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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11-43; DA 13-1438]

Inquiry Regarding Video Description in Video Programming Distributed on Television and on the Internet

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: In this document, the Federal Communications Commission (Commission) solicits public comment on issues related to video description in video programming that is delivered via both television and the Internet. The comments received in response to these inquiries will inform a report to Congress required by the CVAA on the status, benefits, and costs of video description on television and Internet-provided video programming, which must be completed no later than July 1, 2014.

DATES: Comments may be filed on or before September 4, 2013, and reply comments may be filed on or before October 2, 2013.

ADDRESSES: You may submit comments, identified by MB Docket No. 11-43, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in MB Docket No. 11-43, DA 13-1438, released on June 25, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to

fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary

1. By the Public Notice, the Media Bureau seeks comment on video description of video programming that is delivered via both television and the Internet. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), the Commission released a Report and Order¹ on August 25, 2011, published at 76 FR 55585, September 8, 2011, reinstating the video description rules previously vacated by the U.S. Court of Appeals for the District of Columbia Circuit.² Under the reinstated rules, certain television broadcast stations and MVPDs have an obligation to provide video description for a portion of the video programming³ that they offer to consumers. Video description is “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”⁴ It makes video programming accessible to individuals who are blind or visually impaired. The Media Bureau seeks comment on specific inquiries related to video description in video programming that is delivered via both television and the

¹ 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”). See 47 U.S.C. 613(f)(1)-(2).

² In 2000, the Commission adopted rules requiring certain broadcasters and multichannel video programming distributors (“MVPDs”) to carry programming with video description. See Implementation of Video Description of Video Programming, Report and Order, 15 FCC Rcd 15230 (2000) (“2000 Video Description Order”). The D.C. Circuit vacated the rules five months after they went into effect, on the ground that the Commission lacked authority to promulgate video description rules. Motion Picture Ass’n of Am., Inc. v. FCC, 309 F.3d 796 (D.C. Cir. 2002).

³ In this context, “video programming” is defined as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” 47 CFR 79.3(a)(4).

⁴ Id. 79.3(a)(3).

Internet, as the CVAA requires.⁵ The comments received in response to these inquiries will inform a report to Congress required by the CVAA on the status, benefits, and costs of video description on television and Internet-provided video programming, which must be completed no later than July 1, 2014.⁶

2. Background. The video description rules 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.⁷ 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.⁸ The rules also impose video description “pass through” obligations on all network-affiliated broadcast stations regardless of market size,⁹ and on all MVPDs regardless of

⁵ 47 U.S.C. 613(f)(3)(A)-(B). Congress directed the Commission to “commence the . . . inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations. . . .” *Id.* 613(f)(3). Broadcasters and MVPDs were required to be in full compliance with the video description rules beginning on July 1, 2012. See 2011 Video Description Order, 26 FCC Rcd at 11864, para. 34. Thus, the inquiries must be commenced no later than July 1, 2013.

⁶ 47 U.S.C. 613(f)(3) (requiring the Commission to report to Congress two years after the completion of the phase-in of the reinstated video description rules on the findings for the inquiries set forth in this section).

⁷ 47 CFR 79.3(b)(1). See 2011 Video Description Order, 26 FCC Rcd at 11849, para. 4. Beginning July 1, 2015, full-power affiliates of the top four television broadcast networks located in markets 25 to 60 will also be subject to this requirement. See 47 CFR 79.3(b)(2); 2011 Video Description Order, 26 FCC Rcd at 11856, para. 16.

⁸ 47 CFR 79.3(b)(4). See also 2011 Video Description Order, 26 FCC Rcd at 11849-50, para. 4. For purposes of the video description rules, the top five national nonbroadcast networks include only those 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 CFR 79.3(b)(4). See also 2011 Video Description Order, 26 FCC Rcd at 11854-55, paras. 12-15. Thus, for purposes of the rules, the top five nonbroadcast networks are USA, the Disney Channel, TNT, Nickelodeon, and TBS. 2011 Video Description Order, 26 FCC Rcd at 11854, para. 12. The list of top five networks will be reviewed every three years for changes in ratings. *Id.* at 11857, para. 18.

