1 (“Blackburn Reply”) (stating that she enjoys watching video-described

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whether these instances are due to the broadcaster or MVPD not passing through available video description,<sup>73</sup> difficulty accessing the secondary audio stream, or other reasons. A few commenters report that they are not able to get video-described programming through their provider in high definition, though it is unclear from the comments why the high definition feed does not include video description.<sup>74</sup> As noted, only the top four network-affiliated broadcast stations in the top markets and larger MVPDs are required to provide 50 hours per calendar quarter of video-described prime time or children's programming, though all network-affiliated broadcast stations and all MVPDs must pass through video description provided by a network, if they have the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.<sup>75</sup> It is not always clear from consumers' comments whether their frustration with the lack of video description services available to them stems from the limited scope of the current requirements, or from a failure of the broadcaster or MVPD at issue to comply with the rules. That is, some of the broadcast stations and MVPD systems about which consumers complain may not currently be subject to the obligation to provide 50 hours of video description in prime time or children's programming because they are located outside the top 25 television markets or are not systems that serve 50,000 or more subscribers, respectively, and some may not be passing through video description from broadcast and nonbroadcast networks because they do not have the technical capability to do so on a particular station or channel. Thus, the comments do not necessarily indicate a failure to comply with the video description rules. We encourage consumers to file complaints concerning alleged violations of the video description rules.<sup>76</sup> This will allow the Commission to investigate the problems consumers raise to determine whether entities are violating our rules and to take enforcement action when appropriate.

24. In addition, consumers' comments raise other issues that may impact their ability to access video description services, as well as their perception that the availability of video-described programming is very limited. In particular, comments from individual consumers reveal concerns about a lack of publicly available information about which television programs are video-described; inadequate customer support service for video description; and technical problems with accessing video description services on consumer electronics equipment. Each of these issues is addressed below.

25. *Information on Video-Described Programming.* As NAB correctly observes, the *2011 Video Description Order* did not require that the availability of video description for certain programs be publicized in a particular manner.<sup>77</sup> However, the *Order* stated an expectation that programmers,

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programs on the USA Network, but is disappointed that current shows on CBS are not video-described, and that she has had problems with Time Warner Cable "carrying description from ABC[,] NBC and Fox"); Hornbacher Reply at 1 ("Currently, I am not receiving any description on my local FOX or NBC stations on any programs.").

<sup>73</sup> As noted in the accompanying paragraph, the broadcasters and MVPDs mentioned in consumers' comments may not be required to provide or pass through video description on a particular station or channel and, therefore, may be complying with the Commission's rules even if they are not passing through video description provided by a network.

<sup>74</sup> See Sinnett Reply at 1 (explaining that he is able to get video description from DISH Network only on the standard definition channels); Spratt Comments at 1 (noting that he cannot get video description on any HD station except for Fox on Verizon FiOS).

<sup>75</sup> See *supra* ¶¶ 6-7.

<sup>76</sup> See 47 C.F.R. § 79.3(e). The FCC's consumer guide on video description provides information about how to file such complaints and is available at <http://www.fcc.gov/guides/video-description>. For example, such complaints can be filed online using the FCC Disability Access Complaint Form 2000C available at <http://www.fcc.gov/accessibility-complaints-form-2000c> or by calling the FCC's Consumer Center at 1-888-225-5322.

<sup>77</sup> *2011 Video Description Order*, 26 FCC Rcd at 11872, ¶ 51. See also NAB Comments at 3, n. 6.

broadcasters, and MVPD systems will provide this information to viewers in an accessible manner, including on their websites, and will provide it to companies that publish television listings information.<sup>78</sup>

26. NAB contends that each of the four major broadcast networks identifies programming with video description on its website<sup>79</sup> and provides such information to programming guides, but, “[f]or reasons of which the networks are unaware . . . this information appears not to be published regularly.”<sup>80</sup> NCTA states that, to help consumers utilize video description, some programming networks provide schedules that indicate available video-described content via their websites<sup>81</sup> and over the phone.<sup>82</sup> NCTA also reports that “[t]he cable industry has coordinated with entities that aggregate and publicize lists of programming containing video description, including the Commission.”<sup>83</sup> Notably, NCTA highlights the American Foundation for the Blind’s (“AFB”) website, which provides a search tool to locate programs containing video description by zip code, provider, date, and time, as a useful resource for video description information.<sup>84</sup> According to NCTA, some programmers also use an on-screen icon (*i.e.*, “D”) “that enables sighted viewers to identify video-described programming for viewing companions who are blind or visually impaired.”<sup>85</sup> NCTA notes that the cable industry would welcome further coordination with advocacy groups on consumer awareness efforts for video description.<sup>86</sup>

27. Despite the industry efforts described above, consumer commenters assert that they often are unable to obtain accessible information about which programs are provided with video description.<sup>87</sup>

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<sup>78</sup> *See id.*

<sup>79</sup> According to NAB, video description schedules for ABC, CBS, and NBC can be accessed at the following websites: <http://abc.go.com/audio-description> (ABC); <http://www.cbs.com/schedule/video-description/> (CBS); <http://www.nbc.com/schedule/> (NBC; shows that are video-described are denoted with the icon “AD”). NAB Comments at 4. In addition, links to video-described shows on Fox can be accessed by navigating to an individual show’s page from the main website and clicking on the “Audio Description” link at the bottom of the page. *Id.*

<sup>80</sup> NAB Comments at 3-4.

<sup>81</sup> According to NCTA, video description schedules for the top five nonbroadcast networks can be accessed at the following websites: <http://www.tbs.com/schedule/video-described/> (TBS); <http://www.tntdrama.com/schedule/video-described/> (TNT); <http://www2.usanetwork.com/accessibility/> (USA); <http://a.dolimg.com/en-US/disneychannel/media/tvschedule/index.html> (Disney Channel); and <http://www.nick.com/shows/tvschedule/audio-described> (Nickelodeon). NCTA Comments at 3, nn. 7-8, 11.

<sup>82</sup> *Id.* at 3. NCTA cites both USA and Turner Classic Movies as examples of networks that provide phone numbers for consumers to call for information on content available with video description. *Id.* at 3, n. 12 (USA website indicates that consumers can call (212) 664-7010; TCM website indicates that consumers can call (404) 885-5535 and select option 2, or use the TCM “Now Playing Guide” available at (800) TCM-1002).

<sup>83</sup> *Id.* at 3-4. NCTA cites the FCC’s Encyclopedia webpage for video description, which provides some general information on video description requirements as well as the list of television markets subject to the rules and a list of programs expected to be aired with video description, with links to network websites for more specific information on video-described programming. *See id.* at 4, n. 13; FCC Encyclopedia, Video Description, available at <http://www.fcc.gov/encyclopedia/video-description>.

<sup>84</sup> *See* NCTA Comments at 4, n. 13; AFB, Described TV Listings, available at <http://www.afb.org/tv.aspx>. AFB’s website indicates that the information in its search tool is provided by the Rovi database of television and movie listings. *See id.* We note that the American Council of the Blind (“ACB”) also provides information about video-described programs on television. *See* ACB, The Audio Description Project, Video Described Shows, available at <http://www.acb.org/adp/tv.html>.

<sup>85</sup> NCTA Comments at 4.

<sup>86</sup> *Id.*

<sup>87</sup> *See, e.g.*, Cook Reply at 1 (“I am a blind person who experiences difficulty in finding and receiving information from the 3 major tv providers for audible access.”); Reply Comments of Nancy Johnson at 1 (“Johnson Reply”) (asking where consumers can “get accessible program listings,” and saying that she would like to have information

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For example, Jeff Mihelich states that he enjoys video description when he can find it, but says it is problematic that many television guides do not contain an icon or word indicating whether a television show has video description.<sup>88</sup> Similarly, Rhonda Hornbacher reports that she “cannot find a definitive list of described programs and when they are on” and the lists of programs that she does find are not accurate and do not seem to be updated.<sup>89</sup> For this reason, she states that “[t]here needs to be a definitive list of all described programs that is updated regularly.”<sup>90</sup> Citing similar issues with accessing information, Dorothy M. Doran requests a television guide that provides information on where to access descriptive television programs, suggests that there should be public service announcements to inform the public about the availability of video description and the stations and times that it can be accessed, and recommends that agencies that serve individuals who are blind or visually impaired provide information about video description.<sup>91</sup>

28. We commend the efforts of covered entities and consumer groups to inform consumers about which programs contain video description through their websites, while acknowledging that, despite these efforts, some consumers have difficulty finding this information. We encourage industry to coordinate with program guide developers to include information about which programs are described as part of mainstream program information resources to ensure that consumers are provided with current and accurate information on video-described programming.<sup>92</sup> We also hope that industry will promote the availability of such websites and other information outlets so that consumers are aware of how to obtain this information.<sup>93</sup> We note that consumers can also access the FCC’s Encyclopedia webpage for video description, which provides information about video description and links to more specific information on video-described programming.<sup>94</sup>

29. *Customer Support for Video Description Services.* Individual consumer commenters also express frustrations with inadequate MVPD customer support for video description services. In particular, a number of commenters report that they have contacted customer support staff and technicians for assistance with video description services only to find that the employee had no knowledge of what

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about what video-described programs are on and which channel they are on); Sykes Reply at 1 (asserting that, to his knowledge, video description is available from his provider, Time Warner Cable, but stating “[t]he bad news is I don’t know which channel(s) offer it that I can receive through them”); Vido Reply at 1 (stating that she loves video description, but wishes she could know which programs are video-described and how to find them); Yarnall Reply at 1 (explaining that “Comcast does not tell us when something is going to be audio described but I can use the TV guide that comes from [NFB’s] Newsline” via an iPhone application).

