

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Consumer and Governmental Affairs, Media, and) GN Docket No. 21-140
Wireless Bureaus Seek Comment on Commission’s)
Fulfillment of the Twenty-First Century)
Communications and Video Accessibility Act)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ respectfully submits that the broadcast-related rules adopted by the Commission to implement the Twenty-First Century Communications and Video Accessibility Act are working well and as intended by the Act.² Broadcasters have faithfully implemented the applicable CVAA and Commission policies, and demonstrated their commitment to enhancing the ability of persons with disabilities to access video programming in a myriad of ways. Indeed, broadcasters routinely go above and beyond their regulatory obligations to serve the needs and interests of persons with disabilities. Below, we discuss these efforts in three of the policy areas listed in the above-captioned Public Notice:³ audio description, IP-closed captioning and accessible emergency information.⁴

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CVAA or the Act).

³ *Consumer and Governmental Affairs, Media, and Wireless Bureaus Seek Comment on Commission’s Fulfillment of the Twenty-First Century Communications and Video Accessibility Act*, Public Notice, DA 21-05 (Apr. 7, 2021) (Public Notice).

⁴ MB Docket No. 11-43 (audio description), MB Docket No. 11-154 (IP captioning), and MB Docket No. 12-107 (accessible emergency information).

II. Broadcasters Have Improved the Quality and Availability of Audio Description

The CVAA directed the FCC to adopt rules requiring certain television stations (and MVPDs) to provide audio description for a portion of their video programming.⁵ Audio description makes video programming more 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.”⁶

The FCC’s rules initially required television station affiliates of the top four broadcast networks (ABC, CBS, Fox, and NBC) to provide 50 hours of audio described programming per calendar quarter during prime time or on children’s programming.⁷ Pursuant to the Act, the FCC increased this obligation in 2017 to require an additional 37.5 hours of described programming quarter that may be aired at any time between 6 a.m. and midnight.⁸ The rules also initially applied to stations in the top 25 markets, but were subsequently extended to the top 60 markets, and last year further extended to stations in the next 10 largest markets as of January 1, 2021, and again on January 1 each of the next three years.⁹

Broadcasters appreciate the importance of audio description, as it greatly enhances the ability of persons who are blind or visually impaired to enjoy video programming, and to do so independently.¹⁰ Description is also a major factor when blind or visually impaired

⁵ Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(1).

⁶ 47 C.F.R. § 79.3(a)(3).

⁷ *Id.* at § 79.3(b)(1).

⁸ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-43, 32 FCC Rcd 5962, 5967 (2017) (2017 AD Order); 47 C.F.R. § 79.3(b)(4).

⁹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-43, 35 FCC Rcd 12577 (2020) (2020 AD Expansion Order).

¹⁰ Second Report, 34 FCC Rcd at 9358.

viewer are choosing which shows to watch.¹¹ Thus, broadcasters have been leaders in audio describing their video programming, even as those obligations have rapidly expanded, requiring them to launch description at additional stations and ramp up the total amount of described programming.

Each of the networks covered by the rules routinely exceeds the required 87.5 hours per quarter obligation, with the actual amount of described programming ranging from 100 to 125 hours per quarter for some networks.¹² The networks monitor and confirm compliance with the rules at their affiliated stations, and track additional programs they voluntarily describe.¹³ The networks also take steps to make it easy for consumers to identify which programming is audio described, including prominently listing all such programming on a dedicated website that is constantly updated and/or identifies described programs on their main schedule through the use of a distinctive icon.¹⁴ The networks have also created procedures and invested in equipment and personnel to help ensure the high quality of audio description.

The FCC itself has acknowledged these efforts, noting in a recent report to Congress the “significant progress in the variety and amount of audio-described programming

¹¹ *Id.*

¹² Comments of NAB, MB Docket No. 11-43, at 3 (Apr. 1, 2019) (NAB AD Status Report Comments).