⁹ 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

the number of subscribers.¹⁰ Any programming aired with video description must include video description if it is re-aired on the same station or MVPD channel. The video description rules were reinstated as of October 8, 2011, and broadcasters and MVPDs were required to be in full compliance with the video description requirements beginning on July 1, 2012.¹¹ Video description services for television are provided on a secondary audio stream, and typically a consumer can access video description through an on-screen menu provided by the home television receiver or set-top box. The Commission recently adopted rules requiring apparatus that is designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available for video description services.¹² Those rules go into effect on June 24, 2013, except for the rules that require approval by the Office of Management and Budget.¹³ In a separate rulemaking proceeding, the Commission recently issued a Notice of Proposed Rulemaking seeking comment on issues related to implementation of Sections 204 and 205 of the CVAA, which generally require that user

necessary to do so and if that technology is not being used for another purpose related to the programming. 47 CFR 79.3(b)(3). See also 2011 Video Description Order, 26 FCC Rcd at 11850, para. 4.

¹⁰ 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. 47 CFR 79.3(b)(5)(i)-(ii). See also 2011 Video Description Order, 26 FCC Rcd at 11850, para. 4.

¹¹ See 2011 Video Description Order, 26 FCC Rcd at 11864, para. 34.

¹² See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4907, para. 49 (2013) (“Emergency Information/Video Description Order”). Covered entities must comply with the apparatus rules by May 26, 2015.

¹³ See Public Notice, Notice of Effective Date of New Emergency Information Rules and Emergency Information/ Video Description Apparatus Rules and Announcement of Comment and Reply Comment Deadlines for Related Further Notice of Proposed Rulemaking, DA 13-1240 (rel. May 29, 2013) (“Effective Date PN”).

interfaces on digital apparatus used to view video programming, as well as on-screen text menus and guides on navigation devices, be accessible to and usable by individuals who are blind or visually impaired.¹⁴

3. Video Description in Television Programming. Section 713(f)(3)(A) of the Communications Act of 1934 as amended (the “Communications Act”), as added by the CVAA, directs the Commission to inquire about the following specific issues related to video description in television programming:

- 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.¹⁵

In accordance with Congress’ directive, we request comment on each of the issues set forth above, including information on pertinent developments since the video description rules were reinstated in October 2011. Specifically, we solicit data on the amount of video-described programming that is currently available to consumers on television, as

¹⁴ See Accessibility of User Interfaces, and Video Programming Guides and Menus, Notice of Proposed Rulemaking, MB Docket No. 12-108, FCC 13-77 (rel. May 30, 2013) (“User Interfaces/Programming Guides NPRM”). The User Interfaces/Programming Guides NPRM also seeks comment on the statutory requirement that certain devices must provide access to video description features through a mechanism reasonably comparable to a button, key, or icon. *Id.* at 19-20, para. 45. Any comments relating to these issues should be filed in MB Docket No. 12-108. Comments are due July 15, 2013, and reply comments are due August 7, 2013. See Public Notice, Media Bureau Announces Comment and Reply Comment Deadlines for the Notice of Proposed Rulemaking Regarding Accessibility of User Interfaces and Video Programming Guides/Menus and Establishes Schedule for Ex Parte Meetings, DA 13-1398 (rel. June 18, 2013).

¹⁵ 47 U.S.C. 613(f)(3)(A).

well as the types of programming that are provided with video description. We seek comment on both programming that is video-described by covered entities to comply with the Commission's rules and programming that is video-described voluntarily. How much video-described programming is being provided voluntarily? We also seek comment on the extent to which consumers use video description services when viewing television programming, as well as the benefits to consumers of such services, including whether the benefits of video description extend to audiences without visual disabilities. Is the availability of video description indicated in program guides or other sources?¹⁶ If it is, is it indicated audibly, and is there a common industry method to indicate that the program is video-described?

4. We seek comment on any technical or creative issues involved with the provision of video-described television programming, whether related to the creation, distribution, or viewing of such programming. We request information regarding the costs of providing video description for video programming on television. 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? What financial costs, if any, have been incurred by network-affiliated broadcast stations and MVPDs to comply with the video description pass through requirements? We further ask commenters to provide information on any other relevant

¹⁶ See 2011 Video Description Order, 26 FCC Rcd at 11871-72, para. 51 (declining, at that time, “to require that the availability of video description on certain programs be publicized in a certain manner,” but stating the Commission’s expectation “that programmers, stations, and systems will provide this information to viewers in an accessible manner, including on their websites and to companies that publish television listings information”). See also User Interfaces/Programming Guides NPRM at 19-20, paras. 45-46.

legal and policy issues regarding the provision of video description in television programming that can help inform the Commission's report to Congress.