<sup>88</sup> Mihelich Reply at 1.

<sup>89</sup> Hornbacher Reply at 1 (“If I did not have a sighted spouse who visually checks the symbol displayed as a program starts, I would never know what programs are described and which are not.”).

<sup>90</sup> *Id.* See also Reply Comments of Calvin Lee at 1 (“Lee Reply”) (stating that the Commission should “make it easier to find out what programs are described”).

<sup>91</sup> Reply Comments of Dorothy M. Doran at 1.

<sup>92</sup> In addition, we encourage MVPDs that are developing audibly accessible program guides in compliance with the Commission’s recently adopted user interfaces rules to work with program guide publishers and aggregators, broadcasters, and nonbroadcast channels to include video description information in their accessible program guides. See *infra* ¶ 33.

<sup>93</sup> We note that Accessible Media Inc. (“AMI”), a Canadian broadcast company that operates two television stations that provide fully video-described content, has launched a guide that lists all video-described programming available on all networks in Canada, which is available on the Internet and through a 24-hour national center, by working collaboratively with other industry stakeholders. Comments of Accessible Media Inc. at 1 (“AMI Comments”).

<sup>94</sup> See FCC Encyclopedia, Video Description, available at <http://www.fcc.gov/encyclopedia/video-description>.

video description is or how to access video description in the MVPD's programming.<sup>95</sup> Some commenters contend that the deficiencies in customer support have prevented them from enjoying the benefits of video-described programming altogether.<sup>96</sup> One commenter refers to her customer service experience as "frustrating and hopeless."<sup>97</sup> Another commenter states that company representatives should be educated about video description to ensure that consumers who are blind or visually impaired can access this service.<sup>98</sup>

30. NCTA is the only industry commenter to address this issue. Specifically, NCTA asserts that cable operators have trained their customer service representatives to handle questions from consumers about accessing video description on particular cable systems and have coordinated with broadcasters and programmers to resolve video description-related issues.<sup>99</sup> However, despite NCTA's assertions, the comments received by consumers suggest that training of customer service representatives and other steps taken by industry have not been effective in resolving video description issues faced by consumers in many instances.

31. At this time, there are no requirements for broadcast stations or MVPDs to provide customer support services to assist consumers who are blind or visually impaired with accessing video description services. However, in the *Emergency Information Order* adopted in April 2013, the Commission stated that customer service representatives of covered entities should be able to answer

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<sup>95</sup> Consumers' complaints about customer support extend to a large number of MVPDs, including Comcast, Cox Communications, DIRECTV, DISH Network, and Time Warner Cable. *See* Brodsky Reply at 1 (explaining that when she called Time Warner Cable to ask about a lack of video description on television, "customer service has no idea what I'm talking about" and "the servicemen don't know what audio description is"); Cook Reply at 1 (stating that Comcast, DISH Network, and DIRECTV "have failed to give me understandable directions" to set up video description services, and "when contacted support staff say they have no knowledge of this service and will get back to me (which they never do)"); East Reply at 1 ("All of the representatives at Cox Communications that I have spoke[n] with, have told me they have not heard of descriptive television."); Hall Reply at 1 (stating that he called Time Warner Cable for information on accessing video description, and "the rep to whom I spoke had no idea what I was talking about"); Reply Comments of Terry Knox at 1 (stating that he called customer service at Time Warner Cable regarding video description, and "not one person knew what I was talking about . . . no call back, no help"); Reply Comments of Wilman Antonio Navarreto at 1 ("I have reached out to my cable provider Time Warner [Cable] in New York City but the company does not seem to understand about the TV description services."); Richmond Reply at 1 (stating that she asked an employee at Cox Communications about television programs with video description, and "[s]he had no idea that it even existed"); Rodgers Reply at 1 ("I spent many hours on the phone with ill-informed customer services representatives who had no idea what video description or audio description was. . . . Most technicians didn't even understand what video description or audio description was either. . . ."); Sinnett Reply at 1 (explaining that he attempted to contact Comcast for video description support, "but with no success" and "I even emailed an address they claimed was specifically for video description," and noting that when he called and emailed his next provider, DISH Network, "they were, if possible, less helpful than Comcast"); Yarnall Reply at 1 ("The people we have talked to at Comcast [about video description] seem to have no idea what we are talking about.").

<sup>96</sup> *See, e.g.*, Carcione Reply at 1 (stating that she has difficulty accessing video description through her Cablevision service, and "no one . . . seems to have a clue what I'm talking about when I call about it"); Hornbacher Reply at 1 ("Currently, I am not receiving any description on my local FOX or NBC stations on any programs. We have been in contact with several people for several months with no success."); Kohs Reply at 1 ("Despite repeated calls to DISH, I have never been able to access audio description on television."); Sedmak Reply at 1 ("I have talked to customer service three times, one call lasting an hour, and gotten a new set-top box, all to no avail.").

<sup>97</sup> Brodsky Reply at 1.

<sup>98</sup> Sefzik Reply at 1. *See also* Hall Reply at 1 (stating that "providers have no idea how to help consumers access whatever [video description] might be available," and that service representatives must be educated and "all content providers should be familiar with this sort of thing so they can help their customers").

<sup>99</sup> NCTA Comments at 4.

consumer questions about accessing emergency information, which, like video description, will be provided on a secondary audio stream, and it encouraged covered entities to provide a point of contact and other information about how to seek assistance, both on their websites and in other informational materials distributed to the public.<sup>100</sup> The Commission also sought comment in a further notice that accompanied the *Emergency Information Order* on whether entities subject to the emergency information rules must provide dedicated customer support services to assist consumers who are blind or visually impaired with accessing the secondary audio stream.<sup>101</sup> In the meantime, we urge covered entities to provide proper training and dedicated support so that customer service representatives of covered entities are able to answer consumer questions about accessing video description on the secondary audio stream. Further, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact for video description inquiries, as well as other information about how to seek assistance to access video description, on their websites and in other informational materials distributed to the public.

32. *Technical Problems Accessing Video Description Services on Consumer Electronics Equipment.* Video description is provided through the secondary audio feature on the television or set-top box, and consumers must be able to switch from the main program audio to the secondary audio stream in order to hear the narration provided in the video description track. Individuals who are blind or visually impaired contend that activating video description on their television or set-top box is often very challenging, and sometimes impossible, due to the complexities of navigating on-screen menus to select the secondary audio stream.<sup>102</sup> In particular, a number of consumer commenters indicate that they are not able to turn on video description unless they have assistance from a sighted person,<sup>103</sup> and some indicate that even their sighted family members and friends have difficulty figuring out how to access video description.<sup>104</sup> Another consumer states that she is unable to access video-described programming at all because she cannot see the on-screen menus and has no one to assist her.<sup>105</sup>

33. To fulfill its responsibilities under Sections 204 and 205 of the CVAA, the Commission recently adopted rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming to enable individuals with disabilities to more easily access such programming.<sup>106</sup> Specifically, the rules require that digital apparatus subject to Section 204 make appropriate built-in apparatus functions (*i.e.*, the functions used to receive, play back, and display video

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<sup>100</sup> *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; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4895, ¶ 28 (2013) (“*Emergency Information Order*”).

<sup>101</sup> *Id.* at 4929, ¶ 86.

