

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Video)	CS Docket 99-339
Description of Video)	
Programming)	

REPLY COMMENTS OF LIFETIME ENTERTAINMENT SERVICES

Lifetime Entertainment Services (“Lifetime”) hereby replies to comments submitted in response to the Commission’s *Notice of Proposed Rulemaking* concerning the implementation of video description in television programming.¹ Lifetime and its recently launched sister network, Lifetime Movie Network (“LMN”), are 24-hour, advertiser supported basic cable networks targeted to women.² Although Lifetime has always supported the accessibility of television programming to as large an audience as possible, it has serious reservations about the proposals under consideration by the Commission in this proceeding.

Lifetime believes that the significant constitutional, jurisdictional, copyright and practical problems that have been identified in numerous comments in this proceeding³

¹ Implementation of Video Description in Video Programming, MM Docket No. 99-339, *Notice of Proposed Rulemaking*, FCC 99-353 (rel. Nov. 18, 1999) (“*Notice*”).

² Lifetime currently reaches over 75 million MVPD households and is ranked third among advertiser-supported satellite-delivered program networks in total day household ratings and fifth in prime time ratings according to A.C. Nielsen Cable Network Audience composition Reports (4th Quarter 1999). LMN was launched in June 1998.

³ See, e.g. Comments of A&E Television Networks (“*A&E Comments*”);

have been inadequately studied and addressed at this time to permit the successful and effective implementation of a long-term video description scheme. In particular, key elements of the proposals under consideration do not take into account significant differences between video description and closed captioning. Accordingly, Lifetime's reply: (i) expresses Lifetime's shared concern over the important legal issues raised by other commenting parties; (ii) summarizes Lifetime's experiences with technical and practical problems that video description poses for the production and distribution of programming to MVPDs; and (iii) offers some constructive suggestions to help make video programming more accessible to the blind and visually disabled in a more effective manner.

1. The Basis of Lifetime's Interest in Video Description.

Lifetime's commitment to program accessibility dates back to 1989, when the network instituted closed captioning of select original productions. The amount of captioned programming on Lifetime has increased steadily since that time, with approximately 75% of Lifetime's weekly program schedule and 100% of its prime time original programming closed captioned today. The network's closed captioned original programming includes highly-rated and acclaimed original series and movies such as "Any Day Now" (which will receive the YWCA Racial Justice Award in April and has been nominated for a NAMIC Vision Award for diversity), "Lifetime Live" (a daily news service targeted to women), "Courage to Love," "My Little Assassin" and "Navigating the Heart;" specials such as "Who Wants to be Our President," a New Hampshire President

Comments of C-SPAN and C-SPAN2 ("*C-SPAN Comments*"); Comments of the Motion Picture Association of America ("*MPAA Comments*"); and Comments of the National Cable Television Association ("*NCTA Comments*").

Town Hall Meeting; and the “Intimate Portrait” series featuring prominent women such as Golda Meir, Indira Gandhi, Hillary Rodham Clinton, Cokie Roberts and Eleanor Roosevelt. In addition, Lifetime has made a major commitment to reformat captioning of acquired programs, including “Party of Five,” “Chicago Hope,” “Golden Girls” and “Designing Women.” Lifetime has also explored the use of a Secondary Audio Program (“SAP”) channel for video description and second language tracks; however, as will be discussed in greater detail below, technical and practical obstacles have impeded these efforts.

2. Legal Issues Associated with Video Description.

The comments of the NCTA, A&E, C-SPAN and MPAA identify some serious legal issues raised by mandatory video description. First, legal questions exist as to the Commission’s jurisdiction to mandate video description. Indeed, Congress only authorized the Commission to study the issue, not to impose requirements.⁴ Lifetime also concurs in these comments’ assessment of the constitutional problems presented. Unlike closed captioning, which involves only the preparation of a transcript of the actual existing audio content of a television program for presentation in textual form, video description involves highly subjective artistic and editorial decision-making as to how what is taking place visually in a program should be described, a judgment call that is also affected by the length of pauses in the program’s existing audio in which to insert such description. Thus, as both C-SPAN and MPAA explain, video description would compel content-based speech on media protected by the First Amendment in a manner that is not narrowly tailored to serve a compelling state interest.⁵ From a copyright law standpoint, video description entails creation and public performance of a derivative work of the original

⁴ See *MPAA Comments* at 3-6 and *NCTA Comments* at 3-5.