¹³ *Id.*

¹⁴ *Id.* at 5. These listings are also consolidated on the website of the Audio Description Project (ADP), An Initiative of the American Council of the Blind (ACB), available at <http://acb.org/adp/tvschedule.html> (last visited May 11, 2021).

available” to consumers,¹⁵ not only of pre-recorded programming, but also live programming, such as award shows and the Olympics.¹⁶

Beyond merely implementing the CVAA, broadcasters make additional efforts to support audio description. For example, NAB and the covered networks have worked closely with ACB, the National Federal of the Blind and other advocacy groups on multiple initiatives of the FCC’s Disability Advisory Committee (DAC). Recently, we completed a recommendation setting forth resources and guidance for the composition of audio description.¹⁷ This item emphasizes the importance of description to consumers and the benefits of using experienced providers of description. The document is a resource for best practices for audio description and provides context for the decisions and strategies that are commonly employed in creating description, such as identifying the key elements in a visual scene, the audio levels and editing of description, and ensuring the technical delivery of description. Earlier, the DAC approved a separate recommendation urging the FCC to harmonize the publicly available listings of audio description.¹⁸ Broadcasters have also taken steps to educate broadcasters about audio description, including giving a presentation to the Board of Directors of the Radio Television Digital News Association (RTDNA) where we offered guidance on ways to effectively aurally describe emergencies.

NAB submits that all of these efforts have paid off. The covered networks all report that consumer complaints about audio description are extremely rare. In fact, the networks

¹⁵ Second Report to Congress, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, 34 FCC Rcd 9350, 9357 (2019) (Second Report).

¹⁶ *Id.*

¹⁷ See [Recommendation of the Federal Communications Commission Disability Advisory Committee Audio Description Quality Working Group](#) (Oct. 14, 2020).

¹⁸ See [Recommendation of the Federal Communications Commission Disability Advisory Committee Described Audio TV Listings Working Group](#) (Sep. 24, 2019).

have not received any substantial complaints about the description of pre-recorded programs in recent memory, and consumer feedback about voluntary description of live events is increasingly positive. Accordingly, to NAB's knowledge, the audio description rules that the FCC adopted to implement the CVAA appear to be working very well.

Nevertheless, we recognize that certain challenges remain. First, audio description is typically carried on the same secondary audio service as other audio (e.g., foreign language programming), and therefore is sometimes unavailable for use for audio description. Industry and the DAC have explored ways to overcome this problem, but options remain limited at this time.¹⁹ NAB has previously explained that additional routing, encoding and other equipment would need to be installed and tested at every television station to encode more than two audio services.²⁰ We also noted that many digital television receivers apparently continue to lack the user interface needed to enable viewers to easily select the second language or Audio Description channels. Moreover, some existing cable converter boxes may not have the capability to provide multiple audio services, and some cable and satellite head-ends are not able to process multiple audio services.²¹ It is possible that the advanced audio features of Next Generation Television (ATSC 3.0) may provide a solution to these challenges, but that remains uncertain at the moment.

Second, we anticipate that some commenters on the Notice may urge the FCC to adopt quality standards for audio description. NAB would object to any such regulations. It is well-settled that the text of the CVAA demonstrates Congress' intent to specifically limit the FCC's authority to act in this area. Congress instructed the FCC to reinstate the audio

¹⁹ Reply Comments of NAB, MB Docket No. 11-43, at 17 (July 26, 2016).

²⁰ NAB AD Status Report Comments at 6.

²¹ *Id.*

description rules that were previously vacated by the D.C. Circuit Court of Appeals,²² and only allowed the FCC to modify the rules in certain discrete areas.²³ For instance, the FCC has acted upon this limited authority to increase the required number of hours audio described programming on covered networks and increase the number of television markets where the rules apply, after thorough cost-benefit analyses. Quality standards would be outside the scope of the Commission's authority under the Act. In addition, as the FCC has recognized, evaluating the quality of audio description or imposing quality standards would require subjective determinations by the FCC that would be inappropriate in light of the First Amendment and the no censorship provisions of the Act.²⁴ For example, it would be unlawful for the FCC to require that certain elements in a visual scene, such as the facial features or age or clothes of a person, should be emphasized or downplayed. These concerns were recently noted in the DAC's recommendation setting forth resources and guidance for composing audio description.²⁵ NAB would urge the FCC to avoid any FCC rules or policies that could influence the subjective quality of audio description.