<sup>102</sup> *See, e.g.*, Blackburn Reply at 1; Carcione Reply at 1; Comments of Micah Grossman at 1; Hornbacher Reply at 1; Hugues Reply at 1; Johnson Reply at 1; Lee Reply at 1; Mayer Reply at 1; Porter Reply at 1; Rodgers Reply at 2; Sykes Reply at 1; West Reply at 1.

<sup>103</sup> *See* Reply Comments of Kolby Garrison at 1; Richmond Reply at 1; Roy Reply at 1; Sefzik Reply at 1; Yarnall Reply at 1.

<sup>104</sup> *See, e.g.*, Reeder Reply at 1; Rodgers Reply at 2.

<sup>105</sup> *See* Hiland Reply at 1.

<sup>106</sup> *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 and Video Accessibility Act of 2010*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (“*User Interfaces Order*”).

programming) accessible to individuals who are blind or visually impaired,<sup>107</sup> and that navigation devices subject to Section 205 make on-screen text menus and guides used for the display or selection of multichannel video programming audibly accessible to individuals who are blind or visually impaired.<sup>108</sup> This obligation includes making sure that individuals who are blind or visually impaired can access the “Configuration – Video Description Control,” a function that allows the user to enable or disable the output of video description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains video description, and from the secondary audio stream back to the main audio).<sup>109</sup> The rules also require digital apparatus with built-in video description capability to have a mechanism that is reasonably comparable to a button, key, or icon to activate the video description.<sup>110</sup> The compliance deadline for entities covered by the new user interfaces rules is December 20, 2016, subject to certain exceptions.<sup>111</sup> We believe that the requirements implemented in the *User Interfaces Order*, once effective, will alleviate the issues identified by consumer commenters by making it easier for individuals who are blind or visually impaired to access the secondary audio stream for video description. In the meantime, we encourage MVPDs and manufacturers of digital apparatus and navigation devices to train their customer service representatives to assist consumers with accessing the secondary audio stream on consumer electronics equipment, so that consumers who are blind or visually impaired can more easily access video description services.

34. **Use of Video Description.** In the *Public Notice*, the Media Bureau inquired about the extent to which consumers use video description services when viewing television programming.<sup>112</sup> The record in response to this inquiry was sparse, and the only industry commenter who addressed this issue states that it does not track the extent to which its subscribers use video description services.<sup>113</sup> Although the record does not indicate whether there is a method to track the number of consumers who tune to the secondary audio stream for video description for a particular program, and, if so, whether any entities are currently doing so, the anecdotal evidence provided in the record suggests that consumers who are blind or visually impaired do use video description services to make television programming accessible when

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<sup>107</sup> *See id.* at 17363, ¶ 54. Digital apparatus include televisions and PCs without CableCARD or other conditional access technology, mobile devices (*e.g.*, tablets and smartphones) without MVPD applications pre-installed by the manufacturer, and removable media players. *See id.* at 17348, ¶ 28.

<sup>108</sup> *See id.* at 17371-72, ¶ 64. Navigation devices include digital cable ready televisions (*i.e.*, televisions with CableCARD slots), set-top boxes (including those provided by MVPDs as well as consumer-owned CableCARD-ready devices), computers with CableCARD slots, cable modems, and third-party devices with MVPD applications installed by the device manufacturer. *See id.* at 17345, ¶ 23.

<sup>109</sup> *See id.* at 17367-68, 17373-74, ¶¶ 58, 68.

<sup>110</sup> *See id.* at 17384, ¶ 84. The Commission will consider the simplicity and ease of use of the mechanism in determining whether an activation mechanism is “reasonably comparable” to a button, key, or icon. *Id.* at 17381, ¶ 81. In the *User Interfaces Order*, the Commission did not require Section 205 navigation devices to provide an activation mechanism that is reasonably comparable to a button, key, or icon for video description given Congress’s omission of the term “video description” in Section 205. *Id.* at 17384-85, ¶ 85. However, in the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. *See id.* at 17417-18, ¶¶ 145-47. The Commission also strongly encouraged manufacturers and providers of navigation devices to provide a simple and easy means to access video description for consumers who are blind or visually impaired. *Id.* at 17385, ¶ 85.

<sup>111</sup> *Id.* at 17352-53, 17399-405, ¶¶ 36-37, 111-19.

<sup>112</sup> *Public Notice*, 28 FCC Rcd at 9045, ¶ 3.

<sup>113</sup> DIRECTV Comments at 2.

video-described programming is available to them and they are able to access such programming without difficulty, and that they eagerly seek access to more video description.<sup>114</sup>

35. ***Findings.*** The record reflects that video description provides significant benefits to individuals who are blind or visually impaired by making key visual components of video programming accessible to them, which allows them greater independence and ability to follow and understand television programs. The record also indicates that, although industry commenters claim to be in compliance with the Commission's video description rules, consumers who are blind or visually impaired perceive there to be a minimal amount of video-described programming available to them. Overwhelmingly, consumers who are blind or visually impaired desire an increased amount of video description on television.

36. Broadcasters and MVPDs report compliance with the video description rules and suggest that, in some cases, they are providing video description in excess of the 50 hours per quarter requirement. As noted above, certain broadcast stations and MVPD systems may not currently be subject to the obligation to provide 50 hours of video description in prime time or children's programming because they are located outside the top 25 television markets or are not systems that serve 50,000 or more subscribers, respectively, and some may not be passing through video description from broadcast and nonbroadcast networks because they do not have the technical capability to do so on a particular station or channel. Consumers who are aware generally that video description rules have been adopted in the United States may not understand the particulars of the rules' applicability, which could explain their frustration with the inability to view video-described programming on a particular broadcast or MVPD channel.

37. We believe that some of the concerns about the availability of video-described content will be alleviated in the coming years. Notably, the obligation to provide 50 hours of video description expands to affiliates of the top four television broadcast networks located in television markets ranked 26 through 60 on July 1, 2015,<sup>115</sup> which will lead to increased video description availability for a greater number of consumers.<sup>116</sup> In addition, as described above, the Commission's recently adopted *Emergency Information Order* requires video programming providers and distributors to make visual emergency information provided during non-newscast programming accessible to individuals who are blind or visually impaired by aurally describing the emergency information on a secondary audio stream.<sup>117</sup> Unlike the video description rules, there is no technical capability exception to the emergency information rules, which means that all covered entities<sup>118</sup> that provide visual emergency information covered by the

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<sup>114</sup> See *supra* ¶ 22.

<sup>115</sup> 47 C.F.R. § 79.3(b)(2). See also *2011 Video Description Order*, 26 FCC Rcd at 11855-56, ¶ 16.

<sup>116</sup> In accordance with the CVAA, the Commission will have authority to expand the video description rules to market areas outside of the top 60 ten years after the date of CVAA enactment, based on a subsequent report assessing costs, benefits, and other issues related to video description that must be submitted to Congress no later than nine years after the date of CVAA enactment. 47 U.S.C. §§ 613(f)(4)(C)(iii)-(iv). Pursuant to this authority, the Commission can "phase in the video description regulations for up to an additional 10 designated market areas each year." *Id.* § 613(f)(4)(C)(iv).

<sup>117</sup> See *Emergency Information Order*, 28 FCC Rcd at 4880, ¶ 11.

<sup>118</sup> Entities subject to the emergency information rules include video programming distributors and video programming providers (including program owners), as defined in Section 79.1 of the Commission's rules. See *id.* at 4897-900, ¶¶ 32-36. See also 47 C.F.R. §§ 79.1(a)(2) (defining a "video programming distributor" as "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission"); 79.1(a)(3) (defining a "video programming provider" as "[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming").

rules must get the equipment necessary to make a secondary audio stream available, and all MVPDs must pass through the secondary audio stream of stations that provide aural emergency information, by the applicable deadline of May 26, 2015.<sup>119</sup> This means that more video programming providers and distributors will have the technical capability to provide and pass through a secondary audio stream – which is used for both video description and aural emergency information – which should expand the availability of passed-through video description. Further, if the Commission determines that the need for and benefits of providing video description for television programming outweigh the technical and economic costs, the Commission has authority two years after the completion of this *Report* to adopt additional regulations, including the ability to increase the 50 hours per quarter requirement by up to 75 percent (*i.e.*, up to 87.5 hours per quarter, or roughly 7 hours per week).<sup>120</sup>

38. Consumers express concern regarding the lack of information about which television programs are video-described, inadequate customer support service for video description, and technical problems with accessing video description services on consumer electronics equipment. As noted, we encourage industry to coordinate with program guide developers to ensure that consumers are provided with current and accurate information about video-described programming and to promote the availability of such websites and other information outlets. We also urge covered entities to provide proper training and dedicated support so that their customer service representatives are able to answer consumer questions about accessing video description on the secondary audio stream. The Commission recently adopted rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming to enable individuals with disabilities to access such programming more easily, which will go into effect in 2016. In the interim, we expect that MVPDs and manufacturers of digital apparatus and navigation devices will train their customer service representatives to assist consumers in accessing the secondary audio stream.