⁵ See *C-SPAN Comments* at 5-7 and *MPAA Comments* at 7-9.

television program, which cannot be done without the permission of the copyright owner, regardless of the FCC's mandate.⁶ Although it certainly is possible to obtain such permission, a network's ability to do so is by no means assured. Moreover, the need to obtain video description rights undoubtedly will add to the lead time and cost of new productions and potentially will be even more difficult to obtain for pre-existing syndicated programs that already are under contract. Thus, for networks such as Lifetime, which airs a significant amount of pre-existing syndicated programming, the copyright aspects of video description will significantly complicate, delay and increase the cost of program acquisition. The existence of all of these potentially serious but unresolved legal issues militates against precipitous imposition of rigid regulatory mandates and in favor of those aspects of the Commission's proposal based on a more measured and flexible approach.

3. *Practical Considerations and Existing Resources for Video Description.*

Many of the comments do not fully appreciate the significant differences between what was needed to implement closed captioning and what it will take to implement video description.⁷ Lifetime's experience in production and acquisition of programming indicates that the personnel, equipment and administrative resources that are needed to support implementation of video description greatly exceed the resources required for closed captioning. Moreover, while the resource needs for video description are greater, far fewer resources are available for video description than those available for closed captioning when the captioning rules were adopted. Lifetime estimates that in the cable

⁶ See *MPAA Comments* at 14-18; 17 U.S.C. § 101 *et seq.*.

⁷ See *Comments of the American Foundation for the Blind* at 6 and

Comments of Narrative Television Network at 2-3

television context, the status of video description today is almost ten years behind what the status of the closed captioning field was at the time captioning became mandatory.

a. Personnel Requirements for Video Description

In general, the staffing needs for closed captioning are smaller and less demanding than for video description: a stenocaptioner to transcribe the audio portion of the program into text; a proofreader or supervisor to maintain quality control; and a technician to put the visual text on the master tape of the program. To the extent that such personnel are not already available in the labor force, a substantial cadre of trained court stenographers can be converted to video captioning or individuals can learn the necessary skills at many institutions that provide such training.

In contrast, it takes at least four to six professionals, several of whom must be highly skilled, to equip a pre-recorded program with video description, and the process is much more time-consuming and complex.⁸ As noted above, the principal difference between the creation of the video descriptions and the creation of closed captions is that video description entails editorial and creative skills, while closed captioning only requires someone to transcribe what already has been created. Video description cannot begin until there is a finished program, which someone must watch in order to make the highly subjective editorial and artistic judgments of how best to convey in an aural manner what is happening visually on the screen within the stringent confines of available pauses in dialogue or audio portions of the program. The writing skills required for creating video

⁸ The demands and skills that would be required for live programming are even more unique, as noted in the Commission's *Notice* as well as in certain comments. See *Notice* at footnote 64, *NCTA Comments* at 18, Comments of Alan Clive at 2-3 and Comments of QVC, Inc. at 4-5.

captions are comparable to those needed for writing radio scripts. As the Commission recognizes and as comments submitted by the National Federation of the Blind and the National Television Video Access Coalition stipulate, this is not an easy task. In fact, there is a very basic disagreement among blind and visually disabled individuals as to the desirability of video description at all.⁹ Moreover, only if the descriptions are read by a professional actor or voice-over talent accustomed to the timing and other demands of audio production will the video description process be effective and enhance rather than detract from the audience's experience. A director may also be required to guide and coordinate the voice-over talent. On the technical side, video descriptions require an experienced audio engineer and audio editor to fit the descriptions within the pauses in the program and a video engineer to lay the video descriptions back on the video tape following encryption.