Finally, some parties may support extension of audio description to programming distributed on the Internet. However, the CVAA confines the FCC's authority to audio description for video programming that is displayed on television, and not IP-delivered programming.²⁶ NAB has previously explained that certain operational challenges still

²² *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F. 3d 796, 805 (D.C. Cir. 2002).

²³ 47 U.S.C. §§ 713(f)(1) (Reinstatement of Regulations) and 713(f)(2) (Modifications to Reinstated Regulations).

²⁴ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 2975, 2989 (2011); U.S. CONST. amend. I; 47 U.S.C. § 326.

²⁵ See *supra* note 20.

²⁶ 47 U.S.C. § 613(f)(4)(A).

prevent the offering of multiple secondary audio streams in IP-delivered content.²⁷ Specifically, the variety of devices used for to view IP video programming is rapidly growing and changing, but the technology needed to reliably enable the selection of a secondary audio stream on these devices does not seem to have advanced significantly. Unlike broadcasting, no single standard exists for creating, encoding, delivering and selecting multiple audio tracks in an IP-delivered program. Moreover, the variety of video encoders and players of IP-delivered content and operating systems raise obstacles to the efficient audio description of IP-delivered video programming.²⁸ NAB believes that much more information is needed before any new obligations in this area are considered.²⁹

III. The FCC's Rules Implementing IP-Closed Captioning are Effective

The CVAA instructed the FCC to revise its rules to require the closed captioning of certain IP-delivered video programming.³⁰ The FCC's implementing rules require captioned programming that is shown on television in the U.S. to be captioned when re-shown on the Internet. The obligations apply to "full-length video programming," or programming that is shown on TV substantially in its entirety through the Internet,³¹ and "video clips," which are excerpts of full-length video programming that are posted online.³² The rules require

²⁷ NAB AD Status Report Comments at 10-11.

²⁸ *Id.*

²⁹ NAB is aware that some streaming platforms have begun to voluntarily provide some audio description in spite of these challenges.

³⁰ 47 U.S.C. § 613(c)(2)(A). Programming shown on television was already required to be captioned. 47 C.F.R. § 79.1; 47 U.S.C. § 613.

³¹ 47 C.F.R. § 79.4; *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 (2012) (2012 IP Order).

³² 47 C.F.R. § 79.4(b)(2). *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010*, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 8687 (July 2014) (2014 IP Second Order/FNRPM).

broadcasters and other video programming distributors that show programming on TV to post captioned clips of their programming on their own websites or apps, but not on third party distributors, websites or apps, or platforms that are not owned, operated or permitted by the programming owner, producer or distributor.³³

Broadcasters go to extraordinary lengths to ensure that video programming is captioned, whether consumers view the content over-the-air or online. They invest in personnel and processes to create accurate, complete captions that are properly paced and synchronized with the audio and do not obstruct any important information on-screen.³⁴ Pursuant to the rules, broadcasters also ensure that program files are sent to video programming distributors and providers with the same quality of captions.³⁵ When the programming distributor or provider is affiliated with the programming owner, this process works very efficiently. To NAB's knowledge, when a broadcaster simulcasts its local newscasts or publishes the full program or clips thereof, or provides other video programming, on its own website or app, problems with caption quality are fairly infrequent, and in many of those cases,³⁶ the problem is often caused by a technical glitch or some other issue outside a broadcaster's control.

As noted, the FCC's rules for captioning IP-distributed clips do not apply to content that is subsequently displayed by third party distributors, websites or apps, such as those

Consumer-generated media such home videos shown on the internet are not required to be captioned unless they were previously shown on TV with captions. 47 C.F.R. § 79.4(a)(1).

³³ 2014 IP Second Order/FNRPM, 29 FCC Rcd at 8701-02.

³⁴ 47 C.F.R. at § 79.1(j).

³⁵ *Id.* at § 79.4(c)(1).

³⁶ Broadcasters make sure to provide captions to the distributor using the Society of Motion Picture and Television Engineers Timed Text (SMPTE) format, or a mutually agreed-upon alternative format, and take steps to monitor the presence and quality of captions. *Id.* at § 79.4(c)(1)(i).

that are not owned or operated by the programming owner, producer or distributor.³⁷ NAB would object to extending the rules to such unrelated platforms because doing so would be very complex and unduly burdensome, given the complicated nature of the clip captioning process, the vast number of third-party distributors, and the widespread unauthorized use of online video clips by third parties.³⁸ It would be difficult if not impossible for broadcasters to identify video clips subject to the rules because they may not have relationships, agreements, or even contact with the vast majority of third-party video distributors who may re-use their online content.³⁹ For example, a Google search for “online video clips” produces more than one billion results including online photo and video providers like Pexels.com, Videvo.net and Pixabay.com, among others,⁴⁰ and sometimes, the underlying ownership and jurisdiction of such websites can be unclear.