#### **B. Technical and Creative Issues Associated With Providing Video Description in Television Programming**

39. In the *Public Notice*, the Media Bureau inquired about any technical and creative issues involved with the provision of video-described television programming, whether related to the creation, distribution, or viewing of such programming.<sup>121</sup> The CVAA directed the Commission to reinstate the video description rules as adopted in 2000, which did not dictate technical specifications for providing video description or creative specifications for the content of video description. As such, industry currently has flexibility with respect to these issues.

40. Industry commenters do not raise any technical concerns, and the technical issues raised by consumer commenters relate more broadly to the availability of video-described programming on certain broadcast stations and MVPD systems and the accessibility of user interfaces used to activate video description, which are discussed in detail above.<sup>122</sup> The comments do not address technical elements of video description, such as recording quality and synchronization.

41. Likewise, industry and consumer commenters are not vocal in the record with regard to creative issues, such as the content of the narration provided in the video description audio stream. One consumer commenter addresses this issue, noting that he is “pretty satisfied” with the quality of the video description in television shows, and although on some programs there is too much dialogue and, thus, not a chance to include everything in the video description, “[o]bviously this can’t be helped.”<sup>123</sup> AMI is part

<sup>119</sup> See *Emergency Information Order*, 28 FCC Rcd at 4884-85, ¶ 17.

<sup>120</sup> 47 U.S.C. §§ 613(f)(4)(A)-(B).

<sup>121</sup> *Public Notice*, 28 FCC Rcd at 9045-46, ¶ 4.

<sup>122</sup> See *supra* ¶¶ 21-23, 32-33.

<sup>123</sup> Sinnott Reply at 1. Mr. Sinnott also suggests that if there are any visual components that can be seen in a television program and there is a pause in the dialogue to describe them, then they should be described. See *id.*

of an ongoing working group that addresses technical and artistic issues with regard to video description in television programming in Canada. As part of the record developed in response to the *Public Notice*, AMI submitted for the Commission's consideration a recently completed "Described Video Best Practices" guide developed in conjunction with the Canadian Association of Broadcasters and other groups.<sup>124</sup> According to AMI, the guide was developed "in an effort to standardize and bring consistency to the delivery of description in Canada," and it provides high level technical and artistic guidelines for topics such as describing physical characteristics of characters, scene transitions, visual effects, non-verbal communications, on-screen text, and style/tone.<sup>125</sup> We believe that AMI's "Described Video Best Practices" guide can be a useful resource for the entities that create video description for television programs. In addition, while the VPAAC was unable to reach consensus on best practices recommendations regarding the quality of video description, the report does provide a list of references agreed to by both consumer and industry representatives that provide guidance on quality for the production of video description.<sup>126</sup>

42. NCTA notes that program networks "have been able to identify the optimal children's and prime time programming to be described without running into creative roadblocks," but "anticipate[s] that this will become more difficult over time, even if the amount of mandated video-described programming hours does not increase."<sup>127</sup> NCTA explains that certain factors "will reduce programmers' ability to work around potential creative problems," including the rule that allows operators to count only a single rerun of a video-described show toward the 50 hour threshold, and to count only prime time or children's programming, and the fact that the top five networks air a significant amount of live programming, such as seasonal sporting events, during prime time.<sup>128</sup> According to NCTA, "[a]s more prime time hours or children's blocks are filled with library programming that contains video description, the rules inevitably will lead to programmers having less flexibility about which additional programming to describe" to meet the 50 hours per quarter requirement.<sup>129</sup> As it did in the record for the *2011 Video Description Order*, NCTA again asks the Commission for an exemption from the 50 hour requirement if all non-exempt programming in a quarter that could count toward the requirement is video-described, even if it amounts to less than 50 hours.<sup>130</sup>

43. In the *2011 Video Description Order*, the Commission declined NCTA's request for an exemption for networks that have fewer than 50 hours of scheduled prime time or children's programming that can count toward the video description requirement in a given quarter, and noted that NCTA can raise this issue in the context of a future review, once the impact of the rules can be assessed.<sup>131</sup> At this time, the record does not reflect that covered entities are experiencing challenges with finding sufficient hours of programming to meet the 50 hour requirement and, in fact, some entities are exceeding this requirement. NCTA's position also does not account for new programming that is regularly aired in prime time each season and would count toward the 50 hour requirement. We thus

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<sup>124</sup> AMI Comments at 1. AMI's "Described Video Best Practices" guide can be accessed at <http://apps.fcc.gov/ecfs/document/view?id=7520940294>.

<sup>125</sup> *Id.*

<sup>126</sup> See *VPAAC Report: Video Description* at 28, 30-31. This includes links to guides developed by the Described and Captioned Media Program, the American Council of the Blind, and WGBH's National Center for Accessible Media.

<sup>127</sup> NCTA Comments at 5.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 5, n. 18.

<sup>131</sup> *2011 Video Description Order*, 26 FCC Rcd at 11869-70, ¶ 46.

continue to believe that an exemption to our video description rules is unwarranted, but we remain open to reviewing this issue in the context of a future review.<sup>132</sup>

44. In response to the *Public Notice*, commenters did not raise the issue of how content on the secondary audio stream is tagged, even though this issue was raised in the *2011 Video Description Order* and other CVAA proceedings. A tag, in this context, refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is. Discrepancies in how the secondary audio stream is tagged on video apparatus may be making it difficult for consumers to identify and select this audio stream to access video description. In the *2011 Video Description Order*, the Commission observed that viewers with digital television sets may be unable to find and activate an audio stream tagged as “visually impaired” (“VI”), which is the tag used for video description as dictated by the digital television standard, known as the ATSC standard.<sup>133</sup> The Commission also cited comments indicating that many legacy televisions may be compatible only with audio streams tagged as “complete main” (“CM”).<sup>134</sup> Further, the record in the accessible emergency information proceeding indicates that some television receivers do not properly handle two audio tracks identified as English and, thus, to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description.<sup>135</sup> Given these issues, in the *Emergency Information Order*, the Commission sought comment in a Further Notice of Proposed Rulemaking on whether the Commission should require that the video description stream include a particular tag that consumers can access on all apparatus, and, if so, whether the “visually impaired” (“VI”) tag is the appropriate one to mandate.<sup>136</sup> As stated in that *Order*, in the interim we expect local broadcasters to coordinate with manufacturers to ensure that consumers can easily access video description provided on a secondary audio stream, and we expect voluntary standards setting bodies to explore how best to impose a consistent tagging scheme.<sup>137</sup> In addition, as noted above, we urge broadcasters and MVPDs to train their customer service representatives to assist consumers with accessing the secondary audio stream for video description.

45. ***Findings.*** The record does not reveal any significant problems with regard to the technical or creative aspects of creating, distributing, or viewing video description since the adoption of the rules. We note that the VPAAC, which was required to identify any necessary technical protocols, capabilities, and procedures for the delivery of video description, “identified no technical impediments to the reliable transport of video description” in the secondary audio stream by broadcasters and MVPDs.<sup>138</sup> We encourage industry to coordinate with consumer groups to address any technical and creative issues that may arise in the future.

### C. Financial Costs of Providing Video Description in Television Programming

46. In the *Public Notice*, the Media Bureau sought comment on the costs of providing video description for video programming on television.<sup>139</sup> Specifically, the Bureau requested information on

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<sup>132</sup> We note that parties can file for waiver on a case-by-case basis for any quarter in which they have provided video description for all non-exempt, countable programming and it still falls below the 50 hour threshold. See 47 C.F.R. § 1.3. See also *2011 Video Description Order*, 26 FCC Rcd at 11870, ¶ 46 (“If such a situation does arise, however, a station or system (or the programmer itself) may petition the Commission for a waiver.”).

<sup>133</sup> See *2011 Video Description Order*, 26 FCC Rcd at 11863, ¶ 30.

<sup>134</sup> *Id.* at 11863, ¶ 30, n. 131.

<sup>135</sup> *Emergency Information Order*, 28 FCC Rcd at 4912, ¶ 57.

<sup>136</sup> *Id.* at 4928-29, ¶ 85.