5. In the 2011 Video Description Order, the Commission also indicated that it would revisit the need for providing an exception to the video description pass through requirements¹⁷ and to the requirements applicable to subsequent airings of programs¹⁸ when the technology used to provide video description is being used for other program-related content.¹⁹ At that time, the Commission explained that eliminating the exception may lead covered entities to replace other program-related content (e.g., foreign language audio) 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.²⁰ We seek comment on whether we should revisit the need for an exception for other program-related content. We note that the Commission has already addressed issues regarding the capacity to provide more than one audio stream in the Emergency Information/Video Description Order and concluded that it should not mandate more than two audio streams.²¹

Apparatus are required to make video description available only on a secondary audio

¹⁷ See supra notes 9-10.

¹⁸ See 47 CFR 79.3(c)(3)-(4) (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”).

¹⁹ See 2011 Video Description Order, 26 FCC Rcd at 11863, para. 31.

²⁰ See id. In the Further Notice of Proposed Rulemaking (“FNPRM”) adopted with the Emergency Information/Video Description Order, the Commission inquires whether an audio stream containing video description should include a particular tag (e.g., “VI”). See Emergency Information/Video Description Order, 28 FCC Rcd at 4928-29, para. 85. Any comments relating to this issue should be filed in MB Docket Nos. 12-107, 11-43. Comments are due July 23, 2013, and reply comments are due August 22, 2013. Effective Date PN at 1.

²¹ See Emergency Information/Video Description Order, 28 FCC Rcd at 4882-83, para. 14.

stream.²² Further, in the Emergency Information/Video Description Order, the Commission adopted rules requiring that emergency information provided on a secondary audio stream supersede all other programming on the secondary audio stream, including video description.²³ We are not seeking to revisit these issues here.

6. Video Description in Video Programming Distributed on the Internet.

Section 713(f)(3)(B) of the Communications Act also directs the Commission to make the following inquiry related to video description in video programming distributed on the Internet:

- The technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol (“IP”).²⁴

In accordance with Congress’ directive, we seek comment on the inquiry set forth above. We note that the Commission’s video description regulations require video description only by certain television broadcast stations and MVPDs and that, at this time, the requirements do not apply to IP-delivered video programming that is not otherwise an MVPD service.²⁵ What technical and operational issues are involved with providing video descriptions for IP-delivered video programming? As noted above, the Commission recently adopted rules requiring certain apparatus to make secondary audio

²² See *id.* at 4907, para. 49.

²³ See *id.* at 4892-94, para. 26.

²⁴ 47 U.S.C. 613(f)(3)(B).

²⁵ In the pending FNPRM, the Commission is seeking comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. See Emergency Information/Video Description Order, 28 FCC Rcd at 4927-28, paras. 83-84. Any comments relating to these issues should be filed in MB Docket Nos. 12-107, 11-43. See *supra* note 20.

streams available for video description services.²⁶ Are there other 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?²⁷ What are the costs of providing video description for IP-delivered video programming and what are the benefits to consumers of making video-described programming available on the Internet? We also seek comment on the feasibility of enforcing video description requirements for IP-delivered video programming that is not provided by broadcast stations or MVPDs. We further ask commenters to provide information on any other relevant legal and policy issues regarding the provision of video description on video programming distributed on the Internet that can help inform the Commission's report to Congress.

7. Permit-but-Disclose. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules.²⁸ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data

²⁶ Id. at 4907, para. 49.

²⁷ See, e.g., Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: Video Description, at 27-28 (Apr. 9, 2012), available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

²⁸ 47 CFR 1.1200 et seq.

presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

8. Comments and Replies. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and Reply Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS").²⁹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in

²⁹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

9. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS.

Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

10. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

11. Additional Information. For additional information on this proceeding, contact Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120. Press contact: Janice Wise (202-418-8165; Janice.Wise@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION.

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