Broadcasters have no control over when or where their clips may be played or whether their caption files will function on such websites or with the equipment of end users.⁴¹ Nor do they have a way to identify whether the clips on third-party websites have been previously aired on TV with captions, or have any remedy against a third-party distributor if the clip does not retain captions. Thus, any third-party obligation could result in consumer confusion because there is no way to identify whether a particular clip on a third-party distributor’s website should have been captioned.⁴² For these reasons, NAB submits that the FCC should continue to limit any obligations to caption IP-delivered clips to online outlets under the ownership or control of broadcasters and other programming owners.

³⁷ 2014 IP Second Order/FNRPM, 29 FCC Rcd at 8702.

³⁸ Reply Comments of NAB, MB Docket No. 11-154, at 2-5 (Nov. 3, 2014).

³⁹ *Id.*

⁴⁰ Sample search available [here](#) (last visited May 17, 2021).

⁴¹ See *supra* note 38.

⁴² *Id.*

IV. Broadcasters Are Committed to Keeping Persons Who Are Blind or Visually Impaired Safe and Informed During Times of Emergency

Section 202 of the CVAA required the FCC to identify methods to convey emergency information in a manner that is accessible to individuals who are blind or visually impaired.⁴³ In 2013, the FCC implemented this mandate by requiring broadcasters and MVPDs to use a second audio service to aurally convey emergency information that is displayed visually during non-newscast programming, such as an on-screen crawl.⁴⁴ The aural information does not need to be a verbatim translation of the crawl, but must describe the critical details regarding the emergency and how to respond.⁴⁵ To effect this mandate, the FCC required that certain end user apparatus make the secondary audio stream available to provide aural emergency information.⁴⁶

As “First Informers,” America’s broadcasters are leaders in providing information about emergencies, and this was never more evident than during the COVID-19 pandemic. Events unfolded rapidly last year, requiring broadcasters to quickly change their operations to comply with social distancing guidelines and protect the health and safety of their staffs. Stations had to promptly figure out how to run stations remotely, provide on-air reports from

⁴³ 47 U.S.C. § 613(g)(1).

⁴⁴ *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*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket Nos. 12-107 and 11-43, 28 FCC Rcd 4871 (2013) (Accessible Emergency Info Order); 47 C.F.R. § 79.2.

⁴⁵ “Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders and road closures, shelters, and how to secure personal property or obtain assistance. See note to 47 C.F.R. § 79.2(a)(2).

⁴⁶ *Id.* at § 79.2(b)(5); 47 U.S.C. §§ 303(u), (z), 330(b). The FCC routinely issues reminders to industry of these obligations. See, e.g., *Reminder Regarding Obligations to Make Television Emergency Information Accessible to Viewers with Disabilities*, Public Notice, MB Docket No. 12-107, DA 20-855 (Aug. 10, 2020).

home, and gather timely news despite limited access to government, public health officials and other sources of information about the pandemic.⁴⁷

Nevertheless, as Chairman Pai recognized, broadcasters have admirably served their audiences. Radio and TV stations have run thousands of public service announcements (PSAs) on the pandemic (more than \$160 million worth of free time),⁴⁸ aired educational programming to help students and educators with distance learning, held numerous fundraisers for charities and small businesses, and expanded local news to cover the impact of COVID-19 on communities across the country.⁴⁹ NAB has also created a comprehensive “Vaccine Education Toolkit” that provides research and sample messaging to help journalists craft vaccine education messages that will best resonate with their audiences.⁵⁰

Regarding accessibility, television stations had to promptly expand efforts to keep persons with disabilities informed. For example, during the bulk of 2020, many governors conducted press conferences about the pandemic at least weekly or even more frequently, all of which broadcasters sought to caption. Given this demand, it was sometimes challenging for stations to find available live captioning services, especially when press conferences were called on short notice. Moreover, some television stations reach viewers in two or even three states, further increasing the number of last-minute events that required captioning. On top of these governor pressers, stations had to locate live captioning services for the numerous live events by public health officials, mayors, police, school systems and other entities with updates about the pandemic’s impact. In addition, many

⁴⁷ See, e.g., Stephen Battaglio, *How the Pandemic has Forever Changed TV News*, Los Angeles Times (Mar. 11, 2021).