<sup>137</sup> *Id.* at 4912, ¶ 57.

<sup>138</sup> *VPAAC Report: Video Description* at 8.

<sup>139</sup> *Public Notice*, 28 FCC Rcd at 9046, ¶ 4.

what financial costs have been incurred by program owners and video programming providers and distributors, particularly large market broadcast affiliates and large MVPDs that are currently subject to the requirements, to create and distribute video-described programming.<sup>140</sup> In addition, the Bureau inquired as to what financial costs, if any, have been incurred by network-affiliated broadcast stations and MVPDs to comply with the video description pass-through requirements.<sup>141</sup>

47. NAB reports that the costs of providing video description for television programming can vary and range from around \$2,500 per program hour at the low end to \$4,100 per program hour at the high end.<sup>142</sup> NAB explains that higher costs can be attributed to contractual requirements to use voiceover artists that are members of the Screen Actors Guild and the American Federation of Television and Radio Artists (“SAG-AFTRA”)<sup>143</sup> in the recording of video description.<sup>144</sup> According to NAB, “[b]ecause some costs are fixed regardless of the length of a program, half-hour programs generally cost more than 50 percent of the per-hour cost for an hour-long program – typically about \$1,525 for 30 minutes. Thus, costs for every hour of video-described half-hour shows begin around \$3,050 per hour.”<sup>145</sup> In addition, NAB states that it costs \$25,000 to \$50,000 to outfit a local broadcast station to pass through video description if the station does not already have the ability to provide a secondary audio stream and that there are additional costs for stations to update feeds to MVPD systems.<sup>146</sup> NAB also states that “applying video description to video programming takes considerable time,” sometimes up to seven days to create a single hour of video description.<sup>147</sup>

48. Although NCTA does not provide specific cost figures, it states that companies “have expended considerable resources” in creating video-described programming, with costs to video describe an hour of programming being “roughly in line with what was anticipated by industry when the rules were adopted.”<sup>148</sup>

49. ***Findings.*** The record reflects that the costs of video description are consistent with the expectations of industry at the time of rule adoption, and covered entities do not indicate that the costs of video description have impeded their ability to comply with the video description rules. In accordance with the CVAA, the video description rules currently permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.<sup>149</sup> To date, the Commission has not received any such exemption requests.

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> NAB Comments at 4.

<sup>143</sup> SAG-AFTRA is a labor union for actors, announcers, broadcast journalists, dancers, disc jockeys, news writers, news directors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists, and other media professionals. See SAG-AFTRA, About Us, available at <http://www.sagaftra.org/content/about-us>.

<sup>144</sup> See NAB Comments at 4-5.

<sup>145</sup> *Id.* at 4.

<sup>146</sup> See *id.* at 4, n. 7.

<sup>147</sup> *Id.* at 5, n. 8.

<sup>148</sup> NCTA Comments at 4.

<sup>149</sup> See 47 C.F.R. § 79.3(d). The term “economically burdensome” means imposing significant difficulty or expense, and the Commission will consider the following factors in determining whether the requirements for video description would be economically burdensome: (i) the nature and cost of providing video description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission will consider any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the video description requirements, and it will evaluate economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3).

We believe that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.

#### IV. VIDEO DESCRIPTION IN VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL

50. Section 713(f)(3)(B) of the Communications Act also directs the Commission to inquire and report about the technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using IP.<sup>150</sup> We address these issues below.

51. At the outset, industry commenters argue that the Commission does not have authority at this time to expand video description requirements to IP-delivered programming. NAB argues that the CVAA does not give the Commission authority to do anything more than issue a report with regard to video description for programming delivered via IP, and that “the CVAA does *not* authorize the adoption of any video description rules for IP-delivered programming.”<sup>151</sup> Similarly, NCTA emphasizes that “Congress carefully circumscribed the Commission’s authority in the area of video description,” and “chose not to grant the Commission authority to require online delivery of video description, instead providing only for this inquiry and report.”<sup>152</sup>

##### A. Benefits of Providing Video Description in IP-Delivered Programming

52. In the *Public Notice*, the Media Bureau sought comment on the benefits of providing video description for IP-delivered programming.<sup>153</sup> NFB argues that “[a]s video programming over IP becomes more common and central to communication, recreation, and fundamental participation in American life, it becomes equally critical that blind people are secured a right of access to that programming as well.”<sup>154</sup> NFB notes that the Commission has recognized “the increasing effect television ha[s] on shaping individuals’ opinions and culture,” and explains that the benefits of video description for television programming are equally applicable to video description in programming delivered via IP.<sup>155</sup>

53. Consumer commenters who address the issue of video description for IP-delivered programming unanimously express a desire to see video description expanded to online programming.<sup>156</sup>

<sup>150</sup> 47 U.S.C. § 613(f)(3)(B).

<sup>151</sup> NAB Comments at 2, 6-7 (footnote omitted) (emphasis in original) (stating that Congress gave the Commission authority to reinstate the video description rules for traditional television, but “[i]ts focus on IP-delivered programming for video description purposes was limited to a request for a report on its costs, benefits, and technical feasibility”).

<sup>152</sup> NCTA Comments at 9 (footnote omitted).

<sup>153</sup> *Public Notice*, 28 FCC Rcd at 9047, ¶ 6.

<sup>154</sup> Reply Comments of the National Federation of the Blind at 3 (“NFB Reply”).

<sup>155</sup> *Id.* at 2-3.

<sup>156</sup> See Hall Reply at 1 (stating that “online providers need to offer all content with optional description tracks”); Hornbacher Reply at 1 (stating that “[a]ny movies or shows from any retail service such as iTunes, Net[f]lix, or other services needs to have description included”); Kohs Reply at 1 (stating that she would like “the ability to get audio description through DISH, through the internet and in all modes of media reception available to other Americans”); Lamperis Reply at 1 (“Making more shows accessible both on television and on-line would make a huge impact on my life.”); Mayer Reply at 1 (stating that he “would like to see internet TV described just like regular tv”); Morgan Reply at 1 (stating that she would like to see more video-described movies and programs online); Reply Comments of Philip G. Rich at 1 (stating that he “would like to see audio described programs on the Internet”); Rodgers Reply at 2 (asserting that the FCC should mandate more video-described media both on television and on the Internet); Roy Reply at 1 (asking that the Commission apply video description rules to online services like Netflix). See also Sezik Reply at 1.

Individual commenters who are blind or visually impaired contend that providing video description for IP-delivered video programming would make the visual components of online programming accessible to them, but express frustration that they are not able to take advantage of this important benefit on the IP-delivered programming that they watch. For example, Adrienne Roy explains that video description is beneficial because it allows her not to miss visual aspects of video programming, such as expressions, scene changes, and visual jokes, but that she cannot take advantage of the benefits as much as she would like because her family watches the majority of video programming online through Netflix.<sup>157</sup> Roy states that Netflix does not offer much help with accessibility through its website and that certain shows listed as having video description when aired on television are not being shown online with video description.<sup>158</sup> Byron Sykes notes that he does not watch television on the Internet “in large part due to the fact that not much if any is described.”<sup>159</sup> Alex Hall expresses concerns with the dearth of video-described programming available on Hulu, Netflix, and Apple, and notes that individuals who are blind or visually impaired have “very little choice when it comes to described entertainment.”<sup>160</sup>

54. NFB argues that unless content providers and IP-video distributors are statutorily required to provide video description for IP-delivered programming, blind and visually impaired consumers will be left behind as the rest of the country transitions to IP-based video programming.<sup>161</sup> NFB points out that in recent years there has been rapid growth in the number of Americans that watch video programming delivered over IP on services such as Netflix, Hulu Plus, and iTunes, and that approximately 4.7 million Americans will have “cut the cord” – *i.e.*, discontinued MVPD service – by the end of 2013.<sup>162</sup> According to data cited by NFB, 50 percent of Americans will watch digital television online by 2014.<sup>163</sup> NFB also states that Netflix’s streaming service and Hulu Plus offer closed captions as required by statute, but neither site offers video-described programming, and NFB contends that neither is likely to do so without statutory requirements.<sup>164</sup>

55. Therefore, NFB urges the Commission to request authority from Congress to extend the video description requirements to IP-delivered video programming.<sup>165</sup> NFB argues that Congress intended that the video description rules would eventually be expanded to programming delivered over IP.<sup>166</sup> Specifically, NFB states that “Congress recognized the increasing trend to distribute video programming over IP, and therefore required reports about video description capabilities on Internet

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<sup>157</sup> Roy Reply at 1. Roy explains that her family chooses to watch video programming via Netflix because it has the advantage of being economical, allows you to watch shows whenever you want, and has an abundance of children’s programming and older shows. *Id.* However, because video description is not provided on Netflix programming, “[w]ith some shows, I cannot follow them altogether, so I either won’t watch them at all or I’ll only watch them with my husband.” *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Sykes Reply at 1.

