

**TESTIMONY OF JAMES M. ASSEY  
EXECUTIVE VICE PRESIDENT  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

**on**

**H.R. 3101, the Twenty-First Century Communications and Video Accessibility Act of 2009**

**before the**

**Committee on Energy and Commerce  
Subcommittee on Communications, Technology, and the Internet**

**UNITED STATES HOUSE OF REPRESENTATIVES  
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**EXECUTIVE VICE PRESIDENT, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Good morning, Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee. My name is James Assey and I am the Executive Vice President of the National Cable & Telecommunications Association. Thank you for inviting me today to testify on H.R. 3101, the Twenty-First Century Communications and Video Accessibility Act of 2009.

NCTA represents cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of residential high-speed Internet service, having invested more than \$160 billion since 1996 to build two-way, interactive networks with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to more than 20 million American consumers. NCTA and its members are committed to making their services available to all Americans, and we support the objective of H.R. 3101 to ensure that IP-based voice, broadband, and video services are accessible to the visually- and hearing-impaired.

Cable industry representatives are actively involved in ensuring that the needs of our customers with disabilities are addressed. Today, our voice offerings comply with Section 255's accessibility requirements, and cable operators contribute to the Telecommunications Relay Service Fund. Our video programming is closed captioned in accordance with the FCC's rules. Moreover, cable programmers increasingly are providing this programming online with captions, and some cable programmers continue to voluntarily provide some video-described programming. In addition to these steps, we remain actively engaged in organizations and standards development activities dedicated to working on disability issues. For example, NCTA

is pleased to participate in forums focused on accessibility solutions like this year's 25<sup>th</sup> Annual International Technology & Persons with Disabilities Conference that was held in San Diego, California. In addition, NCTA and Comcast have been working with the FCC, through its Technical Working Group on Closed Captioning and Video Description, to help make sure that the transition from analog to digital programming does not disrupt our customers' ability to continue to enjoy captioned video programming.

We agree that more can and should be done. In that regard, discussions surrounding this bill have played a positive role in helping the cable industry better understand the needs and goals of cable consumers with disabilities. Along with representatives of other industry organizations with an interest in this legislation, NCTA has actively participated in discussions for several months with the Coalition of Organizations for Accessible Technology (COAT) about the provisions of H.R. 3101. Cable operator engineers have met with COAT and its technical experts to exchange information and learn about technological developments in assistive technology. We hope to continue our positive dialogue with COAT and with the Committee to ensure any legislation considered addresses the needs of the disability community, but also takes into consideration the impact on industry. We want to continue to be a productive participant in these ongoing discussions to identify solutions and to best achieve concrete results.

Our dialogue with COAT has helped us not only better understand the needs of consumers with hearing and visual disabilities, but has also brought to light certain elements of H.R. 3101 that we believe can achieve accessibility goals through a more pragmatic approach. I would like to highlight a few of the areas where we would suggest such changes.

First, cable operators are committed to working to find solutions to the accessibility of menus and program guides provided for digital multichannel video programming. In light of the

nascent stage of development of accessible solutions, NCTA suggests amending the bill to make clear that operators should have the needed time and flexibility to design and develop the technology required to provide audible versions of their guides and menus for the blind and visually impaired.

Second, we recognize that the Internet is becoming an increasingly significant source for viewing video programming, and we are committed to making online video as accessible as possible. Cable programmers and operators are participating in an Ad Hoc Group within the Society of Motion Picture and Television Engineers (SMPTE) working to resolve the technical barriers that currently prevent captioning from accompanying the video content when it is moved from television to online delivery. We believe we can successfully overcome these challenges in the near future, so that programming captioned for television viewing can more easily retain the captions when distributed over the Internet and does not have to be captioned multiple times to accommodate different online formats. When the SMPTE process is complete and a standard is finalized, use of that standard can be incorporated into programming going forward. NCTA proposes that Internet captioning requirements be timed to reflect the ongoing standard-setting process and apply prospectively to programming distributed online.

We also propose a phase-in of Internet captioning obligations that reflects the different levels of difficulty associated with captioning programming online. For example, if a program is edited for Internet distribution (e.g., the commercials are removed, scenes are eliminated or added, other elements such as the music are replaced), the captions may need to be reformatted or redone, and we have suggested some additional time to ensure edited programming is captioned online. While we anticipate that most programming eventually will be able to seamlessly move from television to the Internet with captions, it will be more difficult for some

types of programming. The bill should thus allow some necessary leeway to address some likely technical glitches and other unusual situations that may occur.

Third, the challenges we face in providing video description, both over television and the Internet, are more difficult. There are technical and operational difficulties, as well as significant costs (which far exceed those for captioning) and creative issues associated with providing video described programming. Despite these challenges, the cable industry would agree to the reinstatement of the FCC's earlier video description requirements on television, with certain modifications. Much has occurred over the decade since the rules were eliminated, and we ask that legislation give the industry sufficient time to provide video-described programming. This time is necessary to incorporate the provision of video description into budgets and program production plans and to ensure that programmers and operators have the right equipment in place to provide video-described programming. Because of the significant questions that remain about the utility of, and difficulty of providing, video description, it is premature to provide the FCC authority to expand the scope and coverage of the rules. Instead, we believe the FCC should study the associated issues and report back to Congress.

Finally, while we generally support Title I of the bill ("Communications Access"), we share some of the concerns raised by other industry groups. In particular, we would suggest changes that clarify the scope and application of Title I to reflect the difference between the IP environment and the old circuit-switched world in which accessibility requirements were first imposed. As we move increasing to an IP environment, the service provider and the network operator may be two different entities that have no direct contact with one another. This is much different than the pre-IP world, where the network operator was the service provider (such as in the case of traditional voice telephone service). Consequently, a network operator may have no

control over whether the application provider that is actually providing the communications service complies with accessibility requirements. Congress needs to clarify the respective accessibility responsibilities of IP network operators and applications providers – or expressly direct the FCC to do so – and ensure that network operators functioning solely as passive conduits for third party services providers are not made responsible for compliance by those providers. We would be happy to work with you to fashion language to accomplish these goals.

Thank you again for the opportunity to appear this morning on this very important matter. We look forward to working with you on H.R. 3101.