b. Unique Technical Constraints in the Cable/MVPD Context

For a satellite-delivered programming network, implementing video description would require major changes to the infrastructure at each step of the production and distribution process, from the studio to the cable headend. In the production and post production process, Lifetime currently is using the full, four-channel audio capacity of its video recording equipment, and there is no equipment commonly in use that is capable of recording the fifth audio channel that would be needed for video description. In the broadcast phase, because Lifetime currently operates in a two-channel on-air environment (stereo), it also would need to augment the on-air play-out infrastructure to accommodate a third synchronous audio channel for video description. In the transmission process, additional infrastructure would be needed as well for the ground-based circuits that

⁹ See Comments of the National Federation of the Blind at 1-3, 5.

transmit programming to the satellite uplink. Depending on the satellite technology in use, it is unclear whether Lifetime would be able to include an additional audio channel on the same transponder without interference. Moreover, the encryption system currently in use in satellite transmissions cannot process an additional audio channel. As noted above, Lifetime began exploring use of the SAP for video description or second language audio several years ago. Although some cable operators expressed interest in passing through the SAP to subscribers, the need to reconfigure their systems to accommodate an additional audio channel, which is detailed in the *NCTA Comments*,¹⁰ was a major concern to them. The addition of an audio channel at the cable headend is complicated further by the switching involved in local advertising insertion by the cable operator, an essential element of the economic relationship between programming networks and their distributors. While all of these technical limitations can be examined and explored, the cost, time and resources involved should not be underestimated.

4. *Recommendations.*

Clearly, significant legal and practical problems continue to stand in the way of rapid deployment of video description. While this should not deter the Commission or the affected industries from pursuing the worthy goal of making television more accessible to the visually disabled, the realities of implementation must be taken into account. Lifetime strongly supports those elements of the Commission's *Notice* that recognize the need for a more measured approach.

As the *A&E Comments* point out, rigid video description mandates are premature at this time.¹¹ Experience with video description is not yet widespread, as is evident from

¹⁰ *NCTA Comments* at 15-17.

¹¹ *See A&E Comments* at 14-16.

the extremely limited scope of the examples (public television programs and Turner movies) presented in the comments in this proceeding. Moreover, when closed captioning rules were adopted, there were at least three or four facilities immediately capable of providing the captions in a major way. In contrast, WGBH appears to be the only facility that has come forward with the ability to provide video descriptions at this time. This further underscores the need for additional time for experimentation, for identification of the precise kinds of resources needed and for such resources to develop.

Lifetime agrees with A&E that the Commission should encourage the industry to engage in further voluntary experimentation before adopting rules. Even in the case of voluntary efforts, there must be sufficient lead time (at least the 18 months that the Commission proposed) to enable programmers to obtain rights to video caption pre-existing programs or to assemble the talent and other resources necessary to provide high quality captions for original productions. While Lifetime basically agrees with the Commission's determination -- supported by the comments of visually disabled advocacy groups¹²-- that video description of news, sports and live events coverage need not be among the first genres of programming to be video described, Lifetime nonetheless urges the Commission to allow participants in video description trials maximum flexibility to determine what works best. In order to benefit by the knowledge and experience gained through an official period of trial and experimentation, the Commission could require participants to submit reports on their efforts by a pre-determined date.

5. Conclusion

There is no question that making television programming more readily accessible

¹² See Notice at 12 and Comments of the National Federation of the Blind at 5-6.

for the blind and visually disabled is an important objective that Lifetime strongly supports; however, the legal, technical and practical issues that video description presents must be resolved before long-term requirements for implementing a video description system are established. The most productive course for the Commission to pursue at this time is to continue gathering information based on industry experience gained through flexible, creative and effective efforts.

Respectfully submitted,

LIFETIME ENTERTAINMENT

SERVICES

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