<sup>160</sup> Hall Reply at 1.

<sup>161</sup> NFB Reply at 2-5.

<sup>162</sup> *Id.* at 3-4. *See also* Roy Reply at 1 (“Watching TV online is a fast growing trend, especially in my generation, and I think it will continue to grow over time.”).

<sup>163</sup> NFB Reply at 4 (footnote omitted).

<sup>164</sup> *Id.* According to NFB, some entities have developed third-party solutions to address the lack of video description in IP content, but such solutions may require the cooperation of content providers and video programming distributors. *Id.* at 4-5. For example, Blindy.tv is a charitable website that provides channels of video-described programming for individuals who are blind or visually impaired, and YouDescribe is an experimental website that enables users to add their own audio descriptions to YouTube and other user generated videos. *Id.*

<sup>165</sup> *Id.* at 1, 6.

<sup>166</sup> *Id.* at 1.

programming” and “intended the CVAA to promote accessibility of modern communication technology to disabled persons.”<sup>167</sup> Further, according to NFB, the CVAA’s legislative history shows Congress’s “intent for the bill to expansively progress alongside technology and to potentially extend the Commission’s authority to make such regulations in the future.”<sup>168</sup>

56. ***Findings.*** The record reflects that video description for IP-delivered programming would provide the same, significant benefits that video description for television programming does for individuals who are blind or visually impaired. Notably, video description in programming delivered via IP would make key visual components of online video programming accessible to individuals with visual disabilities, which allows them greater independence and ability to follow and understand television programs, and would allow them to participate more fully in cultural, informational, and entertainment discourse. As NFB points out, an increasing number of Americans are cutting the cord, or discontinuing MVPD services and replacing them with online video distribution services.<sup>169</sup> Given the rapid growth in the number of Americans who consume video programming online and the benefits of video description for individuals who are blind or visually impaired, we will continue to monitor developments on this front, and we hope that industry will take the initiative to develop standards and work toward providing video description of IP-delivered programming.

#### **B. Technical and Operational Issues Associated With Providing Video Description in IP-Delivered Programming**

57. In the *Public Notice*, the Media Bureau sought comment on the technical and operational issues that are involved with providing video description for IP-delivered video programming.<sup>170</sup> The Media Bureau also inquired about any technologies or functionalities that must be developed to accommodate the delivery of video-described programming on the Internet and to make such programming accessible to individuals who are blind or visually impaired.<sup>171</sup>

58. Industry commenters reiterate the position stated in the VPAAC’s 2012 report on video description that there are significant technical challenges involved with imposing video description requirements in an IP environment.<sup>172</sup> Both NAB and DIRECTV emphasize the consumer and industry representatives’ positions expressed in the VPAAC Report that a single audio stream is the primary

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<sup>167</sup> *Id.* at 5 (footnote omitted).

<sup>168</sup> *Id.* at 6.

<sup>169</sup> See *supra* note 162 and accompanying text. See also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, MB Docket No. 12-203, 28 FCC Rcd 10496, 10650-51, ¶ 316 (2013); Consumer Electronics Association, News Releases, Change is in the Air: U.S. Households Viewing TV Programming Only via the Internet are Poised to Surpass Those Viewing Only via Antenna, Finds New CEA Study (June 5, 2014), available at [http://www.ce.org/News/News-Releases/Press-Releases/2014/OTA-Study\\_060514.aspx](http://www.ce.org/News/News-Releases/Press-Releases/2014/OTA-Study_060514.aspx) (citing a CEA study showing that “the percentage of U.S. households with a television that relies exclusively on an antenna for television programming reception (six percent) is about to be eclipsed for the first time ever by the percentage of households relying only on the Internet for TV programming (five percent)”).

<sup>170</sup> *Public Notice*, 28 FCC Rcd at 9047, ¶ 6.

<sup>171</sup> *Id.*

<sup>172</sup> Although the *VPAAC Report: Video Description* is the product of a collaborative effort between industry and consumer representatives on the advisory committee, the report provides separately stated industry and consumer positions for issues on which consensus could not be reached. See *VPAAC Report: Video Description* at 23. With respect to the issue of video description in Internet content, there is “agreement among many members that further effort would be required to develop internet technologies to accommodate consistent delivery of programming with description,” while “[a]reas of disagreement include the extent of technology development, as well as what programming could be provided over the internet with description.” *Id.* at 27.

approach for providing audio on the Internet, which can be subject to bandwidth constraints.<sup>173</sup> NAB also notes the VPAAC's finding that "[m]any streaming platforms, especially those that use adaptive bit-rate technologies, will have to be modified and add functionality to support the incremental audio component(s) needed to become capable of storage, serving, transport, and user selected playback of video description."<sup>174</sup> Similarly, NCTA cites the VPAAC report for its description of the complexities involved in providing consumers with multiple audio streams for online video programming and the position that Internet streaming technologies are not yet "description ready."<sup>175</sup>

59. NAB further explains that, as a practical matter, adopting video description regulations for IP-delivered video programming raises "tremendous technical challenges" because "[a]t present, there is very limited capability to consistently and reliably deliver a secondary audio stream in linear programming viewed via IP. Nor is there sufficient equipment or software to reliably support the many and ever-evolving IP devices, such as laptops, smartphones, tablets or desktop computers, or other IP based applications, in a multichannel audio environment."<sup>176</sup> NAB contends that "the main technical hurdle is lack of a single standard for selection among audio tracks in an Internet delivered program."<sup>177</sup> According to NAB, in contrast to the ATSC digital broadcast standard, "there is no common technical standard in the Internet environment for encoding and signaling to the consumer which streams are available or for the consumer to select."<sup>178</sup> NAB states that "[t]he problem is further complicated by a diversity of video encoders and players that are not compatible with each other, as well as a variety of device operating systems on which each video player must be able to run."<sup>179</sup>

60. Similarly, NCTA notes that "[m]ultiple additional changes would need to be made to be able to supply online providers with video-described programming in a format that supports alternate audio tracks."<sup>180</sup> These include upgrades to existing content management and encoding processes to pass through the secondary audio stream to different platform providers, modifying existing software for content delivery networks to support alternate audio streams, and having devices that are capable of toggling between different audio streams.<sup>181</sup>

61. In line with other industry commenters, DIRECTV states that "[e]xtension of video description requirements to linear programming delivered via IP would be highly problematic from a technical perspective,"<sup>182</sup> explaining that linear programming delivered via IP does not currently include the capability for a secondary audio stream to support video description, and the equipment used to view such programming does not support such capability.<sup>183</sup> DIRECTV argues that additional data added to the

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<sup>173</sup> DIRECTV Comments at 3 (citing *VPAAC Report: Video Description* at 27-28) (stating that "[t]oday, the *one audio* approach is the primary audio for delivery over the sometimes-bandwidth-constrained Internet pipe"); NAB Comments at 8, n. 16 (citing *VPAAC Report: Video Description* at 27) (same).

<sup>174</sup> NAB Comments at 8, n. 16 (citing *VPAAC Report: Video Description* at 27).

<sup>175</sup> NCTA Comments at 8 (citing *VPAAC Report: Video Description* at 28).

<sup>176</sup> NAB Comments at 2, 7.

<sup>177</sup> *Id.* at 8.

<sup>178</sup> *Id.* (footnote omitted).

<sup>179</sup> *Id.* at 8-9. NAB states that the production effort for generating video-described content that is operational on multiple video players is unknown because currently there are no common specs and technical requirements, and companies will develop "proprietary handling methods" without a single industry standard or safe harbor. *Id.* at 9. NAB also notes that there are more than half a dozen standards for audio compression on the Internet. *Id.*

<sup>180</sup> NCTA Comments at 8.

<sup>181</sup> *Id.* at 8-9.

<sup>182</sup> DIRECTV Comments at 2.