⁴⁸ See <https://www.nab.org/coronavirus/>.

⁴⁹ *Broadcasters Serving Their Communities in Response to COVID-19 Pandemic*, FCC (July 8, 2020).

⁵⁰ See <https://www.nab.org/vaccine/>.

television stations, often in concert with disability advocates, urged public officials to provide sign language interpreters during their events.

Despite these challenges, television stations managed to ensure the accessibility of emergency and other live programming, including coverage of the devastating 2020 hurricane season, California wildfires, floods in Michigan and other events,⁵¹ and continue to fulfill their obligation to aurally convey emergency information that is visually presented in crawls. NAB has inquired with several TV station groups, and none reports any kind of recent increase in the number of viewer complaints about the aural presentation of visual emergency programming, either directly from consumers or through complaints forwarded by the FCC. This supports our understanding that viewers with disabilities are generally satisfied with the accessibility of emergency programming provided by over-the-air television stations, and that the FCC rules implementing the CVAA in this area are working as intended.

However, we recognize that certain challenges remain. Specifically, broadcasters continue to face obstacles to complying with the FCC requirement to aurally describe certain dynamic visual but non-textual information, such as radar maps and other moving graphics.⁵² We have explained that, unlike text-based information, the software used to automatically create dynamic images does not contain text files that can be converted into

⁵¹ See, e.g., <https://www.scientificamerican.com/article/a-running-list-of-record-breaking-natural-disasters-in-2020/>.

⁵² 47 CFR § 79.2(b)(2)(ii); *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 Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4880-4881 (2013).

speech, and in turn, used to create an audible crawl.⁵³ Broadcasters have coordinated with some of the leading advocacy groups for blind and visually impaired persons, as well as all known potential developers of a solution to this problem, but there remains no solution to this issue.⁵⁴

The FCC has also acknowledged this problem, finding good cause to waive this rule until May 26, 2023.⁵⁵ The FCC noted feedback that, absent such a waiver, broadcasters may be forced to remove maps and other graphic images from emergency news updates to avoid the risk of FCC enforcement.⁵⁶ The FCC also stated that the record indicated that, in most cases, the required critical details about an emergency provided in a graphic image are duplicative of the information conveyed in text-based crawls, which are already accessible to individuals who are blind or visually impaired.⁵⁷ Therefore, stations that add a graphic image to a crawl that already conveys all the critical details may consider themselves in compliance with the audible crawl rule.⁵⁸ Accordingly, the FCC granted the extension to allow more time for a technical solution to be developed. For the time being, and despite industry's continued efforts, the challenges and situation remain the same. NAB appreciates the reasonable approach the FCC has taken regarding a waiver of this obligation.

⁵³ See, e.g., Joint Petition for Extension of Waiver of the American Council of the Blind, the American Foundation for the Blind, and the NAB, MB Docket No. 12-107 (Mar. 23, 2018) (Joint Petition).

⁵⁴ Status Report of the National Association of Broadcasters, MB Docket No. 12-107, at 5-8 (Nov. 24, 2020).

⁵⁵ *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*, Memorandum Opinion and Order, 33 FCC Rcd 5059 (2018) (Audible Crawl Waiver).

⁵⁶ *Id.* at 5065.

⁵⁷ *Id.*

⁵⁸ *Id.* at 5066.

V. Conclusion

Accordingly, NAB submits that the broadcast-related rules adopted by the FCC to implement the CVAA are working well and as intended by the Act, and no additional obligations are necessary or appropriate at this time. NAB looks forward to continued engagement with the FCC and the disability community on ways to voluntarily further enhance access to broadcast programming for persons with a disability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan, Larry Walke, Kelly Williams". The signature is written in a cursive, flowing style.

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