<sup>183</sup> *Id.* at 3.

video stream to support such capability would further congest broadband facilities that are already strained.<sup>184</sup>

62. Given the technical challenges, NAB and NCTA advise against prematurely adopting video description regulations for IP-delivered programming.<sup>185</sup> According to NAB, such a step “could stifle developments such as voice-activated messaging, touch screens, or emerging text-to-speech applications, which could enhance the consumer experience for accessing both programming and emergency information.”<sup>186</sup> NAB suggests that policymakers would need substantially more information before considering video description requirements for IP-delivered programming and that industry would need a substantial amount of time to comply with such requirements.<sup>187</sup> Finally, NAB points out that many companies face challenges in meeting the current delivery volume and timeline for required IP closed captioning,<sup>188</sup> and these challenges caution against a rush to require IP video description.<sup>189</sup> NCTA contends that the Commission “should report that an online video description requirement would impose significant logistical and operational issues” and, “[g]iven the newness of the video description rules, and the technical challenges of providing two audio streams online, the Commission should report that it is premature to suggest any online video description obligations.”<sup>190</sup>

63. In contrast to the statements of industry commenters, NFB argues that providing video description in IP-delivered video programming is technologically feasible.<sup>191</sup> According to NFB, statements by commenters about the limited capability and complexity of delivering multiple audio streams for video programming delivered via IP are exaggerated.<sup>192</sup> NFB contends that “HTML5 is the emerging standard for web based interaction and has built-in capability for multiple audio streams,” but although major search engines, social networking sites, and Fortune 500 companies have adopted HTML5, online video providers have made the business decision to use other streaming technologies that do not have the capability to switch between multiple audio tracks.<sup>193</sup> NFB identifies other technologies currently used to distribute videos on the Internet that are “readily adaptable to the inclusion of description,” including SilverLight and Flash, and notes that there are pre-existing web-based video players that use HTML5 and allow switching between separate audio tracks.<sup>194</sup>

64. NFB also argues that synchronization of multiple bit-rate streams does not pose a technical challenge to video description.<sup>195</sup> NFB explains that “[i]f video description is imbedded into the existing audio stream and a program is created to identify which video is being played . . . , synchronization is easy. Although this new program would have to be created, it calls for utilization of

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<sup>184</sup> *Id.*

<sup>185</sup> See NAB Comments at 7, 9-10; NCTA Comments at 9.

<sup>186</sup> NAB Comments at 7.

<sup>187</sup> *Id.* at 9-10.

<sup>188</sup> The rules impose closed captioning requirements on the owners, providers, and distributors of IP-delivered video programming that is published or exhibited on television with captions, and require apparatus that receive or play back video programming and recording devices to support IP-closed captioning capabilities. See 47 C.F.R. §§ 79.4, 79.103-104.

<sup>189</sup> NAB Comments at 9.

<sup>190</sup> NCTA Comments at 9.

<sup>191</sup> NFB Reply at 1, 6-9.

<sup>192</sup> *Id.* at 6-7.

<sup>193</sup> *Id.* at 7.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

pre-existing technology.”<sup>196</sup> In addition, NFB notes that the Smith-Kettlewell Video Description Research and Development Center has built a video description system that mixes audio streams at the browser level, which allows a third party to create video description that can be synchronized with the video during user play back, arguing that this existing system demonstrates the technological capacity to provide online video description “in innovative and cost effective ways.”<sup>197</sup>

65. NFB states that “[t]he best approach would call for creators of video content and the disseminators of the content (in this case, broadcasters and website operators) to embrace video description. This would include the aforementioned solutions like utilizing HTML5, or investing in a program that will imbed video description into the audio stream.”<sup>198</sup> However, NFB argues that, in the absence of regulatory requirements, industry has not implemented and utilized these technologies to enable the delivery of video description in IP-delivered video programming, and that this will not happen without incentive.<sup>199</sup>

66. ***Findings.*** The record reflects that there are currently technical challenges to imposing video description requirements in the context of IP-delivered programming, though it also reveals divergent views among industry and consumer commenters with regard to the extent of technological development and whether such issues are a roadblock to the implementation of video description regulations for IP-delivered programming. Notably, the comments of industry representatives suggest that, at present, the hurdles for online video description include limited capability to deliver a secondary audio stream in linear programming viewed via IP, development of equipment and software that will support multichannel audio for a multitude of IP devices, and the lack of a standard that would allow encoding and user selection among audio tracks in an Internet delivered video program. However, the comments of consumer group NFB, as well as recent comments in the emergency information proceeding discussed below, suggest that, although there are some technical impediments that exist at present, they are not insurmountable and, in fact, some technologies have already been developed that could support a secondary audio stream for IP-delivered programming.

67. We note that it has been over two years since the VPAAC issued its report on video description. Although industry commenters rely on the pronouncements in that report to support their position that there are substantial technical challenges involved with requiring video description in the IP context, technologies in this area are evolving rapidly, and we understand that at least some MVPDs are working with vendor partners to enable this technology. Specifically, we have learned in the emergency information proceeding that at least some MVPDs are already able to use a secondary audio stream to deliver emergency information and video description via IP and that some common platforms have already been upgraded to support this capability.<sup>200</sup> We believe that as larger MVPDs work to enable this technology, it will be more feasible for all to use it. The Commission will continue to monitor developments with regard to technical capability to provide a secondary audio stream for IP-delivered programming in the context of the emergency information proceeding.

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<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 8.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 7-8.

<sup>200</sup> See Letter from James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 1 (May 23, 2014) (discussing “Comcast’s efforts to pass through emergency information and video description provided by broadcasters or other programmers in the secondary audio stream on IP platforms,” including “Comcast’s investments in infrastructure to enable this capability on Comcast’s IP-delivered cable services,” as well as its “work and collaboration with various vendor partners to enable this capability on IP cable services offered via Xfinity applications on third-party devices”).

### C. Costs of Providing Video Description in IP-Delivered Programming

68. In addition to inquiring about the benefits of providing video description for IP-delivered programming, the Media Bureau also sought comment on the costs of providing this service.<sup>201</sup> Only one commenter discusses the financial costs of providing video description in IP-delivered programming, and no commenter provides specific figures to estimate these costs. DIRECTV generally states that “[a]ny report to Congress on this issue must reflect that fact that the technical and operational issues to be overcome and the costs imposed to achieve carriage of video description in programming delivered via IP would be very substantial.”<sup>202</sup>

69. **Findings.** Given the lack of detailed comment on this issue, the Commission is currently without sufficient information to assess accurately the costs for content owners and video programming providers and distributors to provide video description in IP-delivered programming. As noted above, however, technology in this area is evolving rapidly, and it appears that larger industry members are already making the investments to develop this technology.

## V. OTHER ISSUES

### A. “Other Program-Related Service” Exception

70. In the *2011 Video Description Order*, the Commission indicated that it would revisit the need for providing an exception to the video description pass-through requirements<sup>203</sup> and to the requirements applicable to subsequent airing of programs<sup>204</sup> when the technology used to provide video description is being used for other program-related services (e.g., foreign language audio).<sup>205</sup> At that time, the Commission explained that eliminating the exception may lead covered entities to replace other program-related content with video description on the secondary audio stream or, alternatively, to provide video description on a third audio stream tagged in a particular manner (e.g., “visually impaired”), which could make it difficult for consumers to access.<sup>206</sup> In the *Public Notice*, the Media Bureau followed up on this issue by seeking comment on whether it should revisit the need for an exception for other program-related content.<sup>207</sup>

71. Industry commenters support retention of the exception to the video description pass-through requirements and to the requirements for subsequent airings of programs when the technology is being used for other program-related content. NAB contends that there is no basis at present to eliminate the exception for other program-related services, arguing that “the exception remains necessary in the near term to ensure that program diversity is not lost as a result of the conflict between use of the secondary audio channel for video description versus Spanish-language audio,” and that “there is no other

<sup>201</sup> *Public Notice*, 28 FCC Rcd at 9047, ¶ 6.

<sup>202</sup> DIRECTV Comments at 3.

<sup>203</sup> See 47 C.F.R. §§ 79.3(b)(3), 79.3(b)(5)(i)-(ii) (requiring certain television stations and MVPDs to pass through video description when it is provided by a broadcast station or network and if they have the technical capability to do so, “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”).

<sup>204</sup> See *id.* §§ 79.3(c)(3), 79.3(c)(4)(i)-(ii) (requiring certain television stations and MVPDs to include video description on subsequent airings for programs that have already aired with 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”).

<sup>205</sup> See *2011 Video Description Order*, 26 FCC Rcd at 11862-64, ¶¶ 28-33.

<sup>206</sup> See *id.* at 11863, ¶ 31. We note that in the *Emergency Information Order*, the Commission addressed technical issues regarding the capability to provide more than one audio stream, and concluded that based on the record, it should not mandate more than two audio streams. See *Emergency Information Order*, 28 FCC Rcd at 4882-83, ¶ 14.

<sup>207</sup> *Public Notice*, 28 FCC Rcd at 9046, ¶ 5.

solution in the current two-channel environment.<sup>208</sup> NAB also points out that broadcasters are exceeding the threshold required amount of video-described programming even with the existing exception.<sup>209</sup>

72. Likewise, NCTA argues that the Commission should maintain both program-related exceptions so that the secondary audio stream can be used for multiple, important purposes.<sup>210</sup> NCTA argues that both program-related exceptions “remain important to cable operators’ and programmers’ ability to serve the needs and interests of multiple constituencies, including not only blind and visually impaired but also Spanish-speaking cable customers.”<sup>211</sup> NCTA points out that MVPDs and some broadcasters can provide only one audio stream in addition to the main audio stream, and that the Commission has acknowledged potential, negative consequences of eliminating the exception, such as the potential to deprive non-English speaking audiences of Spanish-language programming provided on the secondary audio stream.<sup>212</sup> NCTA also notes that programmers are increasing the number of hours of Spanish-language programming.<sup>213</sup> With regard to the exception for subsequent airings, NCTA explains that “[m]aintaining th[is] exception . . . is critically important to programmers’ ability to rerun the same program and serve a different audience with a different audio stream.”<sup>214</sup>

73. DIRECTV supports the exception for entities that use the secondary audio stream for other program-related purposes and sees no reason for the Commission to revisit this issue.<sup>215</sup> According to DIRECTV, the Commission has recognized that eliminating the exception could result in entities replacing other program-related content, such as foreign language audio, with video description on the secondary audio stream.<sup>216</sup>

74. Although some individual consumers express frustration with receiving foreign language audio on the secondary audio stream when they prefer that it be used for video description,<sup>217</sup> we believe that the record does not present sufficient justification to deviate from our decision in the *2011 Video Description Order* to maintain the exception for other program-related services. Although there is significant value in video description services for individuals who are blind or visually impaired, there is also significant value in providing foreign language audio for non-English speaking audiences, and we do not believe that our rules should force stations to supplant one service for another, but that stations should make those decisions based on the needs of their audiences.

75. In accordance with the regulations adopted in the *Emergency Information Order*, video programming providers and distributors must also use the secondary audio stream to provide an aural presentation of emergency information that is provided visually during non-newscast programming.<sup>218</sup> The Commission did not require covered entities to provide an audio stream that is dedicated solely to aurally accessible emergency information based on arguments in the record that mandating more than two

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<sup>208</sup> NAB Comments at 5-6 (footnote omitted).

<sup>209</sup> *Id.* at 6.

<sup>210</sup> NCTA Comments at 6-7.

<sup>211</sup> *Id.* at 6.

<sup>212</sup> *Id.* at 6-7.

<sup>213</sup> *Id.* at 7.

<sup>214</sup> *Id.*

<sup>215</sup> DIRECTV Comments at 2.

<sup>216</sup> *Id.*

<sup>217</sup> *See, e.g.*, Rodgers Reply at 2.

<sup>218</sup> *Emergency Information Order*, 28 FCC Red at 4881, ¶ 12. As noted above, in the *Emergency Information Order*, the Commission also sought comment on whether to require a particular tag that would allow consumers to more easily identify and select the secondary audio stream containing video description. *See id.* at 4928-29, ¶ 85.

audio streams would be costly and, in some cases, would pose technical difficulties.<sup>219</sup> However, given the importance of emergency information, video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with the rules supersedes all other programming on the secondary audio stream, including video description and foreign language translation.<sup>220</sup>

### B. Video Description of Spanish Language Programming

76. Although it was not specifically raised in the *Public Notice*, two commenters raise the issue of the lack of video description in Spanish language programming. In particular, Bridge Multimedia emphasizes that Spanish language broadcasters are not providing video description, even when the broadcast-ready description is available without costs, because there are no mandates for them to comply with the rules even though they easily compete with and in some cases outpace the traditional top four English language broadcasters.<sup>221</sup> Bridge Multimedia refers to “the current state of inequality for people with disabilities who are consumers of Spanish television broadcasts,” and urges the Commission “to consider how consumers of Spanish language broadcasters like Univision can benefit in a fair and equal manner from the provision of video description.”<sup>222</sup> Similarly, Dicapta Corp. notes “the lack of availability of video description in Spanish language networks and cable stations despite the fact that they are number one in ratings in some of the media markets according to Nielsen.”<sup>223</sup> In the *2011 Video Description Order*, the Commission adopted the proposal to designate ABC, CBS, Fox, and NBC affiliates licensed to the top 25 markets as the broadcast stations required to provide 50 hours of video description per quarter.<sup>224</sup> However, we reiterate that any broadcast station affiliated or otherwise associated with a television network – including Spanish language networks – must pass through video description when it is provided by the network, if the station has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.<sup>225</sup> Moreover, the Commission has authority to adopt additional regulations with regard to video description in television programming two years after the completion of this *Report*, if the Commission determines that the need for and benefits of providing video description outweigh the technical and economic costs.<sup>226</sup>

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<sup>219</sup> *Id.* at 4882-83, ¶ 14.

<sup>220</sup> See 47 C.F.R. § 79.2(b)(5). See also *Emergency Information Order*, 28 FCC Rcd at 4892-94, ¶ 26.

<sup>221</sup> Comments of Bridge Multimedia at 1. Bridge Multimedia cites data showing that Univision is the top television broadcaster within certain key age-range demographics and ranks in the top four when looking at total market share for all ages. *Id.* at 1-2.

<sup>222</sup> *Id.*

<sup>223</sup> Comments of Dicapta Corp. at 1. Dicapta Corp. offers video description to Spanish language educational programs through funds from the U.S. Department of Education, and states that blind Spanish speaking individuals continue to request video description for entertainment programs. *Id.*

<sup>224</sup> *2011 Video Description Order*, 26 FCC Rcd at 11853, ¶ 10. See also 47 C.F.R. § 79.3(b)(1) (“Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 25 DMAs, . . . must provide 50 hours of video description per calendar quarter. . .”).

<sup>225</sup> 47 C.F.R. § 79.3(b)(3). See also *2011 Video Description Order*, 26 FCC Rcd at 11850, 11858-59, ¶¶ 4, 20.

<sup>226</sup> 47 U.S.C. § 613(f)(4)(A).

**VI. CONCLUSION**

77. Consumers who are blind or visually impaired concur that video description in video programming provides significant benefits by making video programming accessible to them and allowing them to fully understand and enjoy such programming independently. Consumers also unanimously express a desire to see more video description available on video programming delivered via both television and IP. Industry has been working diligently to comply with the video description regulations for television programming, and we believe that in the coming years the availability of video description in television programming will expand and the ability to access video description will be made substantially easier for individuals with visual disabilities. However, in the absence of regulatory requirements, video description in IP-delivered programming is lacking, while the number of Americans who view such programming online is dramatically increasing. We will continue to monitor developments on this front, and we hope that industry will take the initiative to develop standards and work toward providing video description of IP-delivered programming.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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**APPENDIX A****List of Commenters****Comments filed in MB Docket No. 11-43**

Accessible Media Inc.  
Bridge Multimedia  
Dicapta Corp.  
DIRECTV, LLC  
National Association of Broadcasters (NAB)  
National Cable & Telecommunications Association (NCTA)

**Reply Comments filed in MB Docket No. 11-43**

National Federation of the Blind (NFB)

In addition, the following individual consumers filed comments and reply comments in this proceeding:

Micah Grossman; Adrian Spratt; Kenneth; Jose Raul Ocasio; Adrienne Roy; Anet M. Richmond; Gayle Yarnall; Kolby Garrison; Linda Faust; Nancy Johnson; Ann Salazar; Wilman Antonio Navarreto; Audley Blackburn; Christine Cook; Elizabeth Morgan; Jim East; Marlene Mesot; Myra Brodsky; Terry Knox; Anne M. West; Byron Sykes; Ken Rodgers; Penny Reeder; Edmund R. Meskys; Tracy Carcione; David M. Mayer; Dorothy M. Doran; Jeff Mihelich; Mary Hiland; Alex Hall; Nicole Hugues; Perla Kohs; Rhonda Hornbacher; Steve Fort; Blake Sinnett; Calvin Lee; Joe Sorenson; Joseph Lamperis; Judith Vido; Lisa D. Porter; Mary Sefzik; Michael Sedmak; and Philip G. Rich.